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9:00 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741-6008



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Rules and Regulations

Federal Register

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Monday, August 31, 2009

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FARM CREDIT ADMINISTRATION

12 CFR Part 604

RIN 3052-AC58

Farm Credit Administration Board Meetings; Sunshine Act

AGENCY: Farm Credit Administration.

ACTION: Direct final rule.

SUMMARY: The Farm Credit Administration (FCA or we) issues this direct final rule amending our regulation on meeting announcements to provide greater flexibility to the FCA Board in scheduling meetings.

DATES: The regulation shall become effective upon the expiration of 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Michael Wilson, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4124, TTY (703) 883-4434; or

Mary Alice Donner, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4033, TTY (703) 883-4020.

SUPPLEMENTARY INFORMATION: The Farm Credit Administration Board (Board) holds its regularly scheduled meeting on the second Thursday of each month. Occasionally, matters may require the Board to reschedule the monthly meeting or to hold meetings between its regularly scheduled monthly meetings. We are amending § 604.425 to provide the Board greater flexibility in rescheduling meetings or holding additional meetings. The current rule provides that the Board may fix a different time and place for a meeting only at an earlier regularly scheduled

meeting. The new rule removes this constraint and allows the Board to set a time and place for a meeting by public announcement in accordance with the Government in the Sunshine Act, 5 U.S.C. 552b.

We are amending § 604.425 by a direct final rulemaking. Because § 604.425 is a rule of agency procedure not requiring notice and comment (5 U.S.C. 553(b)(A)), the amendment is adopted as a direct final rule without notice and comment. We will publish notice of the effective date of the rule following the required congressional waiting period under section 5.17(c)(1) of the Farm Credit Act of 1971, as amended.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not “small entities” as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 604

Sunshine Act.

■ For the reasons stated in the preamble, part 604 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

PART 604—FARM CREDIT ADMINISTRATION BOARD MEETINGS

■ 1. The authority citation for part 604 continues to read as follows:

Authority: Secs. 5.9, 5.17 of the Farm Credit Act; 12 U.S.C. 2243, 2252.

■ 2. Section 604.425 is revised to read as follows:

§ 604.425 Announcement of Meetings.

(a) The Board meets in the offices of the Farm Credit Administration, McLean, Virginia 22102-5090, on the second Thursday of each month, unless the Board fixes a different time and/or place for a meeting and follows the requirements of paragraph (b) of this section.

(b)(1) The Farm Credit Administration shall make available for public

inspection the time, place, and subject matter of the meeting, and whether it is to be open or closed, by posting notice on its public notice board or on its public Web site except to the extent that such information is exempt from disclosure under the provisions of § 604.420 of this part. The public announcement must be made at least 1 week before the meeting, unless a majority of the FCA Board determines by a recorded vote that agency business requires that a meeting be called on lesser notice, in which case the announcement shall be made at the earliest practicable time.

(2) Once a meeting has been announced, the time, place, and subject matter of the meeting and whether it is open or closed to the public may be changed following the requirements of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: August 26, 2009.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E9-20939 Filed 8-28-09; 8:45 am]

BILLING CODE 6705-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM410; Special Conditions No. 25-389-SC]

Special Conditions: Rosemount Aerospace Inc. Modification to Airbus Model A330-200 and A330-300 Airplanes: Lithium-Battery Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Airbus Model A330-200 and A330-300 airplanes. This airplane, as modified by Rosemount Aerospace, will have a novel or unusual design feature associated with lithium batteries. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety

equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is August 20, 2009. We must receive your comments by October 15, 2009.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM-113), Docket No. NM410. 1601 Lind Avenue, SW., Renton, Washington, 98057-3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM410. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Nazih Khaouly, ANM-111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2432; facsimile (425) 227-1320.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected airplane. In addition, the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We may change these special

conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on these special conditions, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

Background

On April 15, 2008, Rosemount Aerospace Inc. applied for a supplemental type certificate for installation of a cargo video-surveillance system (CVSS) in Airbus Model A330-200 and A330-300 airplanes. The CVSS uses or otherwise incorporates lithium batteries.

Existing regulations do not adequately address several characteristics of lithium batteries. Lithium-battery installations could affect the safety and reliability of the Airbus Model A330-200 and A330-300 airplanes. These special conditions address characteristics of, and safety measures required for, lithium-battery installations.

Type Certification Basis

Under the provisions of § 21.101, Rosemount Aerospace Inc. must show that the Airbus Model A330-200 and A330-300 airplanes, as changed, continue to meet the applicable provisions of the regulation incorporated by reference in Type Certificate No. A46NM or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulation incorporated by reference in A46NM is 14 CFR 25.1353 at Amendment 25-38.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Rosemount Aerospace Inc. CVSS because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A330-200 and A330-300 airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92-574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate, to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The Rosemount Aerospace Inc. modification to Airbus Model A330-200 and A330-300 airplanes will incorporate the following novel or unusual design feature: a lithium-battery system.

Discussion

The current regulations governing installation of batteries in large, transport-category airplanes were derived from Civil Air Regulations (CAR) part 4b.625(d) as part of the recodification of CAR 4b that established 14 CFR part 25 in February, 1965. The new battery requirements, § 25.1353(c)(1) through (c)(4), basically reworded the CAR requirements.

Increased use of nickel-cadmium batteries in small airplanes resulted in increased incidents of battery fires and failures, which led to additional rulemaking affecting large, transport-category airplanes as well as small airplanes. On September 1, 1977, and March 1, 1978, respectively, the FAA issued § 25.1353(c)(5) and (c)(6), governing nickel-cadmium battery installations on large, transport-category airplanes.

The proposed use of lithium batteries for equipment and systems on the Airbus Model A330-200 and A330-300 airplanes has prompted the FAA to review the adequacy of these existing regulations. Our review indicates that the existing regulations do not adequately address several failure, operational, and maintenance characteristics of lithium batteries that could affect the safety and reliability of lithium-battery installations on Airbus Model A330-200 and A330-300 airplanes.

At present, there is limited experience with use of rechargeable lithium batteries in applications involving commercial aviation. However, other users of this technology, ranging from wireless-telephone manufacturers to the electric-vehicle industry, have noted safety problems with lithium batteries. These problems include overcharging,

over-discharging, and flammability of cell components.

1. Overcharging

In general, lithium batteries are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (i.e., thermal runaway) than their nickel-cadmium or lead-acid counterparts. This is especially true for overcharging, which causes heating and destabilization of the components of the cell, leading to the formation (by plating) of highly unstable metallic lithium. The metallic lithium can ignite, resulting in a self-sustaining fire or explosion. Finally, the severity of thermal runaway due to overcharging increases with increasing battery capacity due to the higher amount of electrolyte in large batteries.

2. Over-discharging

Discharge of some types of lithium batteries beyond a certain voltage (typically 2.4 volts) can cause corrosion of the electrodes of the cell, resulting in loss of battery capacity that cannot be reversed by recharging. This loss of capacity may not be detected by the simple voltage measurements commonly available to flight crews as a means of checking battery status—a problem shared with nickel-cadmium batteries.

3. Flammability of Cell Components

Unlike nickel-cadmium and lead-acid batteries, some types of lithium batteries use liquid electrolytes that are flammable. The electrolyte can serve as a source of fuel for an external fire if the battery container is breached.

These problems, experienced by users of lithium batteries, raise concerns about the use of these batteries in commercial aviation. The intent of the proposed special conditions is to establish appropriate airworthiness standards for lithium-battery installations in the Airbus Model A330–200 and A330–300 airplanes and to ensure, as required by §§ 25.1309 and 25.601, that these battery installations are not hazardous or unreliable.

Applicability

As discussed above, these special conditions are applicable to the Rosemount Aerospace Inc., cargo video-surveillance systems. Should Rosemount Aerospace Inc. apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A46NW, to incorporate the same novel or unusual design feature, the special

conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on Rosemount Aerospace Inc. CSVVs installed on Airbus Model A330–200 and A330–300 airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Airbus Model A330–200 and A330–300 airplanes modified by Rosemount Aerospace Inc. lithium batteries, and battery installations on Airbus Model A330–200 and A330–300 airplanes must be designed and installed as follows:

1. Safe cell temperatures and pressures must be maintained during any foreseeable charging or discharging condition, and during any failure of the charging or battery-monitoring system not shown to be extremely remote. The lithium-battery installation must preclude explosion in the event of those failures.

2. Design of the lithium batteries must preclude the occurrence of self-sustaining, uncontrolled increases in temperature or pressure.

3. No explosive or toxic gases, emitted by any lithium battery in normal operation, or as the result of any failure of the battery-charging system, monitoring system, or battery installation which is not shown to be extremely remote, may accumulate in hazardous quantities within the airplane.

4. Installations of lithium batteries must meet the requirements of § 25.863(a) through (d).

5. No corrosive fluids or gases that may escape from any lithium battery may damage surrounding structure, or any adjacent systems, equipment, or electrical wiring of the airplane, in such a way as to cause a major or more-severe failure condition, in accordance with § 25.1309 (b) and applicable regulatory guidance.

6. Each lithium-battery installation must have provisions to prevent any hazardous effect on structure or essential systems caused by the maximum amount of heat the battery can generate during a short-circuit of the battery or of its individual cells.

7. Lithium-battery installations must have a system to automatically control the charging rate of the battery, to prevent battery overheating or overcharging, and,

a. A battery-temperature-sensing and over-temperature-warning system with a means for automatically disconnecting the battery from its charging source in the event of an over-temperature condition, or,

b. A battery-failure-sensing-and-warning system with a means for automatically disconnecting the battery from its charging source in the event of battery failure.

8. Any lithium-battery installation, the function of which is required for safe operation of the airplane, must incorporate a monitoring-and-warning feature that provides an indication to the appropriate flight-crew members when the state-of-charge of the batteries has fallen below levels considered acceptable for dispatch of the airplane.

9. The instructions for continued airworthiness (ICA), required by § 25.1529 (and 26.11), must contain maintenance steps to:

a. Assure that the lithium battery is sufficiently charged at appropriate intervals specified by the battery manufacturer.

b. Ensure the integrity of lithium batteries in spares-storage to prevent the replacement of batteries, whose function is required for safe operation of the airplane, with batteries that have experienced degraded charge-retention ability or other damage due to

prolonged storage at a low state of charge.

The ICA maintenance procedures must contain precautions to prevent mishandling of the lithium battery, which could result in short-circuit or other unintentional damage that, in turn, could result in personal injury or property damage.

Note 1: The term “sufficiently charged” means that the battery will retain enough of a charge, expressed in ampere-hours, to ensure that the battery cells will not be damaged. A battery cell may be damaged by lowering the charge below a point where the battery’s ability to charge and retain a full charge is reduced. This reduction would be greater than the reduction that may result from normal, operational degradation.

Note 2: These special conditions are not intended to replace § 25.1353(b) in the certification basis of the Airbus Model A330-200 and A330-300 airplanes. These special conditions apply only to lithium batteries and their installations. The requirements of § 25.1353(b) remain in effect for batteries and battery installations in Airbus Model A330-200 and A330-300 airplanes that do not use lithium batteries.

Compliance with the requirements of these special conditions must be shown by test, or analysis by the Aircraft Certification Office or its designees, with the concurrence of the FAA Transport Airplane Directorate.

Issued in Renton, Washington, on August 20, 2009.

Ali Bahrami,

*Manager, Transport Airplane Directorate,
Aircraft Certification Service.*

[FR Doc. E9-20698 Filed 8-28-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM406; Special Conditions No. 25-384-SC]

Special Conditions: Bombardier Inc. Model CL-600-2B19, -2C10, -2D15 and -2D24 Airplanes; Passenger Seats With Non-Traditional, Large, Non-Metallic Panels

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for Bombardier Inc. model CL-600-2B19, -2C10, -2D15 and -2D24 airplanes. These airplanes will have a novel or unusual design feature(s) associated with seats that include non-

traditional, large, non-metallic panels that would affect survivability during a post-crash fire event. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* August 12, 2009.

FOR FURTHER INFORMATION CONTACT:

Alan Sinclair, FAA, Airframe/Cabin Safety Branch, ANM-115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington, 98057-3356; telephone (425) 227-2195; facsimile (425) 227-1232; electronic mail alan.sinclair@faa.gov.

Background

On July 1, 2008, Bombardier Inc. 400 Cote Vertu West, Dorval, Quebec, Canada, H4S 1Y9 applied for a design change to Type Certificate No. A21EA for installation of seats that include non-traditional, large, non-metallic panels in the following Bombardier Inc. airplanes: Model CL-600-2B19, Model CL-600-2C10, Model CL-600-2D15 and Model CL-600-2D24. These airplanes, which are currently approved under Type Certificate No. A21EA, are swept-wing, T-tail, twin-engine, fuselage mounted turbofan-powered, single aisle, medium sized transport category airplanes.

The applicable regulations to airplanes currently approved under Type Certificate No. A21EA do not require seats to meet the more stringent flammability standards required of large, non-metallic panels in the cabin interior. At the time the applicable rules were written, seats were designed with a metal frame covered by fabric, not with large, non-metallic panels. Seats also met the then recently adopted standards for flammability of seat cushions. With the seat design being mostly fabric and metal, the contribution to a fire in the cabin had been minimized and was not considered a threat. For these reasons, seats did not need to be tested to heat release and smoke emission requirements.

Seat designs have now evolved to occasionally include non-traditional, large, non-metallic panels. Taken in total, the surface area of these panels is on the same order as the sidewall and overhead stowage bin interior panels. To provide the level of passenger protection intended by the airworthiness standards, these non-traditional, large, non-metallic panels in the cabin must meet the standards of

Title 14 Code of Federal Regulations (14 CFR), part 25, Appendix F, parts IV and V, heat release and smoke emission requirements.

Type Certification Basis

Under the provisions of § 21.101 Bombardier must show that the following airplane models, CL-600-2B19, CL-600-2C10, CL-600-2D15 and CL-600-2D24, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A21AE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the “original type certification basis.”

The regulations incorporated by reference in Type Certificate No. A21AE are for the following models:

- CL-600-2B19, part 25, effective February 1, 1965, including Amendments 25-1 through 25-62;
- CL-600-2C10, part 25, effective February 1, 1965, including Amendments 25-1 through 25-86;
- CL-600-2D15, part 25, effective February 1, 1965, including Amendments 25-1 through 25-86, Amendments 25-88 through Amendments 25-90 and Amendments 25-92 through Amendments 25-98.
- CL-600-2D24, part 25, effective February 1, 1965, including Amendments 25-1 through 25-86, Amendments 25-88 through Amendments 25-90 and Amendments 25-92 through Amendments 25-98.

In addition, the certification basis includes other regulations and special conditions that are not pertinent to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model CL-600 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model CL-600 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38 and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they

are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The Model CL-600 series airplanes will incorporate the following novel or unusual design features: These models offer interior arrangements that include passenger seats that incorporate non-traditional, large, non-metallic panels in lieu of the traditional metal frame covered by fabric. The flammability properties of these panels have been shown to significantly affect the survivability of occupants of the cabin in the case of fire. These seats are considered a novel design for transport category airplanes that include Amendment 25-61 and Amendment 25-66 in the certification basis, and were not considered when those airworthiness standards were established.

The existing regulations do not provide adequate or appropriate safety standards for seat designs that incorporate non-traditional, large, non-metallic panels. In order to provide a level of safety that is equivalent to that provided by the balance of the cabin, additional airworthiness standards, in the form of special conditions, are necessary. These special conditions supplement 14 CFR 25.853. The requirements contained in these special conditions consist of applying the identical test conditions required of all other large panels in the cabin, to seats with non-traditional, large, non-metallic panels.

Definition of "Non-Traditional, Large, Non-Metallic Panel"

A non-traditional, large, non-metallic panel, in this case, is defined as a panel with exposed-surface areas greater than 1.5 square feet installed per seat place. The panel may consist of either a single component or multiple components in a concentrated area. Examples of parts of the seat where these non-traditional panels are installed include, but are not limited to: Seat backs, bottoms and leg/foot rests, kick panels, back shells, credenzas and associated furniture. Examples of traditional exempted parts of the seat include: Arm caps, armrest close-outs such as end bays and armrest-styled center consoles, food trays, video monitors and shrouds.

Clarification of "Exposed"

"Exposed" is considered to include those panels directly exposed to the passenger cabin in the traditional sense, plus those panels enveloped such as by a dress cover. Traditional fabrics or leathers currently used on seats are excluded from these special conditions. These materials must still comply with 14 CFR 25.853(a) and § 25.853(c) if used as a covering for a seat cushion, or § 25.853(a) if installed elsewhere on the seat. Non-traditional, large, non-metallic panels covered with traditional fabrics or leathers will be tested without their coverings or covering attachments.

Discussion

In the early 1980s the FAA conducted extensive research on the effects of post-crash flammability in the passenger cabin. As a result of this research and service experience, we adopted new standards for interior surfaces associated with large surface area parts. Specifically, the rules require measurement of heat release and smoke emission (part 25, Appendix F, parts IV and V) for the affected parts. Heat release has been shown to have a direct correlation with post-crash fire survival time. Materials that comply with the standards (*i.e.*, § 25.853 entitled "Compartment interiors" as amended by Amendment 25-61 and Amendment 25-66) extend survival time by approximately 2 minutes, over materials that do not comply.

At the time these standards were written, the potential application of the requirements of heat release and smoke emission to seats was explored. The seat frame itself was not a concern because it was primarily made of aluminum and there were only small amounts of non-metallic materials. It was determined that the overall effect on survivability was negligible, whether or not the food trays met the heat release and smoke requirements. The requirements, therefore, did not address seats. The preambles to both the Notice of Proposed Rule Making (NPRM), Notice No. 85-10 (50 FR 15038, April 16, 1985), and the Final Rule at Amendment 25-61 (51 FR 26206, July 21, 1986), specifically note that seats were excluded "because the recently-adopted standards for flammability of seat cushions will greatly inhibit involvement of the seats."

Subsequently, the Final Rule at Amendment 25-83 (60 FR 6615, March 6, 1995) clarified the definition of minimum panel size: "It is not possible to cite a specific size that will apply in all installations; however, as a general rule, components with exposed-surface

areas of one square foot or less may be considered small enough that they do not have to meet the new standards. Components with exposed-surface areas greater than two square feet may be considered large enough that they do have to meet the new standards. Those with exposed-surface areas greater than one square foot, but less than two square feet, must be considered in conjunction with the areas of the cabin in which they are installed before a determination could be made."

In the late 1990s, the FAA issued Policy Memorandum 97-112-39, "Guidance for Flammability Testing of Seat/Console Installations," October 17, 1997. That memo was issued when it became clear that seat designs were evolving to include large non-metallic panels with surface areas that would impact survivability during a cabin fire event, comparable to partitions or galleys. The memo noted that large surface area panels must comply with heat release and smoke emission requirements, even if they were attached to a seat. If the FAA had not issued such policy, seat designs could have been viewed as a loophole to the airworthiness standards that would result in an unacceptable decrease in survivability during a cabin fire event.

In October of 2004, an issue was raised regarding the appropriate flammability standards for passenger seats that incorporated non-traditional, large, non-metallic panels in lieu of the traditional metal covered by fabric. The Seattle Aircraft Certification Office and Transport Standards Staff reviewed this design and determined that it represented the kind and quantity of material that should be required to pass the heat release and smoke emissions requirements. We have determined that special conditions would be promulgated to apply the standards defined in § 25.853(d) to seats with large non-metallic panels in their design.

Discussion of Comments

Notice of proposed special conditions no. 25-284-SC for the Bombardier Inc. Model CL-600-2B19, -2C10, -2D15 and -2D24 Airplanes was published in the **Federal Register** on June 5, 2009. No comments were received and the special conditions are adopted as proposed.

Applicability

These special conditions are applicable to Bombardier model CL-600-2B19 airplanes. Because the heat release testing requirements of § 25.853 per Appendix F, part IV are part of the type certification basis for airplane model CL-600-2B19, these special conditions are applicable to airplane

model CL-600-2B19. Although smoke testing requirements of § 25.853 per Appendix F, part V, are not part of the part 25 certification basis for Bombardier Model CL-600-2B19 airplanes, these special conditions are applicable if the airplanes are in 14 CFR part 121 service. Part 121 requires applicable interior panels to comply with § 25.853 and Appendix F, part V, regardless of the certification basis. It is not our intent to require seats with large non-metallic panels to meet § 25.853 and Appendix F, parts V, if they are installed in cabins of airplanes that otherwise are not required to meet these standards. Should Bombardier apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

These special conditions are applicable to Bombardier airplane Models CL-600-2C10, -2D15 and -2D24. Because the heat release and smoke testing requirements of § 25.853 are part of the type certification basis for the airplane Models CL-600-2C10, -2D15 and -2D24, these special conditions are applicable to the airplane Models CL-600-2C10, -2D15 and -2D24. Should Bombardier apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Seats do not have to meet these special conditions when installed in compartments that are not otherwise required to meet the test requirements of CFR part 25, Appendix F, parts IV and V. For example, airplanes that do not have § 25.853, Amendment 25-61 or later, in their certification basis and those airplanes that do not need to comply with the requirements of § 121.312.

Conclusion

This action affects only certain novel or unusual design features on Bombardier Inc.: airplane Models CL-600-2B19, -2C10, -2D15 and -2D24. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. These special conditions were also subjected to a notice and comment period of 45 days with no changes made. Therefore, the FAA has determined that good cause exists for adopting these special conditions upon issuance.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Bombardier Inc. airplane Models CL-600-2B19, -2C10, -2D15 and -2D24.

1. Passenger Seats with Non-Traditional, Large, Non-metallic Panels.

2. Except as provided in paragraph 3 of these special conditions, compliance with heat release and smoke emission testing requirements per 14 CFR part 25 and Appendix F, parts IV and V, is required for seats that incorporate non-traditional, large non-metallic panels that may either be a single component or multiple components in a concentrated area in their design.

3. The applicant may designate up to and including 1.5 square feet of non-traditional, non-metallic panel material per seat place that does not have to comply with special condition Number 1, above. A triple seat assembly may have a total of 4.5 square feet excluded on any portion of the assembly (*e.g.*, outboard seat place 1 square foot, middle 1 square foot, and inboard 2.5 square feet).

4. Seats do not have to meet the test requirements of 14 CFR part 25 and Appendix F, parts IV and V, when installed in compartments that are not otherwise required to meet these requirements. Examples include:

a. Airplanes with passenger capacities of 19 or less,

b. Airplanes that do not have 14 CFR 25.853, Amendment 25-61 or later, in their certification basis and do not need to comply with the requirements of 14 CFR 121.312, and

c. Airplanes exempted from 14 CFR 25.853, Amendment 25-61 or later.

5. Only airplanes associated with new seat certification programs approved after the effective date of these special conditions will be affected by the requirements in these special conditions. Previously certificated interiors on the existing airplane fleet and follow-on deliveries of airplanes with previously certificated interiors are not affected.

Issued in Renton, Washington, on August 4, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9-20742 Filed 8-28-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 622

[Docket No. 090206149-91081-03]

RIN 0648-AX39

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 29

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 29 to the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico (FMP), as prepared and submitted by the Gulf of Mexico Fishery Management Council (Council). This final rule implements a multi-species individual fishing quota (IFQ) program for the grouper and tilefish component of the commercial sector of the reef fish fishery in the Gulf of Mexico (Gulf) exclusive economic zone. In addition, the final rule allows permit consolidation and dual classifications to the shallow-water grouper (SWG) and deep-water grouper (DWG) management units for speckled hind, warsaw grouper, and scamp, and modifies some provisions of the Gulf red snapper IFQ program for consistency with this final rule. NMFS also informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for those collections. This rule is intended to reduce effort in the grouper and tilefish component of the commercial Gulf reef fish fishery.

DATES: This final rule is effective September 30, 2009; however, the applicability date for all the amendments except for amendments to § 622.7 (gg) and (hh), § 622.20(b), § 622.20(c)(3)(v), and § 622.20(c)(6) is January 1, 2010.

ADDRESSES: Copies of the Final Environmental Impact Statement (FEIS), Final Regulatory Flexibility Analysis (FRFA), and Record of Decision (ROD) may be obtained from Susan Gerhart, Southeast Regional Office, NMFS 263 13th Avenue South, St. Petersburg, FL 33701; telephone 727-824-5305; fax 727-824-5308.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Susan Gerhart, Southeast Regional Office, NMFS, and by e-mail to David_Rostker@omb.eop.gov, or by fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727-824-5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On April 8, 2009, NMFS published a notice of availability of Amendment 29 and requested public comments (74 FR 15911). On April 30, 2009, NMFS published the proposed rule to implement Amendment 29 and requested public comments (74 FR 20134). NMFS approved Amendment 29 on July 2, 2009. The rationale for the measures in Amendment 29 is provided in the amendment and the preamble to the proposed rule and is not repeated here.

Effective Dates and Applicability Dates

To implement this IFQ program on January 1, 2010, it is essential that certain provisions of the final rule be effective earlier to allow for the logistical operations required prior to implementation, e.g., exchange of information between NMFS and fishers and dealers, preliminary determinations of eligibility, share values, etc. Therefore, NMFS has structured this rule to make the entire rule effective September 30, 2009 but is delaying the applicability date, the date on which compliance is required, until January 1, 2010, for all provisions of the rule except § 622.7(gg) and (hh), § 622.20(b), § 622.20(c)(3)(v), and § 622.20(c)(6). Compliance with these sections of the rule is required September 30, 2009. Compliance with all other provisions of the rule is required beginning January 1, 2010, the start of the fishing year and the start of the IFQ program.

Comments and Responses

NMFS received 153 public comments on Amendment 29 and the proposed rule, including 94 comments from individuals, 54 copies of a form letter sent by individuals, and 5 comments from non-governmental agencies. Several comments fell outside the scope of the amendment and the rule, including comments regarding the Council's role in fisheries management, bycatch in the red snapper IFQ program, IFQ programs in Iceland, and a comment questioning the legal authority of the Magnuson-Stevens Act. These comments were not addressed in this final rule. Comments that pertain to the actions addressed in the amendment or the proposed rule were categorized by topic. The following are NMFS' respective responses for each category.

Comment 1: An IFQ program is not needed because quotas are not being met.

Response: The intention of the IFQ program is to rationalize effort and reduce overcapacity in the grouper and tilefish component of the commercial Gulf reef fish fishery to achieve and maintain optimum yield for the fishery. An IFQ program will also improve safety at sea by eliminating derby conditions under which fishermen race to harvest as many fish as possible before the quota is reached. Both DWG and tilefish quotas have been met or exceeded, annually, the past 5 years. SWG and red grouper quotas were not met the past 2 years, but were met before 2006. Preliminary results from the red grouper and gag stock assessments, in May 2009, indicate that quotas may need to be reduced to levels below landings in recent years.

The fact that in some years certain grouper and tilefish components of the commercial Gulf reef fish fishery did not experience a closure, does not indicate a significant change in the prevailing incentive structure for derby behavior. Rather, it is simply an indication of changes in relative abundance due to biological factors.

Comment 2: Actions to restrict longline gear and a new grouper stock assessment update that may indicate a need for further reduction in the quota will reduce capacity in the fishery; therefore an IFQ is not needed.

Response: Amendment 31 to the Gulf reef fish FMP addresses hard shell sea turtle takes by the longline component of the commercial Gulf reef fish fishery. Proposed restrictions include time/area closures and gear endorsements. These actions could reduce effort for SWG; however, they are not expected to decrease effort for DWG or tilefish.

Preliminary reports from the red grouper and gag stock assessment updates indicate total allowable catch (TAC) may need to be reduced for these species. If the same number of vessels that comprise the fishery were under a reduced TAC, this situation would compound the overcapacity issue and could continue to lead to early closures. Thus the intentions of the IFQ program to reduce overcapacity and eliminate the race for fish would become even more necessary in the Gulf reef fish fishery.

Comment 3: The IFQ program will improve management, better utilize resources, and help meet National Standards (NS) 1, 9, and 10.

Response: Current regulatory measures used in the management of the grouper complex have allowed the fishery to become overcapitalized, which means the collective harvest capacity of participants is in excess of that required to efficiently harvest the commercial share of the total allowable catch. The overcapitalization observed in the fishery has caused commercial grouper regulations to become increasingly restrictive over time, intensifying derby conditions under which fishermen race to harvest as many fish as possible before the quota is reached.

Incentives for overcapitalization and derby fishing conditions are expected to be maintained as long as the current management structure persists. Therefore, the Council approved and NMFS is implementing an IFQ program to rationalize effort and reduce overcapacity in the grouper and tilefish component of the commercial Gulf reef fish fishery to achieve and maintain optimum yield in this multi-species fishery.

IFQ programs can help meet NS 1, 9, and 10, by preventing overfishing, minimizing bycatch and bycatch mortality, and promoting safety at sea. NS 1 requires management measures to prevent overfishing while achieving optimum yield for the fishery. Assigning shares to individual permit holders helps prevent landings from exceeding catch limits.

NS 9 requires management measures to minimize bycatch and bycatch mortality. Under an IFQ program, regulatory discards due to seasonal closures are eliminated because fishermen can catch their allocation any time during the year. Discards are further limited because ghost fishing is expected to significantly decrease when crew members are not racing to catch fish. In addition, provisions for multi-use allocation will allow fishermen to land gag incidentally caught when

fishing for red grouper (or red grouper incidentally caught when fishing for gag) rather than discard them. Other IFQ program requirements, including a limited landings overage and revisions to species classification for warsaw grouper, speckled hind, and scamp will also contribute to reducing discards in the IFQ program for Gulf groupers and tilefishes.

NS 10 requires management measures to promote safety at sea. Under an IFQ program, fishermen can fish any time during the year and not feel obliged to fish during bad weather. A lack of derby conditions will improve safety and overall quality of working conditions.

Comment 4: The IFQ program should be implemented because it has significant and widespread support.

Response: In 2004, the Council created an IFQ Advisory Panel to develop a plan for creating a grouper IFQ program. The ten members of the panel were commercial fishermen and dealers. The program received widespread support because it was designed by members of the industry. After development of Amendment 29, NMFS conducted a referendum in December 2008. Individuals eligible to participate in the referendum accounted for approximately 89 percent of grouper and tilefish landings during the qualifying time period. Eighty-one percent of votes were in favor of the proposed IFQ program. At their January 2009 meeting, the Council voted 14–3 in favor of submitting Amendment 29 to NMFS for approval.

Comment 5: The IFQ program is inconsistent with the Magnuson-Stevens Act.

Response: Section 303A of the Magnuson-Stevens Act specifically authorizes and establishes requirements for limited access privilege programs (LAPPs). LAPP requirements under the Magnuson-Stevens Act include goals and objectives of the program, program duration and provisions for regular review, appeals process, allocation, and transferability. Amendment 29 addresses all of these issues, as well as details of the implementation of the program for which the Magnuson-Stevens Act allows discretion. Amendment 29 and the associated rule have been determined by NOAA and the Department of Commerce to be consistent with the Magnuson-Stevens Act and other applicable laws.

Comment 6: The IFQ program grants permanent rights to individuals to use a public resource.

Response: Section 303A(a) of the Magnuson-Stevens Act clearly states that a limited access system does not create a right, title, or interest. Awarded

shares are considered a grant of permission to harvest that may be revoked at any time, in accordance with the Magnuson-Stevens Act. The IFQ program does not confer any right of compensation to shareholders if it is discontinued.

Comment 7: The IFQ program will increase bycatch.

Response: Under an IFQ program, regulatory discards due to seasonal closures are eliminated because fishermen can catch their allocation at any time during the year. Discards are further limited because ghost fishing, which refers to fish killed by abandoned or lost gear, is expected to significantly decrease when crew members are not racing to catch fish. In the Gulf, implementation of the red snapper IFQ program and the 13-inch minimum size limit in 2007 resulted in fewer fish discarded per fish landed.

The allowance of multi-use allocation for gag and red grouper will further reduce discards. Annual multi-use allocation allows fishermen to use a small portion of their allocation for one species to harvest another species that would otherwise be discarded because the fisherman does not possess allocation for that species.

Reduced bycatch of warsaw grouper, speckled hind, and scamp is expected to occur with revisions to species classifications in the DWG and SWG complexes under this IFQ program. Warsaw grouper and speckled hind, which are considered DWG species under current regulations, will be considered SWG species after an IFQ account holder's DWG allocation has been landed and sold, or transferred, or if an IFQ account holder has no DWG allocation. Scamp, considered a SWG species under current regulations, will be considered a DWG species after an IFQ account holder's SWG allocation has been landed and sold, or transferred, or if an IFQ account holder has no SWG allocation. Because these species are caught in both shallow water and deep water, classification changes are expected to reduce discards.

IFQ program participants are also allotted a limited landings overage in each share category on their last fishing trip, which is expected to reduce bycatch. If catch exceeds a fisherman's allocation on his last trip, he is allowed to retain up to 10 percent more fish than his remaining allocation, which is then deducted from next year's allocation. This will prevent fishers from having to discard fish harvested in excess of available allocation.

Comment 8: The program should be able to be reviewed and altered based on new information.

Response: The Magnuson-Stevens Act specifies that a detailed review of the program be conducted within the first 5 years of implementation of the program and thereafter, no less than once every 7 years. Additionally, the Southeast Regional Office will conduct an annual review of the program activities and costs and disseminate a report of the results. If new information indicates the program should be altered, the Council may initiate the fisheries management plan amendment process.

Comment 9: The amendment does not analyze the effects of the IFQ program on the recreational sector.

Response: Actions contained in Amendment 29 are not directed at the recreational sector of the Gulf reef fish fishery and as such do not present many potential impacts to the recreational sector. The establishment of the IFQ program does not change the TAC, nor does it change the allocation between the recreational and commercial sectors. For example, the allocation of gag will remain 61 percent to the recreational sector and 39 percent to the commercial sector unless changed by a subsequent amendment. However, to the extent that actions contained in Amendment 29 do present potential impacts to the recreational sector, those impacts are addressed in the FEIS, particularly in the cumulative impacts assessment and the environmental baseline discussions.

Comment 10: The amendment did not analyze the social impacts of an IFQ program.

Response: In Amendment 29, the Fisheries Impact Statement (page vi), Description of the Social Environment (page 134), Environmental Consequences - Action A1 (page 150), as well as Environmental Consequences for other actions all address the social impacts of the IFQ program. Based on an analysis of landings and permit data, few communities in the Gulf of Mexico region can be described as dependent on these species. Fishing communities were ranked according to the dealer-reported number of pounds landed and value for the grouper and tilefish component of the commercial Gulf reef fish fishery for 2004–2007. These data revealed that a substantial portion of groupers and tilefishes are historically landed off west Florida and south Texas. Permits data were also examined to determine where permit concentrations existed. As a result of these examinations, Madeira Beach and Panama City, Florida, and Port Isabel, Texas, were selected as representative communities for the grouper and tilefish component of the commercial Gulf reef fish fishery. Other communities would be impacted by the IFQ program, but

little data are available to include in the analysis.

Comment 11: Small-scale fishermen will be put out of business and only large-scale fishermen will be allowed to fish for grouper and tilefish.

Response: All individuals with annual average grouper and tilefish landings of one or more pounds during the qualifying time period, 1999–2004 (with allowance for dropping one year), will receive IFQ shares, provided they have an active or renewable commercial Gulf reef fish permit, as of October 1, 2009. NMFS estimates nearly 1,000 out of the 1,209 permit holders that comprise the commercial sector of the Gulf reef fish fishery will receive grouper and/or tilefish shares in this IFQ program. Shareholders will have the option of fishing their allocation or transferring their shares or allocation to other Gulf reef fish permit holders, for the first 5 years of the program, and to all U.S. citizens or resident aliens thereafter. LAPPs are designed for the fishermen to manage their share of the resource for the best net benefit to the nation.

Comment 12: The program ignores new entrants to the fishery, who may have purchased permits after 2004.

Response: Initial allocation of shares in the IFQ program for groupers and tilefishes will be based on landings history associated with a permit. All landings associated with a valid Gulf reef fish vessel permit for the applicable landings period (1999–2004) will be attributed to the current owner, including those reported by a person who held the permit prior to the current owner. Therefore, even individuals who purchased permits recently may be eligible to receive shares. Individuals who are not initially eligible may participate in the program through transfer of shares or allocation.

Comment 13: Recreational fishermen should be allowed to purchase IFQ shares and allocation.

Response: Five years after implementation of this IFQ program, all U.S. citizens and permanent resident aliens will be eligible to purchase shares and allocation in the IFQ program for groupers and tilefishes. However a commercial permit would be required to fish the allocation.

The Council is considering a variety of data collection methods that would allow development of a catch share program for the recreational sector. However, because recreational fishers are not currently required to report their catch, tracking of individual catch is not possible at this time and, therefore, an IFQ program for the recreational sector is premature.

Comment 14: Landings history should not be based on logbooks as they may not be factual.

Response: Logbooks provide the most complete set of landings data from individual vessels available to NMFS. Logbooks submitted to NMFS Southeast Fisheries Science Center contain landings for each trip by species, as well as other information such as trip length, number of sets, and bait used. While some information may not be entirely accurate, submitting false information to NMFS via a logbook is a violation of Federal law. Accordingly, logbooks are considered to be the most accurate source of vessel specific landings information.

Comment 15: Each participant should receive a minimum of 10,000 pounds of allocation.

Response: Assigning 10,000 pounds to each participant would greatly exceed the catch limits for these species and allow overfishing to occur, which violates NS 1 of the Magnuson-Stevens Act. In addition, this amount would exceed the average annual landings for the majority of the permit holders currently participating in the fishery.

Comment 16: The government should rent shares similar to leases for oil and gas resources.

Response: The Council considered an alternative to distribute initial IFQ shares through an auction system. They determined the auction system could provide an unfair advantage to those participants who have greater financial resources than other participants. Similarly, allocation by a resource rental system could encounter environmental justice issues and discriminate against lower-income fishers. This alternative would also provide less consideration to historical dependence on the fishery since it might allow shares to be distributed to participants who have never fished but could afford to compete in the auction or buy leases.

Comment 17: Transfer of shares and allocation should not be allowed. If a participant does not use his shares, these shares should be revoked.

Response: A transferable IFQ program will allow the market to reduce fishing capacity, as quota could be consolidated among fewer vessel owners, who would then have an incentive to fish efficiently to maximize profits. Fishermen who desired more quota than they received through initial apportionment could purchase additional shares or allocation. Conversely, those fishermen who were apportioned too small a portion of the quota to make fishing worthwhile could sell their shares or allocation.

Prohibiting transfers would not allow a fisherman to pass on his or her fishing

privileges to other family members, including their children, a common practice within fishing communities.

The Council considered implementation of a use it or lose it provision in Amendment 29. Under this policy, IFQ shares that remained inactive for 3 years would be revoked and redistributed proportionately among the remaining shareholders. However, a use it or lose it provision could create greater incentive for fishermen to increase their landings, resulting in higher fishing mortality rates. If fishermen choose not to harvest their allotted IFQ shares in any given year it would benefit rebuilding of overfished stocks and stocks undergoing overfishing (e.g., gag) as well as reduce gear-habitat interactions.

Comment 18: The IFQ program should be designed to allow day trippers to fish during the same hours they currently fish.

Response: All persons fishing in the IFQ program would be able to catch and land their fish 24 hours a day but would be required to notify NMFS enforcement agents 3–12 hours in advance of the time of landing. For enforcement purposes, fishermen participating in the IFQ program would be required to offload their grouper and tilefish landings only between 6:00 a.m. and 6:00 p.m. daily.

Comment 19: Fishermen who do not support the IFQ program will not comply with the regulations.

Response: Most individuals who participate in the Gulf reef fish fishery are honest and law-abiding. Those who are not will receive violations and appropriate penalties if apprehended. The IFQ program is designed to track fishing activity throughout the fishing, landing, and sale processes. Currently, reef fish fishermen must submit a declaration of fishing activity before a trip. Under the IFQ program, participants will also be required to submit a landing notification 3–12 hours before landing ashore identifying the number of pounds of each IFQ species to be landed, as well as the landing time and location. NMFS Office for Law Enforcement then has the opportunity to meet the vessel at the landing location to check for compliance. Fishermen could not offload or transport fish until a landing transaction takes place with a dealer. A landing transaction number will be required to offload the fish and transport them. Any failure to comply with any of these steps could result in a violation.

Classification

The Administrator, Southeast Region, NMFS, determined that Amendment 29 is necessary for the conservation and management of Gulf groupers and tilefishes and is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an FEIS for this amendment. A notice of availability for the FEIS was published on May 8, 2009 (74 FR 21684). A copy of the ROD is available from NMFS (see **ADDRESSES**).

An FRFA was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant economic issues raised by public comments, NMFS responses to those comments, and a summary of the analyses completed to support the action. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

Although no comments were received specific to the IRFA, several comments were received that pertain to the economic effects of the proposed rule. These comments were addressed in the comments and responses section of this final rule. The economic analysis conducted for the proposed rule estimated the expected quantitative effects of each alternative to the extent possible. Qualitative discussion of expected effects was provided where data or analytical techniques were not available. The economic analysis concluded that the proposed rule would enhance the overall net benefits to the nation. No changes were made to the final rule in response to public comments, therefore, the final rule is expected to enhance the overall net benefits to the nation.

This final rule implements an IFQ program for the grouper and tilefish component of the commercial Gulf reef fish fishery; allows a single owner of multiple commercial reef fish permits to consolidate his or her permits into one, with the consolidated permit having a catch history equal to the sum of the catch histories associated with the individual permits; maintains the current composition of the multi-species DWG unit and revises the SWG unit to include speckled hind and warsaw grouper; restricts initial eligibility to valid commercial reef fish permit holders; distributes initial IFQ shares proportionately among eligible participants based on the average annual landings from logbooks associated with their current permit(s) during the time period 1999 through

2004 with an allowance for excluding one year; establishes IFQ share types as follows: red grouper, gag, other SWG, DWG, and tilefish shares; converts four percent of each IFQ participant's red grouper individual species share into multi-use red grouper allocation valid for harvesting red or gag groupers, and converts eight percent of each IFQ participant's gag grouper individual species share into multi-use gag grouper allocation valid for harvesting gag or red groupers; allows transfers of IFQ shares or allocations only to commercial reef fish permit holders during the first five years of the IFQ program and to all U.S. citizens and permanent resident aliens thereafter; sets a cap on any one person's ownership of IFQ shares to no more than the maximum percentage issued to the recipient of the largest shares at the time of the initial apportionment of IFQ shares, with the cap(s) calculated as separate caps for each type of share; sets a total allocation cap calculated as the sum of the maximum allocations associated with the share caps for each individual share category; allocates adjustments in the commercial quota proportionately among eligible IFQ shareholders based on their respective shareholdings at the time of the adjustments; lets the RA review, evaluate, and render the final decision on appeals (hardship arguments will not be considered for appeals); sets aside three percent of the current commercial quota or allowance to resolve appeals, with any remaining amount proportionately distributed back to initial IFQ shareholders after the appeals process has been terminated; implements an IFQ cost recovery fee based on actual ex-vessel value at the time of sale of fish, with the payment of the fee being the responsibility of the recognized IFQ shareholder and collection/remittance of the fee being the responsibility of the dealer; and establishes certified landing sites for all IFQ programs for the commercial Gulf reef fish fishery, with the sites selected by the fishermen but certified completed by NMFS Office for Law Enforcement.

This final rule is expected to directly affect vessels that operate in the commercial Gulf reef fish fishery and reef fish dealers or processors. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S. including fish harvesters, fish processors, and fish dealers. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its

affiliates), and has combined annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all affiliated operations worldwide. For seafood processors and dealers, rather than a receipts threshold, the SBA uses an employee threshold of 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all affiliated operations for a seafood processor and 100 or fewer persons for a seafood dealer.

This final rule introduces new or additional reporting, record-keeping and other compliance requirements. A summary of the general requirements of the IFQ program for Gulf groupers and tilefishes follows.

An IFQ dealer endorsement is required of any dealer purchasing groupers or tilefishes subject to this IFQ program. The IFQ dealer endorsement will be issued at no cost to those individuals who possess a valid reef fish dealer permit and request the endorsement. Although the current reef fish dealer permit must be renewed annually at a cost of \$60 for the initial permit (\$12.60 for each additional permit), the IFQ dealer endorsement will remain valid as long as the individual possesses a valid Gulf reef fish dealer permit and abides by all reporting and cost recovery requirements of the IFQ program. This requirement will affect all 159 existing dealers (as of November 2008) of groupers or tilefishes.

An electronic reporting system will serve as the main vehicle for tracking IFQ activities. The electronic nature of the reporting system will render the reporting of most IFQ activities on a real time basis. For example, to effect a sale of grouper or tilefish landings, the purchasing dealer will log into the electronic reporting system and enter all the required information about the grouper or tilefish sale. The required information includes, but is not limited to, the name of the dealer and that of the fisherman, identification number of the harvesting vessel, and the pounds and ex-vessel values of groupers and tilefishes. Electronic validation of the dealer-supplied information by the selling fisherman is necessary to complete the sale. Also, transfer of IFQ allocations and shares will be effected and recorded through the electronic reporting system. Holders of IFQ allocations will be able to access the system to check on the outstanding IFQ allocations remaining in their account/possession. In this scenario, an IFQ shareholder account, an IFQ vessel account, and an IFQ dealer account will be established with NMFS. There will

be no charge for establishing any of these accounts.

By the very nature of the reporting system, IFQ dealers will be required to have access to computers and the Internet. If a dealer does not have current access to computers and the Internet, he/she may have to expend approximately \$1,500 for computer equipment (one-time cost) and \$300 annual cost for Internet access. Dealers will need some basic computer and Internet skills to input information for all grouper and tilefish purchases into the IFQ electronic reporting system.

Dealers will also be required to remit to NMFS, on a quarterly basis, the cost recovery fees initially set at three percent of the ex-vessel value of groupers and tilefishes purchased from IFQ share/allocation holders. Although IFQ share/allocation holders will pay this fee, it will be the responsibility of dealers to collect and remit it to NMFS. Dealers will be required to remit fees electronically by automatic clearing house (ACH), debit card or credit card. There is currently no available information to determine how many of the 159 grouper or tilefish dealers have the necessary electronic capability to participate in the IFQ program. However, demonstration of this capability will be necessary for IFQ program participation. Those dealers currently participating in the red snapper IFQ program will generally meet most, if not all, of the requirements under the electronic reporting system.

Holder of IFQ shares and allocations will need access to computers and the Internet to effect allocation transfers through the electronic reporting system. These persons will then be subject to the same cost and skill requirements as dealers. It is very likely that most individuals have access to computers and the Internet. It should also be pointed out that in the case of reporting a sale of groupers or tilefishes to a dealer, all the fisherman will do is to validate the sale using the dealer's computer. This requirement affects all those who will initially qualify for, or those who will decide to participate in, the IFQ program for Gulf groupers and tilefishes.

One other compliance issue under the IFQ system involves landing and offloading of IFQ groupers or tilefishes. The owner or operator of a vessel landing IFQ groupers or tilefishes will provide NMFS an advance landing notification at least 3 hours but no more than 12 hours before arriving at a dock, berth, beach, seawall, or ramp. In addition, offloading of IFQ groupers or tilefishes is allowed only between 6 a.m. and 6 p.m.

A total of 1,209 vessels is assumed to comprise the universe of commercial harvest operations in the Gulf reef fish fishery. This total includes vessels with active or renewable permits. An examination of permits in conjunction with logbook information revealed, however, that 1,028 permits (as of November 2008) have some records of landings during the Council's chosen period of 1999–2004 for purposes of determining initial apportionment of IFQ shares.

Whereas there is a one-to-one correspondence between permits and vessels, the total number of vessels actually harvesting reef fish, or groupers or tilefishes, may be lower or higher than the number of permits. Some vessels may remain inactive in the reef fish fishery during the entire year, so there will be fewer vessels than permits. Because a permit can be transferred from one vessel to another during the year, the number of vessels harvesting any of the species in this amendment during the year may exceed the number of permits. This distinction is important when using logbook information to count vessels.

For the period 1993–2006, an average of 1,123 vessels harvested at least 1 pound (0.45 kg) of reef fish, 993 vessels harvested any groupers or tilefishes, 765 vessels harvested red groupers, 591 vessels harvested gag, 977 vessels harvested SWG, 376 vessels harvested DWG, and 212 vessels harvested tilefishes. For the period 1999–2004, an average of 1,075 vessels harvested at least 1 pound (0.45 kg) of reef fish, 968 vessels harvested any groupers or tilefishes, 767 vessels harvested red groupers, 655 vessels harvested gag, 958 vessels harvested SWG, 368 vessels harvested DWG, and 193 vessels harvested tilefishes.

Vessels harvesting reef fish in general and groupers or tilefishes in particular use a variety of gear. Some vessels use only one gear type while others use multiple gear types; thus, classification of vessels by gear type is not straightforward for some vessels. For the period 1993–2006, an average of 805 vessels harvested groupers or tilefishes using vertical lines, 171 vessels harvested groupers or tilefishes using longlines, and 162 vessels harvested groupers or tilefishes using other gear types (diving, trap, unclassified). For the period 1999–2004, an average of 790 vessels harvested groupers or tilefishes using vertical lines, 167 vessels harvested groupers or tilefishes using longlines, and 148 vessels harvested groupers or tilefishes using other gear types (diving, trap, unclassified).

Collection of information regarding vessel operating costs was only initiated in mid-2005. Information from this survey was used in estimating overall economic effects on the commercial sector of an IFQ system in the fishery. This was possible as the evaluation was conducted on a trip basis. However, vessel-level gross and net revenues could not be readily derived using the same trip-based information. For our current purpose, cost and return information derived from an earlier survey of commercial reef fish fishermen in the Gulf of Mexico was used. High-volume vertical line vessels in the northern Gulf grossed an average of approximately \$110,000 (2005 dollars) and those in the eastern Gulf grossed approximately \$68,000. Their respective net revenues were approximately \$28,000 and \$24,000. Low-volume vertical line vessels in the northern Gulf grossed approximately \$24,000 and those in the eastern Gulf grossed approximately \$25,000. Their respective net revenues were approximately \$7,000 and \$4,000. High-volume longline vessels grossed approximately \$117,000 while low-volume longline vessels grossed \$88,000. Their respective net revenues were approximately \$25,000 and \$15,000. High-volume fish traps (fish traps have been banned since February 2007) grossed approximately \$93,000 while their low-volume counterparts grossed approximately \$86,000. Their respective net revenues were approximately \$19,000 and \$21,000.

A definitive calculation of which commercial entities will be considered large entities and small entities cannot be made using average income information. However, based on those data and the permit data showing the number of permits each person/entity owns, it appears that all of the commercial reef fish fleet will be considered small entities. The maximum number of permits reported to be owned by the same person/entity was six, additional permits (and revenues associated with those permits) may be linked through affiliation rules. Affiliation links cannot be made using permit data. If one entity held six permits and was a high-volume bottom longline gear vessel, they are estimated to generate about \$700,000 in annual revenue. That estimate is well below the \$4 million threshold set by the SBA for defining a large entity.

Also affected by the measures in this amendment are fish dealers, particularly those who receive gag and red groupers and tilefishes from harvesting vessels. Currently, a Federal permit is required for a fish dealer to receive reef fish from

commercial vessels. As of November 2008, there were 159 active permits for dealers buying and selling reef fish species; but because the reef fish dealer permitting system in the Gulf is an open access program, the number of dealers can vary from year to year. As part of the commercial reef fish logbook program, reporting vessels identify the dealers who receive their landed fish. Commercial reef fish vessels with Federal permits are required to sell their harvest only to permitted dealers. For the period 2004–2007, these dealers handled an average of 10.8 million lb (4.9 million kg) of groupers and tilefishes valued at \$25.4 million. These dealer transactions were distributed as follows: Florida, with 10 million lb (4.5 million kg) worth \$23.5 million; Alabama and Mississippi, with 102,000 lb (46,266 kg) worth \$222,000; Louisiana, with 270,000 lb (122,476 kg) worth \$592,000; and, Texas, with 434,000 lb (196,859 kg) worth \$1.03 million. The rest of the transactions were handled by dealers outside of the Gulf.

Average employment information per reef fish dealer is unknown. It is estimated that total employment for reef fish processors in the Southeast is approximately 700 individuals, both part and full time. It is assumed all processors must be dealers, yet a dealer need not be a processor. Further, processing is a much more labor intensive exercise than dealing. Therefore, given the employment estimate for the processing sector, it is assumed that the average dealer's number of employees will not surpass the SBA employment benchmark.

Based on the gross revenue and employment profiles presented above, all permitted commercial reef fish vessels and fish dealers directly affected by the final rule may be classified as small entities.

Because all entities that are expected to be affected by the final rule are considered small entities, the issue of disproportional impacts on small and large entities does not arise. Although some vessel and dealer operations are larger than others, they nevertheless fall within the definition of small entities.

The various measures in this final rule have varying effects on small entities. Adoption of an IFQ program for the grouper and tilefish component of the commercial Gulf reef fish fishery has been estimated to result in variable cost savings to the fishing industry of \$2.23 to \$3.24 million per year. There will also be some unknown reductions in fixed costs. In addition, possible increases in revenues could result as

improved product quality will most likely command higher prices.

Permit stacking will allow owners to consolidate their multiple permits into one with corresponding consolidation of landings history for all permits. This may be expected to accelerate the reduction in the number of permits, resulting in cost savings to permit owners and in administrative cost reductions.

Dual classification of both speckled hind and warsaw grouper into SWG and DWG tends to reduce discards of both species and allow fishermen to keep more of these two species they catch. Also, this has been estimated to increase revenues of fishermen by \$450,000.

Restricting the number of participants eligible to receive initial IFQ shares to commercial permit holders will prevent over-extended distribution of IFQ shares while allowing active participants in the fishery to immediately benefit from the implementation of the grouper and tilefish IFQ program. This limitation also tends to speed up the process of consolidation in the fishery, a result that allows participants to reap the gains from an IFQ program over a relatively short time.

Initial apportionment of IFQ shares based on landings history for the years 1999–2004, with allowance to drop one year, provides a higher likelihood that active participants in the fishery are allotted IFQ shares in accordance with the extent of their participation in the fishery. This tends to preserve the historical landings status of eligible participants, so the initial impacts on their profits are not diminished. As the IFQ program progresses, their profits may increase depending on whether or not they choose to fish their IFQs or lease or sell them to others.

By defining IFQ shares on a species-specific basis, the eventual true value of each species may be generated. This option, however, could result in more discards of some species and complicate balancing of catch and quota as well as the monitoring of the IFQ program. It thus needs to be complemented by flexibility measures to assist IFQ participants in balancing their catch and quota holdings. The provision for multi-use allocations introduces certain flexibility as IFQ participants have some leeway in balancing their catch and quota holdings.

The transferability aspect of IFQ shares/allocation provides the mechanism to allow the IFQ program to generate greater efficiency and higher profitability in the fishery. As such, the lesser the limitations on transferability the better the system is. The final rule limits transfers only to reef fish permit

holders the first five years of the program and to a broader pool of participants thereafter. While the five-year limitation is unlikely to bring about cost increases, it does not allow proper pricing of IFQ shares. This condition, however, may be necessary to allow IFQ holders to get familiar with the IFQ program before they engage in transfers outside of the limited pool of eligible IFQ transfer recipients.

Establishing a cap on IFQ share holdings is consistent with the Magnuson-Stevens Act provision to prevent the acquisition of excessive shares in the IFQ program. The final rule to set the share cap to the maximum assigned to a participant during initial apportionment allows every participant to at least maintain their existing scale of operation. Costs of operation and possibly revenues are expected to remain the same. Over time, all participants, except the highest one, will be able to increase their scale of operation they deem most profitable to them. The highest holders, however, and presumably the current more efficient producers will not have the same opportunity as the others.

The same reasoning provided in the preceding paragraph for a share cap also applies to the establishment of a cap on IFQ allocation holdings. In addition, the established cap on IFQ allocations could possibly close the loophole allowing some participants to circumvent the established cap on IFQ share holdings by entering into a long-term contract with other participants.

Quotas change periodically, so there is a need to address this in the IFQ program. The final rule allocates quota adjustments, increases or decreases, in proportion to a participant's IFQ share ownership at the time of quota adjustments. This may not allocate quota adjustments as efficiently as an auction alternative, but it appears to be the least costly and least disruptive option.

The establishment of an appeals process affords participants the opportunity to correct any mistakes in the initial allocation of IFQ shares. This could result in more costs to participants and the administering agency, but such costs are expected to be relatively small especially when seen against the potential benefits an appeals process will generate. The added provision to set aside three percent of the quota to settle appeals prevents the possibility of taking back some allocations already distributed to participants.

The cost recovery fee feature of the IFQ program (a requirement under the Magnuson-Stevens Act) undoubtedly

imposes additional cost on fishing participants both in terms of reductions in revenue and increases in costs (particularly on dealers) to comply with the collection and remittance of the fees to NMFS. A three-percent cost recovery fee based on total revenues could translate into larger reductions in profits, particularly for small fishing operations.

Requiring pre-approved landing sites where fishermen are obligated to land their IFQ catches may increase the cost of fishing operations. Fishermen may need to travel farther to land their catch, if for some reasons, such as weather conditions or fishing opportunities, the closest landing site is not pre-approved. This could, however, enhance the enforcement of the IFQ program, which may help ensure that benefits from the program are not impaired.

It is expected that the combined effects of the final rule will result in significant changes to the profitability status of fishing operations in the grouper and tilefish component of the commercial Gulf reef fish fishery. This is especially true over the long run when significant benefits, both in terms of revenue increases and cost decreases, may be expected to accrue. The net economic effects on dealers cannot be readily ascertained.

Several alternatives were considered by the Council in their deliberation of the various measures contained in the final rule. For purposes of the succeeding discussion, each of the Council's preferred alternatives is termed final action.

Three alternatives, including no action, were considered for establishment of an IFQ program. The first alternative (no action) to the final action would maintain the incentives to overcapitalize the fishery and to promote derby fishing. Such conditions may be expected to result in increased operating costs, increased likelihood of shortened seasons, reduced at-sea safety, wide fluctuations in domestic grouper and tilefish supply, and depressed ex-vessel prices for groupers and tilefishes. The other alternative to the final action, establishment of an endorsement system, would have short-term effectiveness in addressing overcapitalization and derby fishing by reducing the number of participants. Over the long run, remaining participants may be expected to increase their effort either through vessel, crew, and equipment upgrades or via additional or longer fishing trips.

The only alternative to the final action of consolidating multiple commercial reef fish permits is the no action alternative. This alternative would not

accelerate the reduction in the number of permits, thus forgoing the benefits from permit stacking due to cost savings by permit owners and reductions in administrative costs.

Four alternatives, including no action, were considered regarding the species composition of DWG and SWG. The first alternative (no action) to the final action would maintain the composition of the SWG and DWG management units. This alternative would neither reduce the discards of speckled hind or warsaw grouper nor grant flexibility to IFQ participants. The second alternative to the final action would classify speckled hind as both SWG and DWG while the third alternative to the final action would classify warsaw grouper as both SWG and DWG. These two alternatives would reduce discards and add flexibility to IFQ participants but only with respect to either speckled hind or warsaw grouper but not both as in the final action.

Four alternatives, including no action, were considered for initial eligibility in the IFQ program. The first alternative (no action) to the final action would not specify initial eligibility requirements for IFQ share allocation, and thus is deemed to provide insufficient guidance in initially allocating IFQ shares. The other alternatives to the final action would include more entities for initial distribution of IFQ shares: a) commercial reef fish permit holders and reef fish captains and crew, b) commercial reef fish permit holders and permitted dealers, and c) commercial reef fish permit holders, reef fish captains and crew, and permitted dealers. These other alternatives to the final action would complicate the determination of initial IFQ holders, slow down the eventual consolidation of fishing operations in the fishery, and lessen the likelihood of maintaining viable fishing operations.

Four alternatives, including no action, were considered for the initial apportionment of IFQ shares. The first alternative (no action) to the final action would not provide any guidance in initially apportioning IFQ shares. The second alternative to the final action would proportionately allocate IFQ shares based on average annual landings during 1999–2004. This alternative is less flexible than the final action where eligible participants can drop one year in calculating annual average landings. The third alternative to the final action would initially distribute IFQ shares through an auction. This alternative may be deemed best in generating the most appropriate value for IFQ shares at the start of the program. However, this alternative offers some possibility that

some historical yet active participants in the fishery would not receive any IFQ share or receive only few shares that would not make their fishing operations viable.

Four alternatives, including no action, were considered for IFQ share definitions. The first alternative (no action) to the final action would not establish IFQ shares and is therefore not a viable alternative under an IFQ system. The second alternative to the final action would establish a single IFQ share for the combined groupers and tilefishes. While this alternative would tend to minimize transaction costs and eliminate the need to trade shares to balance catch and quota holdings, it would limit the effectiveness of species-specific management measures and complicate the future establishment of annual catch limits required by the Magnuson-Stevens Act. The third alternative to the final action would establish separate IFQ shares for the DWG complex, the SWG complex, and tilefish. As with the second alternative, this particular alternative would limit the effectiveness of species-specific management measures and complicate the future establishment of annual catch limits required by the Magnuson-Stevens Act.

Three alternatives, including no action, were considered for multi-use allocation and trip limits. The first alternative (no action) to the final action would not establish multi-use IFQ shares or trip allowances and thus, would not contribute to catch and quota balancing under the IFQ program. The second alternative to the final action would establish a trip allowance granting IFQ participants the flexibility to land red or gag for which the IFQ participant has no allocation by using allocation from the other species (i.e., red or gag). This alternative would not cap the amount of multi-use allocation and would be associated with a higher likelihood of exceeding allowable harvest levels.

Three alternatives, including no action, were considered for transfer eligibility requirements. The first alternative (no action) to the final action would make any U.S. citizen or permanent resident alien eligible for IFQ share or allocation transfer. Among the alternatives, this one would immediately allow the largest pool of IFQ share/allocation recipients, thereby providing the best mechanism for eliciting the highest value of an IFQ share or allocation. The difference between this alternative and the final action is the provision in the latter that transfers be allowed only among holders of commercial reef fish permits during

the first five years of the IFQ program. Over the long-run, then, the two alternatives would have the same economic effects. The final action reflects the Council's intent to provide enough time for current fishery participants to be familiar with the nature of the IFQ system, particularly with respect to proper valuation of IFQ shares/allocation, before opening up the market to a broader pool of participants. The second alternative to the final action would limit transfer eligibility only to commercial reef fish permit holders. This alternative was not chosen, because it would constrain the process of valuing IFQ shares/allocation over a long time.

Three alternatives, including no action, were considered for caps on IFQ share ownership. The first alternative (no action) to the final action would not impose any cap on IFQ share ownership. Although this alternative offers the best environment for individual fishing operations to determine their most profitable scale of operations, this was not chosen because it also offers the highest probability for an individual fishing operation or very few fishing operations to obtain "excessive share" which the Magnuson-Stevens Act disallows. The second alternative to the final action would impose an IFQ share cap of 5 percent, 10 percent, or 15 percent of either the total grouper and tilefish shares or each type of species-specific shares. Part of this second alternative is the provision for grandfathering in those with initial percentage shares higher than the chosen ownership cap. Although this alternative appears to balance the concern over excessive share and that of constraining the operations of the most efficient producers, this was not chosen because it would appear to impose arbitrary levels of maximum share ownership. The issue of grandfathering in those with initial share above the maximum would also limit the ability of some producers to compete in the open market against those grandfathered in. Part of the rationale for the final action was to achieve consistency with similar provisions in the red snapper IFQ program, and this would not be achieved under the two alternatives to the final action. A sub-option under the final action which would impose a cap on total grouper and tilefish IFQ shares but not on each type of IFQ share was not chosen, because it could result in some entities obtaining excessive shares of certain species.

Three alternatives, including no action, were considered for caps on IFQ allocation ownership. The first alternative (no action) to the final action

would not limit the amount of IFQ allocation to be owned by any entity each year. Although this alternative would provide the best economic environment relative to the holding of IFQ allocations, it would afford some entities the opportunity to circumvent the provision on IFQ share cap by entering into long-term arrangements with IFQ share/allocation holders. The second alternative to the final action would impose an allocation cap of an additional one percent, two percent, or five percent above the percent cap on IFQ share ownership. This alternative was not chosen because of the potential complication it would add to the monitoring and enforcement of share ownership cap.

Three alternatives, including no action, were considered for adjustments in annual allocations of commercial TAC. The first alternative (no action) to the final action would not specify the allocation mechanism of any changes in commercial TAC. This alternative was not chosen because it would require the Council to address the allocation issue every time the commercial quota is adjusted and thus would impose additional administrative costs. This could also delay the determination of each entity's allocation at the start of the fishing season which could be disruptive to the affected entity's fishing operations. The second alternative to the final action would allocate adjustments in the commercial quota via an auction system. This alternative was not chosen because it could complicate and thus increase the cost of allocating quota adjustments. Moreover, it could raise equity concerns if the winners were new entrants who did not share the cost of managing the fishery.

Four alternatives, including no action, were considered regarding the appeals process. The final action consists of two alternatives. One pertains to the establishment and structure of an appeals process and the other to the provision of a commercial quota set-aside to resolve appeals. The first alternative (no action) to the final action on appeals process would not provide a formal, in-house means of addressing disputes particularly regarding initial IFQ share allocation and so was not chosen by the Council. The second alternative to the final action on appeals process would establish a special board composed of state directors/designees who will review, evaluate, and make individual recommendations to the NMFS RA on appeals. This alternative was not chosen because it would merely add layers to the appeals process that would tend to increase the administrative costs, with no

corresponding benefits. Besides, this alternative would mainly provide board members' advice to the RA on appeals matters. The three-percent quota set-aside is based on a similar percent level chosen for the red snapper IFQ program that sufficiently accommodated all appeals.

Three alternatives, including no action, were considered for a cost recovery plan. The first alternative (no action) to the final action would not impose a cost recovery fee. This would not be consistent with provisions of the Magnuson-Stevens Act. The second alternative to the final action would require each IFQ registered buyer who purchased IFQ groupers or tilefishes to submit an IFQ buyer report either on a quarterly or annual basis. This alternative was deemed to mainly impose additional costs with relatively small economic or social benefits. Under the final action, several sub-options were also considered but rejected. The first such sub-option would calculate the recovery fee based on standard, as opposed to actual, ex-vessel value. The second sub-option would impose the responsibility of collecting and remitting the fees on the IFQ shareholders. The third sub-option would require the remittance of collected fees on a monthly basis. The rationale for their rejection was that being inconsistent with corresponding provisions in the red snapper IFQ system would add complication to the cost recovery plan and add costs to both the participants and NMFS.

Three alternatives, including no action, were considered for certifying landing sites. The first alternative (no action) to the final action would not establish certified landing sites for IFQ programs in the commercial reef fish fisheries, thus providing no additional means to improve enforcement of the IFQ program for groupers and tilefishes. The second alternative to the final action would require that landing sites be certified by the Office for Law Enforcement in order for IFQ fishermen to use the VMS units as an option for reporting landing notifications. This was deemed unnecessary for monitoring and enforcing the IFQ program for groupers and tilefishes. Under the final action, a sub-option providing for the selection of certified landing sites by the Council and NMFS, based on industry recommendations and resource availability was not adopted. This sub-option was deemed more restrictive than the final action in identifying landing sites for certification purposes.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group

of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all vessel permit holders for the Gulf Reef Fish fishery.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB under control number 0648–0587. The collections and the associated estimated average public reporting burden per response are provided in the following table.

COLLECTION REQUIREMENT	ESTIMATED BURDEN PER RESPONSE
Dealer Account Activation	5 minutes
Dealer Transaction Report	7 minutes
Shareholder Account Activation	5 minutes
Fisherman Account Activation	10 minutes
Active Vessels Report	10 minutes
Approval of Landing Location	5 minutes
Notification of Landing Time	3 minutes
Transfer of Share	15 minutes
Transfer of Allocation	5 minutes
Permit Consolidation	10 minutes

These estimates of the public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to David_Rostker@omb.eop.gov, or fax to 202–395–7285.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: August 26, 2009.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 15 CFR Chapter IX and 50 CFR Chapter VI are amended as follows: Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, paragraph (b), under “50 CFR”, the entry “622.20” is added in numerical order to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number the information (All numbers begin with 0648–)
* * * * *	* * * * *
50 CFR * * * * *	* * * * *
622.20 * * * * *	–0587 * * * * *

50 CFR Chapter VI

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 3. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 4. In § 622.1, paragraph (b), Table 1, the entry for FMP for the Reef Fish Resources of the Gulf of Mexico, and footnote 5 are revised, and footnote 6 is added to read as follows:

§ 622.1 Purpose and scope.

* * * * *
(b) * * *

TABLE 1—FMPs IMPLEMENTED UNDER PART 622

FMP title	Responsible fishery management council(s)	Geographical area
* * * * *	* * * * *	* * * * *
FMP for the Reef Fish Resources of the Gulf of Mexico	GMFMC	Gulf. ^{1,5,6}

¹ Regulated area includes adjoining state waters for purposes of data collection and quota monitoring.
⁵ Regulated area includes adjoining state waters for Gulf red snapper harvested or possessed by a person aboard a vessel for which a Gulf red snapper IFQ vessel account has been established or possessed by a dealer with a Gulf IFQ dealer endorsement.
⁶ Regulated area includes adjoining state waters for Gulf groupers and tilefishes harvested or possessed by a person aboard a vessel for which an IFQ vessel account for Gulf groupers and tilefishes has been established or possessed by a dealer with a Gulf IFQ dealer endorsement.

■ 5. In § 622.2, the definitions of “Deep-water grouper (DWG)” and “Shallow-water grouper (SWG)” are revised to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *
Deep-water grouper (DWG) means yellowedge grouper, misty grouper, warsaw grouper, snowy grouper, and

speckled hind. In addition, for the purposes of the IFQ program for Gulf groupers and tilefishes in § 622.20,

scamp are also included as DWG as specified in § 622.20(b)(2)(vi).

* * * * *

Shallow-water grouper (SWG) means gag, red grouper, black grouper, scamp, yellowfin grouper, rock hind, red hind, and yellowmouth grouper. In addition, for the purposes of the IFQ program for Gulf groupers and tilefishes in § 622.20, speckled hind and warsaw grouper are also included as SWG as specified in § 622.20(b)(2)(v).

* * * * *

■ 6. In § 622.4, paragraphs (a)(2)(v), (a)(2)(ix), and (a)(4)(ii) are revised, and a new sentence is added after the third sentence in paragraph (i) to read as follows:

§ 622.4 Permits and fees.

* * * * *

- (a) * * *
- (2) * * *

(v) *Gulf reef fish*. For a person aboard a vessel to be eligible for exemption from the bag limits, to fish under a quota, as specified in § 622.42(a)(1), or to sell Gulf reef fish in or from the Gulf EEZ, a commercial vessel permit for Gulf reef fish must have been issued to the vessel and must be on board. If Federal regulations for Gulf reef fish in subparts A, B, or C of this part are more restrictive than state regulations, a person aboard a vessel for which a commercial vessel permit for Gulf reef fish has been issued must comply with such Federal regulations regardless of where the fish are harvested. See paragraph (a)(2)(ix) of this section regarding an IFQ vessel account required to fish for, possess, or land Gulf red snapper or Gulf groupers and tilefishes. To obtain or renew a commercial vessel permit for Gulf reef fish, more than 50 percent of the applicant's earned income must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during either of the 2 calendar years preceding the application. See paragraph (m) of this section regarding a limited access system for commercial vessel permits for Gulf reef fish and limited exceptions to the earned income requirement for a permit.

(A) *Option to consolidate commercial vessel permits for Gulf reef fish*. A person who has been issued multiple commercial vessel permits for Gulf reef fish and wants to consolidate some or all of those permits, and the landings histories associated with those permits, into one permit must submit a completed permit consolidation application to the RA. The permits consolidated must be valid, non-expired

permits and must be issued to the same entity. The application form and instructions are available online at sero.nmfs.noaa.gov. After consolidation, such a person would have a single permit, and the permits that were consolidated into that permit will be permanently terminated.

(B) [Reserved]

* * * * *

(ix) *Gulf IFQ vessel accounts*. For a person aboard a vessel, for which a commercial vessel permit for Gulf reef fish has been issued, to fish for, possess, or land Gulf red snapper or Gulf groupers (including DWG and SWG, as specified in § 622.20(a)) or tilefishes (including goldface tilefish, blackline tilefish, anchor tilefish, blueline tilefish, and tilefish), regardless of where harvested or possessed, a Gulf IFQ vessel account for the applicable species or species groups must have been established. As a condition of the IFQ vessel account, a person aboard such vessel must comply with the requirements of § 622.16 when fishing for red snapper or § 622.20 when fishing for groupers or tilefishes regardless of where the fish are harvested or possessed. An owner of a vessel with a commercial vessel permit for Gulf reef fish, who has established an IFQ account for the applicable species, as specified in § 622.16(a)(3)(i) or § 622.20(a)(3)(i), online via the NMFS IFQ website ifq.sero.nmfs.noaa.gov, may establish a vessel account through that IFQ account for that permitted vessel. If such owner does not have an online IFQ account, the owner must first contact IFQ Customer Service at 1-866-425-7627 to obtain information necessary to access the IFQ website and establish an online IFQ account. There is no fee to set-up an IFQ account or a vessel account. Only one vessel account may be established per vessel under each IFQ program. An owner with multiple vessels may establish multiple vessel accounts under each IFQ account. The purpose of the vessel account is to hold IFQ allocation that is required to land the applicable IFQ species. A vessel account must hold sufficient IFQ allocation in the appropriate share category, at least equal to the pounds in gutted weight of the red snapper or groupers and tilefishes on board, from the time of advance notice of landing through landing (except for any overage allowed as specified in § 622.16(c)(1)(ii) for red snapper and § 622.20(c)(1)(ii) for groupers and tilefishes). The vessel account remains valid as long as the vessel permit remains valid; the vessel has not been sold or transferred; and the vessel owner is in compliance with all

Gulf reef fish and IFQ reporting requirements, has paid all applicable IFQ fees, and is not subject to sanctions under 15 CFR part 904. The vessel account is not transferable to another vessel. The provisions of this paragraph do not apply to fishing for or possession of Gulf groupers and tilefishes under the bag limit specified in § 622.39 (b)(1)(ii) or Gulf red snapper under the bag limit specified in § 622.39 (b)(1)(iii). See § 622.16 regarding other provisions pertinent to the Gulf red snapper IFQ system and § 622.20 regarding other provisions pertinent to the IFQ system for Gulf groupers and tilefishes.

* * * * *

(4) * * *

(ii) *Gulf IFQ dealer endorsements*. In addition to the requirement for a dealer permit for Gulf reef fish as specified in paragraph (a)(4)(i) of this section, for a dealer to receive red snapper subject to the Gulf red snapper IFQ program, as specified in § 622.16(a)(1), or groupers and tilefishes subject to the IFQ program for Gulf groupers and tilefishes, as specified in § 622.20(a)(1), or for a person aboard a vessel with a Gulf IFQ vessel account to sell such red snapper or groupers and tilefishes directly to an entity other than a dealer, such persons must also have a Gulf IFQ dealer endorsement. A dealer with a Gulf reef fish permit can download a Gulf IFQ dealer endorsement from the NMFS IFQ website at ifq.sero.nmfs.noaa.gov. If such persons do not have an IFQ online account, they must first contact IFQ Customer Service at 1-866-425-7627 to obtain information necessary to access the IFQ website and establish an IFQ online account. There is no fee for obtaining this endorsement. The endorsement remains valid as long as the Gulf reef fish dealer permit remains valid and the dealer is in compliance with all Gulf reef fish and IFQ reporting requirements, has paid all IFQ fees required under paragraph (c)(2) of this section, and is not subject to any sanctions under 15 CFR part 904. The endorsement is not transferable. See § 622.16 regarding other provisions pertinent to the Gulf red snapper IFQ system and § 622.20 regarding other provisions pertinent to the IFQ system for Gulf groupers and tilefishes.

* * * * *

(i) *Display*. * * * A Gulf IFQ dealer endorsement must accompany each vehicle that is used to pick up Gulf IFQ red snapper and/or Gulf IFQ groupers and tilefishes. * * *

* * * * *

■ 7. In § 622.7, paragraphs (gg) and (hh) are revised to read as follows:

§ 622.7 Prohibitions.

* * * * *

(gg) Fail to comply with any provision related to the Gulf red snapper IFQ program as specified in § 622.16, or the IFQ program for Gulf groupers and tilefishes as specified in § 622.20.

(hh) Falsify any information required to be submitted regarding the Gulf red snapper IFQ program as specified in § 622.16, or the IFQ program for Gulf groupers and tilefishes as specified in § 622.20.

* * * * *

■ 8. In § 622.16, revise the fifth and sixth sentences in the introductory text of paragraph (a), and revise paragraphs (a)(1) and (c) to read as follows:

§ 622.16 Gulf red snapper individual fishing quota (IFQ) program.

(a) * * * See § 622.4(a)(2)(ix) regarding a requirement for a vessel landing red snapper subject to this IFQ program to have a Gulf red snapper IFQ vessel account. See § 622.4(a)(4)(ii) regarding a requirement for a Gulf IFQ dealer endorsement. * * *

(1) *Scope.* The provisions of this section apply to Gulf red snapper in or from the Gulf EEZ and, for a person aboard a vessel with a Gulf red snapper IFQ vessel account as required by § 622.4(a)(2)(ix) or for a person with a Gulf IFQ dealer endorsement as required by § 622.4(a)(4)(ii), these provisions apply to Gulf red snapper regardless of where harvested or possessed.

* * * * *

(c) *IFQ operations and requirements—*(1) *IFQ Landing and transaction requirements.* (i) Gulf red snapper subject to this IFQ program can only be possessed or landed by a vessel with a Gulf red snapper IFQ vessel account with allocation at least equal to the pounds of red snapper on board, except as provided in paragraph (c)(1)(ii) of this section. Such red snapper can only be received by a dealer with a Gulf IFQ dealer endorsement.

(ii) A person on board a vessel with an IFQ vessel account landing the shareholder's only remaining allocation, can legally exceed, by up to 10 percent, the shareholder's allocation remaining on that last fishing trip of the fishing year, i.e., a one-time per fishing year overage. Any such overage will be deducted from the shareholder's applicable allocation for the subsequent fishing year. From the time of the overage until January 1 of the subsequent fishing year, the IFQ shareholder must retain sufficient shares to account for the allocation that will be deducted the subsequent fishing

year. Share transfers that would violate this requirement will be prohibited.

(iii) The dealer is responsible for completing a landing transaction report for each landing and sale of Gulf red snapper via the IFQ website at *ifq.sero.nmfs.noaa.gov* at the time of the transaction in accordance with reporting form and instructions provided on the website. This report includes, but is not limited to, date, time, and location of transaction; weight and actual ex-vessel value of red snapper landed and sold; and information necessary to identify the fisherman, vessel, and dealer involved in the transaction. The fisherman must validate the dealer transaction report by entering his unique PIN number when the transaction report is submitted. After the dealer submits the report and the information has been verified, the website will send a transaction approval code to the dealer and the allocation holder.

(iv) If there is a discrepancy regarding the landing transaction report after approval, the dealer or vessel account holder (or his or her authorized agent) may initiate a landing transaction correction form to correct the landing transaction. This form is available via the IFQ website at *ifq.sero.nmfs.noaa.gov*. Both parties must validate the landing correction form by entering their respective PIN numbers, i.e. vessel account PIN or dealer account PIN. The dealer must then print out the form, both parties must sign it, and the form must be mailed to NMFS. The form must be received by NMFS no later than 15 days after the date of the initial landing transaction.

(2) *IFQ cost recovery fees.* As required by section 304(d)(2)(A)(i) of the Magnuson-Stevens Act, the RA will collect a fee to recover the actual costs directly related to the management and enforcement of the Gulf red snapper IFQ program. The fee cannot exceed 3 percent of the ex-vessel value of Gulf red snapper landed under the IFQ program. Such fees will be deposited in the Limited Access System Administration Fund (LASAF). Initially, the fee will be 3 percent of the actual ex-vessel value of Gulf red snapper landed under the IFQ program, as documented in each landings transaction report. The RA will review the cost recovery fee annually to determine if adjustment is warranted. Factors considered in the review include the catch subject to the IFQ cost recovery, projected ex-vessel value of the catch, costs directly related to the management and enforcement of the IFQ program, the projected IFQ balance

in the LASAF, and expected non-payment of fee liabilities. If the RA determines that a fee adjustment is warranted, the RA will publish a notification of the fee adjustment in the **Federal Register**.

(i) *Payment responsibility.* The IFQ allocation holder specified in the documented red snapper IFQ landing transaction report is responsible for payment of the applicable cost recovery fees.

(ii) *Collection and submission responsibility.* A dealer who receives Gulf red snapper subject to the IFQ program is responsible for collecting the applicable cost recovery fee for each IFQ landing from the IFQ allocation holder specified in the IFQ landing transaction report. Such dealer is responsible for submitting all applicable cost recovery fees to NMFS on a quarterly basis. The fees are due and must be submitted, using *pay.gov* via the IFQ system at the end of each calendar-year quarter, but no later than 30 days after the end of each calendar-year quarter. Fees not received by the deadline are delinquent.

(iii) *Fee payment procedure.* For each IFQ dealer, the IFQ system will post, on individual message boards, an end-of-quarter statement of cost recovery fees that are due. The dealer is responsible for submitting the cost recovery fee payments using *pay.gov* via the IFQ system. Authorized payments methods are credit card, debit card, or automated clearing house (ACH). Payment by check will be authorized only if the RA has determined that the geographical area or an individual(s) is affected by catastrophic conditions.

(iv) *Fee reconciliation process--delinquent fees.* The following procedures apply to an IFQ dealer whose cost recovery fees are delinquent.

(A) On or about the 31st day after the end of each calendar-year quarter, the RA will send the dealer an electronic message via the IFQ website and official notice via mail indicating the applicable fees are delinquent, and the dealer's IFQ account has been suspended pending payment of the applicable fees.

(B) On or about the 91st day after the end of each calendar-year quarter, the RA will refer any delinquent IFQ dealer cost recovery fees to the appropriate authorities for collection of payment.

(3) *Measures to enhance IFQ program enforceability—*(i) *Advance notice of landing.* For the purpose of this paragraph, landing means to arrive at a dock, berth, beach, seawall, or ramp. The owner or operator of a vessel landing IFQ red snapper is responsible for ensuring that NMFS is contacted at least 3 hours, but no more than 12 hours, in advance of landing to report

the time and location of landing, estimated red snapper landings in pounds gutted weight, vessel identification number (Coast Guard registration number or state registration number), and the name and address of the IFQ dealer where the red snapper are to be received. The vessel landing red snapper must have sufficient IFQ allocation in the IFQ vessel account, at least equal to the pounds in gutted weight of red snapper on board (except for any overage up to the 10 percent allowed on the last fishing trip) from the time of the advance notice of landing through landing. Authorized methods for contacting NMFS and submitting the report include calling NMFS Office for Law Enforcement at 1-866-425-7627, completing and submitting to NMFS the notification form provided through the VMS unit, or providing the required information to NMFS through the web-based form available on the IFQ website at ifq.sero.nmfs.noaa.gov. As new technology becomes available, NMFS will add other authorized methods for complying with the advance notification requirement, via appropriate rulemaking. Failure to comply with this advance notice of landing requirement is unlawful and will preclude authorization to complete the landing transaction report required in paragraph (c)(1)(iii) of this section and, thus, will preclude issuance of the required transaction approval code.

(ii) *Time restriction on offloading.* IFQ red snapper may be offloaded only between 6 a.m. and 6 p.m., local time.

(iii) *Restrictions on transfer of IFQ red snapper.* At-sea or dockside transfer of IFQ red snapper from one vessel to another vessel is prohibited.

(iv) *Requirement for transaction approval code.* If IFQ red snapper are offloaded to a vehicle for transportation to a dealer or are on a vessel that is trailered for transport to a dealer, on-site capability to accurately weigh the fish and to connect electronically to the online IFQ system to complete the transaction and obtain the transaction approval code is required. After a landing transaction has been completed, a transaction approval code verifying a legal transaction of the amount of IFQ red snapper in possession and a copy of the dealer endorsement must accompany any IFQ red snapper from the landing location through possession by a dealer. This requirement also applies to IFQ red snapper possessed on a vessel that is trailered for transport to a dealer.

(v) *Approved landing locations.* Landing locations must be approved by NMFS Office for Law Enforcement prior to landing or offloading at these sites.

Proposed landing locations may be submitted online via the IFQ website at ifq.sero.nmfs.noaa.gov, or by calling IFQ Customer Service at 1-866-425-7627, at any time, however, new landing locations will be approved only at the end of each calendar-year quarter. To have a landing location approved by the end of the calendar-year quarter, it must be submitted at least 45 days before the end of the calendar-year quarter. NMFS will evaluate the proposed sites based on, but not limited to, the following criteria:

(A) Landing locations must be publicly accessible by land and water, and

(B) they must have a street address. If there is no street address on record for a particular landing location, global positioning system (GPS) coordinates for an identifiable geographic location must be provided.

(4) *Transfer of IFQ shares and allocation.* Until January 1, 2012, IFQ shares and allocations can be transferred only to a person who holds a valid commercial vessel permit for Gulf reef fish; thereafter, IFQ shares and allocations can be transferred to any U.S. citizen or permanent resident alien. However, a valid commercial permit for Gulf reef fish, a Gulf red snapper IFQ vessel account, and Gulf red snapper IFQ allocation are required to possess (at and after the time of the advance notice of landing), land or sell Gulf red snapper subject to this IFQ program.

(i) *Share transfers.* Share transfers are permanent, i.e., they remain in effect until subsequently transferred. Transfer of shares will result in the corresponding allocation being automatically transferred to the person receiving the transferred share beginning with the fishing year following the year the transfer occurred. However, within the fishing year the share transfer occurs, transfer of shares and associated allocation are independent--unless the associated allocation is transferred separately, it remains with the transferor for the duration of that fishing year. A share transfer transaction that remains in pending status, i.e., has not been completed and verified with a transaction approval code, after 30 days from the date the shareholder initiated the transfer will be cancelled, and the pending shares will be re-credited to the shareholder who initiated the transfer.

(ii) *Share transfer procedures.* Share transfers must be accomplished online via the IFQ website. An IFQ shareholder must initiate a share transfer request by logging onto the IFQ website at ifq.sero.nmfs.noaa.gov. Following the instructions provided on the website,

the shareholder must enter pertinent information regarding the transfer request including, but not limited to, amount of shares to be transferred, which must be a minimum of 0.0001 percent; name of the eligible transferee; and the value of the transferred shares. An IFQ shareholder who is subject to a sanction under 15 CFR part 904 is prohibited from initiating a share transfer. An IFQ shareholder who is subject to a pending sanction under 15 CFR part 904 must disclose in writing to the prospective transferee the existence of any pending sanction at the time of the transfer. For the first 5 years this IFQ program is in effect, an eligible transferee is a person who has a valid commercial vessel permit for Gulf reef fish; is in compliance with all reporting requirements for the Gulf reef fish fishery and the red snapper IFQ program; is not subject to sanctions under 15 CFR part 904; and who would not be in violation of the share cap as specified in paragraph (c)(6) of this section. Thereafter, share transferee eligibility will be extended to include U.S. citizens and permanent resident aliens who are otherwise in compliance with the provisions of this section. The online system will verify the transfer information entered. If the information is not accepted, the online system will send the shareholder an electronic message explaining the reason(s) why the transfer request can not be completed. If the information is accepted, the online system will send the transferee an electronic message of the pending transfer. The transferee must approve the share transfer by electronic signature. If the transferee approves the share transfer, the online system will send a transaction approval code to both the transferor and transferee confirming the transaction. All share transfers must be completed and the transaction approval code received prior to December 31 at 6 p.m. eastern time each year.

(iii) *Allocation transfers.* An allocation transfer is valid only for the remainder of the fishing year in which it occurs; it does not carry over to the subsequent fishing year. Any allocation that is unused at the end of the fishing year is void. Allocation may be transferred to a vessel account from any IFQ account. Allocation held in a vessel account, however, may only be transferred back to the IFQ account through which the vessel account was established.

(iv) *Allocation transfer procedures.* Allocation transfers must be accomplished online via the IFQ website. An IFQ account holder must initiate an allocation transfer by logging

onto the IFQ website at ifq.sero.nmfs.noaa.gov, entering the required information, including but not limited to, name of an eligible transferee and amount of IFQ allocation to be transferred and price, and submitting the transfer electronically. An IFQ allocation holder who is subject to a sanction under 15 CFR part 904 is prohibited from initiating an allocation transfer. An IFQ allocation holder who is subject to a pending sanction under 15 CFR part 904 must disclose in writing to the prospective transferee the existence of any pending sanction at the time of the transfer. If the transfer is approved, the online system will provide a transaction approval code to the transferor and transferee confirming the transaction.

(5) *Restricted transactions during the 12-hour online maintenance window.* All electronic IFQ transactions must be completed by December 31 at 6 p.m. eastern time each year. Electronic IFQ functions will resume again on January 1 at 6 a.m. eastern time the following fishing year. The remaining 6 hours prior to the end of the fishing year, and the 6 hours at the beginning of the next fishing year, are necessary to provide NMFS time to reconcile IFQ accounts, adjust allocations for the upcoming year if the commercial quotas for Gulf red snapper have changed, and update shares and allocations for the upcoming fishing year. No electronic IFQ transactions will be available during these 12 hours. An advance notice of landing may still be submitted during the 12-hour maintenance window by calling IFQ Customer Service at 1-866-425-7627.

(6) *IFQ share cap.* No person, including a corporation or other entity, may individually or collectively hold IFQ shares in excess of 6.0203 percent of the total shares. For the purposes of considering the share cap, a corporation's total IFQ share is determined by adding the applicable IFQ shares held by the corporation and any other IFQ shares held by a corporation(s) owned by the original corporation prorated based on the level of ownership. An individual's total IFQ share is determined by adding the applicable IFQ shares held by the individual and the applicable IFQ shares equivalent to the corporate share the individual holds in a corporation. Initially, a corporation must provide the RA the identity of the shareholders of the corporation and their percent of shares in the corporation, and provide updated information to the RA within 30 days of when changes occur. This information must also be provided to the RA any time a commercial vessel

permit for Gulf reef fish is renewed or transferred.

(7) *Redistribution of shares resulting from permanent permit or endorsement revocation.* If a shareholder's commercial vessel permit for Gulf reef fish has been permanently revoked under provisions of 15 CFR part 904, the RA will redistribute the IFQ shares held by that shareholder proportionately among remaining shareholders (subject to cap restrictions) based upon the amount of shares each held just prior to the redistribution. During December of each year, the RA will determine the amount of revoked shares, if any, to be redistributed, and the shares will be distributed at the beginning of the subsequent fishing year.

(8) *Annual recalculation and notification of IFQ shares and allocation.* On or about January 1 each year, IFQ shareholders will be notified, via the IFQ website at ifq.sero.nmfs.noaa.gov, of their IFQ share and allocation for the upcoming fishing year. These updated share values will reflect the results of applicable share transfers and any redistribution of shares (subject to cap restrictions) resulting from permanent revocation of applicable permits under 15 CFR part 904. Allocation is calculated by multiplying IFQ share times the annual red snapper commercial quota. Updated allocation values will reflect any change in IFQ share, any change in the annual commercial quota for Gulf red snapper, and any debits required as a result of prior fishing year overages as specified in paragraph (c)(1)(ii) of this section. IFQ participants can monitor the status of their shares and allocation throughout the year via the IFQ website.

■ 9. Section 622.20 is added to subpart B to read as follows:

§ 622.20 Individual fishing quota (IFQ) program for Gulf groupers and tilefishes.

(a) *General.* This section establishes an IFQ program for the commercial components of the Gulf reef fish fishery for groupers (including DWG, red grouper, gag, and other SWG) and tilefishes (including goldface tilefish, blackline tilefish, anchor tilefish, blueline tilefish, and tilefish). For the purposes of this IFQ program, DWG includes yellowedge grouper, misty grouper, warsaw grouper, snowy grouper, and speckled hind, and scamp, but only as specified in paragraph (b)(2)(vi) of this section. For the purposes of this IFQ program, other SWG includes black grouper, scamp, yellowfin grouper, rock hind, red hind, and yellowmouth grouper, and warsaw grouper and speckled hind, but only as specified in paragraph (b)(2)(v) of this

section. Under the IFQ program, the RA initially will assign eligible participants IFQ shares, in five share categories. These IFQ shares are equivalent to a percentage of the annual commercial quotas for DWG, red grouper, gag, and tilefishes, and the annual commercial catch allowance (meaning the SWG quota minus gag and red grouper) for other SWG species, based on their applicable historical landings. Shares determine the amount of IFQ allocation for Gulf groupers and tilefishes, in pounds gutted weight, a shareholder is initially authorized to possess, land, or sell in a given calendar year. Shares and annual IFQ allocation are transferable. See § 622.4(a)(2)(ix) regarding a requirement for a vessel landing groupers or tilefishes subject to this IFQ program to have an IFQ vessel account for Gulf groupers and tilefishes. See § 622.4(a)(4)(ii) regarding a requirement for a Gulf IFQ dealer endorsement. Details regarding eligibility, applicable landings history, account setup and transaction requirements, constraints on transferability, and other provisions of this IFQ system are provided in the following paragraphs of this section.

(1) *Scope.* The provisions of this section apply to Gulf groupers and tilefishes in or from the Gulf EEZ and, for a person aboard a vessel with an IFQ vessel account for Gulf groupers and tilefishes as required by § 622.4(a)(2)(ix) or for a person with a Gulf IFQ dealer endorsement as required by § 622.4(a)(4)(ii), these provisions apply to Gulf groupers and tilefishes regardless of where harvested or possessed.

(2) *Duration.* The IFQ program established by this section will remain in effect until it is modified or terminated; however, the program will be evaluated by the Gulf of Mexico Fishery Management Council every 5 years.

(3) *Electronic system requirements.* (i) The administrative functions associated with this IFQ program, e.g., registration and account setup, landing transactions, and transfers, are designed to be accomplished online; therefore, a participant must have access to a computer and Internet access and must set up an appropriate IFQ online account to participate. The computer must have browser software installed, e.g. Internet Explorer, Netscape, Mozilla Firefox; as well as the software Adobe Flash Player version 9.0 or greater, which may be downloaded from the Internet for free. Assistance with online functions is available from IFQ Customer Service by calling 1-866-425-7627 Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

(ii) The RA will mail initial shareholders and dealers with Gulf reef fish dealer permits information and instructions pertinent to setting up an IFQ online account. Other eligible persons who desire to become IFQ participants by purchasing IFQ shares or allocation or by obtaining a Gulf IFQ dealer endorsement must first contact IFQ Customer Service at 1-866-425-7627 to obtain information necessary to set up the required IFQ online account. Each IFQ participant must monitor his/her online account and all associated messages and comply with all IFQ online reporting requirements.

(iii) During catastrophic conditions only, the IFQ program provides for use of paper-based components for basic required functions as a backup. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the **Federal Register**, NOAA weather radio, fishery bulletins, and other appropriate means and will authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. NMFS will provide each IFQ dealer the necessary paper forms, sequentially coded, and instructions for submission of the forms to the RA. The paper forms will also be available from the RA. The program functions available to participants or geographic areas deemed affected by catastrophic conditions will be limited under the paper-based system. There will be no mechanism for transfers of IFQ shares or allocation under the paper-based system in effect during catastrophic conditions. Assistance in complying with the requirements of the paper-based system will be available via IFQ Customer Service 1-866-425-7627 Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

(b) *Procedures for initial implementation*—(1) *Determination of eligibility for initial IFQ shares*. To be eligible as an initial IFQ shareholder a person must possess a valid commercial Gulf reef fish permit as of October 1, 2009. NMFS' permit records are the sole basis for determining eligibility for the IFQ program for Gulf groupers and tilefishes based on permit history. No more than one initial eligibility will be granted based upon a given commercial vessel permit for Gulf reef fish.

(2) *Calculation of initial IFQ shares and allocation*—(i) *IFQ shares*. The RA will calculate initial IFQ shares based on the highest average annual landings

of Gulf groupers and tilefishes, in each of five share categories, associated with each shareholder's current commercial vessel permit for Gulf reef fish during the applicable landings history. The five share categories are gag, red grouper, DWG, other SWG, and tilefishes. The applicable landings history for reef fish permit holders with grouper or tilefish landings includes landings data from 1999 through 2004 with the allowance for dropping one year. All grouper and tilefish landings associated with a current reef fish permit for the applicable landings history, including those reported by a person(s) who held the license prior to the current license owner, will be attributed to the current license owner. Only legal landings reported in compliance with applicable state and Federal regulations will be accepted. For each share category, each shareholder's initial share is derived by dividing the shareholder's highest average annual landings during the applicable landings history by the sum of the highest average annual landings of all shareholders during the respective applicable landings histories. Initial shares distributed in the gag share category and the other SWG share category will be based on landings that have been adjusted for gag and/or black grouper misidentification. Initial IFQ shares will not be issued in units less than the percentage equivalent to 1.0 lb (0.45 kg) of the grouper or tilefish species, in each share category, based on that share category's quota or catch allowance.

(ii) *Initial share set-aside to accommodate resolution of appeals*. During the first year of implementation of this IFQ program only, for each share category, the RA will reserve a 3-percent IFQ share prior to the initial distribution of shares, to accommodate resolution of appeals, if necessary. Any portion of the 3-percent share set-aside for each share category remaining after the appeals process is completed will be distributed as soon as possible among initial shareholders in direct proportion to the percentage share each was initially allocated. If resolution of appeals requires more than a 3-percent share set-aside for a share category, the shares of all initial shareholders, for that share category, would be reduced accordingly in direct proportion to the percentage share each was initially allocated.

(iii) *IFQ allocation*. IFQ allocation is the amount of Gulf groupers and tilefishes, in pounds gutted weight, an IFQ shareholder or allocation holder is authorized to possess, land, or sell during a given fishing year. IFQ allocation for the five respective share

categories is derived at the beginning of each year by multiplying a shareholder's IFQ share times the annual commercial quota for gag, red grouper, DWG, and tilefishes; and times the annual commercial catch allowance for other SWG.

(iv) *Red grouper and gag multi-use allocation*—(A) *Red grouper multi-use allocation*. At the beginning of each fishing year, 4 percent of each shareholder's initial red grouper allocation will be converted to red grouper multi-use allocation. Red grouper multi-use allocation may be used to possess, land, or sell either red grouper or gag under certain conditions. Red grouper multi-use allocation may be used to possess, land, or sell red grouper only after an IFQ account holder's (shareholder or allocation holder's) red grouper allocation has been landed and sold, or transferred; and to possess, land, or sell gag, only after both gag and gag multi-use allocation have been landed and sold, or transferred.

(B) *Gag multi-use allocation*. At the beginning of each fishing year, 8 percent of each shareholder's initial gag allocation will be converted to gag multi-use allocation. Gag multi-use allocation may be used to possess, land, or sell either gag or red grouper under certain conditions. Gag multi-use allocation may be used to possess, land, or sell gag only after an IFQ account holder's gag allocation has been landed and sold, or transferred; and possess, land or sell red grouper, only after both red grouper and red grouper multi-use allocation have been landed and sold, or transferred. Multi-use allocation transfer procedures and restrictions are specified in paragraph (c)(4)(iv) of this section.

(v) *Warsaw grouper and speckled hind classification*. Warsaw grouper and speckled hind are considered DWG species and under certain circumstances SWG species. For the purposes of the IFQ program for Gulf groupers and tilefishes, once all of an IFQ account holder's DWG allocation has been landed and sold, or transferred, or if an IFQ account holder has no DWG allocation, then other SWG allocation may be used to land and sell warsaw grouper and speckled hind.

(vi) *Scamp classification*. Scamp is considered a SWG species and under certain circumstances a DWG. For the purposes of the IFQ program for Gulf groupers and tilefishes, once all of an IFQ account holder's other SWG allocation has been landed and sold, or transferred, or if an IFQ account holder has no SWG allocation, then DWG allocation may be used to land and sell scamp.

(3) *Shareholder notification regarding landings history, initial determination of IFQ shares and allocations, and IFQ account setup information.* (i) On or about October 1, 2009, the RA will mail each Gulf reef fish commercial vessel permittee with grouper and tilefish landings history during the qualifying years, information pertinent to the IFQ program. This information will include—

(A) Gulf grouper and tilefish landings associated with the Gulf reef fish commercial vessel permit during each year of the applicable landings history;

(B) The highest average annual grouper and tilefish landings, in each of the five share categories, based on the permittee's best 5 out of 6 years of applicable landings history;

(C) The permittee's initial IFQ share, in each of the five share categories, based on the highest average annual landings associated with the permittee's best 5 out of 6 years of applicable landings history;

(D) The initial IFQ allocation, in each of the five share categories, as well as their total IFQ allocation;

(E) Instructions for appeals;

(F) General instructions regarding procedures related to the IFQ online system, including how to set up an online account; and

(G) A user identification number; and a personal identification number (PIN) that will be provided in a subsequent letter.

(ii) The RA will provide this information, via certified mail return receipt requested, to the permittee's address of record as listed in NMFS' permit files. A permittee who does not receive such notification from the RA, must contact the RA by November 1, 2009, to clarify eligibility status and landings and initial share information.

(iii) The initial share information provided by the RA is based on the highest average annual landings during the best 5 out of 6 years associated with the permittee's applicable landings history for each share category; however, a permittee may select to exclude a different year of landings history than was chosen, consistent with the permittee's applicable landings history, for the calculation of the initial IFQ share. The permittee must submit that information to the RA postmarked no later than December 1, 2009. If alternative years, consistent with the applicable landings history, are selected, revised information regarding shares and allocations will be posted on the online IFQ accounts no later than January 1, 2010. A permittee who disagrees with the landings or eligibility

information provided by the RA may appeal the RA's initial determinations.

(4) *Procedure for appealing IFQ eligibility and/or landings information.* The only items subject to appeal under this IFQ system are initial eligibility for IFQ shares based on ownership of a reef fish permit, the accuracy of the amount of landings, correct assignment of landings to the permittee, and correct assignment of gag versus black grouper landings. Appeals based on hardship factors will not be considered. Appeals must be submitted to the RA postmarked no later than April 1, 2010, and must contain documentation supporting the basis for the appeal. The RA will review all appeals, render final decisions on the appeals, and advise the appellant of the final decision.

(i) *Eligibility appeals.* NMFS' records of reef fish permits are the sole basis for determining ownership of such permits. A person who believes he/she meets the permit eligibility criteria based on ownership of a vessel under a different name, as may have occurred when ownership has changed from individual to corporate or vice versa, must document his/her continuity of ownership.

(ii) *Landings appeals.* Appeals regarding landings data for 1999 through 2004 will be based on NMFS' logbook records. If NMFS' logbooks are not available, the RA may use state landings records or data that were submitted in compliance with applicable Federal and state regulations, on or before December 31, 2006.

(5) *Dealer notification and IFQ account setup information.* On or about October 1, 2009, the RA will mail each dealer with a valid Gulf reef fish dealer permit information pertinent to the IFQ program. Any such dealer is eligible to receive a Gulf IFQ dealer endorsement, which can be downloaded from the IFQ website at ifq.sero.nmfs.noaa.gov once an IFQ account has been established. The information package will include general information about the IFQ program and instructions for accessing the IFQ website and establishing an IFQ dealer account.

(c) *IFQ operations and requirements—*
(1) *IFQ Landing and transaction requirements.* (i) Gulf groupers and tilefishes subject to this IFQ program can only be possessed or landed by a vessel with a IFQ vessel account for Gulf groupers and tilefishes. Such groupers and tilefishes can only be received by a dealer with a Gulf IFQ dealer endorsement. The vessel landing groupers or tilefishes must have sufficient IFQ allocation in the IFQ vessel account, at least equal to the pounds in gutted weight of grouper or

tilefish species to be landed, from the time of advance notice of landing through landing, except as provided in paragraph (c)(1)(ii) of this section.

(ii) A person on board a vessel with an IFQ vessel account landing the shareholder's only remaining allocation from among any of the grouper or tilefish share categories, can legally exceed, by up to 10 percent, the shareholder's allocation remaining on that last fishing trip of the fishing year, i.e. a one-time per fishing year overage. Any such overage will be deducted from the shareholder's applicable allocation for the subsequent fishing year. From the time of the overage until January 1 of the subsequent fishing year, the IFQ shareholder must retain sufficient shares to account for the allocation that will be deducted the subsequent fishing year. Share transfers that would violate this requirement will be prohibited.

(iii) The dealer is responsible for completing a landing transaction report for each landing and sale of Gulf groupers and tilefishes via the IFQ website at ifq.sero.nmfs.noaa.gov at the time of the transaction in accordance with reporting form and instructions provided on the website. This report includes, but is not limited to, date, time, and location of transaction; weight and actual ex-vessel value of groupers and tilefishes landed and sold; and information necessary to identify the fisherman, vessel, and dealer involved in the transaction. The fisherman must validate the dealer transaction report by entering the unique PIN number for the vessel account when the transaction report is submitted. After the dealer submits the report and the information has been verified by NMFS, the online system will send a transaction approval code to the dealer and the allocation holder.

(iv) If there is a discrepancy regarding the landing transaction report after approval, the dealer or vessel account holder (or his or her authorized agent) may initiate a landing transaction correction form to correct the landing transaction. This form is available via the IFQ website at ifq.sero.nmfs.noaa.gov. Both parties must validate the landing correction form by entering their respective PIN numbers, i.e. vessel account PIN or dealer account PIN. The dealer must then print out the form, both parties must sign it, and the form must be mailed to NMFS. The form must be received by NMFS no later than 15 days after the date of the initial landing transaction.

(2) *IFQ cost recovery fees.* As required by section 304(d)(2)(A)(i) of the Magnuson-Stevens Act, the RA will

collect a fee to recover the actual costs directly related to the management and enforcement of the IFQ program for Gulf groupers and tilefishes. The fee cannot exceed 3 percent of the ex-vessel value of Gulf groupers and tilefishes landed under the IFQ program. Such fees will be deposited in the Limited Access System Administration Fund (LASAF). Initially, the fee will be 3 percent of the actual ex-vessel value of Gulf groupers and tilefishes landed under the IFQ program, as documented in each landings transaction report. The RA will review the cost recovery fee annually to determine if adjustment is warranted. Factors considered in the review include the catch subject to the IFQ cost recovery, projected ex-vessel value of the catch, costs directly related to the management and enforcement of the IFQ program, the projected IFQ balance in the LASAF, and expected non-payment of fee liabilities. If the RA determines that a fee adjustment is warranted, the RA will publish a notification of the fee adjustment in the **Federal Register**.

(i) *Payment responsibility.* The IFQ account holder specified in the documented IFQ landing transaction report for Gulf groupers and tilefishes is responsible for payment of the applicable cost recovery fees.

(ii) *Collection and submission responsibility.* A dealer who receives Gulf groupers or tilefishes subject to the IFQ program is responsible for collecting the applicable cost recovery fee for each IFQ landing from the IFQ account holder specified in the IFQ landing transaction report. Such dealer is responsible for submitting all applicable cost recovery fees to NMFS on a quarterly basis. The fees are due and must be submitted, using pay.gov via the IFQ system, at the end of each calendar-year quarter, but no later than 30 days after the end of each calendar-year quarter. Fees not received by the deadline are delinquent.

(iii) *Fee payment procedure.* For each IFQ dealer, the IFQ system will post, in individual IFQ dealer accounts, an end-of-quarter statement of cost recovery fees that are due. The dealer is responsible for submitting the cost recovery fee payments using pay.gov via the IFQ system. Authorized payment methods are credit card, debit card, or automated clearing house (ACH). Payment by check will be authorized only if the RA has determined that the geographical area or an individual(s) is affected by catastrophic conditions.

(iv) *Fee reconciliation process—delinquent fees.* The following procedures apply to an IFQ dealer whose cost recovery fees are delinquent.

(A) On or about the 31st day after the end of each calendar-year quarter, the RA will send the dealer an electronic message via the IFQ website and official notice via mail indicating the applicable fees are delinquent, and the dealer's IFQ account has been suspended pending payment of the applicable fees.

(B) On or about the 91st day after the end of each calendar-year quarter, the RA will refer any delinquent IFQ dealer cost recovery fees to the appropriate authorities for collection of payment.

(3) *Measures to enhance IFQ program enforceability—(i) Advance notice of landing.* For the purpose of this paragraph, landing means to arrive at a dock, berth, beach, seawall, or ramp. The owner or operator of a vessel landing IFQ groupers or tilefishes is responsible for ensuring that NMFS is contacted at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing, estimated grouper and tilefish landings in pounds gutted weight for each share category (gag, red grouper, DWG, other SWG, tilefishes), vessel identification number (Coast Guard registration number or state registration number), and the name and address of the IFQ dealer where the groupers or tilefishes are to be received. The vessel landing groupers or tilefishes must have sufficient IFQ allocation in the IFQ vessel account, and in the appropriate share category or categories, at least equal to the pounds in gutted weight of all groupers and tilefishes on board (except for any overage up to the 10 percent allowed on the last fishing trip) from the time of the advance notice of landing through landing. Authorized methods for contacting NMFS and submitting the report include calling NMFS at 1-866-425-7627, completing and submitting to NMFS the notification form provided through the VMS unit, or providing the required information to NMFS through the web-based form available on the IFQ website at ifq.sero.nmfs.noaa.gov. As new technology becomes available, NMFS will add other authorized methods for complying with the advance notification requirement, via appropriate rulemaking. Failure to comply with this advance notice of landing requirement is unlawful and will preclude authorization to complete the landing transaction report required in paragraph (c)(1)(iii) of this section and, thus, will preclude issuance of the required transaction approval code.

(ii) *Time restriction on offloading.* IFQ groupers and tilefishes may be offloaded only between 6 a.m. and 6 p.m., local time.

(iii) *Restrictions on transfer of IFQ groupers and tilefishes.* At-sea or dockside transfer of IFQ groupers or tilefishes from one vessel to another vessel is prohibited.

(iv) *Requirement for transaction approval code.* If IFQ groupers or tilefishes are offloaded to a vehicle for transportation to a dealer or are on a vessel that is trailered for transport to a dealer, on-site capability to accurately weigh the fish and to connect electronically to the online IFQ system to complete the transaction and obtain the transaction approval code is required. After a landing transaction has been completed, a transaction approval code verifying a legal transaction of the amount of IFQ groupers and tilefishes in possession and a copy of the dealer endorsement must accompany any IFQ groupers and tilefishes from the landing location through possession by a dealer. This requirement also applies to IFQ groupers and tilefishes possessed on a vessel that is trailered for transport to a dealer.

(v) *Approved landing locations.* Landing locations must be approved by NMFS Office for Law Enforcement prior to landing or offloading at these sites. Proposed landing locations may be submitted online via the IFQ website at ifq.sero.nmfs.noaa.gov, or by calling IFQ Customer Service at 1-866-425-7627, at any time, however, new landing locations will be approved only at the end of each calendar-year quarter. To have your landing location approved by the end of the calendar-year quarter, it must be submitted at least 45 days before the end of the calendar-year quarter. NMFS will evaluate the proposed sites based on, but not limited to, the following criteria:

(A) Landing locations must be publicly accessible by land and water, and

(B) they must have a street address. If there is no street address on record for a particular landing location, global positioning system (GPS) coordinates for an identifiable geographic location must be provided.

(4) *Transfer of IFQ shares and allocation.* Until January 1, 2015, IFQ shares and allocations can be transferred only to a person who holds a valid commercial vessel permit for Gulf reef fish; thereafter, IFQ shares and allocations can be transferred to any U.S. citizen or permanent resident alien. However, a valid commercial permit for Gulf reef fish, an IFQ vessel account for Gulf groupers and tilefishes, and IFQ allocation for Gulf groupers or tilefishes are required to possess (at and after the time of the advance notice of landing),

land or sell Gulf groupers or tilefishes subject to this IFQ program.

(i) *Share transfers.* Share transfers are permanent, i.e., they remain in effect until subsequently transferred. Transfer of shares will result in the corresponding allocation being automatically transferred to the person receiving the transferred share beginning with the fishing year following the year the transfer occurred. However, within the fishing year the share transfer occurs, transfer of shares and associated allocation are independent—unless the associated allocation is transferred separately, it remains with the transferor for the duration of that fishing year. A share transfer transaction that remains in pending status, i.e., has not been completed and verified with a transaction approval code, after 30 days from the date the shareholder initiated the transfer will be cancelled, and the pending shares will be re-credited to the shareholder who initiated the transfer.

(ii) *Share transfer procedures.* Share transfers must be accomplished online via the IFQ website. An IFQ shareholder must initiate a share transfer request by logging onto the IFQ website at ifq.seo.nmfs.noaa.gov. An IFQ shareholder who is subject to a sanction under 15 CFR part 904 is prohibited from initiating a share transfer. An IFQ shareholder who is subject to a pending sanction under 15 CFR part 904 must disclose in writing to the prospective transferee the existence of any pending sanction at the time of the transfer. Following the instructions provided on the website, the shareholder must enter pertinent information regarding the transfer request including, but not limited to: amount of shares to be transferred, which must be a minimum of 0.000001 percent; name of the eligible transferee; and the value of the transferred shares. For the first 5 years this IFQ program is in effect, an eligible transferee is a person who has a valid commercial vessel permit for Gulf reef fish; is in compliance with all reporting requirements for the Gulf reef fish fishery and the IFQ program for Gulf groupers and tilefishes; is not subject to sanctions under 15 CFR part 904; and who would not be in violation of the share or allocation caps as specified in paragraph (c)(6) of this section. Thereafter, share transferee eligibility will be extended to include U.S. citizens and permanent resident aliens who are otherwise in compliance with the provisions of this section. The online system will verify the information entered. If the information is not accepted, the online system will send the shareholder an electronic message

explaining the reason(s). If the information is accepted, the online system will send the transferee an electronic message of the pending transfer. The transferee must approve the share transfer by electronic signature. If the transferee approves the share transfer, the online system will send a transfer approval code to both the shareholder and transferee confirming the transaction. All share transfers must be completed and the transaction approval code received prior to December 31 at 6 p.m. eastern time each year.

(iii) *Allocation transfers.* An allocation transfer is valid only for the remainder of the fishing year in which it occurs; it does not carry over to the subsequent fishing year. Any allocation that is unused at the end of the fishing year is void. Allocation may be transferred to a vessel account from any IFQ account. Allocation held in a vessel account, however, may only be transferred back to the IFQ account through which the vessel account was established.

(iv) *Allocation transfer procedures and restrictions—(A) Allocation transfer procedures.* Allocation transfers must be accomplished online via the IFQ website. An IFQ account holder must initiate an allocation transfer by logging onto the IFQ website at ifq.seo.nmfs.noaa.gov, entering the required information, including but not limited to, name of an eligible transferee and amount of IFQ allocation to be transferred and price, and submitting the transfer electronically. An IFQ allocation holder who is subject to a sanction under 15 CFR part 904 is prohibited from initiating an allocation transfer. An IFQ allocation holder who is subject to a pending sanction under 15 CFR part 904 must disclose in writing to the prospective transferee the existence of any pending sanction at the time of the transfer. If the transfer is approved, the website will provide a transfer approval code to the transferor and transferee confirming the transaction.

(B) *Multi-use allocation transfer restrictions—(1) Red grouper multi-use allocation.* Red grouper multi-use allocation may only be transferred after all an IFQ account holder's red grouper allocation has been landed and sold, or transferred.

(2) *Gag multi-use allocation.* Gag multi-use allocation may only be transferred after all an IFQ account holder's gag allocation has been landed and sold, or transferred.

(3) *Restricted transactions during the 12-hour online maintenance window.* All electronic IFQ transactions must be

completed by December 31 at 6 p.m. eastern time each year. Electronic IFQ functions will resume again on January 1 at 6 a.m. eastern time the following fishing year. The remaining 6 hours prior to the end of the fishing year, and the 6 hours at the beginning of the next fishing year, are necessary to provide NMFS time to reconcile IFQ accounts, adjust allocations for the upcoming year if the commercial quotas or catch allowances for Gulf groupers or tilefishes have changed, and update shares and allocations for the upcoming fishing year. No electronic IFQ transactions will be available during these 12 hours. An advance notice of landing may still be submitted by calling IFQ Customer Service at 1-866-425-7627.

(6) *IFQ share and allocation caps.* A corporation's total IFQ share (or allocation) is determined by adding the applicable IFQ shares (or allocation) held by the corporation and any other IFQ shares (or allocation) held by a corporation(s) owned by the original corporation prorated based on the level of ownership. An individual's total IFQ share is determined by adding the applicable IFQ shares held by the individual and the applicable IFQ shares equivalent to the corporate share the individual holds in a corporation. An individual's total IFQ allocation is determined by adding the individual's total allocation to the allocation derived from the IFQ shares equivalent to the corporate share the individual holds in a corporation.

(i) *IFQ share cap for each share category.* No person, including a corporation or other entity, may individually or collectively hold IFQ shares in any share category (gag, red grouper, DWG, other SWG, or tilefishes) in excess of the maximum share initially issued for the applicable share category to any person at the beginning of the IFQ program, as of the date appeals are resolved and shares are adjusted accordingly. A corporation must provide to the RA the identity of the shareholders of the corporation and their percent of shares in the corporation, by December 1, 2009, for initial issuance of IFQ shares and allocation, and provide updated information to the RA within 30 days of when changes occur. This information must also be provided to the RA any time a commercial vessel permit for Gulf reef fish is renewed or transferred.

(ii) *Total allocation cap.* No person, including a corporation or other entity, may individually or collectively hold, cumulatively during any fishing year, IFQ allocation in excess of the total allocation cap. The total allocation cap

is the sum of the maximum allocations associated with the share caps for each individual share category and is calculated annually based on the applicable quotas or catch allowance associated with each share category.

(7) *Redistribution of shares resulting from permanent permit revocation.* If a shareholder's commercial vessel permit for Gulf reef fish has been permanently revoked under provisions of 15 CFR part 904, the RA will redistribute the IFQ shares associated with the revoked permit proportionately among remaining shareholders (subject to cap restrictions) based upon the amount of shares each held just prior to the redistribution. During December of each year, the RA will determine the amount of revoked shares, if any, to be redistributed, and the shares will be distributed at the beginning of the subsequent fishing year.

(8) *Annual recalculation and notification of IFQ shares and allocation.* On or about January 1 each year, IFQ shareholders will be notified, via the IFQ website at ifq.serono.nmfs.noaa.gov, of their IFQ shares and allocations, for each of the five share categories, for the upcoming fishing year. These updated share values will reflect the results of applicable share transfers and any redistribution of shares (subject to cap restrictions) resulting from permanent revocation of applicable permits under 15 CFR part 904. Allocation, for each share category, is calculated by multiplying IFQ share for that category times the annual commercial quota or commercial catch allowance for that share category. Updated allocation values will reflect any change in IFQ share for each share category, any change in the annual commercial quota or commercial catch allowance for the applicable categories; and any debits required as a result of

prior fishing year overages as specified in paragraph (c)(1)(ii) of this section. IFQ participants can monitor the status of their shares and allocation throughout the year via the IFQ website.

■ 10. In § 622.42, paragraph (a)(1)(ii) and the first sentence of paragraph (a)(1)(iii) introductory text are revised to read as follows:

§ 622.42 Quotas.

* * * * *

(a) * * *

(1) * * *

(ii) Deep-water groupers (DWG) combined—1.02 million lb (0.46 million kg), gutted weight, that is, eviscerated but otherwise whole.

(iii) Shallow-water groupers (SWG) have a combined quota as specified in paragraph (a)(1)(iii)(A) of this section. * * *

* * * * *

§ 622.44 [Amended]

■ 11. In § 622.44, paragraph (g) is removed and reserved.

[FR Doc. E9-20954 Filed 8-28-09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16 and 118

[Docket No. FDA-2000-N-0190] (formerly Docket No. 2000N-0504)

RIN 0910-AC14

Egg Safety; Final Rule for Prevention of Salmonella Enteritidis in Shell Eggs During Production, Storage, and Transportation; Public Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meetings.

The Food and Drug Administration (FDA) is announcing two public meetings to discuss the final rule concerning the prevention of *Salmonella* Enteritidis (SE) in shell eggs during production, storage, and transportation. The purpose of the public meetings is to explain the requirements of the rule and how to comply with it, and to provide the public an opportunity to ask questions.

DATES, TIMES, AND LOCATIONS: See "How to Participate in the Meetings" in the **SUPPLEMENTARY INFORMATION** section of this document for dates and times of the meetings, closing dates for advance registration, requesting special accommodations due to disability, and other information regarding meeting participation.

CONTACT PERSON: For general questions about the meetings or for special accommodations due to a disability, contact Juanita Yates, Center for Food Safety and Applied Nutrition (HFS-009), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301-436-1731, e-mail: juanita.yates@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. How to Participate in the Meetings

Table 1 of this document provides information on participation in the meetings.

TABLE 1.

	Date	Address	Electronic Address	Other Information
First public meeting	September 30, 2009, from 1 p.m. to 5 p.m.	Hyatt Regency Chicago, 151 East Wacker Dr., Chicago, IL 60601		
Advance registration	By September 21, 2009	We encourage you to use electronic registration if possible. ¹	http://www.fda.gov/Food/NewsEvents/WorkshopsMeetingsConferences/default.htm	There is no registration fee for the public meetings. Early registration is recommended because seating is limited.
Request special accommodations due to a disability	By September 21, 2009	See <i>Contact Person</i>		

TABLE 1.—Continued

	Date	Address	Electronic Address	Other Information
Second public meeting	November 5, 2009, from 1 p.m. to 5 p.m.	The Westin Peachtree Plaza Hotel, 210 Peachtree St., NW., Atlanta, GA 30303		
Advance registration	By October 26, 2009	We encourage you to use electronic registration if possible. ¹	http://www.fda.gov/Food/NewsEvents/WorkshopsMeetingsConferences/default.htm	There is no registration fee for the public meetings. Early registration is recommended because seating is limited.
Request special accommodations due to a disability	By October 26, 2009	See <i>Contact Person</i>		

¹ You may also register via e-mail, mail, or fax. Please include your name, title, firm name, address, and phone and fax numbers in your registration information and send to: Deborah Harris, EDJ Associates, Inc., 11300 Rockville Pike, suite 1001, Rockville, MD 20852, 240-221-4326, FAX: 301-945-4295, e-mail: fda-CFSAN_Registration@edjassociates.com. Onsite registration will also be available at both meeting sites.

II. Background

In the **Federal Register** of July 9, 2009 (74 FR 33030), FDA published a final rule, “Prevention of Salmonella Enteritidis in Shell Eggs During Production, Storage, and Transportation,” that requires shell egg producers to implement measures to prevent SE from contaminating eggs on the farm and from further growth during storage and transportation, and requires these producers to maintain records concerning their compliance with the rule and to register with FDA. FDA took this action because SE is among the leading bacterial causes of foodborne illness in the United States, and shell eggs are a primary source of human SE infections. The final rule will reduce SE-associated illnesses and deaths by reducing the risk that shell eggs are contaminated with SE.

This document announces two public meetings as part of the agency’s planned outreach initiatives regarding the final rule.

III. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at <http://www.regulations.gov>. It may be viewed at the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD. A transcript will also be available in either hardcopy or on CD-ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI-35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6-30, Rockville, MD 20857.

Dated: August 24, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9-20856 Filed 8-28-09; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF THE TREASURY

31 CFR Part 32

RIN 1505-AC17

Payments in Lieu of Low Income Housing Tax Credits

AGENCY: Office of the Fiscal Assistant Secretary, Treasury.

ACTION: Interim final rule.

SUMMARY: The Department of the Treasury is amending its policy regarding the time limitation within which State housing credit agencies must disburse funds received under section 1602 of the American Recovery and Reinvestment Tax Act of 2009. This change will allow States to disburse section 1602 funds to subawardees through December 31, 2011 under certain conditions.

DATES: This final rule is effective August 31, 2009. Comments must be received on or before September 30, 2009.

ADDRESSES: Treasury participates in the U.S. government’s eRulemaking Initiative by publishing rulemaking information on <http://www.regulations.gov>. Regulations.gov offers the public the ability to comment on, search, and view publicly available rulemaking materials, including comments received on rules. Comments on this rule should be submitted using only the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the

instructions on the Web site for submitting comments.

Mail: Ellen Neubauer, Fiscal Service, U.S. Department of the Treasury, 1500 Pennsylvania Ave., Washington, DC 20220. *Instructions:* All submissions received must include the agency name (“Fiscal Service”) and the title of this rulemaking. In general, comments received will be published on Regulations.gov without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may also inspect and copy this interim rule at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Before visiting, you must call (202) 622-0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Ellen Neubauer, Program Manager, at (202) 622-0560 or at ellen.neubauer@do.treas.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1602 of the American Recovery and Reinvestment Tax Act of 2009 (Act) (Pub. L. 111-5) (hereinafter Section 1602) allows State housing credit agencies to elect to receive payments in lieu of low-income housing credits under section 42 of the Internal Revenue Code. Payments must be used to make subawards to finance the construction or acquisition and rehabilitation of qualified low-income

buildings. The United States Department of the Treasury (Treasury) awards Section 1602 funds to State housing credit agencies in an amount equal to their low-income housing grant election amount which may not exceed a portion of the States' low-income housing tax credit ceiling for 2009.

Section 1602(d) of the Act requires that State housing credit agencies return to the Treasury funds not used to make subawards before January 1, 2011. The Terms and Conditions promulgated by the Treasury to govern the program require that any funds not disbursed before January 1, 2011, be returned to the Treasury. Upon further consideration Treasury has determined that this requirement is overly restrictive and may preclude funding of otherwise eligible projects that may not reach final completion by the end of 2010. This rule therefore changes this requirement. Under this rule set forth at 31 CFR part 32, State housing credit agencies are required to return to the Treasury any funds not used to make subawards by December 31, 2010. However, once a subaward has been made, a State can continue to disburse funds for the subaward through December 31, 2011, provided the project is at least 30 percent complete by the end of 2010.

II. Procedural Analyses

Administrative Procedures Act

This rule is being issued without prior public notice and comment because under 5 U.S.C. 553(b) and (d)(3) good cause exists to determine that prior notice and comment rulemaking is unnecessary and contrary to the public interest. The policy being implemented through this rule impacts procedural requirements imposed on State housing credit agencies that receive funds from the Federal government under Section 1602 and does not adversely affect the rights of the public. Additionally, delay in the effective date of this rule is contrary to the public interest because without clarity regarding the time period within which State housing credit agencies may disburse funds under the program, State housing credit agencies are unable to make decisions regarding which projects to fund thereby delaying the construction or rehabilitation of low-income housing.

Request for Comment on Plain Language

Executive Order 12866 requires each agency in the Executive branch to write regulations that are simple and easy to understand. We invite comment on how to make the interim rule clearer. For example, you may wish to discuss: (1)

Whether we have organized the material to suit your needs; (2) whether the requirements of the rules are clear; or (3) whether there is something else we could do to make these rules easier to understand.

Regulatory Planning and Review

The rule is a "significant regulatory action" as defined in Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act Analysis

Because no notice of rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

List of Subjects in 31 CFR Part 32

Low-income housing tax credits.

■ For the reasons set forth in the preamble, we add 31 CFR Part 32 to read as follows:

PART 32—PAYMENTS IN LIEU OF LOW INCOME HOUSING TAX CREDITS

Sec.

32.1. Timing of disbursements.

Authority: Public Law 111–5.

§ 32.1 Timing of disbursements.

(a) State housing credit agencies that receive funds under section 1602 of Division B of the American Recovery and Reinvestment Tax Act of 2009 must make subawards to subawardees to finance the construction or acquisition and rehabilitation of low-income housing no later than December 31, 2010. Any funds that are not used to make subawards by December 31, 2010, must be returned to the Treasury by January 1, 2011.

(b) The requirement in subsection (a) above does not prevent State housing credit agencies from continuing to disburse funds to subawardees after December 31, 2010 provided:

(1) A subaward has been made to the subawardee on or before December 31, 2010;

(2) The subawardee has, by the close of 2010, paid or incurred at least 30 percent of the subawardee's total adjusted basis in land and depreciable property that is reasonably expected to be part of the low-income housing project; and

(3) Any funds not disbursed to the subawardee by December 31, 2011, must be returned to the Treasury by January 1, 2012.

Dated: August 19, 2009.

Gary Grippo,

Acting Fiscal Assistant Secretary.

[FR Doc. E9–20903 Filed 8–28–09; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD–2008–HA–0007; RIN 0720–AB21]

TRICARE; Reimbursement of Critical Access Hospitals (CAHs)

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Final rule.

SUMMARY: This rule implements the statutory provisions that TRICARE payment methods for institutional care be determined to the extent practicable in accordance with the same reimbursement rules as those that apply to payments to providers of services of the same type under Medicare. This final rule implements a reimbursement methodology similar to that furnished to Medicare beneficiaries for services provided by critical access hospitals (CAHs).

DATES: *Effective Date:* This rule is effective December 1, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Martha M. Maxey, TRICARE Management Activity, Medical Benefits and Reimbursement Branch, telephone (303) 676–3627.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

Hospitals are authorized TRICARE institutional providers under 10 U.S.C. Code 1079(j)(2) and (4). Under 10 U.S.C. 1079(j)(2), the amount to be paid to hospitals, skilled nursing facilities (SNFs), and other institutional providers under TRICARE, "shall be determined to the extent practicable in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under Medicare." Under 32 CFR 199.14(a)(1)(ii)(D)(1) through (9) it specifically lists those hospitals that are exempt from the DRG-based payment system. CAHs are not listed as exempt, thereby making them subject to the DRG-based payment system. CAHs are not listed as excluded, because at the time this regulatory provision was written, CAHs were not a recognized entity.

Legislation enacted as part of the Balanced Budget Act (BBA) of 1997

authorized states to establish State Medicare Rural Hospital Flexibility Programs, under which certain facilities participating in Medicare could become CAHs. CAHs represent a separate provider type with their own Medicare conditions of participation as well as a separate payment method of 101 percent of reasonable costs. Since that time, a number of hospitals have taken the necessary steps to be designated as CAHs by the Centers for Medicare & Medicaid Services (CMS). The statutory authority requires TRICARE to apply the same reimbursement rules as apply to payments to providers of services of the same type under Medicare to the extent practicable. Therefore, if practicable, TRICARE has the requirement through the publication of a proposed and final rule to exempt critical access hospitals from the DRG-based payment system and adopt a reimbursement method similar to Medicare principles for these hospitals.

Currently under TRICARE, with the exception of Alaska, CAHs are subject to the TRICARE DRG-based payment system for inpatient care. For outpatient care, CAHs are reimbursed based on billed charges for facility charges. In Alaska, under a demonstration project, CAHs are reimbursed the lesser of the billed charge or 101 percent of reasonable costs for inpatient and outpatient care. The 101 percent of reasonable costs is calculated by multiplying the billed charge of each claim by the hospital's cost-to-charge (CCR) ratio, and then adding 1 percent to that amount. Based on the above statutory mandate, TRICARE is proposing to adopt this same reimbursement methodology for all CAHs, with one substantive change. TRICARE will not apply the "lesser of cost or charges" provision. We found approximately 15 percent of CAHs have inpatient CCRs of 1.0 or more and 2 percent have outpatient CCRs greater than 1.0. In order to reimburse the vast majority of hospitals for all their costs in an administratively feasible manner, TRICARE will identify CCRs that are outliers using the method used by Medicare to identify outliers in its outpatient prospective payment system (OPPS) reimbursement methods. Specifically, Medicare classifies CCR outliers as values that fall outside of three standard deviations from the geometric mean. Applying this method to the CAH data, those limits will be considered the threshold limits on the CCR for reimbursement purposes.

II. Public Comments

The TRICARE Reimbursement of CAHs proposed rule (73 FR 17271) was

published on May 5, 2008, providing a 30-day public comment period. Five timely items of correspondence were received containing multiple comments on the proposed rule which resulted in one substantive change in TRICARE's reasonable cost methodology, (i.e., removal of the lesser of cost or charges provision).

Following is a summary of the public comments and our responses:

Comment: Several commenters requested DoD adopt the exact Medicare CAH payment methodology of 101 percent of their allowable and reasonable costs, not being subject to the "lesser of cost or charges" reasonable-cost principle. To comply with the statutory requirement regarding hospital reimbursement, these commenters urge the Secretary to adopt Medicare's exact methodology for determining CAH reimbursement for inpatient and outpatient care.

Response: Based on the comments received, TRICARE is removing the "lesser of cost or charges" provision from its final rule. We found that approximately 15 percent of CAHs have inpatient CCRs of 1.0 or more but that only 2 percent of CAHs have outpatient CCRs greater than 1.0. In order to reimburse the vast majority of hospitals for all their costs in an administratively feasible manner, TRICARE will identify CCRs that are outliers using the method used by Medicare to identify outliers in its OPPS reimbursement methods. Specifically, Medicare classifies CCR outliers as values that fall outside of three standard deviations from the geometric mean. Applying this method to the CAH data, those limits will be considered the threshold limits on the CCR for reimbursement purposes. For FY09, this calculation resulted in an inpatient CCR cap of 2.12 and outpatient CCR cap of 1.23; these will be re-calculated each year with the CCR update. Thus, for FY09, TRICARE will pay the lesser of $2.12 \times$ billed charges or 101 percent of costs (using the hospital's CCR and billed charges) for inpatient services and the lesser of $1.23 \times$ billed charges or 101 percent of costs for outpatient services. We believe this approach captures the bulk of CAHs' costs.

Comment: Several commenters state the proposed rule fails to address interim payments and cost settlement. Medicare may make interim payments to CAHs during a fiscal year based on costs generally estimated from a prior year's cost report. After a fiscal year ends, Medicare reaches a "settlement" with CAHs to align payment with actual costs, which may be higher or lower than estimated. If interim payments

were lower than actual costs, Medicare pays the CAH the difference; if payments were higher, the CAH repays Medicare. Therefore, both interim payments and cost settlement help ensure that CAHs are reimbursed in a timely manner at the appropriate level. Without such mechanisms, hospitals could endure a significant amount of uncertainty about whether they will be able to cover their costs, which may affect their ability to provide quality patient care. These commenters urge the Secretary to make interim payments to and reach cost settlement with CAHs and to do so in the same manner as Medicare.

Response: Since TRICARE is a relatively small payer, and hospitals do not file cost reports with TRICARE, it is not administratively feasible for TRICARE to issue interim payments or conduct retroactive cost settlements. TRICARE will be using historical data to pay claims, i.e., we are using FY 2006 cost report data to calculate CCRs to process and pay claims for services provided in 2009. We acknowledge the data is a few years old, and some hospitals will be paid a little more one year and a little less another year, but over time we believe that the payments will be roughly equal to the hospital's costs. TRICARE does not need to make interim payments because hospitals will be paid as each claim is processed (using the CCR approach). Due to varying fiscal year end dates, database development by CMS, etc., it is not possible to use more recent data.

We have analyzed the impact of the rule on CAHs that have a high percentage of their discharges for TRICARE patients. We examined all the CAHs that served TRICARE patients in October 2008–March 2009 period and found that 11 CAHs had 5 percent or more of their discharges from TRICARE. We then calculated the change in TRICARE payments that would occur due to this rule. We found that the impact was under \$1,000 for two of these hospitals, indicating that the rule would have a significant impact on only 9 of the 11 hospitals. For these 9 hospitals, we calculated the change in TRICARE payments relative to estimated total hospital revenues and found that 3 would have had slight declines in overall hospital revenues due to the rule and that 6 would have had increases. The range of change in total hospital revenues was from -2.4 percent to $+9.1$ percent. The median change in total hospital revenues was estimated to be an increase of 2.9 percent and the average was an increase of 3.2 percent.

Comment: One commenter urges DoD to conduct a thorough review of the Alaska demonstration project—including contacting each of the twelve CAHs that are licensed in Alaska to discuss any difficulties experienced under the demonstration.

Response: The opportunity to provide comments on the proposed reimbursement methodology for CAHs, currently being tested in Alaska, was provided through the publication of the proposed rule. We did receive one item of correspondence from one of the Health Systems in Alaska and their comments are addressed in this final rule. In addition, over the course of the demonstration, we have been contacted by some of the CAHs participating in the demonstration and have worked with them directly to resolve any problems.

Comment: One commenter urged DoD to establish an election option regarding payment for outpatient services that is identical to established Medicare regulations found at 42 CFR Section 413.70(b)(3). The change would also align the TRICARE reimbursement methodology in the proposed rule with Medicare reimbursement principles as required under the statute.

Response: The statutory provision in 10 United States Code 1079(j)(2) states that TRICARE payment methods for institutional care shall be determined to the extent practicable in accordance with the same reimbursement rules as those that apply to payments to providers of services of the same type under Medicare. While it is practicable to adopt a similar payment methodology to Medicare's to pay CAHs 101 percent of reasonable costs, it is not practicable for TRICARE to implement an election option identical to Medicare due to the complexity of identifying what each hospital has elected and keeping up with the changes in the elections and implementing special claims processing procedures to accommodate these elections. TRICARE is not equipped to handle these types of elections.

Comment: One commenter states that while the policy should be automatically effective on a prospective basis, the Secretary should allow CAHs the option to request retroactive reimbursement for all previous years for which they were classified as CAHs.

Response: TRICARE does not have the regulatory authority to allow retroactive reimbursement prior to the effective date of the new reimbursement methodology for CAHs.

Comment: One commenter requests TRICARE clarify in the final rule how the CAH reimbursement methodology will be implemented. They state the

proposed rule was not specific and left many questions unanswered such as:

- How will facility specific cost to charge ratios be computed?
- What data elements will be used from the Medicare cost report?
- How often will rates be determined?
- When will rates be updated?
- Will there be retroactive settlements if rates are changed mid-year after the filing of the prior year's Medicare cost report?
- Will there be retroactive settlements after the year's Medicare cost report is audited and final settled?
- Will there be any retroactive settlements or is the entire payment system prospective?

Response: There are ongoing changes to the Medicare cost report; therefore, we think it is more appropriate to include the method for calculating the CCRs and the data elements used from the Medicare cost report in the Critical Access Hospital policy in Chapter 15, Section 1 of the TRICARE Reimbursement Manual (TRM). The TRM can be accessed at <http://manuals.tricare.osd.mil/>. The rates will be calculated and updated on a yearly basis. As stated above, TRICARE will not conduct any retroactive settlements.

Comment: Several commenters state that for many CAHs, their TRICARE patient volume is small enough that setting rates on a prospective basis updated once per year will be sufficient to ensure reasonable reimbursement. However, for those CAHs that have a higher TRICARE patient volume, they suggest a process be established where CAHs on their own initiative, may request a retroactive settlement after the end of a cost reporting period, by providing TRICARE with a copy of their Medicare cost report. A short computation form, similar to the current capital reimbursement form, could be developed to compute such a retroactive settlement.

Response: We agree with the commenter's first statement. In addition, we believe our revised approach on removing the "lesser of cost or charges" provision from the final rule will ease hospitals concerns about receiving reasonable reimbursement. As stated above, we have analyzed the impact of the rule on CAHs that have a high percentage of their discharges for TRICARE patients and for the period October 2008—March 2009 we found that 11 of approximately 1275 CAHs had 5 percent or more of their discharges from TRICARE. Of the 11, the impact was under \$1,000 for two of the hospitals. For the remaining 9 hospitals, we calculated the change in TRICARE payments relative to

estimated total hospital revenues and found that 3 would have had slight declines in overall hospital revenues due to the rule and that 6 would have had increases. The range of change in total hospital revenues was from -2.4 percent to +9.1 percent. The median change in total hospital revenues was estimated to be an increase of 2.9 percent and the average was an increase of 3.2 percent. As stated above, TRICARE will be using historical data to pay claims and over time we believe that the payments will reimburse the vast majority of hospitals for all their costs.

III. Regulatory Procedures

Executive Order 12866, "Regulatory Planning and Review"

Section 801 of Title 5, U.S.C., and Executive Order (E.O.) 12866 requires certain regulatory assessments and procedures for any major rule or significant regulatory action, defined as one that would result in an annual effect of \$100 million or more on the national economy or which would have other substantial impacts. It has been certified that this rule is not an economically significant rule; however, it is a regulatory action which has been reviewed by the Office of Management and Budget as required under the provisions of E.O. 12866.

Sec. 202, Public Law 104-4, "Unfunded Mandates Reform Act"

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)

The Regulatory Flexibility Act (RFA) requires each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This rule will not significantly affect a substantial number of small entities.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

This rule will not impose any additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3511). Existing information collection requirements of the TRICARE, cleared under OMB Control Number 0720-0013, and Medicare programs will be utilized.

Executive Order 13132, "Federalism"

This rule has been examined for its impact under E.O. 13132. It does not contain policies that have federalism implications that would have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government; therefore, consultation with State and local officials is not required.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. Chapter 55.

2. In § 199.2, paragraph (b) is amended by adding a definition for "CAHs" in alphabetical order to read as follows:

§ 199.2 Definitions.

(b) * * *

CAHs. A small facility that provides limited inpatient and outpatient hospital services primarily in rural areas and meets the applicable requirements established by § 199.6(b)(4)(xvi).

3. Section 199.6 is amended by adding new paragraph (b)(4)(xvi).

§ 199.6 TRICARE—authorized providers.

(b) * * *
(4) * * *

(xvi) *CAHs.* CAHs must meet all conditions of participation under 42 CFR 485.601 through 485.645 in relation to TRICARE beneficiaries in order to receive payment under the TRICARE program. If a CAH provides inpatient psychiatric services or inpatient rehabilitation services in a distinct part unit, these distinct part units must meet the conditions of participation in 42 CFR 485.647, with the exception of being paid under the inpatient prospective payment system for psychiatric facilities as specified in 42 CFR 412.1(a)(2) or the inpatient prospective payment system for rehabilitation hospitals or rehabilitation units as specified in 42 CFR 412(a)(3).

4. Section 199.14 is amended by:

- a. Redesignating paragraphs (a)(3) through (a)(5) as (a)(4) through (a)(6), respectively;
- b. Revising newly redesignated paragraph (a)(4) introductory text and the first sentence of paragraph (d)(1); and
- c. Adding new paragraphs (a)(1)(ii)(D)(10), (a)(3), and (a)(6)(iii) and (iv).

The revisions and additions read as follows:

§ 199.14 Provider reimbursement methods.

(a) * * *
(1) * * *
(ii) * * *
(D) * * *

(10) *CAHs.* Effective December 1, 2009, any facility which has been designated and certified as a CAH as contained in 42 CFR Part 485.606 is exempt from the CHAMPUS DRG-based payment system.

(3) *Reimbursement for inpatient services provided by a CAH.* For admissions on or after December 1, 2009, inpatient services provided by a CAH, other than services provided in psychiatric and rehabilitation distinct part units, shall be reimbursed at 101 percent of reasonable cost. This does not include any costs of physician services or other professional services provided to CAH inpatients. Inpatient services provided in psychiatric distinct part units would be subject to the CHAMPUS mental health per diem payment system. Inpatient services provided in rehabilitation distinct part units would be subject to billed charges or set rates.

(4) *Billed charges and set rates.* The allowable costs for authorized care in all hospitals not subject to the CHAMPUS Diagnosis Related Group-based payment system, the CHAMPUS mental health per diem system, or the reasonable cost method for CAHs, shall be determined on the basis of billed charges or set rates. Under this procedure the allowable costs may not exceed the lower of:

(6) * * *

(iii) *Outpatient Services Subject to CAH Reasonable Cost Method.* For services on or after December 1, 2009, outpatient services provided by a CAH, shall be reimbursed at 101 percent of reasonable cost. This does not include any costs of physician services or other professional services provided to CAH outpatients.

(iv) *CAH Ambulance Services.* Effective for services provided on or after December 1, 2009, payment for

ambulance services furnished by a CAH or an entity that is owned and operated by a CAH is the reasonable costs of the CAH or the entity in furnishing those services, but only if the CAH or the entity is the only provider or supplier of ambulance services located within a 35-mile drive of the CAH or the entity as specified under 42 CFR part 413.70(b)(5)(ii).

(d) * * *

(1) *In general.* CHAMPUS pays institutional facility costs for ambulatory surgery on the basis of prospectively determined amounts, as provided in this paragraph, with the exception of ambulatory surgery procedures performed in hospital outpatient departments or in CAHs, which are to be reimbursed in accordance with the provisions of paragraph (a)(6)(ii) or (a)(6)(iii) respectively, of this section.

Dated: August 21, 2009.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.
[FR Doc. E9-20682 Filed 8-28-09; 8:45 am]
BILLING CODE 5001-06-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2009-0646]
RIN 1625-AA00

Safety Zone; Upper Mississippi River, Mile 427.2 to 427.6, Keithsburg, IL

AGENCY: Coast Guard, DHS.
ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Upper Mississippi River, mile 427.2 to 427.6, extending the entire width of the river near Keithsburg, Illinois. This safety zone is needed to protect persons and vessels from safety hazards associated with a fireworks display occurring over a portion of the Upper Mississippi River. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port Upper Mississippi River or a designated representative.

DATES: This rule is effective from 8 p.m. until 10:30 p.m. CDT on September 5, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the

docket are part of docket USCG–2009–0646 and are available online by going to <http://www.regulations.gov>, inserting USCG–2009–0646 in the “Keyword” box, and then clicking “Search.” They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Lieutenant Commander (LCDR) Matthew Barker, Sector Upper Mississippi River Response Department at telephone (314) 269–2540, e-mail Matthew.P.Barker@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) because doing so and delaying the rule’s effective date would be contrary to public interest. Immediate action is needed to protect vessels and mariners from the safety hazards associated with a fireworks display.

For the same reasons, the Coast Guard also finds under 5 U.S.C. 553(d)(3) that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

On September 5, 2009, the City of Keithsburg, Illinois will be conducting a land based fireworks show between mile 427.2 and 427.6 on the Upper Mississippi River. This event presents safety hazards to the navigation of vessels between mile 427.2 and 427.6, extending the entire width of the river. The Captain of the Port Upper Mississippi River will inform the public of all safety zone changes through broadcast notice to mariners

Discussion of Rule

The Coast Guard is establishing a safety zone for all waters of the Upper Mississippi River, mile 427.2 to 427.6, extending the entire width of the river. Entry into this zone is prohibited to all vessels and persons except participants and those persons and vessels specifically authorized by the Captain of the Port Upper Mississippi River. This rule is effective from 8 p.m. until 10:30 p.m. CDT on September 5, 2009. The Captain of the Port Upper Mississippi River will inform the public through broadcast notice to mariners of all safety zone changes and enforcement periods.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This safety zone is expected to have minimal economic impact because of its small size and short duration.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the Upper Mississippi River, mile 427.2 to 427.6 between 8 p.m. and 10:30 p.m. CDT on September 5. This safety zone will not have a significant economic impact on a substantial number of small entities because the zone covers a small area and will only be in effect for a short period of time. In addition, notifications to the marine community will be made through broadcast notice to mariners

and the River Industry Bulletin Board (RIBB) at <http://www.ribb.com>.

If you are a small business entity and are significantly effected by this regulation, please contact LCDR Matthew Barker, Sector Upper Mississippi River at (314) 269–2540.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small businesses. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are

technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, because the rule establishes a safety zone.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T09-0646 to read as follows:

§ 165.T09-0646 Safety Zone; Upper Mississippi River, Mile 427.2 to 427.6.

(a) *Location.* The following area is a safety zone: All waters of the Upper Mississippi River, from surface to bottom and from Mile 427.2 to 427.6 extending the entire width of the waterway.

(b) *Effective date.* This rule is effective from 8 p.m. until 10:30 p.m. CDT on September 5, 2009.

(c) *Periods of Enforcement.* This rule is effective from 8 p.m. until 10:30 p.m.

CDT on September 5, 2009. The Captain of the Port Upper Mississippi River will inform the public through broadcast notice to mariners of all safety zone changes and enforcement periods.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Upper Mississippi River or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Upper Mississippi River or a designated representative. The Captain of the Port Upper Mississippi River representative may be contacted at (314) 269-2332.

(3) All persons and vessels must comply with the instructions of the Captain of the Port Upper Mississippi River or a designated representative. Designated Captain of the Port representatives include United States Coast Guard commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: July 17, 2009.

S.L. Hudson,

Captain, U.S. Coast Guard, Captain of the Port Upper Mississippi River.

[FR Doc. E9-20861 Filed 8-28-09; 8:45 am]

BILLING CODE 4910-15-P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009-35 and CP2009-54; Order No. 277]

Priority Mail Contract

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding the Priority Mail Contract 15 to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective August 31, 2009 and is applicable beginning August 14, 2009.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202-789-6820 or stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION: *Regulatory History*, 74 FR 39121 (August 5, 2009).

I. Introduction
II. Background
III. Comments

IV. Commission Analysis
V. Ordering Paragraphs

I. Introduction

The Postal Service seeks to add a new product identified as Priority Mail Contract 15 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

II. Background

On July 24, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Priority Mail Contract 15 to the Competitive Product List.¹ The Postal Service asserts that the Priority Mail Contract 15 product is a competitive product “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2009–35.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2009–54.

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the contract which, among other things, provides that the contract will expire 3 years from the effective date, which is proposed to be the day that the Commission issues all regulatory approvals;² (2) requested changes in the Mail Classification Schedule product list;³ (3) a Statement of Supporting Justification as required by 39 CFR 3020.32;⁴ and (4) certification of compliance with 39 U.S.C. 3633(a).⁵ The Postal Service also references Governors’ Decision 09–6, filed in Docket No. MC2009–25, as authorization of the new product. Notice at 1.

In the Statement of Supporting Justification, Mary Prince Anderson, Acting Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to coverage of institutional costs, and will increase contribution toward the requisite 5.5 percent of the Postal Service’s total institutional costs. Request, Attachment C, at 1. W. Ashley Lyons, Manager, Regulatory Reporting

¹ Request of the United States Postal Service to Add Priority Mail Contract 15 to Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, July 24, 2009 (Request).

² Attachment A to the Request.

³ Attachment B to the Request.

⁴ Attachment C to the Request.

⁵ Attachment D to the Request.

and Cost Analysis, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). *See id.*, Attachment D.

The Postal Service filed much of the supporting materials, including the supporting data and the unredacted contract, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer’s name and the accompanying analyses that provide prices, certain terms and conditions, and financial projections, should remain confidential. *Id.* at 2–3.

In Order No. 259, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.⁶

III. Comments

Comments were filed by the Public Representative.⁷ No comments were submitted by other interested parties. The Public Representative states that the Postal Service’s filing comports with title 39 and the relevant Commission Rules of Practice and Procedure. *Id.* at 1, 3–4. He further states that the agreement appears to be beneficial to the general public. *Id.* at 1, 4.

With respect to confidentiality, the Public Representative believes that “[t]o comply with Order No. 247 in Docket[s] MC2009–30 and CP2009–40, the Postal Service should include with its filing a redacted copy of the Governors’ Decision and certification.” *Id.* at 3 (footnote omitted).

IV. Commission Analysis

The Commission has reviewed the Request, the contract, the financial analysis provided under seal that accompanies it, and the comments filed by the Public Representative.

Statutory requirements. The Commission’s statutory responsibilities in this instance entail assigning Priority Mail Contract 15 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

⁶ PRC Order No. 259, Notice and Order Concerning Priority Mail Contract 15 Negotiated Service Agreement, July 29, 2009 (Order No. 259).

⁷ Public Representative Comments in Response to United States Postal Service Request to Add Priority Mail Contract 15 to Competitive Product List, August 6, 2009 (Public Representative Comments).

Product list assignment. In determining whether to assign Priority Mail Contract 15 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether

[T]he Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product, and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment C, para. (d). The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* It further states that the contract partner supports the addition of the contract to the Competitive Product List to effectuate the negotiated contractual terms. *Id.* at para. (g). Finally, the Postal Service states that the market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. It indicates that large carriers serve this market. Accordingly, the Postal Service states that it is unaware of any small business concerns that could offer comparable service for this customer. *Id.* at para. (h).

No commenter opposes the proposed classification of Priority Mail Contract 15 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Priority Mail Contract 15 is appropriately classified as a competitive product and should be added to the Competitive Product List.

Cost considerations. The Postal Service presents a financial analysis showing that Priority Mail Contract 15 results in cost savings while ensuring that the contract covers its attributable costs, does not result in subsidization of competitive products by market

dominant products, and increases contribution from competitive products.

Based on the data submitted, the Commission finds that Priority Mail Contract 15 should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of proposed Priority Mail Contract 15 indicates that it comports with the provisions applicable to rates for competitive products.

Other considerations. The Postal Service shall promptly notify the Commission of the scheduled termination date of the agreement. If the agreement terminates earlier than anticipated, the Postal Service shall inform the Commission prior to the new termination date. The Commission will then remove the product from the Competitive Product List.

Furthermore, the Public Representative's assessment of Order No. 247 is well-taken. Public Representative Comments at 3–4. Subsequently, the Commission issued Order No. 266, which clarified the policy regarding self-contained docket filings. See Docket No. CP2009–47, Order Concerning Filing a Functionally Equivalent Global Plus 1 Contract Negotiated Service Agreement, July 31, 2009, at 6–7 (Order No. 266). In recent filings, the Postal Service has adhered to this policy.

In conclusion, the Commission approves Priority Mail Contract 15 as a new product. The revision to the Competitive Product List is shown below the signature of this order and is effective upon issuance of this order.

V. Ordering Paragraphs

It is ordered:

1. Priority Mail Contract 15 (MC2009–35 and CP2009–54) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.

2. The Postal Service shall notify the Commission of the scheduled termination date and update the Commission if termination occurs prior to that date, as discussed in this order.

3. The Secretary shall arrange for the publication of this Order in the **Federal Register**.

Issued: August 14, 2009.

By the Commission.

Judith M. Grady,
Acting Secretary.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the

Postal Regulatory Commission amends 39 CFR part 3020 as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to Subpart A of Part 3020—Mail Classification Schedule to read as follows:

Appendix A to Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products

1000 Market Dominant Product List

First-Class Mail

Single-Piece Letters/Postcards

Bulk Letters/Postcards

Flats

Parcels

Outbound Single-Piece First-Class Mail

International

Inbound Single-Piece First-Class Mail

International

Standard Mail (Regular and Nonprofit)

High Density and Saturation Letters

High Density and Saturation Flats/Parcels

Carrier Route

Letters

Flats

Not Flat-Machinables (NFM)/Parcels

Periodicals

Within County Periodicals

Outside County Periodicals

Package Services

Single-Piece Parcel Post

Inbound Surface Parcel Post (at UPU rates)

Bound Printed Matter Flats

Bound Printed Matter Parcels

Media Mail/Library Mail

Special Services

Ancillary Services

International Ancillary Services

Address List Services

Caller Service

Change-of-Address Credit Card

Authentication

Confirm

International Reply Coupon Service

International Business Reply Mail Service

Money Orders

Post Office Box Service

Negotiated Service Agreements

HSBC North America Holdings Inc.

Negotiated Service Agreement

Bookspan Negotiated Service Agreement

Bank of America Corporation Negotiated

Service Agreement

The Bradford Group Negotiated Service

Agreement

Inbound International

Canada Post—United States Postal Service

Contractual Bilateral Agreement for

Inbound Market Dominant Services

Market Dominant Product Descriptions

First-Class Mail

[Reserved for Class Description]

Single-Piece Letters/Postcards

[Reserved for Product Description]

Bulk Letters/Postcards

[Reserved for Product Description]

Flats

[Reserved for Product Description]

Parcels

[Reserved for Product Description]

Outbound Single-Piece First-Class Mail

International

[Reserved for Product Description]

Inbound Single-Piece First-Class Mail

International

[Reserved for Product Description]

Standard Mail (Regular and Nonprofit)

[Reserved for Class Description]

High Density and Saturation Letters

[Reserved for Product Description]

High Density and Saturation Flats/Parcels

[Reserved for Product Description]

Carrier Route

[Reserved for Product Description]

Letters

[Reserved for Product Description]

Flats

[Reserved for Product Description]

Not Flat-Machinables (NFM)/Parcels

[Reserved for Product Description]

Periodicals

[Reserved for Class Description]

Within County Periodicals

[Reserved for Product Description]

Outside County Periodicals

[Reserved for Product Description]

Package Services

[Reserved for Class Description]

Single-Piece Parcel Post

[Reserved for Product Description]

Inbound Surface Parcel Post (at UPU rates)

[Reserved for Product Description]

Bound Printed Matter Flats

[Reserved for Product Description]

Bound Printed Matter Parcels

[Reserved for Product Description]

Media Mail/Library Mail

[Reserved for Product Description]

Special Services

[Reserved for Class Description]

Ancillary Services

[Reserved for Product Description]

Address Correction Service

[Reserved for Product Description]

Applications and Mailing Permits

[Reserved for Product Description]

Business Reply Mail

[Reserved for Product Description]

Bulk Parcel Return Service

[Reserved for Product Description]

Certified Mail

[Reserved for Product Description]

Certificate of Mailing

[Reserved for Product Description]

Collect on Delivery

[Reserved for Product Description]

Delivery Confirmation

[Reserved for Product Description]

Insurance

[Reserved for Product Description]

Merchandise Return Service

[Reserved for Product Description]

Parcel Airlift (PAL)

[Reserved for Product Description]

Registered Mail

[Reserved for Product Description]

Return Receipt

[Reserved for Product Description]

Return Receipt for Merchandise

[Reserved for Product Description]

Restricted Delivery

[Reserved for Product Description]

Shipper-Paid Forwarding

[Reserved for Product Description]	Canada Post—United States Postal service	CP2008–19, CP2008–20, CP2008–21,
Signature Confirmation	Contractual Bilateral Agreement for	CP2008–22, CP2008–23, and CP2008–24)
[Reserved for Product Description]	Inbound Competitive Services (MC2009–	Global Plus Contracts
Special Handling	8 and CP2009–9)	Global Plus 1 (CP2008–8, CP2008–46 and
[Reserved for Product Description]	International Money Transfer Service	CP2009–47)
Stamped Envelopes	International Ancillary Services	Global Plus 2 (MC2008–7, CP2008–48 and
[Reserved for Product Description]	Special Services	CP2008–49)
Stamped Cards	Premium Forwarding Service	Inbound International
[Reserved for Product Description]	Negotiated Service Agreements	Inbound Direct Entry Contracts with
Premium Stamped Stationery	Domestic	Foreign Postal Administrations
[Reserved for Product Description]	Express Mail Contract 1 (MC2008–5)	(MC2008–6, CP2008–14 and CP2008–15)
Premium Stamped Cards	Express Mail Contract 2 (MC2009–3 and	International Business Reply Service
[Reserved for Product Description]	CP2009–4)	Competitive Contract 1 (MC2009–14 and
International Ancillary Services	Express Mail Contract 3 (MC2009–15 and	CP2009–20)
[Reserved for Product Description]	CP2009–21)	Competitive Product Descriptions
International Certificate of Mailing	Express Mail Contract 4 (MC2009–34 and	Express Mail
[Reserved for Product Description]	CP2009–45)	[Reserved for Group Description]
International Registered Mail	Express Mail & Priority Mail Contract 1	Express Mail
[Reserved for Product Description]	(MC2009–6 and CP2009–7)	[Reserved for Product Description]
International Return Receipt	Express Mail & Priority Mail Contract 2	Outbound International Expedited Services
[Reserved for Product Description]	(MC2009–12 and CP2009–14)	[Reserved for Product Description]
International Restricted Delivery	Express Mail & Priority Mail Contract 3	Inbound International Expedited Services
[Reserved for Product Description]	(MC2009–13 and CP2009–17)	[Reserved for Product Description]
Address List Services	Express Mail & Priority Mail Contract 4	Priority
[Reserved for Product Description]	(MC2009–17 and CP2009–24)	[Reserved for Product Description]
Caller Service	Express Mail & Priority Mail Contract 5	Priority Mail
[Reserved for Product Description]	(MC2009–18 and CP2009–25)	[Reserved for Product Description]
Change-of-Address Credit Card	Express Mail & Priority Mail Contract 6	Outbound Priority Mail International
Authentication	(MC2009–31 and CP2009–42)	[Reserved for Product Description]
[Reserved for Product Description]	Express Mail & Priority Mail Contract 7	Inbound Air Parcel Post
Confirm	(MC2009–32 and CP2009–43)	[Reserved for Product Description]
[Reserved for Product Description]	Express Mail & Priority Mail Contract 8	Parcel Select
International Reply Coupon Service	(MC2009–33 and CP2009–44)	[Reserved for Group Description]
[Reserved for Product Description]	Parcel Return Service Contract 1 (MC2009–	Parcel Return Service
International Business Reply Mail Service	1 and CP2009–2)	[Reserved for Group Description]
[Reserved for Product Description]	Priority Mail Contract 1 (MC2008–8 and	International
Money Orders	CP2008–26)	[Reserved for Group Description]
[Reserved for Product Description]	Priority Mail Contract 2 (MC2009–2 and	International Priority Airlift (IPA)
Post Office Box Service	CP2009–3)	[Reserved for Product Description]
[Reserved for Product Description]	Priority Mail Contract 3 (MC2009–4 and	International Surface Airlift (ISAL)
Negotiated Service Agreements	CP2009–5)	[Reserved for Product Description]
[Reserved for Class Description]	Priority Mail Contract 4 (MC2009–5 and	International Direct Sacks—M-Bags
HSBC North America Holdings Inc.	CP2009–6)	[Reserved for Product Description]
Negotiated Service Agreement	Priority Mail Contract 5 (MC2009–21 and	Global Customized Shipping Services
[Reserved for Product Description]	CP2009–26)	[Reserved for Product Description]
Bookspan Negotiated Service Agreement	Priority Mail Contract 6 (MC2009–25 and	International Money Transfer Service
[Reserved for Product Description]	CP2009–30)	[Reserved for Product Description]
Bank of America Corporation Negotiated	Priority Mail Contract 7 (MC2009–25 and	Inbound Surface Parcel Post (at non-UPU
Service Agreement	CP2009–31)	rates)
The Bradford Group Negotiated Service	Priority Mail Contract 8 (MC2009–25 and	[Reserved for Product Description]
Agreement	CP2009–32)	International Ancillary Services
Part B—Competitive Products	Priority Mail Contract 9 (MC2009–25 and	[Reserved for Product Description]
2000 Competitive Product List	CP2009–33)	International Certificate of Mailing
Express Mail	Priority Mail Contract 10 (MC2009–25 and	[Reserved for Product Description]
Express Mail	CP2009–34)	International Registered Mail
Outbound International Expedited Services	Priority Mail Contract 11 (MC2009–27 and	[Reserved for Product Description]
Inbound International Expedited Services	CP2009–37)	International Return Receipt
Inbound International Expedited Services 1	Priority Mail Contract 12 (MC2009–28 and	[Reserved for Product Description]
(CP2008–7)	CP2009–38)	International Restricted Delivery
Inbound International Expedited Services 2	Priority Mail Contract 13 (MC2009–29 and	[Reserved for Product Description]
(MC2009–10 and CP2009–12)	CP2009–39)	International Insurance
Priority Mail	Priority Mail Contract 14 (MC2009–30 and	[Reserved for Product Description]
Priority Mail	CP2009–40)	Negotiated Service Agreements
Outbound Priority Mail International	Priority Mail Contract 15 (MC2009–35 and	[Reserved for Group Description]
Inbound Air Parcel Post	CP2009–54)	Domestic
Royal Mail Group Inbound Air Parcel Post	Outbound International	[Reserved for Product Description]
Agreement	Direct Entry Parcels Contracts	Outbound International
Parcel Select	Direct Entry Parcels 1 (MC2009–26 and	[Reserved for Group Description]
Parcel Return Service	CP2009–36)	Part C—Glossary of Terms and Conditions
International	Global Direct Contracts (MC2009–9,	[Reserved]
International Priority Airlift (IPA)	CP2009–10, and CP2009–11)	Part D—Country Price Lists for International
International Surface Airlift (ISAL)	Global Expedited Package Services (GEPS)	Mail [Reserved]
International Direct Sacks—M-Bags	Contracts	
Global Customized Shipping Services	GEPS 1 (CP2008–5, CP2008–11, CP2008–	[FR Doc. E9–20907 Filed 8–28–09; 8:45 am]
Inbound Surface Parcel Post (at non-UPU	12, and CP2008–13, CP2008–18,	BILLING CODE 7710-FW-P
rates)		

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 206

[Docket ID FEMA-2009-0006]

RIN 1660-AA63

Arbitration for Public Assistance Determinations Related to Hurricanes Katrina and Rita (Disasters DR-1603, DR-1604, DR-1605, DR-1606, and DR-1607)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Pursuant to the American Recovery and Reinvestment Act of 2009 (ARRA), this final rule establishes an option for arbitration under the Public Assistance program administered by the Federal Emergency Management Agency. Public Assistance grant award determinations related to Hurricanes Katrina and Rita under major disaster declarations DR-1603, DR-1604, DR-1605, DR-1606, and DR-1607 are eligible for arbitration, within the limits set by this rule.

DATES: *Effective Date:* August 31, 2009.

FOR FURTHER INFORMATION CONTACT: Tod Wells, Deputy Director, Public Assistance Division, Federal Emergency Management Agency, 500 C Street, SW., Washington DC, 20472-3100, (phone) 202-646-3936, or (e-mail) tod.wells@dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Public Assistance Process for Project Approval

Under the Public Assistance program, authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act¹ (Stafford Act), the Federal Emergency Management Agency (FEMA) awards grants to State and local governments, Indian Tribal governments, and certain private nonprofit organizations ("eligible applicant"—44 CFR 206.222) to assist them to respond to and recover from Presidentially-declared emergencies and major disasters as quickly as possible. Specifically, the program provides assistance for debris removal, emergency protective measures, and permanent restoration of infrastructure. When the President declares an

emergency or major disaster declaration for a State, authorizing the Public Assistance program, an eligible applicant may apply for Public Assistance. The applicant submits a Request for Public Assistance (FEMA Form 90-49) to FEMA through the Grantee, which is usually the State, but may be an Indian Tribal government. An eligible applicant may be a State agency, a local or Tribal government, or a private nonprofit organization. See 44 CFR 206.222. Upon award, the Grantee notifies the applicant of the award, and the applicant becomes a subgrantee.

The basis for the Public Assistance grant is a project worksheet. The project worksheet documents the details of the project, which is a logical grouping of work required as a result of a declared major disaster or emergency. A project may include eligible work at several sites, and may include more than one project worksheet. A project worksheet is the primary form used to document the location, damage description and dimensions, scope of work, and cost estimate for each project. The Office of Management and Budget has approved the project worksheet form (FEMA Form 90-91) under information collection number 1660-0017. When the scope of work or estimated costs of a project change, FEMA generates an additional version of the project worksheet. It is not uncommon to have several versions of a project worksheet for one project, as it may be difficult to predict costs and scope of work at the beginning of a project.

FEMA divides applications for Public Assistance into two groups—large projects and small projects—based on the dollar amount of the project. The threshold for large and small projects is adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the United States Department of Labor. The threshold for small projects in Fiscal Year 2005 (Hurricanes Katrina and Rita occurred in Fiscal Year 2005) was \$55,500. The project worksheet process is slightly different for these two types of projects. Since the arbitration process applies only to large projects totaling more than \$500,000, this rulemaking will address the process for reviewing project worksheets for large projects.

Project worksheets for large projects are developed by a FEMA Project Specialist, working with the applicant/subgrantee, and are submitted directly to a FEMA Public Assistance Coordinator (PAC) Crew Leader for review and processing. Although large projects are funded on documented actual costs, work typically is not complete at the time of project approval.

Therefore, FEMA obligates large project grants based on estimated costs. The obligation process is the process by which funds are made available to the Grantee. The funds reside in a Federal account until drawn down by the Grantee and paid to the applicant/subgrantee. When the applicant/subgrantee or Grantee disagree with FEMA's determination about whether a cost is eligible for reimbursement or reasonable, among other project worksheet determinations, FEMA provides an appeals process to adjudicate such disputes.

B. Public Assistance Appeal Process Under 44 CFR 206.206

Traditionally, under the appeals procedures in 44 CFR 206.206, an eligible applicant, subgrantee, or Grantee may appeal any determination made by FEMA related to an application for or the provision of Public Assistance. There are two levels of appeal. The first level appeal is to the FEMA Regional Administrator. The second level appeal is to the FEMA Assistant Administrator for the Disaster Assistance Directorate. Typical appeals involve disputes regarding whether an applicant, facility, item of work, or project is eligible for Public Assistance, whether approved costs are sufficient to complete the work, whether a requested time extension was properly denied, whether a portion of the cost claimed for the work is eligible, or whether the approved scope of work is correct.

An applicant/subgrantee appellant must file an appeal with the Grantee within 60 days of the appellant's receipt of a notice of the determination that is being appealed. The appellant must provide documented justification to support the position of the appellant. This documentation should specify the monetary amount in dispute and the provisions in Federal law, regulation, or policy with which the appellant believes the initial action was inconsistent. The Grantee reviews and evaluates the appeal documentation. The Grantee then prepares a written recommendation on the merits of the appeal and forwards that recommendation to the FEMA Regional Administrator within 60 days of its receipt of the appeal. The Grantee need not endorse the appeal position but must forward all appeals it receives.

The Regional Administrator reviews the appeal and takes one of two actions: (1) Renders a decision on the appeal and informs the Grantee of the decision; or (2) requests additional information. The appellant may be granted 60 days to provide any additional information, and the Regional Administrator provides a

¹ Disaster Relief Act of 1974, Public Law 93-288, 88 Stat. 143 (May 22, 1974), as amended, 42 U.S.C. 5121 *et seq.*

decision on the appeal within 90 days of receipt of that information. If the appeal is granted, the Regional Administrator takes appropriate action, such as approving additional funding, denying additional funding, or sending a Project Specialist to meet with the appellant to determine additional eligible funding.

If the Regional Administrator denies the appeal, the appellant may submit a second appeal. The appellant must submit the second appeal to the Grantee within 60 days of receiving notice of the Regional Administrator's decision. The Grantee must forward the second level appeal with a written recommendation to the Regional Administrator within 60 days of receiving the second appeal. The Regional Administrator reviews the information provided with the second appeal and requests additional information if necessary. The Regional Administrator forwards the second appeal with a recommendation for action to the FEMA Assistant Administrator as soon as practicable.

The FEMA Assistant Administrator for the Disaster Assistance Directorate reviews the second appeal and renders a decision or requests additional information from the appellant. In a case involving highly technical issues, FEMA may request an independent scientific or technical analysis by a group or person having expertise in the subject matter of the appeal. Upon receipt of requested information from the appellant and any other requested reports, FEMA renders a decision on the second appeal within 90 days. This decision constitutes the final administrative decision of FEMA. *See* 44 CFR 206.206(e)(3).

C. *The American Recovery and Reinvestment Act of 2009*

The President signed the American Recovery and Reinvestment Act of 2009 (ARRA or Act), Public Law 111-5, into law on February 17, 2009. Section 601 of the ARRA requires the President to establish an arbitration panel under FEMA's Public Assistance program to expedite recovery efforts from Hurricanes Katrina and Rita within the Gulf Coast region. The ARRA further requires the arbitration panel to have sufficient authority regarding the award or denial of disputed Public Assistance applications for covered hurricane damage under sections 403, 406, or 407 of the Stafford Act. The ARRA limits arbitration to projects that total more than \$500,000. By memorandum dated August 6, 2009, the President assigned to the Secretary of the U.S. Department of Homeland Security the function of

the President under section 601. *See* 74 FR 40055 (Aug. 10, 2009).

Three states in the Gulf Coast region have Public Assistance project worksheets from Hurricane Katrina that are awaiting an initial determination from FEMA: Louisiana, Mississippi, and Alabama. Two states in the Gulf Coast region have Public Assistance project worksheets from Hurricane Rita that are awaiting an initial determination from FEMA: Louisiana and Texas. Any funding of these project worksheets would be under the following major disaster declarations: DR-1603 (Louisiana—Hurricane Katrina), DR-1604 (Mississippi—Hurricane Katrina), DR-1605 (Alabama—Hurricane Katrina), DR-1606 (Texas—Hurricane Rita), and DR-1607 (Louisiana—Hurricane Rita). Approximately 44 appeals are pending from these declarations. Further, there are approximately 2,188 Public Assistance project worksheets from Louisiana and Mississippi awaiting an initial determination of eligibility under the Public Assistance program from FEMA, which, if disputed, may be appealed. These project worksheets are at various stages within the determination process. For example, some are incomplete and awaiting further information from the applicant, some are undergoing site visits, and some have additional versions requiring FEMA review.

II. Discussion of the Rule

A. *General*

This regulation is promulgated pursuant to section 601 of the ARRA and establishes arbitration procedures to resolve outstanding disputes regarding Public Assistance projects over \$500,000 from the states of Louisiana, Mississippi, Alabama, and Texas under the following declarations: DR-1603, DR-1604, DR-1605, DR-1606, and DR-1607. Public Assistance applicants/subgrantees under these declarations may request arbitration in lieu of filing an appeal under 44 CFR 206.206 for any determination made by FEMA that is eligible for appeal and meets the \$500,000 threshold. As discussed below, Public Assistance applicants/subgrantees under these declarations who were engaged in the FEMA appeals process as of February 17, 2009, and had not received a final agency decision prior to February 17, 2009, may request arbitration in lieu of the appeal, even if FEMA issued a final agency decision on the appeal on or after February 17, 2009.

B. *Applicability and Limitations*

The purpose of the ARRA is to expedite recovery efforts from

Hurricanes Katrina and Rita within the Gulf Coast region. Therefore, the option for arbitration is limited to Public Assistance project worksheets filed under one of the five major disaster declarations declared for Hurricanes Katrina and Rita in the Gulf Coast region. In addition, the total amount of the Public Assistance project must be greater than \$500,000. This dollar limitation is set by section 601 of the ARRA and is not within FEMA's discretion.

Arbitration is not an option if an agency decision became final before February 17, 2009, the date when arbitration became a legal option for Public Assistance applicants under the ARRA. For those determinations made prior to February 17, 2009, FEMA has determined that a final decision will exist in three instances: (1) When the applicant/subgrantee did not file an appeal within the 60-day appeal period; (2) when the applicant/subgrantee failed to file for a second appeal within 60 days of denial of its first appeal; or (3) when FEMA issued an appeal decision on a second appeal of the applicant/subgrantee. *See* 44 CFR 206.206. If there was a final decision before February 17, 2009, the applicant/subgrantee has exhausted its administrative remedies and may not elect arbitration.

The ARRA created the right to arbitration as of its effective date. If the applicant/subgrantee is eligible to file an appeal under 44 CFR 206.206, or if a first or second level appeal was pending on or after February 17, 2009, arbitration remains an option. Applicants/subgrantees that had a first or second level appeal pending on or after February 17, 2009, may choose arbitration, regardless of whether FEMA has issued a decision on the appeal since the effective date of the ARRA. However, if the applicant/subgrantee was eligible to appeal after the effective date of the ARRA, but allowed the appeal period to expire without filing an appeal, the applicant/subgrantee is not eligible to file an appeal and, therefore, is not eligible for arbitration.

The stated purpose of the ARRA arbitration provision is to "expedite" recovery efforts. Accordingly, a request for arbitration is in lieu of filing or continuing an appeal under 44 CFR 206.206. The use of only one review procedure, arbitration or appeal, is more expeditious than two consecutive review procedures. The use of both arbitration and the standard appeal process would lengthen, not expedite, the recovery process. Arbitration and appeals each require significant time to complete, and FEMA has determined going forward that it would be contrary

to Congressional intent to allow applicants/subgrantees to pursue both an appeal and arbitration.

C. Content of Request for Arbitration and Other Submissions

A request for arbitration must contain a written statement and all documentation supporting the applicant's or subgrantee's position. The applicant/subgrantee may provide supporting documentation not previously included in the project worksheet or the application to FEMA. There is no limit on the amount of documentation that may be provided. The request should include all information necessary for the arbitration panel to make an informed decision. The request should clearly set out the applicant's/subgrantee's position. The parties are encouraged to describe their claims in sufficient detail to make the circumstances of the dispute clear to the arbitration panel.

Any party may be represented by counsel or another authorized representative. If represented, the party must provide the name and address of the representative to the other party, the Grantee, and the arbitration panel.

All papers, notices, or other documents submitted to the arbitration panel by the applicant or subgrantee, the Grantee, or FEMA must be simultaneously served on each party's authorized representative or counsel. The submitting party must make such service by courier or overnight delivery service (such as Federal Express, DHL, United Parcel Service, or the United States Postal Service overnight delivery), addressed to the party, representative, or counsel, as applicable, at its last known address.

D. Submission of the Request for Arbitration

An applicant/subgrantee must submit a request for arbitration simultaneously to the Grantee, the applicable FEMA Regional Administrator, and the arbitration administrator. FEMA will post an address, phone number, and fax number for the arbitration administrator on FEMA's Web site at <http://www.fema.gov>. Consistent with the Section B above, any application or project worksheet totaling more than \$500,000 that is eligible for appeal is eligible for arbitration.

If there is a first or second level appeal pending with FEMA, or if FEMA issued a decision on a first or second level appeal on or after February 17, 2009, the applicant/subgrantee must submit the request for arbitration, as well as a withdrawal of the pending appeal, if applicable, simultaneously to

the Grantee, the applicable FEMA Regional Administrator, and the arbitration administrator by October 30, 2009. Otherwise, if the applicant/subgrantee seeks arbitration, it must request arbitration in writing to the Grantee within 30 calendar days after receipt of notice of the determination that is the subject of the arbitration request, or by September 30, 2009, whichever is later. Issues that may be arbitrated would be the same as those that are normally subject to appeal, provided the total amount of the project is greater than \$500,000. As an example, a subgrantee could appeal the amount of the FEMA-approved costs, where the subgrantee believes the eligible amount should be greater. Examples of second appeals can be found at <http://www.fema.gov/appeals/>.

E. Submission by the Grantee

Within 15 calendar days of receipt of the applicant's or subgrantee's request for arbitration, the Grantee may forward a written recommendation in support or opposition of the applicant's or subgrantee's request simultaneously to the FEMA Regional Administrator, the arbitration administrator, and the applicant. In addition, the Grantee must forward the name and address of the Grantee's authorized representative or counsel.

In selecting 15 calendar days, FEMA is implementing the intent of the ARRA. The Act specifically requires the arbitration process to "expedite" recovery efforts from Hurricanes Katrina and Rita. A 15-calendar-day time limit is intended to expedite the resolution of the applicant's or subgrantee's dispute. However, this 15-day time period will allow sufficient time for the Grantee to review the request and prepare a recommendation without delaying the arbitration process.

F. Submission of FEMA's Response

Within 30 calendar days of receipt of the applicant's or subgrantee's request, FEMA will simultaneously submit a response in support of its position, a copy of the project worksheet(s), and any supporting information to the arbitration administrator, the Grantee, and the applicant/subgrantee.

G. Selection of Arbitrators

The arbitration panels will be composed of three judges drawn from the Federal pool of current and senior administrative law judges and other similar officials serving in adjudicative capacities on boards, commissions and agencies. Each panel will be selected by the arbitration administrator. The individuals assigned to any one panel

may change from case to case, as assigned by the arbitration administrator. The arbitration administrator will notify all parties to the arbitration of the names and identities of the arbitrators selected for the panel.

H. Preliminary Conference

Within 10 business days of the panel's receipt of FEMA's response to the request for arbitration, a preliminary conference will be held by telephone with the arbitrators, the parties and/or their representatives. The preliminary conference may address such issues as the future conduct of the case, including clarification of the issues and claims, possible arbitrator disqualification, the scheduling of hearings and the hearing location, if applicable, and other administrative matters.

I. Hearing

The panel will provide the applicant/subgrantee and FEMA with an opportunity to make an oral presentation in person, by telephone conference, or other means during which all the parties may simultaneously hear all other participants. If the applicant/subgrantee or FEMA would like to request a hearing, it must be requested no later than the preliminary conference. The panel will determine the hearing location, and its decision will be final and binding. The panel will endeavor to hold the hearing within 60 calendar days of the preliminary conference, unless the panel postpones the hearing upon agreement of the parties, or at the request of a party for good cause shown. If the hearing is postponed, the panel will set a new date within 10 business days of the postponement.

The parties may not engage in discovery or provide additional paper submissions at the hearing. Each party may present its position through oral presentations by individuals designated in advance of the hearing. If the panel deems it appropriate or necessary, it may request additional written materials from either or both parties or seek the advice or expertise of independent scientific or technical subject matter experts, such as engineers and architects.

J. Review by the Arbitration Panel

In its review, the arbitration panel will consider all relevant written materials provided by the parties and the Grantee. If a hearing is held, the panel will also consider the oral presentations made at the hearing. In addition, the panel may, if it deems appropriate or necessary, seek the

advice or expertise of independent scientific or technical subject matter experts, such as engineers or architects.

K. Decision: Time Limits

The panel will make every effort to issue a written decision within 60 calendar days after the panel declares the hearing closed, or if an oral presentation was not requested, within 60 calendar days following the receipt of FEMA's response to the request for arbitration. In general, 60 days is a reasonable time for a panel to review the determination, discuss the issues involved, and issue a decision. It is shorter than the 90 days allotted for first and second level appeals under the appeals process, and in keeping with the purpose of the arbitration provision—to expedite the recovery process.

However, the issues involved in Public Assistance determinations can be technical and complex. In cases involving highly technical and complex matters, a decision of the panel may take longer than 60 days. The appeal regulation allows additional time for review of an appeal when highly technical issues are involved. See 44 CFR 206.206(d). Similarly, this regulation provides for the possibility that the arbitration panel will not be able to render a decision within 60 days on such issues.

L. Finality of Decision

A decision of the majority of the panel will constitute a final decision, binding on all parties. Final decisions are not subject to further administrative review. Final decisions are not subject to judicial review, except as permitted by 9 U.S.C. 10.

M. Ex Parte Communications

No party, and no one acting on behalf of any party, will have ex parte communications with an arbitrator. This means that neither the applicant/subgrantee, the Grantee, nor FEMA may communicate with an arbitrator about a particular arbitration without the participation of the other parties or their representatives. If a party engages in an ex parte communication, the party engaged in such communication must provide a summary or a transcript of the entire communication to the other parties.

N. Costs

FEMA will pay the fees of the arbitrators, the costs of any expert retained by the panel and the arbitration facility costs, if any. The expenses for each party, including attorney's fees, representative fees, copying costs, costs

associated with attending any hearing, and any other fees not specifically listed in the regulation must be paid by the party incurring the expense.

O. Guidance

FEMA will issue separate guidance as necessary to supplement this regulation.

III. Regulatory Analysis

A. Administrative Procedure Act

The Administrative Procedure Act (APA) requires an agency to publish a rule for public comment prior to implementation. 5 U.S.C. 553. The APA, however, provides an exception to this requirement for rules of agency procedure or practice. 5 U.S.C. 553 (b)(3)(A).

This rule implements section 601 of the ARRA by detailing how a Public Assistance applicant or subgrantee may request arbitration. It is therefore, a procedural rule; it establishes procedures for making an arbitration request and the procedures FEMA will follow in issuing an arbitration decision. The rule does not affect eligibility under the Public Assistance program; rather, it adds an option for review of Public Assistance applications to expedite recovery efforts. FEMA already provides for review of these determinations through the appeal provisions of 44 CFR 206.206. This rule simply provides an alternate procedure for seeking such a review of FEMA determinations.

Further, because this rule is procedural in nature and does not confer any substantive rights, benefits or obligations, FEMA finds that this rule shall become effective immediately upon publication of this final rule in the **Federal Register**. 5 U.S.C. 553(d).

B. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, regulatory actions are subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees,

or loan programs or the rights and obligations of recipients thereof; or
(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rule is entirely voluntary. Applicants are not required to seek arbitration under the authority and requirements of this rule. This rule provides an additional option to applicants/subgrantees in lieu of appeal. For those that choose to undergo arbitration, this rule will result in a total cost increase of \$389,363 to applicants/subgrantees, and a cost savings of \$4,242 to Grantees. This rule is not an economically significant regulatory action as defined in Executive Order 12866. This is not a significant rule under Executive Order 12866; therefore, OMB has not reviewed this rule.

Under FEMA's standard appeal procedures, an applicant/subgrantee must file an appeal with documentation supporting the appeal within 60 days of the decision that is being appealed. The Grantee then forwards the request to the Regional Administrator within 60 days of receipt, and in doing so may submit a written recommendation to FEMA. The Regional Administrator then reviews the appeal and either makes a determination or seeks additional information from the applicant within 90 days.

If the Regional Administrator denies the appeal, the applicant/subgrantee may submit a second appeal to the Grantee within 60 days of the Regional Administrator's denial. The Grantee must forward the second appeal to the Regional Administrator within 60 days of receipt. The Regional Administrator then forwards the second appeal to FEMA headquarters as soon as possible. Upon receipt, FEMA headquarters either requests additional information, requests independent scientific or technical analysis from experts, or makes a determination within 90 days.

Under the arbitration procedures contained in this rule, an applicant/subgrantee must submit a request for arbitration, with documentation supporting the request, simultaneously to the Grantee, applicable FEMA Regional Administrator, and the arbitration administrator. For those that do not have a pending appeal with FEMA, this request is due within 30 days of receipt of notice of the determination that is the subject of the arbitration request. If there is an appeal pending with FEMA, or if FEMA has issued a decision on a first or second level appeal on or after February 17, 2009, the request for arbitration with supporting documentation, and if

applicable, a statement that they withdraw the pending appeal, must be sent simultaneously to the Grantee, the applicable FEMA Regional Administrator, and the arbitration administrator by October 30, 2009. The Grantee may forward a recommendation to the Regional Administrator and the arbitration administrator, with a copy to the applicant, within 15 days of receipt from the applicant/subgrantee.

Once formed, the panel will conduct a preliminary conference by telephone, and if requested, the parties will be provided a hearing to make an oral presentation in person, by telephone conference or other means during which all the parties may simultaneously hear all other participants. The location will be chosen by the panel. The panel may, if it deems appropriate or necessary, seek the advice or expertise of independent scientific or technical subject matter experts, or request additional information from the parties. The panel will then endeavor to issue a written decision within 60 days after the hearing or, if there is no hearing, after receipt of FEMA's response to the request for arbitration.

As of July 17, 2009, FEMA had 2,188 project worksheets that had not yet received an initial determination from FEMA as well as 44 pending appeals for disasters DR-1603, DR-1604, DR-1605, DR-1606, and DR-1607 that are for projects over \$500,000. Adding the 44 existing appeals to the 2,188 projects which may result in appealable determinations creates a total of 2,232 potential projects that may be eligible for arbitration. Not all project worksheets will have contested determinations that will result in arbitration, and not all pending appeals will be withdrawn in favor of arbitration. To generate the cost estimates for this rulemaking, FEMA used existing data for first appeals. FEMA receives an average of 364 appeals per year. Conservatively estimating that 80 percent of those appeals involve large projects, FEMA estimates that 291 appeals are associated with the total 5,008 large projects obligated by FEMA per year. As a result, FEMA estimates that 5.81 percent of large projects are appealed ($5.81\% = 291/5,008$). By applying this percentage, FEMA estimates that 127 appeals are expected from the 2,188 large projects over \$500,000 that have not yet received an initial determination from FEMA for disasters DR-1693, DR-1604, DR-1605, DR-1606, and DR-1607 ($5.81\% \times 2,188 = 127$).

The arbitration process requires the applicant/subgrantee to submit a request for arbitration simultaneously to the

Grantee, the applicable FEMA Regional Administrator, and the arbitration administrator in the form of a written statement from the applicant/subgrantee, which FEMA conservatively estimates will take an applicant/subgrantee approximately one hour to complete.² Within 15 days of receipt of the request for arbitration, the Grantee may forward a recommendation to FEMA and the arbitration administrator (with a copy to the applicant/subgrantee), which FEMA estimates will take the Grantee approximately one hour to complete. FEMA therefore estimates that it will take 127 applicants/subgrantees a cumulative 127 hours to prepare requests for arbitration and the four potential Grantees (the States of LA, MS, TX, and AL) a cumulative 127 hours to prepare and forward their recommendation to FEMA and the arbitration administrator.

FEMA obtained the national average hourly wage for a managerial (\$36.50) position in State government from the Bureau of Labor Statistics (2009) "May 2007 National Industry-specific Occupational Employment and Wage Estimates", NAICS 999200—State Government (OES Designation). The managerial wage rate was for the "General and Operations Managers position (standard occupational classification (SOC) code #: 11-1021)." The Bureau of Labor Statistics' hourly wage reflects only the direct cost of employment. FEMA, therefore, multiplied the wage rates by 1.4 to derive the full employment costs for a managerial (\$51.10) position in State government. FEMA estimates that it will take applicants/subgrantees and Grantees the same amount of time to prepare requests for arbitration as it takes them to prepare requests for appeal. Therefore, FEMA estimates that this rulemaking will result in a cost savings of \$6,490 ($= 127 \times 51.10$) for applicants/subgrantees and \$6,490 ($= 127 \times 51.10$) for Grantees. These cost savings occur because there is no requirement for an applicant/subgrantee to resubmit documentation through a second round of review to exhaust its administrative remedies under arbitration, as there is in the appeals process. This method is intended to reduce the administrative burden on

² This figure was generated using similar estimates from other Federal agencies requests for arbitration. For example, National Mediation Board receives about 80 "Requests for Arbitration Panel for Airline System Boards of Adjustment" annually with a burden estimate of 20 hours per year (74 FR 10098); or Federal Mediation and Conciliation Service's "Request for Arbitration Services" form, receiving approximately 10,000 per year and estimating about 10 minutes to complete (71 FR 69130).

applicants/subgrantees. Applicant/subgrantees may only seek one method for resolution of the dispute—appeal or arbitration—not both.

In addition to the 2,188 project worksheets which have not yet received an initial determination from FEMA, as noted above, as of July 17, 2009, FEMA currently has 44 pending appeals. Although it is not expected that all of these appeals will be withdrawn in favor of arbitration, as a conservative estimate for the purposes of this analysis, FEMA estimates that all 44 will withdraw in favor of arbitration. Therefore these applicants/subgrantees will also submit a request for arbitration containing a statement that they withdraw their appeal. FEMA estimates it will take the applicant/subgrantee approximately one hour to prepare its request and the Grantee one hour to prepare its recommendation and forward it to FEMA and the arbitration administrator. Using the \$51.10 wage rate established above, FEMA estimates that this change will have a total cost of \$2,248 ($= 44 \times \51.10) to applicants/subgrantees and \$2,248 ($= 44 \times \51.10) to Grantees.

The panel will conduct a preliminary conference by telephone, and if requested, the parties will make an oral presentation in person, by telephone conference or other means during which all the parties may simultaneously hear all other participants at a location designated by the panel. In person appearance at a hearing is entirely voluntary, at the applicant's/subgrantee's discretion. If they choose to appear, however, the costs to do so are incurred by the applicant/subgrantee. Because the hearings may be conducted via telephone or other means during which all the parties may simultaneously hear all other participants, most applicants are not expected to have any travel costs. For those who are granted an in-person hearing, the panel may choose to have the hearing in Washington, DC. It is also likely that more than one person will attend. This is based on FEMA's experience meeting with applicants on second appeals, which usually involves about six people. This includes representatives from the applicant, the State, and any consultants. Assuming round trip air travel for a team of six people and that 25 percent of the applicants/subgrantees will make an in-person appearance, ($43 = 25\% \times (127 + 44)$), FEMA estimates that the travel cost to applicants/subgrantees will be

\$89,526 (= 43 × 6 × \$347³). In addition, should an applicant/subgrantee choose to appear in person, it will incur (1) lodging, meals, and incidental expenses, and (2) the regular-time cost of the employee who attends the hearing in lieu of performing that employee's regular duties. Assuming that attendance at a hearing will require two work days to travel to and attend the hearing, lodging, meals, and incidental expenses will be \$93,138 (= 43 × 6 people × \$361⁴). The time cost to applicants/subgrantees will be \$210,941

(= 43 × 6 people × 16 hours × \$51.10). Therefore, the total cost to applicants/subgrantees for in-person presentation at a hearing is estimated to be \$393,605 (= \$89,526 + \$93,138 + \$210,941).

FEMA will pay the fees of the arbitrators, the costs of any expert retained by the panel, and the arbitration facility costs, if any. Even though FEMA cannot quantify this cost change, it is not likely to be economically significant given the number of arbitrations expected from disasters DR-1603, DR-1604, DR-1605, DR-1606, and DR-1607. Additionally, it

will save the Federal government the time and costs it would have incurred to process appeals. FEMA estimates that this rule will result in a cost increase of \$389,363 to applicants/subgrantees, and a cost saving of \$4,242 to Grantees. Table 1 details the impact of the final rule. FEMA did not annualize the impact because this rule applies only to disasters DR-1603, DR-1604, DR-1605, DR-1606, and DR-1607. FEMA has determined that this rule will not have a significant economic impact of \$100 million or more per year.

TABLE 1—QUANTIFIED IMPACT OF THE FINAL RULE

	Applicants/ Subgrantees	Grantees
Requests for arbitration	-\$6,490	
Requests forwarded for arbitration		-\$6,490
Withdraw in favor of arbitration	2,248	2,248
In-person presentation	393,605	.....
Sub-total	389,363	-4,242
Grand Total	385,121	

C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), and section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121, 110 Stat. 847, 858-9 (Mar. 29, 1996) (5 U.S.C. 601 note) require that special consideration be given to the effects of proposed regulations on small entities. The RFA mandates that an agency conduct a RFA analysis when an agency is "required by section 553 * * * to publish general notice of proposed rulemaking for any proposed rule." 5 U.S.C. 603(a). Accordingly, an RFA is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). FEMA has determined that this rule is exempt from notice and comment rulemaking because it is a rule of agency procedure. See 5 U.S.C. 553(b)(3)(A). Therefore, an RFA analysis under 5 U.S.C. 603 is not required for this rule.

D. National Environmental Policy Act (NEPA)

This rulemaking is categorically excluded from further review under the National Environmental Policy Act (NEPA), Public Law 91-190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*), as amended. Action taken or

assistance provided under sections 403, 406, and 407 of the Stafford Act are statutorily excluded from NEPA and the preparation of environmental impact statements and environmental assessments by section 316 of the Stafford Act. 42 U.S.C. 5159; 44 CFR 10.8(c). NEPA implementing regulations governing FEMA activities at 44 CFR 10.8(d)(2)(ii) categorically exclude the preparation, revision, and adoption of regulations from the preparation of an environmental assessment or environmental impact statement, where the rule relates to actions that qualify for categorical exclusions. Action taken or assistance provided under sections 403 and 407 of the Stafford Act are categorically excluded under 44 CFR 10.8(d)(2)(ix). Because no other extraordinary circumstances have been identified, this rule does not require the preparation of either an environmental assessment or an environmental impact statement as defined by NEPA.

E. Executive Order 12898, Environmental Justice

Under Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994, FEMA incorporates environmental justice into its policies

and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in our programs, denying persons the benefits of our programs, or subjecting persons to discrimination because of their race, color, or national origin.

No action that FEMA can anticipate under this rule will have a disproportionately high or adverse human health and environmental effect on any segment of the population. Accordingly, the requirements of Executive Order 12898 do not apply to this rule.

F. Congressional Review of Agency Rulemaking

FEMA has sent this final rule to the Congress and to the Government Accountability Office under the Congressional Review of Agency Rulemaking Act, ("Congressional Review Act"), Public Law 104-121, 110 Stat. 873 (Mar. 29, 1996) (5 U.S.C. 804). This rule is not a "major rule" within the meaning of the Congressional Review Act.

³ Average domestic airfare in the 4th quarter of 2008 from the U.S. Department of Transportation's Bureau of Transportation Statistics (BTS), May 6, 2009, http://www.bts.gov/press_releases/2009/bts021_09/html/bts021_09.html.

⁴ The amount of \$361 includes hotel expense for one night, and meals and incidental expenses for two days. The per diem rate for the District of Columbia is obtained from the U.S. General Services Administration, May 2009, <http://>

www.gsa.gov/Portal/gsa/ep/contentView.do?queryYear=2009&contentType=GSA_BASIC&contentId=17943&queryState=District+of+Columbia&noc=T.

G. *Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995, Public Law 104–4, 109 Stat. 48 (Mar. 22, 1995) (2 U.S.C. 1501 *et seq.*), applies to any notice of proposed rulemaking that would implement any rule which includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If the rulemaking includes a Federal mandate, the Act requires an agency to prepare an assessment of the anticipated costs and benefits of the Federal mandate. The Act also pertains to any regulatory requirements that might significantly or uniquely affect small governments. Before establishing any such requirements, an agency must develop a plan allowing for input from the affected governments regarding the requirements. FEMA has determined that this rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, nor by the private sector, of \$100 million or more in any one year as a result of a Federal mandate, and it will not significantly or uniquely affect small governments. In light of the foregoing, FEMA has determined that no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

H. *Executive Order 13132, Federalism*

Executive Order 13132, Federalism, 64 FR 43255, August 4, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action. This final rule involves no policies that have federalism implications under Executive Order 13132.

I. *Paperwork Reduction Act of 1995*

This rule contains a collection of information that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA), as amended, Public Law 104–13, 109 Stat. 163, (May 22, 1995) (44 U.S.C. 3501–3520). The

information collection included in this rule is approved by OMB under control number 1660–0017, Public Assistance Progress Report and Program Forms.

J. *Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, 65 FR 67249, Nov. 9, 2000, applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Under this Executive Order, to the extent practicable and permitted by law, no agency may promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal Government, or the agency consults with Tribal officials.

There is no substantial direct compliance cost associated with this rule. This rule would not affect the distribution of power or responsibilities of Tribal governments.

K. *Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights*

FEMA has reviewed this rule under Executive Order 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights” (53 FR 8859, Mar. 18, 1988) as supplemented by Executive Order 13406, “Protecting the Property Rights of the American People” (71 FR 36973, June 28, 2006). This rule will not affect the taking of private property or otherwise have taking implications under Executive Order 12630.

L. *Executive Order 12988, Civil Justice Reform*

FEMA has reviewed this rule under Executive Order 12988, “Civil Justice Reform” (61 FR 4729, Feb. 7, 1996). This rule meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Coastal zone, Community facilities, Disaster assistance, Fire

prevention, Grant programs—housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs—housing and community development, Natural resources, Penalties, Reporting and recordkeeping requirements.

■ For the reasons discussed in the preamble, the Federal Emergency Management Agency amends 44 CFR part 206, subpart G, as follows:

PART 206—FEDERAL DISASTER ASSISTANCE

■ 1. The authority citation for part 206 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

■ 2. Add § 206.209 to read as follows:

§ 206.209 Arbitration for Public Assistance determinations related to Hurricane Katrina and Rita (Major disaster declarations DR–1603, DR–1604, DR–1605, DR–1606, and DR–1607).

(a) *Scope.* Pursuant to section 601 of the American Recovery and Reinvestment Act of 2009, Public Law 111–5, this section establishes procedures for arbitration to resolve disputed Public Assistance applications under the following major disaster declarations: DR–1603, DR–1604, DR–1605, DR–1606, and DR–1607.

(b) *Applicability.* An applicant or subgrantee (hereinafter “applicant” for purposes of this section) may request arbitration of a determination made by FEMA on an application for Public Assistance, provided that the total amount of the project is greater than \$500,000, and provided that:

(1) the applicant is eligible to file an appeal under § 206.206; or

(2) the applicant had a first or second level appeal pending with FEMA pursuant to § 206.206 on or after February 17, 2009.

(c) *Governing rules.* An applicant that elects arbitration agrees to abide by this section and applicable guidance. The arbitration will be conducted pursuant to procedure established by the arbitration panel.

(d) *Limitations—(1) Election of remedies.* A request for arbitration under this section is in lieu of filing or continuing an appeal under § 206.206.

(2) *Final agency action under § 206.206.* Arbitration is not available for any matter that obtained final agency

action by FEMA pursuant to § 206.206 prior to February 17, 2009. Arbitration is not available for determinations for which the applicant failed to file a timely appeal under the provisions of § 206.206 prior to August 31, 2009, or for determinations which received a decision on a second appeal from FEMA prior to February 17, 2009.

(e) *Request for arbitration*—(1) *Content of request.* The request for arbitration must contain a written statement and all documentation supporting the position of the applicant, the disaster number, and the name and address of the applicant's authorized representative or counsel.

(2) *Submission by the applicant to the Grantee, the FEMA Regional Administrator, and the arbitration administrator.* An applicant under paragraph (b)(1) of this section must submit its request for arbitration in writing simultaneously to the Grantee, the FEMA Regional Administrator, and the arbitration administrator within 30 calendar days after receipt of notice of the determination that is the subject of the arbitration request or by September 30, 2009, whichever is later. An applicant under paragraph (b)(2) of this section must make a request for arbitration in writing and, if FEMA has not issued a decision on the appeal, submit a withdrawal of the pending appeal, simultaneously to the Grantee, the FEMA Regional Administrator, and the arbitration administrator by October 30, 2009.

(3) *Submission by the Grantee to the arbitration administrator and FEMA.* Within 15 calendar days of receipt of the applicant's request for arbitration, the Grantee must forward the name and address of the Grantee's authorized representative or counsel, and may forward a written recommendation in support or opposition to the applicant's request for arbitration, simultaneously to the FEMA Regional Administrator, the arbitration administrator, and the applicant.

(4) *Submission of FEMA's response.* FEMA will submit a memorandum in support of its position, a copy of the Project Worksheet(s), and any other supporting information, as well as the name and address of its authorized representative or counsel, simultaneously to the arbitration administrator, the Grantee, and the applicant, within 30 calendar days of receipt of the applicant's request for arbitration.

(5) *Process for submissions.* When submitting a request for arbitration, the applicant should describe its claim with sufficient detail so that the circumstances of the dispute are clear to

the arbitration panel. All papers, notices, or other documents submitted to the arbitration administrator under this section by the applicant, the Grantee, or FEMA will be served on each party's authorized representative or counsel. The submitting party will make such service by courier or overnight delivery service (such as Federal Express, DHL, United Parcel Service, or the United States Postal Service overnight delivery), addressed to the party, representative, or counsel, as applicable, at its last known address.

(f) *Selection of arbitration panel.* The arbitration administrator will select the arbitration panel for arbitration and notify the applicant, FEMA, and the Grantee of the names and identities of the arbitrators selected for the panel.

(g) *Preliminary conference.* The arbitration panel will hold a preliminary conference with the parties and/or representatives of the parties within 10 business days of the panel's receipt of FEMA's response to the request for arbitration. The panel and the parties will discuss the future conduct of the arbitration, including clarification of the disputed issues, request for disqualification of an arbitrator (if applicable), and any other preliminary matters. The date and place of any oral hearing will be set at the preliminary conference. The preliminary conference will be conducted by telephone.

(h) *Hearing*—(1) *Request for hearing.* The panel will provide the applicant and FEMA with an opportunity to make an oral presentation on the substance of the applicant's claim in person, by telephone conference, or other means during which all the parties may simultaneously hear all other participants. If the applicant or FEMA would like to request an oral hearing, the request must be made no later than the preliminary conference.

(2) *Location of hearing.* If an in-person hearing is authorized, it will be held at a hearing facility of the arbitration panel's choosing.

(3) *Conduct of hearing.* Each party may present its position through oral presentations by individuals designated in advance of the hearing. These presentations may reference documents submitted pursuant to paragraph (e) of this section; the parties may not provide additional paper submissions at the hearing. If the panel deems it appropriate or necessary, it may request additional written materials from either or both parties or seek the advice or expertise of independent scientific or technical subject matter experts.

(4) *Closing of hearing.* The panel will inquire of each party whether it has any further argument. When satisfied that

the record is complete, the panel will declare the hearing closed, unless a post-hearing submission of additional information or a memorandum of law is to be provided in accordance with this paragraph. The hearing will be declared closed as of the date set by the panel for the submission of the additional information or the memorandum of law.

(5) *Time limits.* The panel will endeavor to hold the hearing within 60 calendar days of the preliminary conference.

(6) *Postponement.* The arbitration panel may postpone a hearing upon agreement of the parties, or upon request of a party for good cause shown. Within 10 business days of the postponement, the arbitration panel will notify the parties of the rescheduled date of the hearing.

(7) *Record of the hearing.* There will be no recording of the hearing, unless a party specifically requests and arranges for such recording at its own expense.

(8) *Post-hearing submission of additional information.* A party may file with the arbitration panel additional information or a memorandum of law after the hearing upon the arbitration panel's request or upon the request of one of the parties with the panel's consent. The panel will set the time for submission of the additional information or the memorandum of law.

(9) *Reopening of hearing.* The hearing may be reopened on the panel's initiative under compelling circumstances at any time before the decision is made.

(i) *Review by the arbitration panel.* (1) *Determination of timeliness.* Upon notification by FEMA, or on its own initiative, the arbitration panel will determine whether the applicant timely filed a request for arbitration.

(2) *Substantive review.* The arbitration panel will consider all relevant written materials provided by the applicant, the Grantee, and FEMA, as well as oral presentations, if any. If the panel deems it appropriate or necessary, it may request additional written materials from either or both parties or seek the advice or expertise of independent scientific or technical subject matter experts.

(j) *Ex parte communications.* No party and no one acting on behalf of any party will engage in ex parte communications with a member of the arbitration panel. If a party or someone acting on behalf of any party engages in ex parte communications with a member of the arbitration panel, the party that engaged in such communication will provide a summary or a transcript of the entire communication to the other parties.

(k) *Decision*—(1) *Time limits*. The panel will make every effort to issue a written decision within 60 calendar days after the panel declares the hearing closed pursuant to paragraph (h)(4) of this section, or, if a hearing was not requested, within 60 calendar days following the receipt of FEMA's response to the request for arbitration. A decision of the panel may take longer than 60 calendar days if the arbitration involves a highly technical or complex matter.

(2) *Form and content*. The decision of the panel will be in writing and signed by each member of the panel. The panel will issue a reasoned decision that includes a brief and informal discussion of the factual and legal basis for the decision.

(3) *Finality of decision*. A decision of the majority of the panel shall constitute a final decision, binding on all parties. Final decisions are not subject to further administrative review. Final decisions are not subject to judicial review, except as permitted by 9 U.S.C. 10.

(4) *Delivery of decision*. Notice and delivery of the decision will be by facsimile or other electronic means and by regular mail to each party or its authorized representative or counsel.

(l) *Costs*. FEMA will pay the fees associated with the arbitration panel, the costs of any expert retained by the panel, and the arbitration facility costs, if any. The expenses for each party, including attorney's fees, representative fees, copying costs, costs associated with attending any hearing, or any other fees not listed in this paragraph will be paid by the party incurring such costs.

(m) *Guidance*. FEMA may issue separate guidance as necessary to supplement this section.

Dated: August 14, 2009.

Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9-19994 Filed 8-28-09; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR 202, 209, 214, et al.

Defense Federal Acquisition Regulations Supplement; Technical Amendments

Correction

In rule document E9-20416 beginning on page 42779 in the issue of Tuesday, August 25, 2009, make the following correction:

On page 42780 starting in the first column, the definition for *Contracting activity* in section 202.101 is corrected to read as follows:

202.101 Definitions.

* * * * *

Contracting activity for DoD also means elements designated by the director of a defense agency which has been delegated contracting authority through its agency charter. DoD contracting activities are—

Department of Defense

Counterintelligence Field Activity
Department of Defense Education Activity
TRICARE Management Activity
Washington Headquarters Services,
Acquisition and Procurement Office

Army

Headquarters, U.S. Army Contracting Command
Joint Contracting Command—Iraq/Afghanistan
National Guard Bureau
Program Executive Office for Simulation, Training, and Instrumentation
U.S. Army Aviation and Missile Life Cycle Management Command
U.S. Army Communications-Electronics Life Cycle Management Command
U.S. Army Corps of Engineers
U.S. Army Expeditionary Contracting Command
U.S. Army Intelligence and Security Command
U.S. Army Joint Munitions and Lethality Life Cycle Management Command
U.S. Army Medical Command
U.S. Army Medical Research and Materiel Command
U.S. Army Mission and Installation Contracting Command
U.S. Army Research, Development, and Engineering Command
U.S. Army Space and Missile Defense Command
U.S. Army Sustainment Command
U.S. Army Tank-Automotive and Armaments Life Cycle Management Command

Navy

Office of the Deputy Assistant Secretary of the Navy (Acquisition & Logistics Management)
Naval Air Systems Command
Space and Naval Warfare Systems Command
Naval Facilities Engineering Command
Naval Inventory Control Point
Naval Sea Systems Command
Naval Supply Systems Command
Office of Naval Research
Military Sealift Command
Strategic Systems Programs
Marine Corps Systems Command
Installations and Logistics, Headquarters,
U.S. Marine Corps

Air Force

Office of the Assistant Secretary of the Air Force (Acquisition)
Office of the Deputy Assistant Secretary (Contracting)

Air Force Materiel Command
Air Force Reserve Command
Air Combat Command
Air Mobility Command
Air Education and Training Command
Pacific Air Forces
United States Air Forces in Europe
Air Force Space Command
Air Force District of Washington
Air Force Operational Test & Evaluation Center
Air Force Special Operations Command
United States Air Force Academy
Aeronautical Systems Center
Air Armament Center
Electronic Systems Center
Space and Missile Systems Center

Defense Advanced Research Projects Agency

Office of the Deputy Director, Management

Defense Business Transformation Agency

Contracting Office

Defense Commissary Agency

Directorate of Contracting

Defense Contract Management Agency

Office of the Director, Defense Contract Management Agency

Defense Finance And Accounting Service

External Services, Defense Finance and Accounting Service

Defense Information Systems Agency

Defense Information Technology Contracting Organization

Defense Intelligence Agency

Office of Procurement

Defense Logistics Agency

Acquisition Management Directorate
Defense Supply Centers
Defense Energy Support Center

Defense Security Cooperation Agency

Contracting Division

Defense Security Service

Acquisition and Contracting Branch

Defense Threat Reduction Agency

Acquisition Management Office

Missile Defense Agency

Headquarters, Missile Defense Agency

National Geospatial-Intelligence Agency

Procurement and Contracting Office

National Security Agency

Headquarters, National Security Agency

United States Special Operations Command

Headquarters, United States Special Operations Command

United States Transportation Command

Directorate of Acquisition

* * * * *

[FR Doc. Z9-20416 Filed 8-28-09; 8:45 am]

BILLING CODE 1505-01-D

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**
48 CFR Part 2409

[Docket No. FR-5098-C-03]

RIN 2535-AA28

**HUD Acquisition Regulation (HUDAR)
Debarment and Suspension
Procedures; Correcting Amendment**

AGENCY: Office of the Secretary, HUD.

ACTION: Correcting amendment.

SUMMARY: This document amends HUD's regulations on debarment, suspension and ineligibility to correct cross-references to reflect changes made in previous rulemakings. A final rule, which was published on October 29, 2007, amended HUD's Acquisition Regulation (HUDAR), codified at title 48 of the Code of Federal Regulations (CFR), to include the debarment and suspension procedures specifically applicable to HUD's procurement contracts. Subsequent to the October 2007 final rule, HUD issued regulations that moved HUD's debarment and suspension regulations from 24 CFR part 24 to 2 CFR part 2424. At that time, HUD also adopted, by cross-reference, the governmentwide debarment and suspension regulations at 2 CFR part 180.

This correcting amendment revises the HUDAR at 48 CFR 2409.7001 to refer to the debarment and suspension regulations now located at 2 CFR parts 2424 and 180.

DATES: *Effective Date:* This correcting amendment is effective as of August 31, 2009.

FOR FURTHER INFORMATION CONTACT: Dane Narode, Associate General Counsel for Program Enforcement, Department of Housing and Urban Development, 1250 Maryland Avenue, SW., Suite 200, Washington DC 20024-0500; telephone number 202-708-2350 (this is not a toll-free number). Hearing- or speech-impaired individuals may access the telephone number listed above by calling the toll-free Federal Information Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: On December 27, 2007, HUD published a final rule titled "Implementation of OMB Guidance on Nonprocurement Debarment and Suspension" (72 FR 73487). The December 27, 2007, final rule moved HUD's debarment and suspension regulations from 24 CFR part 24 to 2 CFR part 2424 effective January 28, 2008, consistent with directions of the Office of Management

and Budget (OMB) to all federal agencies to relocate agency-specific debarment and suspension regulations to a new title 2 of the CFR. The December 27, 2007, final rule also adopted the OMB governmentwide guidance on nonprocurement debarment and suspension, codified in 2 CFR part 180, along with HUD-specific amendments, including several conforming amendments throughout HUD's regulations. Many of these changes were revisions to cross-references required by the fact that many HUD regulations referred to HUD's debarment and suspension regulations, formerly codified at 24 CFR part 24, and these regulations needed updating to refer to 2 CFR part 2424. Specifically, HUD's acquisition regulation at 48 CFR 2409.7001 contains HUD's regulation on debarment and suspension but cross-references HUD's former nonprocurement debarment regulations at 24 CFR part 24, and states that, notwithstanding language to the contrary at former 24 CFR 24.220(a)(1), the nonprocurement regulations at 24 CFR part 24 also apply to HUD's debarment and suspensions in the realm of procurement acquisition.

Accordingly, this correcting amendment revises the cross-reference to 24 CFR part 24 to cross-reference those regulations in their current location, 2 CFR parts 180 and 2424. This change does not change the substantive meaning or impact of any of HUD's regulations, but solely corrects an incorrect cross-reference. A member of the public relying on the cross-reference in 48 CFR 2409.7001 would still be directed to the correct regulations, as 24 CFR part 24 now reads, in its entirety, "The policies, procedures, and requirements for debarment, suspension, and limited denial of participation are set forth in 2 CFR part 2424." Part 2424, in turn, refers to part 180. While the meaning is the same, correcting this cross-reference is obviously more convenient for the public.

List of Subjects in 48 CFR Part 2409

Government procurement.

■ Accordingly, for the reasons described in the preamble, 48 CFR part 2409 is corrected by making the following correcting amendment:

**PART 2409—CONTRACTOR
QUALIFICATIONS**

1. The authority citation continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

**Subpart 2409.70—Debarment,
Suspension, and Ineligibility**

■ 2. Revise § 2409.7001 to read as follows:

**2409.7001 HUD regulations on debarment,
suspension, and ineligibility.**

HUD's policies and procedures concerning debarment and suspension are contained in 2 CFR parts 180 and 2424 and, notwithstanding 2 CFR 180.220(a)(1), apply to procurement contracts.

Dated: August 20, 2009.

Shaun Donovan,

Secretary.

[FR Doc. E9-20833 Filed 8-28-09; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF COMMERCE
**National Oceanic and Atmospheric
Administration**
50 CFR Part 300

[Docket No. 0907301169-91204-01]

RIN 0648-AY02

**Fraser River Sockeye and Pink Salmon
Fisheries; Notification of Inseason
Orders; Correction**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction

SUMMARY: NMFS publishes Fraser River salmon inseason orders to regulate salmon fisheries in U.S. waters. NMFS maintains a telephone hotline to notify the public of these inseason orders. The telephone number for the hotline that is specified in the Code of Federal Regulations (CFR) is obsolete. This action corrects the language in the CFR to remove that number and specify that the correct telephone number for the hotline is included in the annual management measures for West Coast Salmon Fisheries, published in the **Federal Register**.

DATES: Effective August 31, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Busby at 206-526-4323.

SUPPLEMENTARY INFORMATION: 50 CFR part 300, subpart F—Fraser River Sockeye and Pink Salmon Fisheries, implements the Pacific Salmon Treaty Act of 1985. Section 300.97 authorizes the Secretary of Commerce to issue orders that establish fishing times and areas consistent with the annual Pacific Salmon Commission regime and

inseason orders of the Fraser River Panel. These orders establish fishing dates, times, and areas for the gear types of U.S. treaty Indian fisheries and for all-citizen fisheries during the period the Panel exercises jurisdiction over these fisheries. Section 300.97(b)(1) specifies a toll-free telephone hotline for NMFS to use to notify the public of orders applicable to all-citizen fisheries. The currently published all-citizen fisheries hotline is 1-800-562-6513. Due to changes in telephone technology, that telephone number is no longer correct.

This action removes that incorrect number and amends the CFR to specify that the correct all-citizen fisheries hotline telephone number is included in the inseason notice procedures section of the annual management measures for West Coast Salmon Fisheries, published in the **Federal Register**. The treaty Indian fisheries hotline is unaffected by this correction.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator finds good cause to waive prior notice and opportunity for additional public comment for this action because any delay of this action would be contrary to the public interest. As stated above, this rule removes the obsolete telephone number currently published in the CFR, and amends the CFR to specify that the correct hotline telephone number is published annually in the **Federal Register** with the annual management measures for West Coast Salmon. This correction notice will eliminate confusion regarding accessing regulatory information on the Fraser River sockeye salmon fisheries, projected to begin in July. Additionally, pursuant to 5 U.S.C. 553(d), the Assistant Administrator finds good cause to waive the 30-day delay in effective date because a delay in implementing this correction may negatively impact the public's ability to access regulatory measures in a timely manner. No aspect of this action is controversial and no change in operating practices in the fishery is required.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

This final rule is exempt from review under Executive Order 12866.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fisheries, Reporting and recordkeeping requirements.

Dated: August 25, 2009.

John Oliver,

Deputy Assistant Administrator For Operations, National Marine Fisheries Service.

■ For the reasons set forth in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

■ 1. The authority citation for part 300 continues to read as follows:

Authority: Pacific Salmon Treaty Act, 16 U.S.C. 3636(b).

■ 2. In § 300.97, paragraph (b)(1) is revised to read as follows:

§ 300.97 Inseason orders.

* * * * *

(b) *Notice of inseason orders.* (1) Official notice of such inseason orders is available from NMFS (for orders applicable to all-citizen fisheries) and from the Northwest Indian Fisheries Commission (for orders applicable to treaty Indian fisheries) through Area Code 206 toll-free telephone hotlines. All-citizen fisheries: the hotline telephone number is published in the inseason notice procedures section of the annual management measures for West Coast Salmon Fisheries, published in the **Federal Register**; Treaty Indian fisheries hotline: 1-800-562-6142.

* * * * *

[FR Doc. E9-20953 Filed 8-28-09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 090206144-9697-02]

RIN 0648-XQ95

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Quota Transfer

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason quota transfer.

SUMMARY: NMFS announces that the Commonwealth of Virginia is transferring commercial bluefish quota

to the State of New York from its 2009 quota. By this action, NMFS adjusts the quotas and announces the revised commercial quota for New York and Virginia.

DATES: Effective August 26, 2009 through December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Sarah Bland, Fishery Management Specialist, (978) 281-9257.

SUPPLEMENTARY INFORMATION:

Regulations governing the Atlantic bluefish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from Florida through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.160.

Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine bluefish commercial quota under § 648.160(f). The Regional Administrator is required to consider the criteria set forth in § 648.160(f)(1) in the evaluation of requests for quota transfers or combinations.

Virginia has agreed to transfer 150,000 lb (68,039 kg) of its 2009 commercial quota to New York. The Regional Administrator has determined that the criteria set forth in § 648.160(f)(1) have been met. The revised bluefish quotas for calendar year 2009 are: New York, 1,126,384 lb (510,919 kg); and Virginia, 1,005,945 lb (456,289 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 26, 2009.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9-20930 Filed 8-26-09; 4:15 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 09100091344-9056-02]

RIN 0648-XR30

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season allowance of the 2009 total allowable catch (TAC) of pollock for Statistical Area 620 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 26, 2009, through 1200 hrs, A.l.t., October 1, 2009.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing

fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The C season allowance of the 2009 TAC of pollock in Statistical Area 620 of the GOA is 2,160 metric tons (mt) as established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009). In accordance with § 679.20(a)(5)(iv)(B) the Administrator, Alaska Region, NMFS (Regional Administrator), hereby decreases the C season pollock allowance by 1,400 mt to reflect the total amount of pollock TAC that has been caught prior to the C season in Statistical Area 620. Therefore, the revised C season allowance of the pollock TAC in Statistical Area 620 is 760 mt (2,160 mt minus 1,400 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the C season allowance of the 2009 TAC of pollock in Statistical Area 620 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 750 mt, and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 620 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 25, 2009.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 26, 2009.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9-20933 Filed 8-28-09; 8:45 am]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 74, No. 167

Monday, August 31, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-1312; Directorate Identifier 2008-CE-065-AD]

RIN 2120-AA64

Airworthiness Directives; Hawker Beechcraft Corporation Models 1900, 1900C, and 1900D Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) that applies to certain Hawker Beechcraft Corporation Models 1900, 1900C, and 1900D airplanes. The earlier NPRM would have required a one-time visual inspection and repetitive ultrasonic inspections of the left and right main landing gear (MLG) actuators for leaking and/or cracks with replacement of the actuator if leaking and/or cracks are found. The earlier NPRM resulted from reports of leaking and cracked actuators. This proposed AD would require the same actions as the earlier NPRM. Since the earlier NPRM, we have identified a MLG overhauled actuator part number and a MLG actuator approved by parts manufacturer approval (PMA) by identity. We propose to expand the applicability to include airplanes equipped with these additional part numbers. Because this imposes an additional burden over that proposed in the earlier NPRM, we are reopening the comment period to allow the public the chance to comment on these additional MLG actuators.

DATES: We must receive comments on this proposed AD by September 30, 2009.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Hawker Beechcraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085; telephone: (800) 429-5372 or (316) 676-3140; Internet: <http://pubs.hawkerbeechcraft.com>.

FOR FURTHER INFORMATION CONTACT: Don Ristow, Aerospace Engineer, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946-4120; fax: (316) 946-4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, "FAA-2008-1312; Directorate Identifier 2008-CE-065-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive concerning this proposed AD.

Discussion

On December 8, 2008, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Hawker Beechcraft Corporation Models 1900, 1900C, and 1900D airplanes. This proposal was published

in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 15, 2008 (73 FR 75977). The NPRM proposed to require a one-time visual inspection and repetitive ultrasonic inspections of the left and right main landing gear (MLG) actuators for leaking and/or cracks with replacement of the actuator if leaking and/or cracks are found.

Comments

We provided the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Report to Type-Certificate (TC) Holder by E-Mail

Wayne R. Modny and Hawker Beechcraft Corporation request the option of using e-mail to send the report required in this AD.

The FAA agrees with allowing owners/operators to comply with the reporting requirement by e-mail. However, we have changed the proposed AD action and no longer require owners/operators to report to the TC holder. We retained the proposed reporting requirement to the FAA and provided an e-mail address for complying with that proposed AD action.

Comment Issue No. 2: Replacement of Actuator With Other Part Number (P/N) Actuators

Gulfstream International Airlines requests that we not limit replacement of the MLG actuator to P/N 114-380041-17 because other FAA-approved P/Ns (P/N 114-380041-7 or -9) could be used as terminating action. The commenter states that terminating action should consist of replacing the affected actuator with an actuator of a P/N listed in the Hawker Beechcraft illustrated parts catalog other than P/N 114-380041-15.

The FAA agrees. Our intent was to not allow installation of P/Ns 114-380041-11 and 114-380041-13 and only allow installation of P/N 114-380041-15 (or P/N 114-380041-15OVH) if the end caps were new or had been inspected per paragraph (e)(1), (e)(2), or (e)(3) of this proposed AD. Installation of other FAA-approved actuators as terminating action is acceptable. The service bulletin calls out replacement parts that are readily available. The P/N 114-

380041-17 is the latest part number available that is not affected by the inspections in this proposed AD. The earlier P/N 114-380041-7 or P/N 114-380041-9 actuator may be used as terminating action in place of the P/N 114-380041-17; however, parts availability is not guaranteed.

We will change the proposed AD action to allow installation of other FAA-approved actuators in paragraph (e)(4) of this AD.

Comment Issue No. 3: Ultrasonic Inspections

Hawker Beechcraft Corporation requests that we remove the words "FAA-approved equivalent P/N" from the replacement parts language of the AD. Using "FAA-approved equivalent P/N" for replacement parts could be misinterpreted to mean that 114-380041 actuators manufactured by Airtight or Tactair may also be required to do the ultrasonic inspections. The ultrasonic inspection defined in the Hawker Beechcraft Service Bulletin 32-3870, dated April 2008, is approved only for MLG actuators P/N 114-380041-11, P/N 114-380041-13, and P/N 114-380041-15 manufactured by Triumph Actuation Systems (previously manufactured by Frisby).

The FAA partially agrees. We agree that Hawker Beechcraft Service Bulletin 32-3870, dated April 2008, should not be used to do ultrasonic inspections on MLG actuators produced by another manufacturer. However, we disagree that the words "FAA-approved equivalent P/N" should be removed from the applicability or replacement parts language. Our research shows Frisby Airborne Hydraulic, Inc. (Frisby) has PMA approval by identity for their P/N 1FA10043-3 actuator as a replacement for Hawker Beechcraft P/N 114-380041-15. Therefore by including "FAA-approved equivalent P/N" in both the applicability and replacement parts language of this proposed AD, P/N 1FA10043-3 and any other actuator that is PMA approved by identity can be used as a replacement part. They will also be subject to the inspection requirement of the AD, but the Hawker Beechcraft service bulletin cannot be used.

We will change the proposed AD action by referencing Hawker Beechcraft Service Bulletin 32-3870, dated April 2008, to do the visual and ultrasonic inspections only for P/N 114-380041-11, P/N 114-380041-13, and P/N 114-380041-15 (or P/N 114-380041-15OVH). For FAA-approved equivalent part numbers, the owner/operator must contact the PMA holder to obtain FAA-

approved inspection instructions to do the visual and ultrasonic inspections.

Comment Issue No. 4: P/Ns for Terminating Action

Hawker Beechcraft Corporation requests that we change the words of the AD to make it clear that only MLG actuators P/N 114-380041-11, P/N 114-380041-13, and P/N 114-380041-15 are affected by the AD and that only P/N 114-380041-17 terminates the requirements of the AD. The Applicability is for MLG actuators P/N 114-380041-11, P/N 114-380041-13, and P/N 114-380041-15, but wording in some areas of the AD imply all P/N 114-380041 actuators.

The FAA disagrees. The P/N 114-380041-17 is the most current part number available that is not affected by the inspections proposed in this proposed AD. However, installation of other FAA-approved actuators as terminating action is acceptable, such as P/N 114-380041-7 or P/N 114-380041-9. The wording "FAA-approved equivalent P/N" applies to actuators that are FAA-approved by identity through the PMA process. Our research shows Frisby has PMA approval for their P/N 1FA10043-3 actuator as a replacement for Hawker Beechcraft P/N 114-380041-15. Therefore by including "FAA-approved equivalent P/N" in the replacement parts language of this proposed AD, P/N 1FA10043-3 can be used as a direct replacement for Hawker Beechcraft P/N 114-380041-15. Since P/N 1FA10043-3 is a PMA part through identity for P/N 114-380041-15, the AD should also apply to that P/N and any other parts that may have PMA through identity to P/N 114-380041-11, P/N 114-380041-13, and P/N 114-380041-15.

We will change the proposed AD action to add the language "FAA-approved equivalent P/N" for P/N 114-380041-11, P/N 114-380041-13, and P/N 114-380041-15 into the Applicability section. We will also add that for the purposes of this AD action the phrase "or FAA-approved equivalent part number" in this AD refers to any PMA part that is approved by identity to the referenced part.

Comment Issue No. 5: Previous Inspections

Wayne R. Modny requests that the compliance inspection criteria defined in paragraphs (e)(1) and (e)(2) of the NPRM address previously inspected parts. If the initial 50-hour visual inspection and the initial 600-cycle ultrasonic inspection have been done following Hawker Beechcraft Mandatory Service Bulletin SB 32-3870, dated

April 2008, then these initial inspections should not have to be repeated for the AD.

The FAA agrees. The language as written in paragraph (e) of this proposed AD, "you must do the following, unless already done" allows for the inspections already done following Hawker Beechcraft Mandatory Service Bulletin SB 32-3870, dated April 2008.

We will not change the proposed AD action based on this comment.

Comment Issue No. 6: Overhauled Actuators and New End Caps

Hawker Beechcraft Corporation requests that we add language to the actions of this AD to allow for overhauled actuators that have records that prove an internal fluorescent penetrant inspection had been done and for actuators that have records that prove the end caps are new.

The FAA agrees. For MLG overhauled actuators that have records that prove an internal fluorescent penetrant inspection has been done and for MLG actuators that have records that prove the end caps are new, we agree that the Hawker Beechcraft Mandatory Service Bulletin SB 32-3870, dated April 2008, makes a compliance time allowance for the initial ultrasonic inspection proposed in this AD.

We will change the proposed AD action by adding language that allows compliance time differences for overhauled MLG actuators that have had an internal fluorescent penetrant inspection and for MLG actuators that have new end caps.

Comment Issue No. 7: Compliance Time Units

Hawker Beechcraft Corporation requests that we remove the NOTE with the conversion formula to determine hours time-in-service (TIS) in lieu of cycles because it is not needed or to add the words "If the number of cycles is not known" at the beginning of the note. The 1900 series fleet tracks cycles, and the landing gear component inspections, specifically, are tracked by cycles. The conversion formula could lead to an interpretation that hours TIS should be used even if the number of cycles is known.

The FAA agrees that the note could include language to indicate the formula applies if the number of cycles is not known. However, since an owner/operator must use the conversion formula if the number of cycles is unknown, we are changing the note to an action statement in this proposed AD. NOTES are for information purposes only and do not include required actions. The proposed actions

in the AD use cycles for the compliance time.

We will change the note in the Compliance section of this proposed AD to an action and add the words "If the number of cycles is not known" at the beginning of that paragraph.

FAA's Determination and Requirements of This Proposed AD

We have carefully reviewed the available data and determined that the unsafe condition referenced in this document exists or could develop on other products of the same type design; and we should take AD action to correct this unsafe condition.

Certain changes described above expand the scope of the earlier NPRM. As a result, we have determined that it

is necessary to reopen the comment period to provide additional opportunity for the public to comment on the proposed AD.

The Supplemental NPRM

Since we issued the earlier NPRM, we have expanded the Applicability section to include airplanes equipped with not only part numbers (P/Ns) 114-380041-11, 114-380041-13, or 114-380041-15 MLG actuators but also airplanes equipped with FAA-approved equivalent P/Ns that have PMA by identity to those referenced parts. Frisby P/N 1FA10043-3 has PMA by identity to P/N 114-380041-15; therefore, it is considered an FAA-approved equivalent P/N and the proposed AD applies to airplanes with

this part installed. We have also identified an overhauled MLG actuator part number and have included that part number in the Applicability section.

This goes beyond the scope of what was originally proposed in the NPRM. Therefore, we are reopening the comment period and allowing the public the chance to comment on these additional actions.

Costs of Compliance

We estimate that this AD affects 300 airplanes in the U.S. registry.

The ultrasonic inspection includes the time allowed for removing and reinstalling the actuator. We estimate the following costs to do the inspections:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
Visual Inspection: .5 work-hour × \$80 per hour = \$40	Not applicable	\$40	\$12,000
Ultrasonic Inspection: 6 work-hours × \$80 per hour = \$480 (If the mechanic does not remove the actuator for the ultrasonic inspection, the labor cost will be less).	Not applicable	480	144,000

We estimate the following costs to do any necessary replacements that would

be required based on the results of the inspections. We have no way of

determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
6 work-hours × \$80 per hour = \$480 (If the mechanic removes the actuator for the ultrasonic inspection, then the labor cost will be less).	\$4,600 per actuator	\$5,080

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism

implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments

received, and other information on the Internet at <http://dms.dot.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647-5527) is located at the street address stated in the ADDRESSES section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Hawker Beechcraft Corporation: Docket No. FAA-2008-1312; Directorate Identifier 2008-CE-065-AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by September 30, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplane models and serial numbers listed below that are certificated in any category and equipped with a Hawker Beechcraft part number (P/N) 114-380041-11 (or FAA-approved equivalent P/N), 114-380041-13 (or FAA-approved

equivalent P/N), 114-380041-15 (or FAA-approved equivalent P/N), or 114-380041-15OVH main landing gear (MLG) actuator. For the purposes of this AD action the phrase “or FAA-approved equivalent part number” in this AD refers to any PMA part that is approved by identity to the referenced part. Frisby Airborne Hydraulic, Inc. (Frisby) P/N 1FA10043-3 has parts manufacturer approval (PMA) by identity to P/N 114-380041-15; therefore, it is considered an FAA-approved equivalent P/N and the AD applies to airplanes with this part installed.

Models	Serial Nos.
(1) 1900	UA-3.
(2) 1900C	UB-1 through UB-74, UC-1 through UC-174, and UD-1 through UD-6.
(3) 1900D	UE-1 through UE-439.

Unsafe Condition

(d) This AD results from reports of leaking and cracked actuators. We are issuing this AD to detect and correct leaking and cracks in the MLG actuators, which could result in loss of hydraulic fluid. This condition could lead to an inability to extend or lock down the landing gear, which could result in a gear up landing or a gear collapse on landing.

Compliance

(e) To address this problem, you must do the following, unless already done:

Note: The phrase “or FAA-approved equivalent part number” in this AD refers to any PMA part that is approved by identity to the referenced part.

Actions	Compliance	Procedures
(1) Do a one-time visual inspection of the MLG actuator for cracks.	Within the next 50 hours time-in-service after the effective date of this AD or within the next 30 days after the effective date of this AD, whichever occurs later.	(i) <i>For Hawker Beechcraft parts:</i> Follow Hawker Beechcraft Mandatory Service Bulletin SB 32-3870, dated April 2008. (ii) <i>For PMA by identity:</i> Either contact the aircraft certification office (ACO) using the contact information in paragraph (g)(2) of this AD for FAA-approved procedures provided by the PMA holder; or install Hawker Beechcraft parts and follow Hawker Beechcraft Mandatory Service Bulletin SB 32-3870, dated April 2008, and follow any inspection required by this AD.
(2) Do an initial ultrasonic inspection of the MLG actuator.	Initially within the next 600 cycles after the effective date of this AD or within the next 3 months after the effective date of this AD, whichever occurs first. (i) For those airplanes with overhauled MLG actuators (with less than 1,200 cycles) that have records that prove an internal fluorescent penetrant inspection has been done, you may do the initial ultrasonic inspection within the next 600 cycles after the effective date of this AD or within the next 1,200 cycles since the last overhaul, whichever occurs later. (ii) For those airplanes with MLG actuators with less than 8,000 cycles since new or MLG actuators that have records that prove the end caps are new (less than 8,000 cycles), you may do the initial ultrasonic inspection within the next 1,200 cycles after the effective date of this AD or upon accumulation of 8,000 cycles since the end caps were new, whichever occurs later.	(A) <i>For Hawker Beechcraft parts:</i> Follow Hawker Beechcraft Mandatory Service Bulletin SB 32-3870, dated April 2008. (B) <i>For PMA by identity:</i> Either contact the ACO using the contact information in paragraph (g)(2) of this AD for FAA-approved procedures provided by the PMA holder; or install Hawker Beechcraft parts and follow Hawker Beechcraft Mandatory Service Bulletin SB 32-3870, dated April 2008, and follow any inspection required by this AD.
(3) For all airplanes, do repetitive ultrasonic inspections of the MLG actuator.	Repetitively at intervals not to exceed every 1,200 cycles since the last ultrasonic inspection.	(i) <i>For Hawker Beechcraft parts:</i> Follow Hawker Beechcraft Mandatory Service Bulletin SB 32-3870, dated April 2008. (ii) <i>For PMA by identity:</i> Either contact the ACO using the contact information in paragraph (g)(2) of this AD for FAA-approved procedures provided by the PMA holder; or install Hawker Beechcraft parts and follow Hawker Beechcraft Mandatory Service Bulletin SB 32-3870, dated April 2008, and follow any inspection required by this AD.

Actions	Compliance	Procedures
<p>(4) If cracks are found during any inspection required in paragraph (e)(1), (e)(2), and (e)(3) of this AD, replace the MLG actuator with one of the following:</p> <p>(i) MLG actuator P/N 114-380041-15 (or FAA-approved equivalent P/N) or 114-380041-15OVH that is new or has been inspected following paragraphs (e)(1), (e)(2), and (e)(3) of this AD and has been found to not have cracks; or</p> <p>(ii) An FAA-approved actuator. Installation of an MLG actuator P/N other than 114-380041-11 (or FAA-approved equivalent P/N), 114-380041-13 (or FAA-approved equivalent P/N), 114-380041-15 (or FAA-approved equivalent P/N), or 114-380041-15OVH terminates the inspection requirements of paragraphs (e)(1), (e)(2), and (e)(3) of this AD.</p> <p>(5) Do not install any MLG actuator P/N 114-380041-11 (or FAA-approved equivalent P/N) or 114-380041-13 (or FAA-approved equivalent P/N).</p>	<p>Before further flight after the inspection where the cracks are found.</p> <p>As of the effective date of this AD.</p>	<p>(A) <i>For Hawker Beechcraft parts:</i> Follow Hawker Beechcraft Mandatory Service Bulletin SB 32-3870, dated April 2008.</p> <p>(B) <i>For PMA by identity:</i> Either contact the ACO using the contact information in paragraph (g)(2) of this AD for FAA-approved procedures provided by the PMA holder; or install Hawker Beechcraft parts and follow Hawker Beechcraft Mandatory Service Bulletin SB 32-3870, dated April 2008, and follow any inspection required by this AD.</p> <p>Not applicable.</p>

(f) If the number of cycles is unknown, calculate the compliance times of cycles in this AD by using hours time-in-service (TIS). Multiply the number of hours TIS on the MLG actuator by 4 to come up with the number of cycles. For the purposes of this AD:

- (1) 600 cycles equals 150 hours TIS; and
- (2) 1,200 cycles equals 300 hours TIS.

(g) If cracks are found during any inspection required in paragraphs (e)(1), (e)(2), or (e)(3) of this AD, report the size and location of the cracks to the FAA within 10 days after the cracks are found or within 10 days after the effective date of this AD, whichever occurs later.

(1) Send report to Don Ristow, Aerospace Engineer, Wichita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; e-mail: donald.ristow@faa.gov.

(2) The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and assigned OMB Control Number 2120-0056.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Don Ristow, Aerospace Engineer, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946-4120; fax: (316) 946-4107. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(i) To get copies of the service information referenced in this AD, contact Hawker Beechcraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085; telephone: (800) 429-

5372 or (316) 676-3140; Internet: <http://pubs.hawkerbeechcraft.com>. To view the AD docket, go to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at <http://dms.dot.gov>. The docket number is Docket No. FAA-2008-1312; Directorate Identifier 2008-CE-065-AD.

Issued in Kansas City, Missouri, on August 20, 2009.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9-20866 Filed 8-28-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2009-0800; Directorate Identifier 2009-CE-041-AD]

RIN 2120-AA64

Airworthiness Directives; Scheibe-Flugzeugbau GmbH Models Bergfalke-III, Bergfalke-II/55, SF 25C, and SF-26A Standard Gliders

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of

another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

The manufacturer has advised of receiving a report of looseness of the drive arm of the mechanical elevator trim tab, found during an annual inspection. This kind of damage is likely caused by penetrated humidity over the years.

If left uncorrected, this condition could lead to the separation of the drive arm which could result in flutter of the elevator and possible loss of control of the aircraft.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by October 15, 2009.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through

Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Greg Davison, Glider Program Manager, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4130; fax: (816) 329-4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2009-0800; Directorate Identifier 2009-CE-041-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No.: 2009-0132, dated June 23, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

The manufacturer has advised of receiving a report of looseness of the drive arm of the mechanical elevator trim tab, found during an annual inspection. This kind of damage is likely caused by penetrated humidity over the years.

If left uncorrected, this condition could lead to the separation of the drive arm which could result in flutter of the elevator and possible loss of control of the aircraft.

For the reasons stated above, this new Airworthiness Directive mandates repetitive inspections for solid fixation of the drive arms of the mechanical elevator trim tabs.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Scheibe-Flugzeugbau GmbH has issued Service Bulletin No. 104-24/1; No. 232-6/1; and No. 653-91/1 (same document), dated June 25, 2009; and Scheibe-Flugzeugbau GmbH Work Instruction No. 104-24; No. 232-6; and No. 653-91 (same document), dated March 23, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a note within the proposed AD.

Costs of Compliance

We estimate that this proposed AD will affect 5 products of U.S. registry. We also estimate that it would take about 8 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$80 per work-hour. Required parts would cost about \$14 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$3,270, or \$654 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of

the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Scheibe-Flugzeugbau GmbH: Docket No. FAA-2009-0800; Directorate Identifier 2009-CE-041-AD.

Comments Due Date

(a) We must receive comments by October 15, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models Bergfalke-III, Bergfalke-II/55, SF 25C, and SF-26A Standard gliders, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 27: Flight Controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

The manufacturer has advised of receiving a report of looseness of the drive arm of the mechanical elevator trim tab, found during an annual inspection. This kind of damage is likely caused by penetrated humidity over the years.

If left uncorrected, this condition could lead to the separation of the drive arm which could result in flutter of the elevator and possible loss of control of the aircraft.

For the reasons stated above, this new Airworthiness Directive mandates repetitive inspections for solid fixation of the drive arms of the mechanical elevator trim tabs.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) At the next scheduled maintenance inspection after the effective date of this AD or within the next 12 months after the effective date of this AD, whichever occurs first, inspect the drive arm of the mechanical elevator trim tab for separation of the drive arm following Scheibe Flugzeugbau GmbH Service Bulletin No. 104-24/1; No. 232-6/1; and No. 653-91/1 (same document), dated June 25, 2009. If any looseness is found, before further flight, repair the drive arm of the mechanical elevator trim tab following Scheibe-Flugzeugbau GmbH Work Instruction No. 104-24; No. 232-6; and No. 653-91 (same document), dated March 23, 2009.

(2) Repetitively thereafter, at intervals not to exceed every 12 months, inspect the drive arm of the mechanical elevator trim tab and do all corrective actions following Scheibe-Flugzeugbau GmbH Service Bulletin No. 104-24/1; No. 232-6/1; and No. 653-91/1 (same document), dated June 25, 2009; and Scheibe-Flugzeugbau GmbH Work Instruction No. 104-24; No. 232-6; and No. 653-91 (same document), dated March 23, 2009.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Greg Davison, Glider Program Manager, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329-4130; *fax:* (816) 329-4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2009-0132, dated June 23, 2009; Scheibe-Flugzeugbau GmbH Service Bulletin No. 104-24/1; No. 232-6/1; and No. 653-91/1 (same document), dated June 25, 2009; and Scheibe-Flugzeugbau GmbH Work Instruction No. 104-24; No. 232-6; and No. 653-91 (same document), dated March 23, 2009, for related information.

Issued in Kansas City, Missouri, on August 25, 2009.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9-20968 Filed 8-28-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 91, and 141

[Docket No. FAA-2008-0938; Notice No. 09-08]

RIN 2120-AJ18

Pilot in Command Proficiency Check and Other Changes to the Pilot and Pilot School Certification Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is proposing several changes to our pilot, flight instructor, and pilot school certification rules. The proposals include requiring pilot-in-command (PIC) proficiency checks for pilots who act as PIC of single piloted, turbojet-powered airplanes; allowing pilot applicants to apply for a private pilot certificate and an instrument rating concurrently; and making allowance in the rule to provide for the issuance of standard U.S. pilot certificates on the basis of an international licensing agreement between the FAA and a foreign civil aviation authority. The FAA has recently entered into such an agreement with the civil aviation authority of Canada. The FAA is also proposing to allow pilot schools to use Internet-based training programs without requiring schools to have a physical ground training facility. The FAA is proposing to allow pilot schools and provisional pilot schools to apply for a combined private pilot certification and instrument rating course. The FAA is also proposing to revise the definition of "complex airplane." Because of changing technology in aviation, the results of successful research, and an international agreement, the FAA has determined these proposed changes to the pilot, flight instructor, and pilot school certification rules are necessary to ensure pilots are adequately trained and qualified to operate safely in the National Airspace System. The FAA has determined these proposals are needed to respond to changes in the aviation industry and to further reduce unnecessary regulatory burdens.

DATES: Send your comments to reach us on or before November 30, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA-2008-0938 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M-30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at 202-493-2251.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. Using the search function of our docket web site, anyone can find and read the electronic form of all comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.) You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://docketsInfo.dot.gov>.

Docket: To read background documents or comments received, go to <http://www.regulations.gov> at any time and follow the online instructions for accessing the docket. Or, go to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this proposed rule contact John D. Lynch, Certification and General Aviation Operations Branch, General Aviation and Commercial Division, AFS-810, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3844; e-mail john.d.lynch@faa.gov. For legal questions concerning this proposed rule contact Michael Chase, Esq., Office of Chief Counsel, AGC-240, Regulations Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3110; e-mail michael.chase@faa.gov.

SUPPLEMENTARY INFORMATION: Later in this preamble under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. We also discuss how you can get a copy of this proposal and related rulemaking documents.

I. Authority for This Rulemaking

The FAA's authority to issues rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator, including the authority to issue, rescind, and revise regulations. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Chapter 447—Safety Regulation. Under section 44701, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations necessary for safety. Under section 44703, the FAA issues an airman certificate to an individual when we find, after investigation, that the individual is qualified for, and physically able to perform the duties related to, the position authorized by the certificate. In this NPRM, we are proposing to amend the training, qualification, certification, and operating requirements for pilots.

The proposing changes are intended to ensure that flight crewmembers have the training and qualifications to operate aircraft safety. For this reason, the proposed changes are within the scope of our authority and are a reasonable and necessary exercise of our statutory obligations.

II. Background

This notice of proposed rulemaking (NPRM) includes 16 changes to FAA's existing pilot, flight instructor, and pilot school certification regulations. These regulations are published in Title 14 of the Code of Federal Regulations, the pilot certifications regulations appear in part 61, the flight instruction regulations appear in part 91, and the pilot school certification regulations appear in part 141. The proposed changes update are regulations to reflect advances in aircraft design and avionics, pilot training, and international relations. One of the proposed amendments requires proficiency checks for a pilot who acts as single pilot in comment of a turbo-jet powered airplane. These new turbojet-powered airplanes are widely referred to as very light jets (VLJs). Other proposed changes relate to improved pilot training methods including the use of Internet-based training programs and concurrent pilot certification and instrument rating training. The FAA is also proposing to revise § 61.71 to provide for the issuance of standard U.S. pilot certificates on the basis of an international licensing agreement between the FAA and a foreign civil aviation authority. Recently, the FAA entered into an Implementation Procedures for Licensing (IPL) agreement with the civil aviation authority from Transport Canada to establish reciprocity of pilot certification for the private pilot, commercial pilot, and airline transport pilot certificates for the airplane and instrument-airplane ratings.

III. Summary Table of Proposed Changes

The table below lists the proposed changes contained in this NPRM in order of their Code of Federal Regulations (CFR) designations.

Proposal No.	CFR designation	Summary of the proposed changes
1	§ 61.1(b)(3)	Proposal to revise the definition of "complex airplane" to include airplanes equipped with a full authority digital engine control (FADEC) and move it from § 61.31(e) to § 61.1(b)(3).
2	§ 61.58(a)(1) & (2) and (d)(1)–(4)	Proposal to require a § 61.58 PIC proficiency check for PICs of single piloted, turbojet-powered airplanes.
3	§ 61.65(a)(1)	Proposal to permit the application for and the issuance of an instrument rating concurrently with a private pilot certificate for pilots.
4	§ 61.71(c)	Proposal to allow the conversion of a foreign pilot license to a U.S. pilot certificate based on an Implementation Procedure for Licensing (IPL) agreement.
5	§ 61.129(a)(3)(ii)	Commercial pilot certificate, airplane single engine class rating—Proposal to replace the 10 hours of complex airplane aeronautical experience with 10 hours of advanced instrument training.
6	§ 61.129(b)(3)(ii)	Commercial pilot certificate, airplane multiengine class rating—Proposal to replace the 10 hours of complex multiengine airplane aeronautical experience with 10 hours of advanced instrument training.

Proposal No.	CFR designation	Summary of the proposed changes
7	§ 91.109(a) and (b)(3)	Proposal to expand the use of airplanes with a single, functioning throwover control wheel for providing expanded flight training. This proposal parallels the long standing grants of exemptions that the FAA has issued to many petitioners for use with certain airplanes with a single, functioning throwover control wheel.
8	§ 141.45	Proposal to allow pilot schools and provisional pilot schools an exception to the requirement to have a ground training facility when the training course is an on-line, computer-based training program.
9	§ 141.55(c)(1)	Proposal to allow pilot schools and provisional pilot schools an exception to the requirement to describe each room used for ground training when the training course is an online, computer-based training program.
10	Part 141, Appx D, para. 4.(b)(1)(ii)	Commercial pilot certification course for an airplane single engine class rating— Proposal to replace the 10 hours of complex airplane training with 10 hours of advanced instrument training.
11	Part 141, Appx D, para. 4.(b)(2)(ii)	Commercial pilot certification course for an airplane multiengine class rating— Proposal to replace the 10 hours of complex multiengine airplane training with 10 hours of advanced instrument training.
12	Part 141, Appx I, para. 4.(a)(3)(ii)	Additional airplane single-engine class rating at the commercial pilot certification level—Proposal to replace the 10 hours of complex airplane training with 10 hours of advanced instrument training.
13	Part 141, Appx I, para. 4.(b)(2)(ii)	Additional airplane multiengine class rating at the commercial pilot certification level—Proposal to replace the 10 hours of complex multiengine airplane training with 10 hours of advanced instrument training.
14	Part 141, Appx I, para. 4.(j)(2)(ii)	Additional airplane single-engine class rating at the commercial pilot certification level—Proposal to replace the 10 hours of complex airplane training with 10 hours of advanced instrument training.
15	Part 141, Appx I, para. 4.(k)(2)(ii)	Additional airplane multiengine class rating at the commercial pilot certification level—Proposal to replace the 10 hours of complex multiengine airplane training with 10 hours of advanced instrument training.
16	Part 141, Appx M	Proposal to establish a combined private pilot certification and instrument rating course.

On August 21, 2009, the FAA published a final rule entitled, “Pilot, Flight Instructor, and Pilot School Certificate” (See 74 FR 42500). In that final rule, we established paragraphs 4.(a)(3)(ii), (b)(2)(ii), (j)(2)(ii), and (k)(2)(ii) in part 141, appendix I to clarify the training requirements for an additional aircraft category and class rating courses. In proposal Nos. 12, 13, 14, and 15 of this preamble, we are now proposing additional changes to paragraphs 4.(a)(3)(ii), (b)(2)(ii), (j)(2)(ii) and (k)(2)(ii) in part 141, appendix I to replace the 10 hours of complex airplane training with 10 hours of advanced instrument training.

IV. Description of Proposed Changes

(1) *Proposal to revise the definition of “complex airplane” and move it from § 61.31(e) to § 61.1(b)(3).*

The FAA proposes to revise the definition of “complex airplane” to include airplanes that are equipped with a full authority digital engine control (FADEC) system consisting of a digital computer and associated accessories for controlling both the engine and propeller with a single lever control. On November 2, 2006, we issued FAA Notice No. 8000.331, “Airplanes Equipped with Retractable Landing Gear, Flaps, and FADEC Meet the Definition of a Complex Airplane (hereafter ‘Complex Airplane Notice’).” That Notice made the public aware of

our determination that airplanes equipped with a retractable landing gear, flaps, and a FADEC system met the definition of a “complex airplane.” In that Notice, we also stated that a FADEC-equipped airplane with a retractable landing gear and flaps may be used for the training and practical test to meet the “complex airplane” requirement for the airplane single-engine and multiengine land ratings at the commercial pilot certification and flight instructor certification.

The current definition of a “complex airplane” in § 61.31(e) requires that the airplane have a retractable landing gear, flaps, and a controllable pitch propeller. As a result, a number of training providers have complained to the FAA that they have had to keep older airplanes in their inventory that meet this current § 61.31(e) “complex airplane” definition for providing commercial pilot and flight instructor training of § 61.129(a)(3)(ii) or § 61.129(b)(3)(ii) and the additional training requirements of § 61.31(e). To remove this unnecessary burden, we are proposing to consider an airplane equipped with a FADEC system as being equivalent to one having a controllable pitch propeller.

(2) *Proposal to require a recurrent PIC proficiency check for a PIC of a single piloted, turbojet-powered airplane.*

The FAA is proposing to revise § 61.48 by requiring PIC proficiency

checks for pilots who act as PIC of single piloted, turbojet-powered airplanes. Section 61.58 currently requires a PIC of aircraft requiring more than one pilot flight crewmember to undergo a proficiency check.

The number of single piloted, turbojet-powered airplanes is expected to increase dramatically in the next few years. The expansion of single piloted, turbojet-powered airplanes is the result of new designs that are substantially lower in cost and smaller in size. These new turbojet-powered airplanes are widely referred to as very light jets (VLJs).

In July 2005, the FAA convened a study group, known as the Very Light Jet (VLJ) Cross Organizational Group, to identify concerns regarding the safe operation of VLJs and other single piloted, turbojet-powered airplanes. One concern was that existing § 61.58 does not require a pilot in command (PIC) of a single piloted, turbojet-powered airplane to complete a recurrent PIC proficiency check. The § 61.58 PIC proficiency check currently applies only to a PIC of an aircraft that is type certificated for more than one required pilot flight crewmember. Thus, under current rules it would be possible for a pilot to accomplish the flight review required under § 61.56 in a glider, balloon, or small general aviation aircraft, such as a Cessna 152, and then

act as PIC in a single piloted, turbojet-powered airplane.

When § 61.58 was originally adopted, there were no single piloted turbojet-powered airplanes and the FAA did not have to address whether a proficiency check was needed for single-piloted turbojet operations. However, with the manufacture of the Cessna Citation series beginning in the 1980s, some turbojet-powered airplanes have been certificated to be operated by one pilot, such as Cessna Citations and Citation Jets (Cessna 501, Cessna 551, and Cessna 515). Since § 91.531 requires large aircraft and most turbojet-powered, multiengine airplanes to be operated with a second-in-command pilot flight crewmember, the FAA began issuing grants of exemption to operators and training providers of two-piloted Cessna Citation (CE500, CE550, CE552, and CE450) to enable operations with one pilot. These grants of exemption were issued with certain conditions, one of which requires a PIC to undergo annual PIC training and proficiency checks.

With the number of VLJs estimated to be in operation in the future, the FAA anticipates that there may be many less-experienced owners and operators of these airplanes. The FAA believes that requiring § 61.58 PIC proficiency checks in single piloted, turbojet-powered airplanes will help ensure that these airplanes are operated by competent and proficient pilots. This proposed change would affect pilots who serve as PIC in single piloted, turbojet-powered airplanes, such as the Cessna 501, Cessna 525, Cessna 551, Raytheon 390, and Eclipse 500. (Pilots operating single piloted, turbojet-powered airplane with an experimental airworthiness certificate also would be affected.) The number of pilots affected will increase as the number of single piloted, turbojet-powered airplanes increase. There are several manufacturers who have such airplanes under development and the fleet is expected to expand significantly.

(3) *Proposal to permit the issuance of an instrument rating concurrently with a private pilot certificate.*

The FAA proposes to revise § 61.65(a)(1) to allow applicants for a private pilot certificate and instrument rating to apply concurrently for the private pilot certificate with an instrument rating. This proposal would also result in adding a new appendix M to part 141 to establish a combined private pilot certification and instrument rating course. (See proposal number 16 in this preamble for further explanation.)

Under existing § 61.65(a)(1), an applicant for an instrument rating must

hold at least a private pilot certificate that is appropriate to the instrument rating sought. This precludes an applicant from simultaneously applying for both the private pilot certificate and instrument rating and performing one practical test for both the private pilot certificate and instrument rating. For several years the FAA co-sponsored studies and research with Advanced General Aviation Transport Experiment (AGATE), FAA and Industry Training Standards (FITS), Middle Tennessee State University (MTSU), and Embry Riddle Aeronautical University (ERAU) to explore the feasibility of private pilot applicants obtaining an instrument rating while concurrently enrolled in a private pilot certification course. The FAA has issued grants of exemption to ERAU and MTSU where we have monitored the feasibility of private pilot applicants receiving training concurrently for private pilot certification and instrument rating, and whether it can be done safely and efficiently.

In 1994, AGATE was founded to develop affordable new technology as well as industry standards and certification methods for airframe, cockpit, flight training systems, and airspace infrastructure for the next generation of single piloted, all-weather light airplanes. The Flight Training Curriculum Workgroup was established to develop and validate advanced training technologies and techniques that take advantage of emerging technologies. The Workgroup developed a combined private pilot certificate and instrument rating training curriculum with part 141 pilot schools. In 1999, the FAA granted ERAU an exemption from § 61.65(a)(1). That exemption (Exemption No. 7168) permitted graduates of ERAU's combined private pilot and instrument rating course to take the combined private pilot certification and instrument rating airplane single-engine land practical test. In 2004, the FAA granted MTSU an exemption from § 61.65(a)(1). That exemption (Exemption No. 8456) allows graduates of MTSU's combined private pilot certificate and instrument rating course to take the private pilot and instrument rating practical test simultaneously.

ERAU's and MTSU's combined private pilot and instrument rating course has demonstrated that some of their students were able to handle the combined course and demonstrate the required knowledge, skills, and abilities to operate safely under both visual meteorological conditions (VMC). Historically, accident statistics show that all weather-related accidents

account for approximately 4.0 percent of total accidents. For single engine airplanes with a fixed landing gear, the airplane used predominantly by both student and private pilots, by far the largest weather-related accident cause is continuing to fly under VFR into IMC. This occurs when a pilot encounters changing weather conditions and does not land prior to encountering IMC. The proposed rule change would permit private pilot applicants to combine their private pilot and instrument training, which would improve their skills to operate in IMC and should reduce weather-related accidents. Thus, the FAA is proposing to revise § 61.65(a)(1) to allow applicants for an instrument rating to concurrently apply for a private pilot certificate.

(4) *Proposal to allow the conversion of a foreign pilot license to a U.S. pilot certificate based on an Implementation Procedures for Licensing (IPL) agreement.*

The FAA proposes to amend § 61.71 by adding a new paragraph (c) to allow the conversion of foreign pilot licenses to equivalent U.S. pilot certificates that are issued on the basis of an Implementation Procedures for Licensing (IPL) agreement that has been approved by the Administrator and the licensing authority of a foreign civil aviation authority.

On June 12, 2000, the United States and Canada signed an international agreement known as a Bilateral Aviation Safety Agreement (BASA). This agreement facilitates the mutual acceptance of various aspects of aviation safety oversight systems for the benefit of pilots and other users of those systems. It also promotes the efficiency of the aviation authorities of the respective countries through cooperative agreements. In the BASA, Canada and the United States have developed supporting agreements in the form of technical annexes called implementation procedures that address specific areas of aviation safety activities. The technical annex addressing pilot licensing is called Implementation Procedures for Licensing or IPL. The IPL permits pilots holding certain pilot licenses or certificates from either country to obtain a pilot license or certificate from the other country after the pilot applicant has met the appropriate qualifications and certification requirements.

To execute an IPL, the BASA requires the FAA and Transport Canada Civil Aviation (TCCA) to first evaluate each other's pilot licensing standards and procedures and compare them to their own to determine what, if any, additional requirements would be

necessary to assure that the pilots are in compliance with their own standards. This task has been completed and the associated IPL was signed by FAA and TCCA on July 14, 2006. This IPL allows holders of FAA pilot certificates and holders of TCCA pilot licenses to convert to Canadian pilot licenses and U.S. pilot certificates, respectively. The IPL currently is limited to the airplane category of aircraft at the private, commercial, and airline transport pilot levels of licenses or certificates, and includes the following ratings or qualifications: instrument rating, class ratings of airplane single engine land (ASEL) and airplane multi-engine land (AMEL), type ratings, and night qualification addressed under part 61 and Canadian Aviation Regulations Part IV. The FAA and TCCA have agreed that they may amend the IPL to allow conversion of other licenses or certificates in the future. Therefore, to issue a U.S. pilot certificate on the basis of this IPL, the FAA proposes to revise § 61.71 to allow holders of TCCA pilot licenses to convert to U.S. pilot certificates.

This proposal would merely allow the issuance of a standard U.S. pilot certificate on the basis of an IPL agreement between the FAA and a foreign civil aviation authority. To date, our agreement with TCCA is the only IPL that we have entered into, and the agreement serves as the basis for proposing § 61.71(c). The issuance of a U.S. private pilot certificate and ratings under § 61.75 is a separate pilot certification process.

(5) *Commercial pilot certificate, airplane single-engine class rating—Proposal to replace the 10 hours of complex airplane aeronautical experience with 10 hours of advanced instrument training.*

The FAA proposes to eliminate the requirement for 10 hours of aeronautical experience in a complex airplane in § 61.129(a)(3)(ii) and replace it with 10 hours of advanced instrument training in a single-engine airplane, or in a flight simulator, flight training device, or an aviation training device that replicates a single-engine airplane. The training must include instrument approaches consisting of both precision and non-precision approaches, holding at navigational radio stations, intersections, waypoints, and cross-country flying that involve performing takeoff, area departure, enroute, area arrival, approach, and missed approach phases of flight.

The FAA proposes to revise the Commercial Pilot Certification—Airplane Single Engine (Land and Sea) rating because fewer single-engine

airplanes are being produced with retractable landing gears. Manufacturers of general aviation airplanes now produce technologically advanced airplanes with “glass cockpits,” but which do not have retractable landing gears. Many pilot schools have complained about the necessity to keep 30-year old Cessna 172RGs and Piper Arrows in inventory, which are less technically advanced airplanes, for the sole purpose of providing 10 hours of complex airplane training. Furthermore, the FAA has determined that most commercial pilot applicants are simultaneously applying for the Instrument-Airplane rating, and this proposal would reduce training costs and align the rules with current training and certification practices.

(6) *Commercial pilot certificate, airplane multiengine class rating—Proposal to replace the 10 hours of complex multiengine airplane aeronautical experience with 10 hours of advanced instrument training.*

The FAA proposes to amend § 61.129(b)(3)(ii) to eliminate the requirement for 10 hours of aeronautical experience in a complex multiengine airplane and replace it with 10 hours of advanced instrument training in a multiengine airplane, or in a flight simulator, flight training device, or an aviation training device that replicates a multiengine airplane. The training must include instrument approaches consisting of both precision and non-precision approaches, holding at navigational radio stations, intersections, waypoints, and cross-country flying that involved performing takeoff, area departure, enroute, area arrival, approach, and missed approach phases of flight.

The FAA proposes to amend § 61.129(b)(3)(ii) for the Commercial Pilot Certification—Airplane Multiengine (Land and Sea) rating because this training would be more beneficial if it were devoted to the development of proficiency using instruments. This proposed change to § 61.129(b)(3)(ii) for the Commercial Pilot Certification—Airplane Multiengine (Land and Sea) rating would parallel the proposed change being considered for the Commercial Pilot Certification—Airplane Single-Engine (land and Sea) rating in for § 61.129(a)(3)(ii). Therefore, the FAA proposes to replace the complex multiengine airplane training with advanced instrument training.

(7) *Proposal to expand the use of an airplane with a single, functioning throwover control wheel for providing certain kinds of flight training and checking.*

The FAA proposes to revise § 91.109(a) to allow for use of an airplane with a single, functioning throwover control wheel for conducting flight instruction. We also propose to revise § 91.109(b)(3) to allow for the use of an airplane with a single, functioning throwover control wheel for conducting a flight review, performing recent flight experience, instrument flight experience, and instrument competency checks.

Existing § 91.109(a) provides for conducting instrument flight instruction in a single engine airplane with a single, functioning throwover control wheel. Existing § 91.109(b)(3) provides for using a single engine airplane with a single, functioning throwover control wheel during simulated instrument flight.

Since August 30, 1993, the FAA has issued several grants of exemption and extensions. These grants of exemption allow instructors to provide recurrent flight training and simulated instrument flight training in certain aircraft, such as, Beechcraft Barons, Bonanzas, Debonairs, and Travel Air that are equipped with a single, functioning throwover control wheel for the purpose of meeting the recency of experience requirements and flight review contained in §§ 61.56(a), (b), and (f) and 61.57(e)(1) and (2). This proposal would amend § 91.109(a) and (b)(3) to incorporate the conditions and limitations that are stated in those grants of exemption.

(8) *Proposal to allow pilot schools and provisional pilot schools an exception to the requirement to have a ground training facility when the training course is an online, computer-based training program.*

The FAA proposed to revise § 141.45 to allow an exception for pilot schools and provisional pilot schools to the requirement to have a ground training facility when the training course is an online, computer-based training program. Examples of online, computer-based training are the flight instructor refresher courses, pilot ground school courses, aeronautical knowledge training courses, and some elements of subpart K of part 141 special preparation courses.

When part 141 was originally developed by the FAA in 1960, we did not envision that aviation training would be available on a personal computer via the Internet. More recently, the FAA has approved several training providers to conduct flight instructor refresher training through the Internet. Our experience with this kind of Internet-based training has shown that this training provides an equivalent

level of supervision by the training provider without requiring the student to be physically present in a classroom. The training providers for this kind of Internet-based training have a permanent business location and telephone, and the training course software allows the FAA to monitor the training from a remote site. For this reason, our rules should not prohibit part 141 pilot schools from conducting Internet-based training, nor should there necessarily be a ground training facility when training is being provided via the Internet.

(9) *Proposal to allow pilot schools and provisional pilot schools an exception from the requirement to describe each room used for ground training course is an online, computer-based training program.*

The FAA proposes to revise § 141.55(c)(1) by providing an exception for pilot schools and provisional pilot schools from the requirement to describe each room used for ground training when the training course is an online, computer-based training program. Examples of online, computer-based training are flight instructor refresher courses, pilot ground school courses, aeronautical knowledge training courses, and some elements of appendix K, part 141 for special preparation courses. We are proposing this change for the same reasons previously discussed in proposal No. 8 of this preamble.

(10) *Commercial pilot certification course for an airplane single-engine class rating—Proposal to replace the 10 hours of complex airplane training requirement with 10 hours of advanced instrument training.*

The FAA proposes to revise part 141, appendix D, paragraph 4.(b)(1)(ii) to correspond to the change proposed for § 61.129(a)(3)(ii), which is previously discussed in proposal No. 5 of this preamble document. This proposed change would require part 141 pilot schools to revise their commercial pilot certification courses by replacing 10 hours of training in a “complex airplane” with 10 hours of advanced instrument training in a single-engine airplane, or in a flight simulator, flight training device, or an aviation training device that replicates a single engine airplane.

(11) *Commercial pilot certification course for an airplane multiengine class rating—Proposal to replace the 10 hours of complex multiengine airplane training requirement with 10 hours of advanced instrument training.*

The FAA proposes to revise part 141, appendix D, paragraph 4.(b)(2)(ii) to correspond to the change proposed for

§ 61.129(b)(3)(ii), which is previously discussed in proposal No. 6 of this preamble. This proposed change would require part 141 pilot schools to revise their commercial pilot certification courses by replacing 10 hours of training in a “complex multiengine airplane” with 10 hours of advanced instrument training in a multiengine airplane, or in a flight simulator, flight training device, or an aviation training device that replicates a multiengine airplane.

(12) *Additional airplane single-engine class rating at the commercial pilot certification level—Proposal to replace the 10 hours of complex airplane training with 10 hours of advanced instrument training.*

The FAA proposes to revise part 141, appendix I, paragraph 4.(a)(3)(ii) to correspond to the change proposed for part 141, appendix D, paragraph 4.(b)(1)(ii), which is previously discussed in proposal No. 5 of this NPRM document. This proposed change would require part 141 pilot schools to revise their commercial pilot certification courses by replacing 10 hours of training in a “complex airplane” with 10 hours of advanced instrument training in a single-engine airplane, or in a flight simulator, flight training device, or an aviation training device that replicates a single engine airplane.

(13) *Additional airplane multiengine class rating at the commercial pilot certification level—Proposal to replace the 10 hours of complex multiengine airplane training requirement with 10 hours of advanced instrument training.*

The FAA proposes to revise part 141, appendix I, paragraph 4.(b)(2)(ii) to correspond to the change proposed for part 141, appendix D, paragraph 4.(b)(2)(ii), which is previously discussed in proposal No. 6 of this preamble. This proposed change would require part 141 pilot schools to revise their commercial pilot certification courses by replacing 10 hours of training in a “complex multiengine airplane” with 10 hours of advanced instrument training in a multiengine airplane, or in a flight simulator, flight training device, or an aviation training device that replicates a multiengine airplane.

(14) *Additional airplane single-engine class rating at the commercial pilot certification level—Proposal to replace the 10 hours of complex airplane training with 10 hours of advanced instrument training.*

The FAA proposes to revise part 141, appendix I, paragraph 4.(j)(2)(ii) to correspond to the change proposed for part 141, appendix I, paragraph

4.(a)(3)(ii), which is previously discussed in proposal No. 5 of this preamble. This proposed change would require part 141 pilot schools to revise their commercial pilot certification courses by replacing 10 hours of training in a “complex airplane” with 10 hours of advanced instrument training in a single-engine airplane, or in a flight simulator, flight training device, or an aviation training device that replicates a single engine airplane.

(15) *Additional airplane multiengine class rating at the commercial pilot certification level—Proposal to replace the 10 hours of complex multiengine airplane training with 10 hours of advanced instrument training.*

The FAA proposes to revise part 141, appendix I, paragraph 4.(k)(2)(ii) to correspond to the change proposed for part 141, appendix I, paragraph 4.(b)(2)(ii), which is previously discussed in proposal No. 6 of this preamble. This proposed change would require part 141 pilot schools to revise their commercial pilot certification courses by replacing 10 hours of training in a “complex multiengine airplane” with 10 hours of advanced instrument training in a multiengine airplane, or in a flight simulator, flight training device, or an aviation training device that replicates a multiengine airplane.

(16) *Proposal to establish a combined private certification and instrument rating course.*

The FAA proposes to add new Appendix M to part 141 to correspond to the change proposed for § 61.65(a)(1), which is discussed in proposal No. 3 of this preamble. This proposed change would provide for a combined private pilot certification and instrument rating course. As discussed in proposal No. 3 of this preamble, we propose to allow an applicant for an instrument rating to concurrently apply for a private pilot certificate.

Under this proposal, the training requirements would be 65 hours of ground training and 70 hours of flight training that includes 5 hours of flying solo. The proposal would allow the use of flight simulators, flight training devices, and aviation training devices. The percentage of usage allowed to be conducted in flight simulators, flight training devices, and aviation training devices can be found in proposed paragraph 4.(c) in appendix M to part 141.

V. Regulatory Notices and Analyses

Paperwork Reduction Act

There are no new information collection requirements associated with

this NPRM. Existing information collection requirements have been approved previously by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and have been assigned OMB Control Number 2120-0021.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this proposed rule: (1) Has benefits that justify its costs; (2) is not an economically "significant regulatory action" as defined in section

3(f) of Executive Order 12866; however, the Office of Management and Budget has determined that this NPRM is a "significant regulatory action" because it harmonizes U.S. aviation standards with those of other civil aviation authorities, (3) is "significant" as defined in DOT's Regulatory Policies and Procedures; (4) would not have a significant economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign commerce of the United States; and (6) would not impose an unfunded mandate on State, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Benefit-Cost Analysis Summary

A. Proposal To Require PIC Proficiency Checks for PICs of Single Piloted Turbojet-Powered Airplanes

Costs—The FAA estimates that there are currently about 1,550 single piloted turbojet airplanes, and more to be manufactured in the future. The FAA estimates that only approximately 325 of these airplanes are ever flown with a single pilot. The cost of PIC proficiency checks varies by the type of airplane as well as whether the check is performed in a simulator or an airplane, ranging from \$600 to \$2,000 per hour. In many instances, insurance carriers require annual PIC training in single piloted turbojet airplanes, so most pilots already undergo annual PIC proficiency checks to qualify for the premium reduction. Requiring proficiency checks on single piloted, turbojet-powered airplanes would be a new requirement. The FAA estimates that over 10 years costs would sum to approximately \$26.8 million.

Benefits—In July 2005, the FAA convened a study group, the VLJ Cross Organizational Group, to identify areas of concern regarding the safe operation of light jets and other single piloted turbojet-powered airplanes. The FAA and this study group noted that existing regulations are currently written so that pilots in charge of other single piloted turbojet-powered airplanes are not required to receive recurrent PIC proficiency checks. The FAA is concerned these PICs could take a flight review in a small general aviation aircraft and still fly legally and carry passengers in single piloted turboprop-powered airplanes that are capable of operating at speeds of over 500 knots and with commercial jets. This proposal to require proficiency checks in single piloted, turbojet-powered airplanes and other single piloted airplanes would

ensure that this would not occur, and constitutes an increase in safety.

B. Proposal To Allow the Conversion of a Foreign Pilot License to a U.S. Pilot Certificate Based on an Implementation Procedure for Licensing (IPL) Agreement

Costs and Benefits—There would be no incremental costs of implementing the Bilateral Aviation Safety Agreement (BASA). Removing barriers to getting pilot certificates and licenses and flying in both countries would encourage greater ease in flying and more efficient enforcement. By facilitating acceptance of various aspects of each country's aviation safety oversight system, the proposal should lead to less burden for pilots and aviation authorities, and could engender cost savings.

C. Proposal To Allow Pilot Schools To Use Internet-Based Training Programs Without Requiring Schools To Have a Ground Training Facility

Costs—The FAA estimates that there are currently six operators that provide online training and that between five and fifteen pilot schools might initially consider adding an on-line curriculum. The FAA has no estimate of how many more would offer this service in the longer term. FAA bases its cost estimates on an additional 10 pilot schools initially electing to use this option. The costs would involve the costs of submitting a training course for FAA approval and the FAA's processing costs. The FAA estimates that the total initial costs would sum to \$10,800.

Benefits—The FAA has in the past extended approval to several training providers to conduct flight instructor refresher training via the Internet. The FAA has found this kind of training is the equivalent to that provided in a classroom setting. Pilot schools would be able to realize cost savings through the need for fewer instructors, reduced costs of curriculum maintenance, and less classroom and auxiliary support space. The extent of savings would vary by provider. The FAA calls for comments on the potential cost savings. The FAA envisions the proposal to be a win-win situation for operators, course developers, pilots, and the FAA.

D. Proposal To Change the Definition of "Complex Airplane" and Eliminate the "Complex Airplane" Training Requirements for Commercial Pilot and Flight Instructor Certification

Costs—This change would not result in incremental costs; rather, it would result in cost savings which are considered a benefit as described below.

Benefits—The FAA believes that this proposal would result in cost savings to

pilot schools and training providers because they wouldn't have to keep an inventory of two kinds of airplanes to meet the commercial pilot and flight instructor certification requirements. The FAA estimates that each pilot school and training provider could save as much as \$1,000 per airplane per month in maintenance and leasing costs. The FAA does not have data on the number of pilot schools and training providers maintaining inventories of airplanes equipped with the FADEC system and those without. Therefore, the FAA calls for comments on current and planned inventory levels of airplanes equipped with the FADEC system.

Substituting 10 hours of instrument training for 10 hours of "complex airplane" training would allow students to use their time more efficiently. There are fewer "complex airplanes" that anyone could fly, students would benefit more by using these extra 10 hours for instrument training rather than flying "complex airplanes." Safety could be increased by the students getting the more useful instrument flying training.

For students, there may be cost implications to the extent that they can substitute the 10 hours in a "complex airplane" for instrument training simulator time. Under the current regulations, commercial pilot applicants are permitted to credit 25 hours in a flight simulator/flight training device toward the commercial pilot certificate, and this would not change. However, in some cases, it is possible that some applicants could benefit. It is possible that substituting instrument training for "complex airplanes" would make applicants more likely to use simulators if they would not have already trained for 25 hours in a flight simulator and so would save in terms of flight instructor costs. However, the FAA does not know how many applicants would substitute time from the currently required "complex airplane" training for instrument simulator time and so calls for comments.

E. Proposal To Allow Pilot Applicants to Apply for a Private Pilot Certificate and Instrument Rating Concurrently

Costs and Benefits—There would be cost implications for applicants, pilot schools, and the FAA, as described below.

1. Applicants

Currently, the majority of applicants obtain their pilot certification outside of a part 141 pilot school because there are more fixed base operators and independent flight instructors than

there are part 141 pilot schools. However, because the amount of time required would diminish substantially under part 141 pilot school training, the FAA believes that some applicants who would otherwise get their certificates under part 61 would seek out part 141 pilot schools to receive their combined private pilot certification and instrument rating.

Over the years, about 30% of applicants for pilot certification have graduated from part 141 pilot schools. The FAA estimates that about 2% of applicants would attempt to get a combined private pilot and instrument rating. The relatively low percentage results from the costs, time, and complexity of taking the combined training, and reflects the experience of schools operating under an exemption that permitted combined training. The FAA estimates a time advantage of 20 hours for the combined rating as opposed to the individual ratings.

Cost savings would be a function of the number of applicants getting the combined certificate at part 141 schools, having to take one less exam, and filling out one less application form. FAA estimates annual cost savings for applicants of \$675,400 and ten-year costs savings of \$6.75 million.

2. Schools

Of the part 141 pilot schools, 367 schools provide courses for private pilot airplane certification and instrument-airplane ratings. The FAA does not know how many of these 367 schools would apply for a combined private and instrument course and calls for comments on the likelihood of schools exercising this option, and the estimated costs and benefits from doing so. Each pilot school would need to modify its syllabus to accommodate this change and submit it to its local FSDO for approval.

3. FAA

There would be both costs and cost savings to the FAA, the former involving the processing of modified syllabi and the latter involving the need to process fewer applications. At the FADO, the ASI would review and approve the course. Each applicant getting a combined private pilot and instrument rating would have to submit one less application form to the FAA for approval. Ten-year quantifiable net cost savings to the FAA would sum to \$9,700.

In addition to cost saving benefits, there would also be safety benefits. Currently, many pilots get their private pilot certificate and then wait before getting their instrument rating. Until

they get their instrument rating, they fly under visual flight rules (VFR). They are not qualified to fly into instrument meteorological conditions (IMC). Until they qualify for their instrument rating, they are at greater risk of weather-related accidents if changing weather conditions result in their operating into IMC. The FAA believes that combined private pilot certification and instrument rating would reduce weather-related accidents. While these types of accidents comprise approximately 4.0% of total accidents for single-engine airplanes with a fixed landing gear, they account for approximately 14.0% of the fatal accidents in such airplanes. The FAA reviewed 1,928 general aviation fatal accidents from October 2002 through June 2007. About 70% of eligible pilots were instrument rated; however, about 75% of these accidents occurred under VMC. Pilots flying under VFR in bad weather are more likely to attempt to use VMC to land. About 45% of pilots flying under VFR or with no flight plan had accidents, while only 10% of pilots flying under IOFR had accidents. It is very possible that better flight planning for minimum safe altitudes in the event of inadvertent instrument meteorological conditions (IMC) would help more than altitude instrument flying and unusual altitude recovery training. Many fatal accidents are due to pilots being unable to control the airplane using instruments when they inadvertently enter IMC. However, if a pilot has an instrument rating when he or she first gets his or her private pilot certificate, then he or she is less likely to lose control of the aircraft. Thus, combined private pilot certification and instrument rating has the potential to reduce weather-related accidents of VFR flights into IMC.

F. Total Costs

Total costs of these proposals over 10 years sum to \$20.01 million (\$13.27 million, discounted).

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of

small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

For this rule, affected small entity groups are considered to be corporations that own aircraft, pilot schools, and training providers. The corresponding North American Industry Classification System [NAICS] are 481211 (Non scheduled Chartered Passenger Air Transportation) and 611512 (Flight Training), respectively. Some of the proposals affect only pilots; however, pilots are not considered to be small entities, so there would no small entity impact on pilots. The remainder of this section discusses small entity impacts in the same order as the groupings above for the benefit-cost analysis summary.

A. The proposal requiring proficiency checks for pilots in command of single piloted turbojet-powered airplanes would affect pilots, pilot examiners, and corporations that own these airplanes. Pilots are not entities, so there would not be a small entity impact with regards to pilots. The vast majority of the pilot proficiency examiners are employees of the operator, the corporation, and those that are not employees would not be considered small businesses. The cost of a proficiency check is about \$1,300. Given the assumption of 1.5 pilots for each single piloted, turbojet-powered airplanes and the assumption that few corporations would have more than a few VLJs, the overall impact of these proficiency checks would be minimal, and so there would not be a significant impact.

B. The proposal to allow foreign pilot applicants to convert their foreign pilot license to a U.S. pilot certificate issued on the basis of an IPL agreement would affect pilots, who are not considered to be small entities.

C. The proposal to allow pilot schools to use online training without requiring a physical ground training facility would be optional. The FAA does not believe that more than 5 to 15 schools would initially take advantage of this proposal. Schools would opt to do this only if they believe that the ultimate pay off, in terms of additional students and revenue, would outweigh start-up costs and the annual maintenance costs. The FAA does not believe that there would be a significant impact on a substantial number of entities.

D. Small businesses that would be affected by the revised definition of "complex airplane" would be schools and training providers. Many pilot schools would not have to keep an inventory of two kinds of airplanes to meet the commercial pilot and flight instructor certification requirements. This would engender cost savings, which the FAA estimates at \$1,000 per airplane annually. Accordingly, the FAA believes that this proposal would not have a significant economic impact on a substantial number of small entities.

The proposal to replace the requirement for 10 hours of "complex airplane" aeronautical experience with 10 hours of specific advanced instrument training with regards to the training required for a commercial pilot certificate would not have a small entity impact because pilots are not considered to be small entities.

E. The proposal allowing applicants to apply for a private pilot certificate and instrument rating concurrently and allow pilot schools to apply for a combined private pilot certification and instrument rating course would affect pilots and pilot schools. Pilots are not small businesses, so there would not be a small entity impact. Each pilot school would have one-time costs to purchase and process the new syllabus before submission to the FSDO of under \$1,000, which would not be a significant impact.

Therefore, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments regarding this determination.

International Trade Impact Statement

The trade Agreements Act of 1979 (Pub. L. 96-39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The

statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and believes that it would impose the same costs on domestic and international entities and, thus have a neutral trade impact.

Unfunded Mandates Determination

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$136.1 million in lieu of \$100 million.

This proposed rule does not contain such a mandate. Therefore the requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have federalism implications.

Plain English

Executive Order 12866 (58 FR 51735, October 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain unnecessary technical language or jargon that interferes with their clarity?
- Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the proposed regulations? Please send your comments to the address specified in the **ADDRESSES** section.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded

from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 307(k) and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. Additional Information

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after that comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER**

INFORMATION CONTACT section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD ROM, mark the outside of the disk or CD ROM and also identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place in the docket. We hold it in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by—

- 1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
- 2. Visiting the FAA's Regulations and Policies Web page at: http://www.faa.gov/regulations_policies/; or
- (3) Accessing the Government Printing Office's Web page at: <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the internet through the Federal eRulemaking Portal referenced in paragraph (1).

List of Subjects

14 CFR Part 61

Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Recreation and recreation areas, Reporting and recordkeeping requirements, Security measures, Teachers.

14 CFR Part 91

Afghanistan, Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Cuba, Ethiopia, Freight, Mexico, Noise control, Political candidates, Reporting and recordkeeping requirements, Yugoslavia.

14 CFR Part 141

Airmen, Educational facilities, Reporting and recordkeeping requirements, Schools.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter I of Title 14, Code of Federal Regulations, and, at amendatory instruction 14, as amended on August 21, 2009 (74 FR 42566), and effective October 20, 2009, as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701-44703, 44707, 44709-44711, 45102-45103, 45301-45302.

2. Amend § 61.1 by re-designating paragraphs (b)(3) through (b)(16) as paragraphs (b)(4) through (b)(17) respectively, and by adding a new paragraph (b)(3) to read as follows:

§ 61.1 Applicability and definitions.

* * * * *

(b) * * *

(3) *Complex airplane* means an airplane that has a retractable landing gear, flaps, and a controllable pitch propeller, including airplanes equipped with an engine control system consisting of a digital computer and associated accessories for controlling the engine and propeller, such as a full authority digital engine control (FADEC). A complex seaplane would not necessarily be equipped with a retractable landing gear.

* * * * *

Amend § 61.31 by revising the introductory text of paragraph (e)(1) to read as follows:

§ 61.31 Type rating requirements, additional training, and authorization requirements.

* * * * *

(e) * * *

(1) Except as provided in paragraph (e)(2) of this section, no person may act as pilot in command of a complex airplane, unless the person has—

* * * * *

4. Amend § 61.58 by revising the section heading; paragraphs (a), (d)(1), (d)(2), (d)(3), and (d)(4) to read as follows:

§ 61.58 Pilot-in-command proficiency check: Operation of an aircraft that requires more than one pilot flight crewmember or is turbojet-powered.

(a) Except as otherwise provided in this section, to serve as pilot in

command of an aircraft that is type certificated for more than one required pilot crewmember, or is turbojet-powered, a person must—

(1) Within the preceding 12 calendar months, complete a pilot-in-command proficiency check in an aircraft in which that person will serve as pilot-in-command, that is type certificated for more than one required pilot flight crewmember, or is turbojet-powered; and

(2) Within the preceding 24 calendar months, complete a pilot-in-command proficiency check in the particular type of aircraft in which that person will serve as pilot-in-command, that is type certificated for more than one required pilot flight crewmember, or is turbojet-powered.

* * * * *

(d) * * *

(1) A pilot-in-command proficiency check conducted by a person authorized by the Administrator, consisting of the aeronautical knowledge areas, areas of operations, and tasks required for a type rating, in an aircraft that is type certificated for more than one pilot flight crewmember or is turbojet-powered.

(2) The practical test required for a type rating, in an aircraft that is type certificated for more than one required pilot flight crewmember or is turbojet-powered;

(3) The initial or periodic practical test required for the issuance of a pilot examiner or check airman designation, in an aircraft that is type certificated for more than one required pilot flight crewmember or is turbojet-powered;

(4) A pilot proficiency check administered by a U.S. Armed Force that qualifies the military pilot for pilot-in-command designation with instrument privileges, and was performed in a military aircraft that the military requires to be operated by more than one pilot flight crewmember or is turbojet-powered.

* * * * *

5. Amend § 61.65 by revising paragraph (a)(1) to read as follows:

§ 61.65 Instrument rating requirements.

(a) * * *

(1) Hold at least a current private pilot certificate, or be concurrently applying for a private pilot certificate, with an airplane, helicopter, or powered-lift rating appropriate to the instrument rating sought;

* * * * *

6. Amend § 61.71 by adding new paragraph (c) to read as follows:

§ 61.71 Graduates of an approved training program other than under this part: Special rules.

* * * * *

(c) A person who holds a foreign pilot license and is applying for an equivalent U.S. pilot certificate on the basis of an approved Implementation Procedures for Licensing agreement is considered to have met the applicable aeronautical experience, aeronautical knowledge, and areas of operation requirements of this part.

7. Amend § 61.129 by revising paragraphs (a)(3)(ii) and (b)(3)(ii) to read as follows:

§ 61.129 Aeronautical experience.

(a) * * *

(3) * * *

(ii) 10 hours of advanced instrument training in a single engine airplane, or in a flight simulator, flight training device, or an aviation training device that replicates a single engine airplane, and the training must include instrument approaches consisting of both precision and non-precision approaches, holding at navigational radio stations, intersections, waypoints, and cross-country flying that involves performing takeoff, area departure, enroute, area arrival, approach, and missed approach phases of flight;

* * * * *

(b) * * *

(3) * * *

(ii) 10 hours of advanced instrument training in a multiengine airplane, or in a flight simulator, flight training device, or an aviation training device that replicates a multiengine airplane, and the training must include instrument approaches consisting of both precision and non-precision approaches, holding at navigational radio stations, intersections, waypoints, and cross-country flying that involves performing takeoff, area departure, enroute, area arrival, approach, and missed approach phases of flight;

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

8. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

9. Amend § 91.109 by revising paragraphs (a) introductory text and (b)(3) to read as follows:

§ 91.109 Flight instruction; Simulated instrument flight and certain flight tests.

(a) No person may operate a civil aircraft (except a manned free balloon) that is being used for flight instruction unless that aircraft has fully functioning dual controls. However, instrument flight instruction may be given in an airplane that is equipped with a single, functioning throwover control wheel that controls the elevator and ailerons, in place of fixed, dual controls, when—

* * * * *

(b) * * *

(3) Except in the case of lighter-than-air aircraft, the aircraft must be equipped with fully functioning dual controls. However, an airplane equipped with a single functioning, throwover control wheel that controls the elevator and ailerons may be used in accordance with the following conditions and limitations:

(1) The airplane's pilot stations must be side-by-side seating.

(ii) An airplane with only a single functioning, throwover control wheel must be equipped with operable rudder pedals at both pilot stations.

(iii) An airplane equipped with a single functioning, throwover control wheel may be used for:

(A) Conducting a flight review required by § 61.56 of this chapter.

(B) Obtaining a recent flight experience as required by § 61.57 of this chapter.

(C) Maintaining instrument proficiency as required by § 61.57(c) or (d) of this chapter.

(iv) The pilot manipulating the controls of an airplane with only a single functioning, throwover control wheel must be qualified to, and serve as, pilot in command of the airplane.

(v) To serve as a flight instructor in an airplane with only a single functioning, throwover control wheel, that flight instructor must:

(A) Be current and qualified to serve as the pilot in command and flight instructor in the airplane involved, as required by § 61.195(b) and (f) of this chapter; and

(B) Have logged at least 25 hours of pilot in command flight time in that make and model of airplane with a single, functioning throwover control wheel involved.

* * * * *

PART 141—PILOT SCHOOLS

10. The authority citation for 14 CFR part 141 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709, 44711, 45102–45103, 45301–45302.

11. Revise § 141.45 to read as follows:

§ 141.45 Ground training facilities.

An applicant for a pilot school or provisional pilot school certificate must show that:

- (a) Except as provided in paragraph (c) of this section, each room, training booth, or other space used for instructional purposes is heated, lighted, and ventilated to conform to local building, sanitation, and health codes.
- (b) Except as provided in paragraph (c) of this section, the training facility is so located that the students in that facility are not distracted by the training conducted in other rooms, or by flight and maintenance operations on the airport.
- (c) If a training course is conducted through an Internet-based medium, the pilot school or provisional pilot school that provides the training must comply with the following:
 - (1) The school must maintain a permanent business location and business telephone number.
 - (2) The school must inform the FAA within 3 working days of any change of location of its permanent business address.
 - (3) The school must maintain its FAA-approved training course outline and student records at its permanent business location.
 - (4) The school must ensure that its approved Training Course Outlines are adhered to by its students and instructors.
 - (5) The school will issue to each graduate of its approved training courses, a sequentially numbered graduation certificate containing at least the following information:
 - (i) The school's full business name and address.
 - (ii) The full name and address of each graduate.
 - (iii) The date of issuance of the graduation certificate.
 - (iv) In accordance with § 61.719a) of this chapter, a statement that the graduation certificate is valid for 60 days from the date of issuance.
 - (v) The signature of the chief instructor or its FAA-approved Airman Certification Representative (ACR).
 - (6) The school must maintain a record of the complete name and address of all of its students, whether a graduation certificate was issued or denied. If a graduation certificate is denied, the reason must be stated in that student's file. Student records must be maintained for a period of at least 12 calendar months after the student has completed or was terminated from the training course.

- (7) The school must maintain in current status, its mailing address, telephone number, and facsimile number for a point of contact for all its Internet-based training courses.
- (8) The school must submit its training course outlines revisions to the FAA that are identified numerically by page, date, and screen, at least 30 days prior to their planned use of the training course outline. Minor editorial and typographical changes do not require FAA approval, provided the school notifies the FAA within 30 days of their insertion.
- (9) For monitoring purposes, the school must provide the FAA an acceptable means to:
 - (i) Log-in and review all elements of the course as viewed by attendees and to by-pass the normal attendee restrictions.
 - (ii) Logoff at will from a remote location.
- (10) The school must incorporate adequate security measures into its Internet-based courseware information system and into its operating and maintenance procedures to ensure the following fundamental areas of security and protection:
 - (i) Integrity.
 - (ii) Identification/Authentication.
 - (iii) Confidentiality.
 - (iv) Availability.
 - (v) Access Control.
- (11) The pilot school must design its Internet-based courses to ensure that the data will not be exposed to accidental alteration or destruction, and that the data is the same as that in source documents or has been correctly computed from source data without inappropriate alteration.
- (12) When requested by the FAA, the pilot school must make the following information about its Internet-based courses readily available to the FAA in a timely manner. The information must be held in confidence to protect that information from unauthorized disclosure. The information that must be made available to the FAA, includes:
 - (i) Training course material and content.
 - (ii) Name of the student to include the student's pilot certificate number, address, and telephone number.
 - (iii) Training folder or electronic training record, as appropriate, of the individual student.
 - (iv) Tests taken by the individual student.
 - (v) Test results record of the individual student.
 - (vi) Copy of the graduation certificate of the individual student.
- (13) The pilot school must use software in the design of its Internet-

based training courses that provides for accountability and traceability that enables any violations and attempted violations of security protections to be traced to an individual who may have committed such acts.

12. Amend § 141.55 by revising paragraph (c)(1) to read as follows:

§ 141.55 Training course: Contents.

- (c) * * *
 - (1) A description of each room used for ground training, including the room's size and the maximum number of students that may be trained in the room at one time, unless the course is provided via an Internet-based training medium;

13. Amend Appendix D to part 141 by revising paragraphs 4.(b)(1)(ii) and 4.(b)(2)(ii) to read as follows:

Appendix D to Part 141—Commercial Pilot Certification Course

- 4. * * *
 - (b) * * *
 - (1) * * *
 - (ii) 10 hours of advanced instrument training in a single-engine airplane, or in a flight simulator, flight training device, or an aviation training device that replicates a single-engine airplane, and the training must include instrument approaches consisting of both precision and non-precision approaches, holding at navigational radio stations, intersections, waypoints, and cross-country flying that involves performing takeoff, area departure, enroute, area arrival, approach, and missed approach phases of flight;
 - (2) * * *
 - (ii) 10 hours of advanced instrument training in a multiengine airplane, or in a flight simulator, flight training device, or an aviation training device that replicates a multiengine airplane, and the training must include instrument approaches consisting of both precision and non-precision approaches, holding at navigational radio stations, intersections, waypoints, and cross-country flying that involves performing takeoff, area departure, enroute, area arrival, approach, and missed approach phases of flight;

14. Amend Appendix I to part 141, as amended on August 21, 2009 (74 FR 42566), and effective October 20, 2009, by revising paragraphs 4.(a)(3)(ii), (b)(2)(ii), (j)(2)(ii), and (k)(2)(ii) to read as follows:

Appendix I to Part 141—Additional Aircraft Category and/or Class Rating Course

- 4. * * *
 - (a) * * *

(3) * * *

(ii) 10 hours of advanced instrument training in a single-engine airplane, or in a flight simulator, flight training device, or an aviation training device that replicates a single-engine airplane and the training must include instrument approaches consisting of both precision and non-precision approaches, holding at navigational radio stations, intersections, waypoints, and cross-country flying that involves performing takeoff, area departure, enroute, area arrival, approach, and missed approach phases of flight;

* * * * *

(b) * * *

(2) * * *

(ii) 10 hours of advanced instrument training in a multiengine airplane, or in a flight simulator, flight training device, or an aviation training device that replicates a multiengine airplane and the training must include instrument approaches consisting of both precision and non-precision approaches, holding at navigational radio stations, intersections, waypoints, and cross-country flying that involves performing takeoff, area departure, enroute, area arrival, approach, and missed approach phases of flight;

* * * * *

(i) * * *

(2) * * *

10 hours of advanced instrument training in a single-engine airplane, or in a flight simulator, flight training device, or an aviation training device that replicates a single-engine airplane and the training must include instrument approaches consisting of both precision and non-precision approaches, holding at navigational radio stations, intersections, waypoints, and cross-country flying that involves performing takeoff, area departure, enroute, area arrival, approach, and missed approach phases of flight;

* * * * *

(k) * * *

(2) * * *

(ii) 10 hours of advanced instrument training in a multiengine airplane, or in a flight simulator, flight training device, or an aviation training device that replicates a multiengine airplane and the training must include instrument approaches consisting of both precision and non-precision approaches, holding at navigational radio stations, intersections, waypoints, and cross-country flying that involves performing takeoff, area departure, enroute, area arrival, approach, and missed approach phases of flight;

* * * * *

15. Add new Appendix M to Part 141 to read as follows:

Appendix M to Part 141—Combined Private Pilot Certification and Instrument Rating Course

1. *Applicability.* This appendix prescribes the minimum curriculum for a combined private pilot certification and instrument rating course required under this part, for the following ratings:

(a) Airplane.

(1) Airplane single engine.

(2) Airplane multiengine.

(b) Rotocraft helicopter.

(c) Powered-lift.

2. *Eligibility for enrollment.* A person must hold a sport pilot, recreational, or student pilot certificate prior to enrolling in the flight portion of a combined private pilot certification and instrument rating course.

3. *Aeronautical knowledge training.*

(a) Each approved course must include at least 65 hours of ground training on the aeronautical knowledge areas listed in paragraph (b) of this section that are appropriate to the aircraft category and class rating of the course:

(b) Ground training must include the following aeronautical knowledge areas:

(1) Applicable Federal Aviation Regulations for private pilot privileges, limitations, flight operations, and IFR flight operations.

(2) Accident reporting requirements of the National Transportation Safety Board.

(3) Applicable subjects of the "Aeronautical Information Manual" and the appropriate FAA advisory circulars.

(4) Aeronautical charts for VFR navigation using pilotage, dead reckoning, and navigation systems.

(5) Radio communication procedures.

(6) Recognition of critical weather situations from the ground and in flight, windshear avoidance, and the procurement and use of aeronautical weather reports and forecasts.

(7) Safe and efficient operation of aircraft and under instrument flight rules and conditions.

(8) Collision avoidance and recognition and avoidance of wake turbulence.

(9) Effects of density altitude on takeoff and climb performance.

(10) Weight and balance computations.

(11) Principles of aerodynamics, powerplants, and aircraft systems.

(12) If the course of training is for an airplane category, stall awareness, spin entry, spins, and spin recovery techniques.

(13) Air traffic control system and procedures for instrument flight operations.

(14) IFR navigation and approaches by use of navigation systems.

(15) Use of IFR en route and instrument approach procedure charts.

(16) Aeronautical decision making and judgment.

(17) Preflight action that includes—

(i) How to obtain information on runway lengths at airports of intended use, data on takeoff and landing distances, weather reports and forecasts, and fuel requirements.

(ii) How to plan for alternatives if the planned flight cannot be completed or delays are encountered.

(iii) Procurement and use of aviation weather reports and forecasts, and the elements of forecasting weather trends on the basis of that information and personal observation of weather conditions.

4. *Flight training.*

(a) Each approved course must include at least seventy hours of training, as described in section 4 and section 5 of this appendix, on the approved areas of operation listed in

paragraph (d) of section 4 that are appropriate to the aircraft category and class rating of the course:

(b) Each approved course must include at least the following flight training:

(1) *For an airplane single-engine course:* Seventy hours of flight training from an authorized instructor on the approved areas of operation in paragraph (d)(1) of this section that includes at least—

(i) Except as provided in § 61.111 of this chapter, 3 hours of cross-country flight training in a single-engine airplane.

(ii) Three hours of night flight training in a single-engine airplane that includes—

(A) One cross-country flight of more than 100 nautical miles total distance.

(B) Ten takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.

(iii) Thirty-five hours of instrument flight training in a single-engine airplane that includes at least one cross-country flight that is performed under IFR and—

(A) Is a distance of at least 250 nautical miles along airways or ATC-directed routing with one segment of the flight consisting of at least a straight-line distance of 100 nautical miles between airports.

(B) Involves an instrument approach at each airport.

(C) Involves three different kinds of approaches with the use of navigation systems.

(iv) Three hours of flight training in a single-engine airplane in preparation for the practical test within 60 days preceding the date of the test.

(2) *For an airplane multiengine course:* Seventy hours of training from an authorized instructor on the approved areas of operation in paragraph (d)(2) of this section that includes at least—

(i) Except as provided in § 61.111 of this chapter, 3 hours of cross-country flight training in a multiengine airplane.

(ii) Three hours of night flight training in a multiengine airplane that includes—

(A) One cross-country flight of more than 100 nautical miles total distance.

(B) Ten takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.

(iii) Thirty-five hours of instrument flight training in a multiengine airplane that includes at least one cross-country flight that is performed under IFR and—

(A) Is a distance of at least 250 nautical miles along airways or ATC-directed routing with one segment of the flight consisting of at least a straight-line distance of 100 nautical miles between airports.

(B) Involves an instrument approach at each airport.

(C) Involves three different kinds of approaches with the use of navigation systems.

(iv) Three hours of flight training in a multiengine airplane in preparation for the practical test within 60 days preceding the date of the test.

(3) *For a rotorcraft helicopter course:* Seventy hours of training from an authorized instructor on the approved areas of operation in paragraph (d)(3) of this section that includes at least—

(i) Except as provided in § 61.111 of this chapter, 3 hours of cross-country flight training in a helicopter.

(ii) Three hours of night flight training in a helicopter that includes—

(A) One cross-country flight of more than 50 nautical miles total distance.

(B) Ten takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.

(iii) Thirty-five hours of instrument flight training in a helicopter that includes at least one cross-country flight that is performed under IFR and—

(A) Is a distance of at least 100 nautical miles along airways or ATC-directed routing with one segment of the flight consisting of at least a straight-line distance of 50 nautical miles between airports.

(B) Involves an instrument approach at each airport.

(C) Involves three different kinds of approaches with the use of navigation systems.

(iv) Three hours of flight training in a helicopter in preparation for the practical test within 60 days preceding the date of the test.

(4) *For a powered-lift course:* Seventy hours of training from an authorized instructor on the approved areas of operation in paragraph (d)(4) of this section that includes at least—

(i) Except as provided in § 61.111 of this chapter, 3 hours of cross-country flight training in a powered-lift.

(ii) Three hours of night flight training in a powered-lift that includes—

(A) One cross-country flight of more than 100 nautical miles total distance.

(B) Ten takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.

(iii) Thirty-five hours of instrument flight training in a powered-lift that includes at least one cross-country flight that is performed under IFR and—

(A) Is a distance of at least 250 nautical miles along airways or ATC-directed routing with one segment of the flight consisting of at least a straight-line distance of 100 nautical miles between airports.

(B) Involves an instrument approach at each airport.

(C) Involves three different kinds of approaches with the use of navigation systems.

(iv) Three hours of flight training in a powered-lift in preparation for the practical test, within 60 days preceding the date of the test.

(c) For use of flight simulators or flight training devices:

(1) The course may include training in a combination of flight simulators, flight training devices, and aviation training device, provided it is representative of the aircraft for which the course is approved, meets the requirements of this section, and the training is given by an authorized instructor.

(2) Training in a flight simulator that meets the requirements of § 141.41(a) of this part may be credited for a maximum of 35 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(3) Training in a flight training device or aviation training device that meets the requirements of § 141.41(b) of this part may be credited for a maximum of 25 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(4) Training in a combination of flight simulators, flight training devices, or aviation training devices, described in paragraphs (c)(2) and (c)(3) of this section, may be credited for a maximum of 35 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less. However, credit for training in a flight training device and aviation training device, that meets the requirements of § 141.41(b), cannot exceed the limitation provided for in paragraph (c)(3) of this section.

(d) Each approved course must include the flight training on the approved areas of operation listed in this section that are appropriate to the aircraft category and class rating course—

(1) *For a combined private pilot certification and instrument rating course involving a single-engine airplane:*

- (i) Preflight preparation.
- (ii) Preflight procedures.
- (iii) Airport and seaplane base operations.
- (iv) Takeoffs, landings, and go-arounds.
- (v) Performance maneuvers.
- (vi) Ground reference maneuvers.
- (vii) Navigation and navigation systems.
- (viii) Slow flight and stalls.

(ix) Basic instrument maneuvers, flight by reference to instruments, and instrument approach procedures.

(x) Air traffic control clearances and procedures.

- (xi) Emergency operations.
- (xii) Night operations.
- (xiii) Postflight procedures.

(2) *For a combined private pilot certification and instrument rating course involving a multiengine airplane:*

- (i) Preflight preparation.
- (ii) Preflight procedures.
- (iii) Airport and seaplane base operations.
- (iv) Takeoffs, landings, and go-arounds.
- (v) Performance maneuvers.
- (vi) Ground reference maneuvers.
- (vii) Navigation and navigation systems.

(viii) Basic instrument maneuvers, flight by reference to instruments, and instrument approach procedure.

- (viii) Slow flight and stalls.

(ix) Basic instrument maneuvers, flight by reference to instruments, and instrument approach procedures.

(x) Air traffic control clearances and procedures.

- (xi) Emergency operations.
- (xii) Multiengine operations.
- (xiii) Night operations.
- (xiv) Postflight procedures.

(3) *For a combined private pilot certification and instrument rating course involving a helicopter:*

- (i) Preflight preparation.
- (ii) Preflight procedures.
- (iii) Airport and heliport operations.
- (iv) Hovering maneuvers.
- (v) Takeoffs, landings, and go-arounds.
- (vi) Performance maneuvers.

(vii) Navigation and navigation systems.
(viii) Basic instrument maneuvers, flight by reference instruments, and instrument approach procedures.

(ix) Air traffic control clearances and procedures.

(x) Emergency operations.

(xi) Night operations.

(xii) Postflight procedures.

(4) *For a combined private pilot certification and instrument rating course involving a powered-lift:*

- (i) Preflight preparation.
- (ii) Preflight procedures.
- (iii) Airport and heliport operations.
- (iv) Hovering maneuvers.
- (v) Takeoffs, landings, and go-arounds.
- (vi) Performance maneuvers.
- (vii) Ground reference maneuvers.
- (viii) Navigation and navigation systems.
- (ix) Slow flight and stalls.

(x) Basic instrument maneuvers, flight by reference to instruments, and instrument approach procedures.

(xi) Air traffic control clearances and procedures.

(xii) Emergency operations.

(xiii) Night operations.

(xiv) Postflight procedures.

5. *Solo flight training.* Each approved course must include at least the following solo flight training:

(a) *For a combined private pilot certification and instrument rating course involving an airplane single-engine:* Five hours of flying solo in a single-engine airplane on the appropriate areas of operation in paragraph (d)(1) of section 4 of this appendix that includes at least—

(1) One solo cross-country flight of at least 100 nautical miles with landings at a minimum of three points, and one segment of the flight consisting of a straight-line distance of at least 50 nautical miles between the takeoff and landing locations.

(2) Three takeoffs and three landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

(b) *For a combined private pilot certification and instrument rating course involving an airplane multiengine:* Five hours of flying solo in a multiengine airplane or 5 hours of performing the duties of a pilot in command while under the supervision of an authorized instructor. The training must consist of the appropriate areas of operation in paragraph (d)(2) of section 4 of this appendix, and include at least—

(1) One cross-country flight of at least 100 nautical miles with landings at a minimum of three points, and one segment of the flight consisting of a straight-line distance of at least 50 nautical miles between the takeoff and landing locations.

(2) Three takeoffs and three landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

(c) *For a combined private pilot certification and instrument rating course involving a helicopter:* Five hours of flying solo in a helicopter on the appropriate areas of operation in paragraph (d)(3) of section 4 of this appendix that includes at least—

(1) One solo cross-country flight of at least 50 nautical miles with landings at a

minimum of three points, and one segment of the flight consisting of a straight-line distance of at least 50 nautical miles between the takeoff and landing locations.

(2) Three takeoffs and three landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

(d) *For a combined private pilot certification and instrument rating course involving a powered-life:* Five hours of flying solo in a powered-lift on the appropriate areas of operation in paragraph (d)(4) of section 4 of this appendix that includes at least—

(1) One solo cross-country flight of at least 100 nautical miles with landings at a minimum of three points, and one segment of the flight consisting of a straight-line distance of at least 50 nautical miles between the takeoff and landing locations.

(2) Three takeoffs and three landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

6. *Stage checks and end-of-course tests.*

(a) Each student enrolled in a private pilot course must satisfactorily accomplish the stage checks and end-of-course tests in accordance with the school's approved training course that consists of the approved areas of operation listed in paragraph (d) of section 4 of this appendix that are appropriate to the aircraft category and class rating for which the course applies.

(b) Each student must demonstrate satisfactory proficiency prior to receiving an endorsement to operate an aircraft in solo flight.

Issued in Washington, DC, on August 3, 2009.

John M. Allen,

Director, Flight Standards Service.

[FR Doc. E9-20957 Filed 8-28-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 650

[FHWA Docket No. FHWA-2009-0074]

RIN 2125-AF33

National Bridge Inspection Standards

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The American Association of State Highway and Transportation Officials (AASHTO) Manual for Condition Evaluation of Bridges, 1994, second edition (also referred to as “the Manual”), together with the 2001 and 2003 Interim Revisions, is incorporated by reference in 23 CFR part 650, subpart E, approved by the Federal Highway

Administration, and recognized as a national standard for bridge inspections and load rating. The purpose of this notice is to update the incorporation by reference language to incorporate the most recent version of the AASHTO Manual, now known as The Manual for Bridge Evaluation, First Edition, 2008.

DATES: Comments must be received on or before September 30, 2009.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, 1200 New Jersey Avenue, SE., Washington, DC 20590, or submit electronically at <http://www.regulations.gov> or fax comments to (202) 493-2251. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Page 19477-78) or you may visit <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Everett, Office of Bridge Technology, (202) 366-4675; or Mr. Robert Black, Office of the Chief Counsel (202) 366-1359, Federal Highway Administration, 1200 New Jersey Ave., SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Federal eRulemaking portal at: <http://www.regulations.gov>. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. It is available 24 hours each day, 365 days each year. Please follow the instructions. An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: <http://www.archives.gov> and the Government Printing Office's

Web page at: <http://www.access.gpo.gov/nara>.

Background

This NPRM is being issued to provide an opportunity for public comment on the proposed revision to the incorporation by reference of the AASHTO Manual in the National Bridge Inspection Standards (NBIS).

The Manual for Bridge Evaluation, First Edition (MBE) was adopted by the AASHTO Highways Subcommittee on Bridges and Structures in 2005. The MBE combines The Manual for Condition Evaluation of Bridges, Second Edition, and its 2001 and 2003 Interim Revisions with the Guide Manual for Condition Evaluation and Load and Resistance Factor Rating (LRFR) of Highway Bridges, First Edition, and its 2005 Interim Revisions. Revisions based on approved agenda items from annual AASHTO Subcommittee meetings in 2007 and 2008 are also incorporated into the MBE.

The MBE, First Edition, 2008, supersedes The Manual for Condition Evaluation of Bridges, Second Edition, and the 2001 and 2003 Interim Revisions, which are currently incorporated by reference at 23 CFR 650.317. The MBE offers assistance to bridge owners at all phases of bridge inspection and evaluation. The Manual serves as a standard and provides uniformity in the procedures and policies for determining the physical condition, maintenance needs, and load capacity of the Nation's highway bridges.

Because the information incorporated by reference at 23 CFR 650.317 has been superseded, the FHWA desires to update the NBIS regulation to reflect the latest information contained in the AASHTO documents. The FHWA also proposes to update the definition for “AASHTO Manual” to reflect the updated document.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

The FHWA has determined that this action would not be a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of U.S. Department of Transportation regulatory policies and procedures. These changes are not anticipated to adversely affect, in any material way, any sector of the economy. The FHWA believes that the incorporation of the MBE within the NBIS regulation will greatly improve consistency and uniformity in the

application of bridge inspection and load rating procedures. In addition, these changes would not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612), the FHWA has evaluated the effects of these changes on small entities and has determined preliminarily that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 109 Stat. 48, March 22, 1995). This action would not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$128.1 million or more in any one year (2 U.S.C. 1532).

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and the FHWA has determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this rulemaking will not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that it would not have substantial direct effects on one or more Indian Tribes; would not impose substantial direct compliance costs on Indian Tribal governments; and would not preempt Tribal law. Therefore, a Tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore,

a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this action does not contain collection information requirements for purposes of the PRA.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this action would not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

The FHWA does not anticipate that this action would affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) and has determined that it would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of

Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 650

Bridges, Grant Programs—transportation, Highways and roads, Incorporation by reference, Reporting and recordkeeping requirements.

Issued on: August 19, 2009.

Victor M. Mendez,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 23, Code of Federal Regulations part 650 as follows:

PART 650—BRIDGES, STRUCTURES, AND HYDRAULICS

Subpart C—National Bridge Inspection Standards

1. The authority citation for part 650 continues to read as follows:

Authority: 23 U.S.C. 109(a) and (h), 144, 151, 315, and 319; 33 U.S.C. 401, 491 *et seq.*; 511 *et seq.*; sec. 4(b) of Pub. L. 97-134, 95 Stat. 1699 (1981); sec. 161 of Pub. L. 97-424, 96 Stat. 2097, at 3135 (1983); sec. 1311 of Pub. L. 105-178, as added by Pub. L. 105-206, 112 Stat. 842 (1998); 23 CFR 1.32; 49 CFR 1.48(b); E.O. 11988 (3 CFR, 1977 Comp., p. 117); Department of Transportation Order 5650.2, dated April 23, 1979 (44 FR 24678).

2. Amend § 650.305 by revising the definition of “American Association of State Highway and Transportation Officials (AASHTO) Manual” to read as follows:

§ 650.305 Definitions.

* * * * *

American Association of State Highway and Transportation Officials (AASHTO) Manual. “The Manual for Bridge Evaluation,” First Edition, 2008, published by the American Association of State Highway and Transportation Officials (incorporated by reference, *see* § 650.317).

* * * * *

3. Revise § 650.317(b) to read as follows:

§ 650.317 Reference manuals.

* * * * *

(b) The Manual for Bridge Evaluation, First Edition, 2008, AASHTO, incorporated by reference approved for §§ 650.305 and 650.313, is available for purchase from the American Association of State Highway and Transportation Officials, Suite 249, 444 N. Capitol Street, NW., Washington, DC

20001. The materials may also be ordered via the AASHTO bookstore located at the following URL: <http://www.aashto.org/aashto/home.nsf/FrontPage>.

[FR Doc. E9-20713 Filed 8-28-09; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 2

RIN 1290-AA23

Requirements for DOL Agencies' Assessment of Occupational Health Risks

AGENCY: Office of the Secretary; Office of the Assistant Secretary for Policy.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Department of Labor ("Department" or "DOL") is withdrawing its proposed rule governing DOL agencies' assessment of occupational health risks. The proposed rule sought to compile Department procedures related to risk assessment into a single regulation and included new requirements aimed at establishing consistent procedures intended to promote greater public input and awareness of the Department's health rulemakings.

DATES: This withdrawal is effective on August 31, 2009.

FOR FURTHER INFORMATION CONTACT:

Kathleen Franks, Office of Regulatory and Programmatic Policy, Office of the Assistant Secretary for Policy, U.S. Department of Labor, (202) 693-5959. This is not a toll-free number. Individuals with hearing or speech impairments may access the number above via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

On August 29, 2008, the Department published in the *Federal Register* (73 FR 50909 Aug. 29, 2008) a notice of proposed rulemaking (NPRM) to codify DOL's internal risk assessment procedures for health standard rulemakings that address workplace exposure to toxic substances and hazardous chemicals. The NPRM stated that it summarized and would codify DOL agencies' existing risk assessment paradigm and requested public comment on two specific procedural requirements: A new requirement that DOL agencies issue an Advance Notice

of Proposed Rulemaking (ANPRM) as a first step whenever developing a health standard that would regulate workplace exposure to toxic substances or hazardous chemicals; and a requirement that DOL agencies electronically post all documents relied upon to develop such health standards within fourteen days of each regulatory step. Because the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA) are the only two agencies within the Department that issue health standards related to toxic substances and hazardous chemicals, it was anticipated that the proposed rule would affect only those agencies.

The Department accepted public comment on the NPRM for a period of 30 days. While some interested parties, including members of Congress, urged DOL to extend the public comment period and requested that the Department hold public hearings on the proposal, the Department declined these requests due to its desire to adhere to the originally published timeframe for completion of this rulemaking.

The Department received comments in response to the NPRM from a variety of sources, including members of Congress, private citizens, labor unions, worker advocacy organizations, industry associations, employer groups, and risk assessment experts. The majority of the commenters were opposed to the rulemaking.¹

II. Reasons for Withdrawal of Proposed Rule

After careful review of the comments and upon reconsideration of the issues involved in this rulemaking, the Department has decided to withdraw the proposed rule. As described below, the two proposed requirements are unnecessary. Moreover, given the nature of the issues, the Department believes that it is more useful to continue describing its internal risk assessment policies through guidance rather than through promulgation of a regulation.

Proposed ANPRM Requirement. The proposal would have required DOL agencies to issue an ANPRM in every rulemaking for a health standard involving toxic substances or hazardous chemicals, apart from emergency temporary standards. Many commenters were opposed to this new requirement. *See, e.g.,* Exs. 7.1; 16.1; 42.1; and 48.1.² Some commenters, including members

of Congress and Senators, employer groups, and worker advocacy organizations claimed that an ANPRM is not always useful and that imposing an ANPRM requirement in a health standard rulemaking when it was not necessary would unduly delay the rulemaking. *See, e.g.,* Exs. 32.1; 37.1; and 42.1. They argued that this in turn could harm workers by unnecessarily delaying the introduction of the health protections required by the standard. Labor unions and worker advocacy organizations also claimed that requiring an unnecessary ANPRM would divert agency resources from other rulemaking efforts. *See, e.g.,* Exs. 45.1 and 48.1.

The current policy of both OSHA and MSHA is to publish an ANPRM only if the agency believes it will be beneficial to the rulemaking. This decision is made on a case-by-case basis. In light of the comments to the proposal and after reconsideration of the proposed ANPRM requirement, the Department has determined that OSHA and MSHA should continue to follow their current ANPRM policy.

The Department believes that an ANPRM can be a valuable part of the rulemaking process in the right circumstances, but that an inflexible requirement would not fit the varied circumstances in which rulemakings are conducted and could cause unnecessary delays. When an agency lacks important information needed to develop an effective proposed rule, an ANPRM provides one means of attempting to obtain that information. However, there are times when an agency has sufficient information to issue a successful proposed rule without taking that step. Avoiding an ANPRM in these situations allows the agency to more effectively use its rulemaking resources. There are also many other ways in which OSHA and MSHA can obtain needed information without using an ANPRM, such as holding stakeholder meetings, conducting surveys, consulting advisory committees, doing site visits, issuing Requests for Information, conducting peer reviews, and, in the case of OSHA, obtaining small entity (including small business) input through procedures required by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 609(b)). By allowing the agency to decide whether or not to use an ANPRM for a rulemaking, the agency retains flexibility to choose the information gathering methods that it has determined will best fit each individual situation.

Proposed Electronic Posting Requirement. The proposal would have required the Department to make

¹ Comments are available for review at <http://www.regulations.gov>. Reference Docket Number: DOL-2008-0002.

² "Ex." Refers to exhibits included in the rulemaking docket, which can be referenced using the URL provided in Footnote 1, *supra*.

available, on <http://www.regulations.gov> or <http://www.dol.gov>, “all relevant documents related to a rulemaking addressing occupational exposure to toxic substances and hazardous chemicals no later than fourteen days after the conclusion of the relevant rulemaking step that relied upon or utilized those documents.” 73 FR at 50914. Commenters such as some industry associations and employer groups, who addressed this issue generally supported the electronic posting requirement and its goal of transparency in rulemaking. See, e.g., Exs. 11.1; 25.1; 32.1; and 38.1. Several commenters, including labor unions, other employer groups, and industry associations however, pointed out that the Department is already required to, and does, make rulemaking information available online. See, e.g., Exs. 17.1; 32.1; and 35.1. Indeed, the E-Government Act of 2002 requires all federal agencies to maintain a publicly accessible website containing electronic dockets for rulemakings. Public Law No. 107–347, Title II, 201 to 216 (codified as 44 U.S.C. 3501 note), at 206(d)(1). All public comments, as well as “other materials that by agency rule or practice are included in the rulemaking docket” are required to be made available to the public via the electronic docket. Public Law No. 107–347, Title II, at 206(d)(2)(A), (B). To implement the E-Government Act and provide the public with a single government-wide access point for rulemaking information and submissions, federal agencies were required to consolidate all electronic rulemaking dockets on <http://www.regulations.gov>. Office of Management and Budget (OMB), Implementation Guidance for the E-Government Act of 2002, M–03–18 (Aug. 1, 2003), available at <http://www.whitehouse.gov/omb/memoranda/m03-18.pdf>. The E-Government Act built on previous efforts to use information technology to provide citizens with easier access to government information and participation. See, e.g., OMB, Redundant Information Systems Relating to On-Line Rulemaking Initiative, M–02–08 (May 6, 2002), available at <http://www.whitehouse.gov/omb/memoranda/m02-08.pdf>.

Pursuant to the E-Government Act, it is the practice of both OSHA and MSHA to post, in a timely manner, information relevant to agency rulemakings on <http://www.regulations.gov>. This includes the posting of all scientific studies that are relied upon in the rulemaking. The Department has determined, therefore, that the proposed

electronic posting requirement is duplicative of E-Government Act requirements and is not needed.

Other Requirements. The proposed regulatory text also stated that agency risk assessments must, when the data are available, use industry-by-industry evidence relating to working life exposures. Proposed 29 CFR 2.9(c)(3), 73 FR at 50915. Of the commenters that discussed the “industry-by-industry” language, the majority, including members of Congress and Senators, risk assessment experts, worker advocacy organizations, and labor unions viewed it as a departure from the Department’s existing longstanding practice of using a 45-year working life assumption for selecting exposure limits for health standards. See, e.g., Exs. 18.1; 23; 28.1; 42.1; and 48.1. Some employer groups and industry associations, however, expressed support for using industry-specific data to develop working life assumptions. See, e.g., Exs. 27.1; 31.1; and 35.1.

Section 6(b)(5) of the Occupational Safety and Health Act requires the agency to regulate in a manner that “most adequately assures * * * that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard * * * for the period of his working life.” 29 U.S.C. 655(b)(5). The Mine Act has nearly identical language, except that it refers to miners rather than employees. 30 U.S.C. 811(a)(6)(A). To implement these provisions, it has been the Department’s longstanding practice to use a general 45-year working life assumption. This practice is not based on empirical data that most employees are exposed to the hazard for 45 years. Rather, it is based on the statutory directive that “no employee” suffer material impairment “even if” such employee is exposed for the period of his or her working life. The Department’s practice of using a 45-year working life has won judicial approval. See, e.g., *Building and Constr. Trades Dep’t, AFL-CIO v. Brock*, 838 F.2d 1258, 1264–65 (D.C. Cir. 1987) (explaining that the assumption of a 45-year working life “appear[ed] to conform to the intent of Congress”); for examples of DOL standards using a 45-year working life, see *Asbestos*, 51 FR 22612, 22648 (June 20, 1986); *Bloodborne Pathogens*, 56 FR 64004, 64031 (Dec. 6, 1991); *Diesel Particulate Matter Exposure of Underground Coal Miners*, 66 FR 5526, 5663–64 (Jan. 19, 2001); *Hexavalent Chromium*, 71 FR 10100, 10224 (Feb. 28, 2006).

OSHA and MSHA have not conducted separate industry-by-industry analyses

of working life for their risk assessments. The Department has consistently rejected the claim that it must conduct a separate risk assessment for each industry regulated by a standard. *Public Citizen Health Research Group v. U.S. Dep’t of Labor*, 557 F.3d 165, 186–188 (3d Cir. 2009); *American Dental Ass’n v. Martin*, 984 F.2d 823, 827 (7th Cir. 1993); *UAW v. OSHA*, 37 F.3d 665, 670 (D.C. Cir. 1994); *Control of Hazardous Energy Sources (Lockout/Tagout)*, OSHA Supplemental Statement of Reasons, 58 FR 16612–02, 16620–16621 (Mar. 30, 1993).

Guidance versus Regulation. The Department received a small number of comments, from risk assessment experts, policy groups, and labor unions that questioned the need for a regulation when it was possible to issue internal guidance instead. All of these commenters argued that the risk assessment rulemaking was unnecessary because the Department already has risk assessment guidance and because guidance rather than regulation is the more appropriate format for such internal Department procedures. See, e.g., Exs. 26.1; 32.1; 46.1; and 48.1. Upon reconsideration of this issue, the Department has concluded that a risk assessment rulemaking is not necessary. The Department believes that guidance, as opposed to regulation, is a more suitable vehicle for its internal risk assessment procedures and allows the Department more flexibility to quickly adapt and improve its risk assessment procedures in the future. Compared to changes to internal guidance, changes to a regulation would take far more time and require a lengthy notice and comment rulemaking.

Other Issues. There were a number of other issues addressed in public comments to the proposed rule. These issues included: (1) Whether the rule was a “significant regulatory action” under Executive Order 12866, thus requiring a cost/benefit analysis before promulgating the rule; (2) whether the rule was substantive or procedural and, if substantive, whether proper rulemaking procedures were followed; (3) whether the rule was appropriately issued under 5 U.S.C. 301; and (4) whether the Assistant Secretary for Policy had a proper delegation of authority to issue the rule. The Department notes that these and other issues raised by commenters, while important, are no longer relevant given the Department’s decision to terminate the rulemaking.

Withdrawal. For the reasons discussed above, the Department is withdrawing its risk assessment

rulemaking, effective on August 31, 2009.

Authority and Signature.

Megan Uzzell,

Acting Assistant Secretary for Policy.

[FR Doc. E9-20923 Filed 8-28-09; 8:45 am]

BILLING CODE 4510-23-P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD-2008-HA-0090; RIN 0720-AB23]

TRICARE; Off-Label Uses of Devices; Partial List of Examples of Unproven Drugs, Devices, and Medical Treatments or Procedures

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense is publishing this proposed rule to revise the definition of “unlabeled or off-label drug” to “off-label use of a drug or device.” This revision is consistent with the regulatory framework under the Federal Food, Drug, and Cosmetic Act. Additionally, this rule removes the partial list of examples of unproven drugs, devices, and medical treatments or procedures proscribed in TRICARE regulations. As it is determined that reliable evidence demonstrates that previously unproven drugs, devices, and medical treatments or procedures have proven medical effectiveness, TRICARE has removed them from the list and authorized medically necessary care. This revision removing the partial list is necessary as the list will never be completely current, and is only a partial list of examples. The removal of this partial list does not change or eliminate any benefits that are currently available under the TRICARE program.

DATES: Written comments received at the address indicated below by October 30, 2009 will be accepted.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number and title, by either of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy

for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT:

René L. Morrell, TRICARE Management Activity, Medical Benefits and Reimbursement Branch, telephone (303) 676-3618.

SUPPLEMENTARY INFORMATION: This proposed rule revises the definition of “unlabeled or off-label drug” to “off-label use of a drug or device.” This revision is consistent with the regulatory framework under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*). Additionally, this proposed rule removes the partial list of examples of unproven drugs, devices, and medical treatments or procedures proscribed under § 199.4(g)(15).

Off-Label Uses of Devices

On January 6, 1997, the Office of the Secretary of Defense published a final rule in the **Federal Register** (62 FR 627-631) clarifying the TRICARE exclusion of unproven drugs, devices, and medical treatments or procedures and adding the TRICARE definition of unlabeled or off-label drugs. This rule also added the provision for coverage of unlabeled or off-label uses of drugs that are Food and Drug Administration (FDA) approved drugs that are prescribed or administered by a health care practitioner and are used for indications or treatments not included in the approved labeling. We are now modifying the definition of “unlabeled or off-label drug” to “off-label use of a drug or device” to be consistent with the regulatory framework under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*) However, this proposed rule does not present new agency policy. Rather, it corrects an error and omission from the current rule. Coverage is limited to those indications for which there is reliable evidence, as defined in section 199.2, sufficient to establish that the off-label use is safe, effective, and in accordance with nationally accepted standards of practice in the medical community. In addition, the off-label use must be reviewed for medical necessity.

Partial List of Examples of Unproven Drugs, Devices, and Medical Treatments or Procedures

By law, TRICARE can only cost-share medically necessary supplies and services. Any drug, device, and medical

treatment or procedure, the safety and efficacy of which have not been established, as described in § 199.4(g)(15), is unproven and cannot be cost-shared by TRICARE except as authorized under § 199.4(e)(26). The current regulation and program policy provide a partial list of examples of unproven drugs, devices, and medical treatments or procedures that are excluded from benefits. The intent of this partial list was to provide information on specific examples of emerging drugs, devices, and medical treatments or procedures determined to be unproven by TRICARE based on review of current reliable evidence. Due to the rapid and extensive changes in medical technology it is not feasible to maintain this list in the regulation. Removal of this partial list of examples does not change the exclusion of unproven drugs, devices, and medical treatments or procedures. Removal of the partial list of examples does not change the process TRICARE follows in determining for purposes of benefit coverage when a drug, device, and medical treatment or procedure has moved from the status of unproven to proven medical effectiveness. The intent of this revision is to ensure that benefit determinations are made based on current reliable evidence rather than relying on outdated regulatory and policy provisions.

Regulatory Procedures

Executive Order 12866, “Regulatory Planning and Review”

Section 801 of Title 5, U.S.C., and Executive Order (E.O.) 12866 require certain regulatory assessments and procedures for any major rule or significant regulatory action, defined as one that would result in an annual effect of \$100 million or more on the national economy or which would have other substantial impacts. It has been certified that this rule is not an economically significant rule, however, it is a regulatory action which has been reviewed by the Office of Management and Budget as required under the provisions of E.O. 12866.

Sec. 202, Public Law 104-4, “Unfunded Mandates Reform Act”

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)

The Regulatory Flexibility Act (RFA) requires each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This proposed rule will not significantly affect a substantial number of small entities for purposes of the RFA.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

This rule will not impose significant additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3511). Existing information collection requirements of the TRICARE and Medicare programs will be utilized.

Executive Order 13132, "Federalism"

This proposed rule has been examined for its impact under E.O. 13132 and it does not contain policies that have federalism implications that would have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government; therefore, consultation with State and local officials is not required.

List of Subjects in 32 CFR Part 199

Claims, dental health, health care, health insurance, individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for 32 CFR part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.2(b) is amended by removing the definition of Unlabeled or Off-Label Drugs and adding a new definition of Off-Label Use of a Drug or Device in alphabetical order to read as follows:

§ 199.2 Definitions.

- (b) Off-Label Use of a Drug or Device. A use other than an intended use for which the drug or device is legally marketed under the Federal Food, Drug, and Cosmetic Act. This includes any use that is not included in the approved labeling for an approved drug or

approved device; any use that is not included in the cleared statement of intended use for a device that has been determined by the Food and Drug Administration (FDA) to be substantially equivalent to a legally marketed predicate device and cleared for marketing; and any use of a device for which a manufacturer or distributor would be required to seek pre-market review by the FDA in order to legally include that use in the device's labeling.

3. Section 199.4 is amended by revising the third paragraph of the Note to paragraph (g)(15)(i)(A), and removing paragraph (g)(15)(iv) as follows:

§ 199.4 Basic program benefits.

- (g) (15) (i) (A)

Note: CHAMPUS will consider coverage of off-label uses of drugs and devices that meet the definition of Off-Label Use of a Drug or Device in Section 199.2(b). Approval for reimbursement of off-label uses requires review for medical necessity, and also requires demonstrations from reliable evidence, as defined in § 199.2, that the off-label use of the drug or device is safe, effective and in accordance with nationally accepted standards of practice in the medical community.

Dated: August 21, 2009.

Patricia L. Toppings, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9-20683 Filed 8-28-09; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD-2009-HA-0094]

RIN 0720-AB32

TRICARE; Diabetic Education

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense is publishing this proposed rule to clarify TRICARE coverage for diabetic education. This rule introduces new definitions and addresses revisions or omissions in policy or procedure inadvertently missed in previous regulatory changes pertaining to diabetic education.

DATES: Written comments received at the address indicated below by October 30, 2009 will be accepted.

ADDRESSES: You may submit comments, identified by docket number or Regulatory Information Number (RIN) and title, by either of the following methods:

The Web site: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, Room 3C843 Pentagon, 1160 Defense Pentagon, Washington, DC 20301-1160.

Instructions: All submissions received must include the agency name and docket number or RIN for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at http://www.regulations.gov as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Joy Saly, Medical Benefits and Reimbursement Branch, TRICARE Management Activity, telephone (303) 676-3742. Questions regarding payment of specific claims should be addressed to the appropriate TRICARE contractor.

SUPPLEMENTARY INFORMATION: This proposed rule introduces new definitions and addresses revisions or omissions in policy or procedure inadvertently missed in previous regulatory changes pertaining to diabetic education.

Diabetes self-management training is an interactive, collaborative process involving beneficiaries with diabetes, their physician(s) and their educators. The educational process should provide the beneficiary with the knowledge and skills needed to perform self-care, manage crises, and make lifestyle changes required to manage the diabetes successfully.

TRICARE had previously classified diabetes self-management training as a counseling service that was not medically necessary. Since all services provided under the TRICARE program must be medically necessary and appropriate, diabetes self-management training was excluded from coverage. In developing the TRICARE policy on self-management, however, it was determined that diabetes educational services are consistent with the medically necessary and appropriate provision and it was decided to conform with Medicare's policy on diabetes self-management training. As such, TRICARE removed "diabetic self-

management training” programs as an excluded benefit effective July 1, 1998. Although the policy change conflicted with existing regulation language, TRICARE determined to move forward with the policy change because TRICARE was expanding and not restricting a benefit, and the change was in line with Medicare’s benefit. This proposed rule corrects the failure to amend the language of the regulation and brings the regulation into conformance with the current policy.

Sec. 199.4 provides basic program benefits.

Sec. 199.4(d)(3)(xiv) Diabetic Self-Management Training (DSMT) is added as a benefit under other covered services and supplies. This addition brings the regulation into conformance with the current policy.

Sec. 199.4(g)(39) is revised to remove diabetic self-education programs as an exclusion.

Sec. 199.6 addresses authorized providers.

Sec. 199.6(c)(3)(iii)(L) adds Nutritionist to the list of individual professional providers of medical care authorized to provide services to CHAMPUS beneficiaries.

Sec. 199.6(c)(3)(iii)(M) adds Registered Dietitian to the list of individual professional providers of medical care authorized to provide services to CHAMPUS beneficiaries.

Regulatory Procedures.

Executive Order 12866, “Regulatory Planning and Review”

Section 801 of title 5, United States Code, and Executive Order 12866 require certain regulatory assessments and procedures for any major rule or significant regulatory action, defined as one that would result in an annual effect of \$100 million or more on the national economy or which would have other substantial impacts. It has been certified that this rule is not a significant regulatory action.

Public Law 96–354, “Regulatory Flexibility Act” (RFA) (5 U.S.C. 601)

Public Law 96–354, “Regulatory Flexibility Act” (RFA) (5 U.S.C. 601), requires that each Federal agency prepare a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This proposed rule will not have a significant impact on a substantial number of small entities. Therefore, this proposed rule is not subject to the requirements of the RFA.

Public Law 96–511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

This rule does not contain a “collection of information” requirement, and will not impose additional information collection requirements on the public under Public Law 96–511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35).

Public Law 104–4, Section 202, “Unfunded Mandates Reform Act”

Section 202 of Public Law 104–4, “Unfunded Mandates Reform Act,” requires that an analysis be performed to determine whether any federal mandate may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of \$100 million in any one year. It has been certified that this proposed rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year, and thus this proposed rule is not subject to this requirement.

Executive Order 13132, “Federalism”

Executive Order 13132, “Federalism,” requires that an impact analysis be performed to determine whether the rule has federalism implications that would have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. It has been certified that this proposed rule does not have federalism implications, as set forth in Executive Order 13132.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. Chapter 55.

2. Section 199.4 is amended by adding paragraph (d)(3)(ix), and revising paragraph (g)(39) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(d) * * *

(3) * * *

(ix) Diabetic Self-Management Training (DSMT). A training service or program that educates diabetic patients

about the successful self-management of diabetes. It includes the following criteria: education about self-monitoring of blood glucose, diet, and exercise; an insulin treatment plan developed specifically for the patient who is insulin-dependent; and motivates the patient to use the skills for self-management. The DSMT service or program must be accredited by the American Diabetes Association. Coverage limitations on the provision of this benefit will be as determined by the Director, TRICARE Management Activity, or designee.

* * * * *

(g) * * *

(39) Counseling. Counseling services that are not medically necessary in the treatment of a diagnosed medical condition: For example, educational counseling, vocational counseling, nutritional counseling, and counseling for socioeconomic purposes, stress management, lifestyle modification, etc. Services provided by a certified marriage and family therapist, pastoral or mental health counselor in the treatment of a mental disorder are covered only as specifically provided in § 199.6. Services provided by alcoholism rehabilitation counselors are covered only when rendered in a CHAMPUS-authorized treatment setting and only when the cost of those services is included in the facility’s CHAMPUS-determined allowable cost rate.

* * * * *

3. Section 199.6 is amended by adding paragraphs (c)(3)(iii)(L) and (M).

§ 199.6 TRICARE—authorized providers.

* * * * *

(c) * * *

(3) * * *

(iii) * * *

(L) Nutritionist. A nutritionist may provide diabetes self-management training (DSMT) via an accredited DSMT program. The nutritionist must be licensed by the State in which the care is provided, and must be under the supervision of a physician who is overseeing the DSMT program.

(M) Registered Dietitian. A dietitian may provide diabetes self-management training (DSMT) via an accredited DSMT program. The dietitian must be licensed by the State in which the care is provided, and must be under the supervision of a physician who is overseeing the DSMT program.

* * * * *

Dated: August 21, 2009.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

[FR Doc. E9-20684 Filed 8-28-09; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD-2009-HA-0095]

RIN 0720-AB33

TRICARE; Extended Care Health Option

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense is publishing this proposed rule to implement the requirements enacted by Congress in Section 732 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 which changes the limit of the Government's share of providing certain benefits under the Extended Care Health Option (ECHO) from \$2,500 per month to \$36,000 per year, and for other non-legislated changes to the ECHO.

DATES: Comments received at the address indicated below by October 30, 2009 will be accepted.

ADDRESSES: You may submit comments, identified by docket number and or Regulatory Information Number (RIN) number and title, by either of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, Room 3C843 Pentagon, 1160 Defense Pentagon, Washington, DC 20301-1160.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT:

Michael Kottyan, TRICARE Management Activity, Medical Benefits and Reimbursement Branch, telephone (303) 676-3520.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1079 of title 10, United States Code (U.S.C.), as amended by Section 701(b) of the National Defense Authorization Act for Fiscal Year 2002 [Pub. L. 107-107], required the Department of Defense to establish a program of extended benefits for eligible dependents. That program, known as the Extended Care Health Option (ECHO), replaced the Program for Persons with Disabilities (PPPWD) and was implemented on September 1, 2005. The primary purpose of the ECHO is to provide eligible beneficiaries with benefits that are not available through the TRICARE Basic Program. The term "eligible beneficiary" means an individual who is a dependent of an Active Duty Service Member (ADSM) or is a Transitional Survivor of a deceased ADSM and who has a qualifying condition. Qualifying conditions include moderate or severe mental retardation, serious physical disability, or an extraordinary physical or psychological condition. The benefits available through the ECHO are intended to assist in the reduction of the disabling effects of an ECHO qualifying condition.

Section 1079(e)(3) and (4) authorized benefits, including training, rehabilitation, special education, assistive technology devices, institutional care in private, nonprofit, public, and State institutions and facilities and, if appropriate, transportation to and from such institutions and facilities in which the beneficiary is receiving institutional care.

Section 1079(f)(2) limited the Government's liability for benefits authorized by Section 1079(e) and (4) to \$2,500 per month and required that the beneficiary's sponsor be liable for any amount of the monthly total cost for those benefits that exceeded the Government's limit. Section 1079(e) also authorized the extended benefits program to provide additional benefits including diagnostic services, inpatient and outpatient care, comprehensive home health care, respite care, and other services and supplies as determined appropriate by the Secretary. However, Section 1079(f) did not limit the Government's liability for those additional benefits. By Final Rule published in the **Federal Register** on August 20, 2004, (69 FR 51559) the Department established that those additional benefits accrued to the \$2,500 per month limit.

Section 732 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 [Public Law 110-417]

(NDAA 2009) changed the limit of the Government's liability for benefits authorized under Section 1079(e)(3) and (4) from \$2,500 per month to \$36,000 per year, prorated as determined by the Secretary. This rule does not prorate the annual limit of Government liability. Section 732 does not affect other benefits authorized under Section 1079(e).

This proposed rule changes the Government's share of providing all benefits available through the Extended Care Health Option from \$2,500 per month to \$36,000 per fiscal year. This rule does not change the Government's liability for benefits provided by the ECHO Home Health Care (EHHC) benefit or the EHHC Respite Care benefit.

Additionally, Section 732 changed the sponsor's liability for costs exceeding the limit of the Government's liability from a per-month basis to a per-year basis; this rule includes that change.

The following additional changes contained in this rule are further discussed below: deletes references to the PFPWD, eliminates allocating the allowable cost of durable equipment authorized for purchase through the ECHO, clarifies the monthly reimbursement for benefits received through the ECHO Home Health Care (EHHC), and allows a waiver of the requirement to enroll in the sponsor's branch of Service Exceptional Family Member Program (EFMP) in order to register in the ECHO.

Active Duty Family Members who have a qualifying condition are eligible to receive benefits through the ECHO. Qualifying conditions include moderate or severe mental retardation, a serious physical disability, or an extraordinary physical or psychological condition such that the beneficiary is homebound. Serious physical disabilities include those conditions that preclude an individual from the unaided performance of at least one major life activity such as breathing, cognition, hearing, seeing, and age appropriate ability essential to bathing, dressing, eating, grooming, speaking, stair use, toilet use, transferring, and walking.

The ECHO, as the replacement for the PFPWD, has been fully implemented for several years; it is therefore appropriate to delete references in the regulations to the transition of the PFPWD to the ECHO.

Durable equipment, which is defined as a device or apparatus which does not qualify as "Durable Medical Equipment" under the TRICARE Basic Program but which is essential to the efficient arrest or reduction of the functional loss resulting from, or the

disabling effects of an ECHO-qualifying condition, is eligible for TRICARE coverage through the ECHO. Paragraph (g)(2) within § 199.5 provides for prorating the allowable amount for durable equipment over a calculated period of time. The method of proration resulted in the monthly benefit limit of \$2,500 being divided, at the ECHO-registered beneficiary's sponsor's discretion, at least equally between the allowable cost of purchasing ECHO-authorized durable equipment and the cost of other authorized ECHO benefits. As a result of Section 732 and the changes made in this rule, the allowable expense for durable equipment accrues to the maximum fiscal year Government limit of \$36,000. Therefore, proration of allowable durable equipment expense is no longer an appropriate option. As a result, the ECHO beneficiary's sponsor will have only one cost share liability for each authorized item of durable equipment purchased through the ECHO.

The ECHO Home Health Care benefit is limited on a fiscal year basis to the amount TRICARE would reimburse a Skilled Nursing Facility (SNF) if the beneficiary were a patient in the SNF. Paragraph (g)(4)(iii) of § 199.5 limits the maximum monthly Government reimbursement for the EHHC, including EHHC respite care, to no more than one-twelfth of the annual maximum Government cost share. Because the actual number of days in the month varies, the one-twelfth limit can be over or understated for a given month. This rule revises that requirement by taking into account the actual number of days in a month EHHC benefits are received.

As required by Section 1079(d)(1), eligible beneficiaries must register in the ECHO in order to receive ECHO benefits. Evidence of enrollment in the sponsor's branch of Service's EFMP is required in order to register in the ECHO. The Department recognizes there are circumstances when that requirement is not appropriate. This rule specifies when the EFMP enrollment requirement can be waived.

Except as specified herein, all other requirements of the ECHO remain as currently published.

Regulatory Procedures

Executive Order 12866, "Regulatory Planning and Review"

Section 801 of Title 5, U.S.C., and Executive Order (E.O.) 12866 requires certain regulatory assessments and procedures for any major rule or significant regulatory action, defined as one that would result in an annual effect of \$100 million or more on the national

economy or which would have other substantial impacts. It has been certified that this rule is not an economically significant rule, however, it is a regulatory action which has been reviewed by the Office of Management and Budget as required under the provisions of E.O. 12866.

Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)

The Regulatory Flexibility Act (RFA) requires each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This proposed rule will not significantly affect a substantial number of small entities for purposes of the RFA.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

This rule will not impose significant additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3511). Existing information collection requirements of the TRICARE and Medicare programs will be utilized.

Executive Order 13132, "Federalism"

This proposed rule has been examined for its impact under E.O. 13132 and it does not contain policies that have federalism implications that would have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government; therefore, consultation with State and local officials is not required.

List of Subjects in 32 CFR Part 199

Extended benefits for disabled family members of Active Duty Service members, health care, military personnel.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.5 is amended by:
- Removing paragraphs (b)(4), (g)(2)(ii)(A) through (g)(2)(ii)(C)(2), and (g)(2)(ii)(E);
 - Redesignating paragraph (g)(2)(ii)(D) as (g)(2)(ii); and
 - Revising paragraphs (c)(6), (c)(7)(iii), (f)(3)(i), (g)(2)(i), newly redesignated paragraph (g)(2)(ii), (g)(4)(iii), (h)(2), (h)(3)(v)(A), and (j) to read as follows:

§ 199.5 TRICARE Extended Care Health Option (ECHO).

* * * * *

(c) * * *

(6) Transportation of an ECHO beneficiary receiving benefits under paragraph (c)(5), and a medical attendant when necessary to assure the beneficiary's safety, to or from a facility or institution to receive authorized ECHO services or items.

* * * * *

(7) * * *

(iii) The Government's cost-share incurred for these services accrues to the fiscal year benefit limit of \$36,000.

* * * * *

(f) * * *

(3) * * *

(i) *ECHO*. The total Government share of the cost of all ECHO benefits, except ECHO Home Health Care (EHHC) and EHHC respite care, provided in a given fiscal year to a beneficiary, may not exceed \$36,000 after application of the allowable payment methodology.

* * * * *

(g) * * *

(2) *Equipment*. (i) The TRICARE allowable amount for durable equipment shall be calculated in the same manner as durable medical equipment allowable through Section 199.4, and accrues to the fiscal year benefit limit specified in paragraph (f)(3) of this section.

(ii) *Cost-share*. A cost-share, as provided by paragraph (f)(2) of this section, is required for each item of durable equipment that is authorized and purchased by the Director, TRICARE Management Activity or designee.

* * * * *

(4) * * *

(iii) The maximum monthly Government reimbursement for EHHC, including EHHC respite care, will be based on the actual number of hours of EHHC services rendered in the month, but in no case will it exceed one-twelfth of the annual maximum Government cost-share as determined in this section and adjusted according to the actual number of days in the month the services were provided.

(h) * * *

(2) *Registration.* Active Duty sponsors must register potential ECHO-eligible beneficiaries through the Director, TRICARE Management Activity, or designee prior to receiving ECHO benefits. The Director, TRICARE Management Activity, or designee will determine ECHO eligibility and update the Defense Enrollment Eligibility Reporting System (DEERS) accordingly. Unless waived by the Director, TRICARE Management Activity or designee, sponsors must provide evidence of enrollment in the Exceptional Family Member Program provided by their branch of Service at the time they register their family member(s) for the ECHO.

(3) * * *

(v) *Public facility use.* (A) An ECHO beneficiary residing within a state must demonstrate that a public facility is not available and adequate to meet the needs of their qualifying condition. Such requirements shall apply to beneficiaries who request authorization for training, rehabilitation, special education, assistive technology, and institutional care in private nonprofit, public, and state institutions and facilities, and if appropriate for beneficiaries receiving institutional care, transportation to and from such institutions and facilities. The maximum Government cost-share for services that require demonstration of public facility non-availability or inadequacy is limited to \$36,000 per fiscal year per beneficiary. State-administered plans for medical assistance under Title XIX of the Social Security Act (Medicaid) are not considered available and adequate facilities for the purpose of this section.

* * * * *

(j) *Effective date.* All changes to this section are effective as of October 14, 2008, and claims for ECHO benefits provided on or after that date will be reprocessed retroactively to that date as necessary.

* * * * *

Dated: August 21, 2009.

Patricia Toppings,

*OSD Federal Register Liaison Officer,
Department of Defense.*

[FR Doc. E9-20685 Filed 8-28-09; 8:45 am]

BILLING CODE 5001-06-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 146**

[EPA-HQ-OW-2008-0390; FRL-8951-3]

RIN 2040-AE98

Federal Requirements Under the Underground Injection Control (UIC) Program for Carbon Dioxide (CO₂) Geologic Sequestration (GS) Wells; Notice of Data Availability and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Data availability; request for comment.

SUMMARY: Today's Notice supplements the proposed "Federal Requirements Under the Underground Injection Control (UIC) Program for Carbon Dioxide (CO₂) Geologic Sequestration (GS) Wells" of July 25, 2008, presents new data and information, and requests public comment on related issues that have evolved in response to comments on the original proposal. This Notice contains preliminary field data from the Department of Energy-sponsored Regional Carbon Sequestration Partnership projects, the results of GS-related studies conducted by the Lawrence Berkeley National Laboratory, and additional GS-related research. Today's Notice also discusses comments and presents an alternative the Agency is considering related to the proposed injection depth requirements for Class VI wells.

DATES: Comments on the contents of this NODA must be received on or before October 15, 2009. EPA does not plan to extend the comment period for this Notice. EPA will hold a public hearing from 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m., CDT, September 17, 2009 in Chicago, IL.

ADDRESSES: The public hearing will be held at the Ralph H. Metcalfe Federal Building, 77 W. Jackson Boulevard, Chicago, IL 60604. Due to capacity limitations, we encourage you to indicate your intent to participate through pre-registration. To pre-register, for directions, and for site specific information, please visit the following Web site: <http://gshearing.cadmusweb.com/>.

Submit your comments, identified by Docket ID No. EPA-HQ-OW-2008-0390, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 4101T,

1200 Pennsylvania Ave., NW.,
Washington, DC 20460.

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FOR FURTHER INFORMATION CONTACT:

Mary Rose Bayer, Underground Injection Control Program, Drinking Water Protection Division, Office of Ground Water and Drinking Water (MC-4606M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 564-1981; *e-mail address:* bayer.maryrose@epa.gov. For general information, contact the Safe Drinking Water Hotline, *telephone number:* (800) 426-4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding legal holidays, from 10 a.m. to 4 p.m. Eastern time. For general information about the public hearing, please contact Sean Porse by phone (202) 564-5990, by e-mail at porse.sean@epa.gov, or by mail at: US Environmental Protection Agency, Mail Code 4606M, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. General Information

This Notice of Data Availability (NODA) presents new information and data related to geologic sequestration (GS) of CO₂ obtained after publication of the July 25, 2008, proposed rule, "Federal Requirements Under the Underground Injection Control (UIC) Program for Carbon Dioxide (CO₂) Geologic Sequestration (GS) Wells" (73 FR 43492). The proposal is available online at <http://www.epa.gov/fedrgstr/EPA-WATER/2008/July/Day-25/w16626.htm>. Availability of this new information could change EPA's approach to the final rulemaking.

The purpose of this NODA is to request public comment on new data and on related issues that have evolved in response to comments on the original proposal. This Notice provides additional information and data on the topic of injection depth as described in the July 25, 2008, proposal (73 FR 43492) and presents an alternative that responds to comments received on this issue. Therefore, EPA is providing the opportunity for notice and comment on the information provided in this Notice as a supplement to the proposed rule. The Agency seeks further public

comment on any and all aspects of the specific data and alternatives it has identified in this Notice. EPA continues to review the comments received on the proposed rule and will address those comments and the comments submitted in response to this Notice in the final action.

Persons interested in recent research related to GS and proposed injection depth requirements are encouraged to read and respond to this NODA. Additionally, owners and operators, States, Tribes, and State co-regulators involved in GS activities may wish to comment on this publication.

Abbreviations and Acronyms

AL: Action Level
 AoR: Area of Review
 CBI: Confidential Business Information
 CFR: Code of Federal Regulations
 CCS: Carbon Capture and Storage
 CO₂: Carbon Dioxide
 DOE: Department of Energy
 EGR: Enhanced Gas Recovery
 EPA: Environmental Protection Agency
 EOR: Enhanced Oil Recovery
 GS: Geologic Sequestration
 GHG: Greenhouse Gas
 IPCC: Intergovernmental Panel on Climate Change
 km: kilometer
 LBNL: Lawrence Berkeley National Lab
 m: meter
 mg/l: milligrams per liter
 Mt: Megaton
 MCL: Maximum Contaminant Level
 NETL: National Energy Technology Laboratory
 NWS: National Water Information System
 NODA: Notice of Data Availability
 ORD: Office of Research and Development
 PWS: Public Water System
 PWSS: Public Water Supply Supervision
 RCSPs: Regional Carbon Sequestration Partnerships
 SDWA: Safe Drinking Water Act
 SECARB: Southeast Regional Carbon Sequestration Partnership
 STAR: Science to Achieve Results
 SWP: Southwest Regional Partnership on Carbon Sequestration
 TDS: Total Dissolved Solids
 UIC: Underground Injection Control
 US: United States
 USDW: Underground Source of Drinking Water
 USGS: United States Geological Survey

Definitions

Action Level (AL): The concentration of lead or copper in water specified in 40 CFR 141.80(c) which determines, in some cases, the treatment requirements contained in subpart I of this part that a water system is required to complete.

Area of review (AoR): The region surrounding the geologic sequestration project that may be impacted by the injection activity. The area of review is based on computational modeling that

accounts for the physical and chemical properties of all phases of the injected carbon dioxide stream.

Buoyancy: Upward force on one phase (e.g., a fluid) produced by the surrounding fluid (e.g., a liquid or a gas) in which it is fully or partially immersed, caused by differences in pressure or density.

Capillary force: Adhesive force that holds a fluid in a capillary or a pore space. Capillary force is a function of the properties of the fluid, and surface and dimensions of the space. If the attraction between the fluid and surface is greater than the interaction of fluid molecules, the fluid will be held in place.

Carbon Capture and Storage (CCS): The process of capturing CO₂ from an emission source, (typically) converting it to a supercritical state, transporting it to an injection site, and injecting it into deep subsurface rock formations for long-term storage.

Carbon dioxide plume: The extent underground, in three dimensions, of an injected carbon dioxide stream.

Carbon dioxide (CO₂) stream: Carbon dioxide that has been captured from an emission source (e.g., a power plant), plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process. This subpart does not apply to any carbon dioxide stream that meets the definition of a hazardous waste under 40 CFR part 261.

Class VI wells: Wells used for geologic sequestration of carbon dioxide beneath the lowermost formation containing a USDW.

Confining zone: A geologic formation, group of formations, or part of a formation stratigraphically overlying the injection zone that acts as a barrier to fluid movement.

Corrective action: The use of Director approved methods to assure that wells within the area of review do not serve as conduits for the movement of fluids into underground sources of drinking water (USDWs).

Director: The person responsible for permitting, implementation, and compliance of the UIC program. For UIC programs administered by EPA, the Director is the EPA Regional Administrator; for UIC programs in Primacy States, the Director is the person responsible for permitting, implementation, and compliance of the State, Territorial, or Tribal UIC program.

Enhanced Oil or Gas Recovery (EOR/EGR): Typically, the process of injecting a fluid (e.g., water, brine, or CO₂) into an oil or gas bearing formation to

recover residual oil or natural gas. The injected fluid thins (decreases the viscosity) or displaces small amounts of extractable oil and gas, which is then available for recovery. This is also known as secondary or tertiary recovery.

Formation or geological formation: A layer of rock that is made up of a certain type of rock or a combination of types.

Geologic sequestration (GS): The long-term containment of a gaseous, liquid or supercritical carbon dioxide stream in subsurface geologic formations. This term does not apply to its capture or transport.

Geologic sequestration project: An injection well or wells used to emplace a CO₂ stream beneath the lowermost formation containing a USDW. It includes the subsurface three-dimensional extent of the carbon dioxide plume, associated pressure front, and displaced brine, as well as the surface area above that delineated region.

Injectate: The fluids injected. For the purposes of this rule, this is also known as the CO₂ stream.

Injection zone: A geologic formation, group of formations, or part of a formation that is of sufficient areal extent, thickness, porosity, and permeability to receive carbon dioxide through a well or wells associated with a geologic sequestration project.

Maximum Contaminant Level (MCL): The maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

Model: A representation or simulation of a phenomenon or process that is difficult to observe directly or that occurs over long time frames. Models that support GS can predict the flow of CO₂ within the subsurface, accounting for the properties and fluid content of the subsurface formations and the effects of injection parameters.

Pore space: Open spaces in rock or soil. These are filled with water or other fluids such as brine (*i.e.*, salty fluid). CO₂ injected into the subsurface can displace pre-existing fluids to occupy some of the pore spaces of the rocks in the injection zone.

Public Water System (PWS): A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least 60 days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and any collection or

pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any "special irrigation district." A public water system is either a "community water system" or a "noncommunity water system."

Pressure front: The zone of elevated pressure that is created by the injection of carbon dioxide into the subsurface. For GS projects, the pressure front of a CO₂ plume refers to the zone where there is a pressure differential sufficient to cause the movement of injected fluids or formation fluids into a USDW.

Saline formations: Deep and geographically extensive sedimentary rock layers saturated with waters or brines that have a high total dissolved solids (TDS) content (*i.e.*, over 10,000 mg/l TDS). Saline formations offer great potential for CO₂ storage capacity.

Stratigraphic zone (unit): A layer of rock (or stratum) that is recognized as a unit based on lithology, fossil content, age or other properties.

Total Dissolved Solids (TDS): The measurement, usually in mg/l, for the amount of all inorganic and organic substances suspended in liquid as molecules, ions, or granules. For injection operations, TDS typically refers to the saline (*i.e.*, salt) content of water-saturated underground formations.

Transmissive fault or fracture: A fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.

Trapping: The physical and geochemical processes by which injected CO₂ is sequestered in the subsurface. Physical trapping occurs when buoyant CO₂ rises in the formation until it reaches a layer that inhibits further upward migration or is immobilized in pore spaces due to capillary forces. Geochemical trapping occurs when chemical reactions between dissolved CO₂ and minerals in the formation lead to the precipitation of solid carbonate minerals.

Underground Source of Drinking Water (USDW): as defined under 40 CFR part 144.3, an aquifer or portion of an aquifer that supplies any public water system or that contains a sufficient quantity of ground water to supply a public water system, and currently supplies drinking water for human consumption, or that contains fewer than 10,000 mg/l total dissolved solids and is not an exempted aquifer.

Special Accommodations: For information on access or accommodations for individuals with disabilities, please contact Sean Porse at (202) 564-5990 or by e-mail at

porse.sean@epa.gov. Please allow at least 10 days prior to the meeting, to give EPA time to process your request.

II. What Did EPA Propose?

On July 25, 2008, EPA published the proposed "Federal Requirements Under the Underground Injection Control (UIC) Program for Carbon Dioxide (CO₂) Geologic Sequestration (GS) Wells." (73 FR 43492) The Agency proposed a new class of injection well (Class VI) along with technical criteria for permitting GS wells, including criteria for geologic site characterization, area of review (AoR) and corrective action, well construction, operation, mechanical integrity testing, monitoring, well plugging, post-injection site care, and site closure. These standards, if finalized, would protect underground sources of drinking water (USDWs) under the Safe Drinking Water Act (SDWA). The technical criteria in the proposed rule are based on the existing UIC regulatory framework under the SDWA for deep injection wells, with modifications to address the unique nature of CO₂ injection for GS.

Existing GS project experience, natural and industrial analogs, research, and current regulatory experience with underground injection were considered in the development of the proposed rule. Ongoing research builds upon the existing foundation of substantial literature on CO₂ injection and storage, some of which is available in the docket for this rulemaking. While CO₂ injection to extract oil and gas has taken place for many years, the use of UIC wells to inject large quantities of CO₂ for long-term storage is a relatively new practice. There are current projects and research underway that examine and demonstrate the effectiveness of underground injection as a tool for sequestering CO₂.

For example, there are four commercial projects in operation today:

- Sleipner (Norwegian North Sea)—1 Mt CO₂/yr injected since 1996;
- Weyburn (Canada)—1 Mt CO₂/yr injected since 2000;
- In Salah (Algeria)—1.2 Mt CO₂/yr injected since 2004;
- Snohvit (Norway)—0.7 Mt CO₂/yr injected since 2008.

Many additional large-scale projects are funded and under development worldwide.

The purpose of this NODA is to provide an update on newly available information and data related to research focused specifically on GS for long-term storage—with particular emphasis on data, research, and information that has become available since the July proposal publication.

In addition, the proposed rule contains a discussion of injection depth. In the July 2008 FR Notice, EPA proposed that the injection of CO₂ be confined to areas below the lowermost USDW (in the absence of an aquifer exemption). This approach is consistent with the approach used for other deep UIC wells; however, circumstances in a few States may warrant an alternative approach. Today's Notice provides additional discussion on an alternative the Agency is considering related to injection depth for GS wells.

EPA received a number of comments indicating that the Agency should further explore environmental and regulatory issues beyond the scope of the proposed SDWA requirements for underground injection of CO₂ for GS. EPA recognizes that a more comprehensive framework may be needed and that some stakeholders remain uncertain with respect to the potential applicability of other Federal environmental statutes such as the Clean Air Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response, Compensation, and Liability Act to various aspects of geologic sequestration of CO₂. The Agency is currently evaluating the need for a more comprehensive regulatory framework to provide legal guidance regarding this emerging technology. If the Agency chooses to pursue a more comprehensive regulatory approach to this subject, it will seek public comment on any proposal it develops for this framework and will also endeavor to issue a more comprehensive rule in the same time frame as it has planned for the stand-alone UIC GS rulemaking.

III. Research, Data Analysis, and Findings

A. Content of NODA and Summary of Comments

In this Notice, EPA is providing a short summary of several ongoing GS studies and interim information on current GS projects relevant to topics within the proposed GS regulation. This information and data were provided or made available after publication of the proposal in July 2008. More detailed information on the GS research and projects discussed below is available for review online as part of the docket for this rulemaking. EPA is providing this data and associated project summaries because the Agency expects that there may be additional studies and data on other GS projects, the use of existing technologies, and GS-related research that may inform the Agency's regulatory development process for GS. Such data

could contribute to the Agency's understanding of site characterization, well construction, operation, and monitoring requirements. The Agency requests comment on data and research discussed in today's Notice and how the Agency might use this data and research in developing the final rule. The Agency also requests submission of additional GS studies related to the data and research discussed in this Notice to inform the GS rulemaking.

In the preamble of the proposed rule, EPA described an adaptive approach to developing regulations for GS. This approach would allow the Agency to establish regulations to protect USDWs and enable the Agency to make changes to regulations over time as information from demonstration projects and other studies becomes available. EPA received comments from stakeholders requesting that additional data be made available to the public before a final rulemaking (particularly related to specific areas of GS) and indicating that more research is needed to support GS in general. Many commenters suggested that supplementary research on GS is necessary prior to rule promulgation and that EPA should wait until the Department of Energy (DOE)-sponsored Phase II and Phase III pilot projects are complete before finalizing the GS rule. Others believed that a final rulemaking should proceed and that new information and data from ongoing GS research should be considered and incorporated over time as part of an adaptive rulemaking process. Comments on the proposal encouraged additional research and investigations on areas including (but not limited to): Confining zone characterization; modeling; CO₂ plume movement; geochemistry; impacts of GS on saline formations; leakage from abandoned wells caused by material and cement degradation; potential pathways for contamination of USDWs; leak mitigation and remediation; and criteria for determining that the CO₂ plume has stabilized.

The Agency is actively tracking the progress of the Regional Carbon Sequestration Partnership (RCSP) GS and carbon capture and storage projects. The RCSPs have been compiling information related to their pilot and demonstration projects and have been developing research projects related to these efforts. A summary of several of these projects is available in today's Notice.

In addition, EPA's Office of Research and Development is conducting intramural and extramural research activities to develop modeling and monitoring tools for protecting

underground sources of drinking water. Laboratory, modeling, and field investigations are focusing on a variety of injection and storage scenarios and candidate injection sites. Analytic and semi-analytic models are being developed and evaluated for determining the area of review based on geologic and hydrologic conditions. Comprehensive laboratory tests are being applied to the development and field-testing of monitoring strategies that can detect migration of fluids into shallow aquifers and assess potential geochemical impacts. The ultimate goal of these research activities is to provide more robust tools for permitting, monitoring, and evaluating GS sites from injection through post-injection site care and site closure to prevent endangerment of USDWs. EPA is also funding six projects for the study of ground water and human health impacts of GS through the Science To Achieve Results (STAR) grant program. The awards will be announced this fall on EPA's Web site (<http://es.epa.gov/ncer/>).

Furthermore, EPA and DOE have jointly supported GS-related studies at Lawrence Berkeley National Lab (LBNL), described in Section II.B. These studies use modeling to predict the potential impacts on ground water from GS activities.

B. DOE-Sponsored Regional Carbon Sequestration Partnership Projects

Currently, DOE's National Energy Technology Laboratory (NETL) is developing and/or operating approximately 30 GS projects, a number of which have either completed injection or are in the process of injecting CO₂. The purpose of these projects is to "help determine the best approaches for capturing and permanently storing gases that can contribute to global climate change" and to determine "the most suitable technologies, regulations, and infrastructure needs for carbon capture, storage, and sequestration in different parts of the country" (http://www.netl.doe.gov/technologies/carbon_seq/partnerships/partnerships.html). Through cooperation with DOE, EPA has obtained pilot project data from several of these GS projects. RCSPs are conducting pilot and demonstration projects to study: site characterization (including injection and confining formation information, core data and site selection information); well construction (well depth, construction materials, and proximity to USDWs); frequency and types of tests and monitoring conducted (on the well and on the project site); modeling and

monitoring results; and injection operation (injection rates, pressures, and volumes, CO₂ source and co-injectates). In addition to information available in the docket for this NODA, information on some of these projects is available at <http://www.netl.doe.gov/publications/proceedings/08/rcsp/>. The following is a short summary of select project activities and data generated.

Escatawpa, Mississippi (MS); Southeast Regional Carbon Sequestration Partnership (SECARB)

SECARB is conducting a CO₂ injection test in Jackson County, MS into a deep saline reservoir along the Gulf Coast that had not previously been characterized for oil and gas exploration. The injection zone, 9,500 feet (2,896 meters) deep in the Lower Tuscaloosa Massive Sand Unit, is overlain by two confining layers. The site is near the Victor J. Daniel Power Plant, the source of the CO₂, which was delivered to the injection site via truck.

Characterization of the site is based on a wealth of geophysical and core-derived information, including well core samples, open-hole and cased-hole well logging, baseline vertical seismic profiling, and pressure transient testing. Baseline sampling and analysis of formation fluids and soil flux sampling were also performed. The SECARB team performed a 3-dimensional simulation to estimate injectivity, storage capacity, and long-term fate of the injected CO₂. The model estimated that the plume would extend up to 350 feet (106.7 meters) at the end of the injection test.

An injection well and a monitoring well were drilled at the site. The injection well is permitted by the Mississippi Department of Environmental Quality as a UIC Class V experimental well. Both the injection and monitoring well were constructed with surface and long-string casing that was cemented from the injection zone to the surface. Pre-injection mechanical integrity tests of the injection and monitoring well (annulus pressure test, radioactive tracer survey, differential temperature survey, and pressure fall-off tests) met UIC Class I requirements.

In October of 2008, 3,027 tons (2,746 tonnes) of CO₂ were injected into the well; injection rates averaged 170 to 180 tons/day (154 to 163 tonnes/day). Continuous monitoring devices were used to record (at 30 second intervals): Injection pressure, annular pressure, temperature, and rate. The injection was complete on October 28, 2008.

SECARB is continuing to monitor activities at the site through surface or near-surface monitoring for upward CO₂ seepage via groundwater sampling, soil

flux sampling and tracer detection. The purpose of this monitoring and sampling is to determine whether CO₂ is migrating upward from the injection zone. To date, there has been no indication of the return of the injected CO₂ in the shallow subsurface. SECARB also plans to employ time-lapse seismic and geophysical tools to determine the deep subsurface fate of the injectate.

This SECARB project employs, demonstrates, and validates the EPA's proposed Class VI well construction, operational, and monitoring requirements. The use of surface and near-surface monitoring techniques provides the EPA with preliminary information regarding the efficacy and appropriateness of these technologies at certain sites; and supports the need for a site-specific monitoring plan that will allow use of a range of monitoring technologies suitable for each unique GS site. This information and public comments on this research will be used to inform the Agency's final rulemaking.

For additional information about the Escatawpa Project, see the full report in the docket for today's publication.

Aneth Field, Paradox Basin, Southeast Utah (UT); Southwest Regional Partnership on Carbon Sequestration (SWP)

The Aneth Field is the site of an experimental combined EOR-GS test by the Southwest Partnership. The primary CO₂ injection target is the carbonate Paradox Formation, which is approximately 5,600 to 5,800 feet (1,707 to 1,768 meters) deep, and is overlain by the low-permeability Gothic Shale. Petrographic, geochemical and mechanical analyses of the Gothic Shale are underway or planned.

CO₂ injection began in August 2007, and approximately 150,000 tons (136,077 tonnes) of CO₂ have been injected to date. Extensive monitoring of the site is complete or underway. Monitoring activities at the site include time-lapse vertical seismic profiling, microseismic monitoring, geochemical and tracer tests, CO₂ soil flux measurements, a surface fracture and banding study, and self-potential monitoring.

Monitoring data are being used to establish parameters for state-of-the-art mathematical reservoir models, which include coupling of multiphase CO₂-ground water flow, rock deformation, and chemical reactions to evaluate residence times, migration patterns and rates, and effects of CO₂ injection on fluid pressures and rock strain.

The Aneth Field project confirms the need for a project design with a robust monitoring plan, and tests the

importance of monitoring and modeling agreement in GS projects. In addition, the project demonstrates the utility of various monitoring technologies that may be used by owners and operators of Class VI wells. This information and public comments on this research will be used to inform the Agency's final rulemaking.

Pump Canyon Site, Near Archuleta, New Mexico (NM); Southwest Regional Partnership on Carbon Sequestration (SWP)

The SWP is conducting a Phase II project of CO₂ injection into deep, unmineable coal seams at the Pump Canyon Site near Archuleta, NM. To support characterization of the site, the SWP is performing a "seal analysis" of the ability of the Kirtland Formation to act as a barrier to the movement of CO₂ or other reservoir fluids. The Kirtland Formation is a major, regional aquitard and reservoir seal that directly overlies the geologic formation containing the coal seams.

To characterize the Kirtland Formation, detailed studies of geological core samples, downhole geophysical logs, and outcrop studies were conducted. Complete and in-progress laboratory analyses include electron microscopic studies of petrographic and petrophysical properties; capillary pressure measurements; multiscale fracture characterization using well logs and core analysis; descriptions of stratigraphic columns and sedimentary structures based on cores; pore size distributions analysis using BET (Brunauer-Emmett-Teller), and geomechanical analyses of the caprock and overlying aquifer.

Operators are actively monitoring potential surface deformation from injection through the use of tilt meters and radar-based Interferometric Synthetic Aperture Radar (InSAR) in addition to monitoring the site's injection pressure. They are also tracking the CO₂ plume through continuous sampling of immediate offset production wells and through perfluorocarbon gas tracers (PFT) and naphthalene sulfonate water tracers (NST) introduced into the CO₂ injection stream. These tracers are used for identification in the unlikely event of reservoir leakage.

The Agency sought comment on using unmineable coal seams for GS in the proposed rule. The investigation at Pump Canyon will inform a determination on whether CO₂ can be effectively and safely sequestered in coal seams.

For further information on aspects of the Pump Canyon project, please refer to data available in the NODA docket.

C. Lawrence Berkeley National Laboratory (LBNL) Studies

An improperly managed GS project has the potential to endanger USDWs. The factors that increase the risk of USDW contamination are complex and can include improper siting, construction, operation and monitoring of GS projects. The proposed GS requirements address endangerment to USDWs by establishing new Federal requirements for the proper management of CO₂ injection and storage. Risks to USDWs from improperly managed GS projects can include CO₂ migration into USDWs, causing the leaching and mobilization of contaminants (e.g., arsenic, lead, and organic compounds), changes in regional groundwater flow, and the movement of greater salinity formation fluids into USDWs, causing degradation of water quality. As mentioned in Section II of this Notice and in the proposal, CO₂ has been injected on large scales at four sites: at Sleipner in the North Sea, at In Salah in Algeria, at Snohvit in Norway, and in the Weyburn Field in Alberta, Canada. There have been no documented cases of leakage from these projects. Additionally, for decades, the oil and gas industry has been safely injecting CO₂ for the purpose of enhanced oil and gas recovery.

LBNL is studying the potential effects of CO₂ injection on ground water and surrounding formations to determine the potential for impacts on USDWs and human health in the event that a GS project is not properly sited, operated, or managed. Specifically, LBNL is evaluating the potential for GS to cause changes in ground water quality as a result of CO₂ leakage and subsequent mobilization of trace elements such as arsenic, barium, cadmium, mercury, lead, antimony, selenium, zinc, and uranium. In addition, LBNL is evaluating basin-scale hydrological impacts of large-volume injection of CO₂ on groundwater aquifers and in particular, the pressure front impacts caused by GS. Summaries of the interim results for these research areas are discussed below. The full publications are available in the docket and on LBNL's Web site at http://esd.lbl.gov/GCS/projects/CO2/index_CO2.html.

1. Ground Water Quality Changes Related to the Mobilization of Trace Elements

Summary

LBNL used a comprehensive computational model to evaluate the potential impact of CO₂ leaking from deep geologic sequestration sites on the concentrations of trace elements in potable ground waters (Birkholzer *et al.*, 2008a). LBNL estimated the amount of trace elements from native mineral species that could potentially be mobilized by the intrusion of CO₂, and the potential ground water concentrations that could result. LBNL then compared these estimates to EPA's Maximum Contaminant Levels (MCLs) and Action Levels (ALs) for drinking water to determine the potential for drinking water standards to be exceeded. It is important to note that model results were dependent on several assumptions and parameter values with a large degree of uncertainty, such as dissolution and dissociation constants. LBNL recommended that further studies should be conducted, including laboratory or field experiments and evaluation of natural analogues.

LBNL conducted multiple model runs to assess a variety of scenarios and aquifer conditions and, as discussed below, found that if injected CO₂ comes into contact with shallow USDWs, some trace element concentrations such as arsenic could increase.

Identification of Trace Elements of Concern

An important step in developing the model used to assess the different scenarios was the identification of naturally occurring minerals that could act as a source of trace elements in ground water if they were to come into contact with CO₂. This identification was accomplished through an extensive review of the scientific literature, through which potential minerals of concern were identified. The presence of these minerals in aquifer rocks was indirectly substantiated through an evaluation of more than 38,000 water-quality analyses from potable aquifers reported in the United States Geological Survey's (USGS) National Water Information System (NWIS). While the abundances of these host minerals are typically very small, all trace elements targeted for study occur frequently in soils, sediments, and aquifer rocks.

A preliminary assessment of CO₂-related water quality changes, including pH, was conducted by calculating the expected equilibrium concentrations of trace elements as a function of the

amount of CO₂ in a representative potable groundwater. Results of this modeling obtained for typical aquifers under reducing conditions indicate that arsenic could potentially exceed Federal drinking water standards at elevated CO₂ concentrations (40 CFR 141.62 (b)(16)). Other trace elements, such as barium, cadmium, lead, antimony, and zinc, may also be mobilized in certain circumstances, but the majority of results did not show mobilization at levels exceeding the MCL or AL.

LBNL used reactive-transport modeling to further study the fate and transport of arsenic and lead in a representative potable aquifer as influenced by leakage of CO₂. This study is described as follows:

Prediction of the Fate and Transport of Trace Elements

LBNL used the reactive-transport model TOUGHREACT to 1) study and predict the transport of CO₂ within a shallow aquifer, 2) estimate potential geochemical changes caused by the presence of CO₂, and 3) estimate the fate and transport of mobilized trace elements. LBNL conducted sensitivity studies to account for a range of conditions found in potable aquifers throughout the US and to evaluate the uncertainty associated with geochemical processes and model parameters. Starting with a representative ground water under equilibrium conditions, the model was used to estimate the impact of CO₂ leakage into the aquifer for 100 years. For this analysis, the investigators assumed a hypothetical release scenario based on CO₂ escape from a deep geologic sequestration site via a preferential pathway, such as a fault zone, entering the shallow aquifer at a constant rate.

Results from this model simulation suggest that if CO₂ were to leak into a shallow aquifer, the potential for mobilization of lead and arsenic could be enhanced, causing increases in the concentration of these trace elements in ground water. While LBNL studies did suggest that CO₂ interaction could cause significant concentration increases compared to the initial water composition, the MCL for arsenic was exceeded in only a few simulation scenarios, while the lead concentrations remained below the AL under all scenarios. It is important to emphasize that these studies looked at potential consequences of CO₂ leakage into the USDW, not the likelihood of such leakage occurring. The goal of the UIC program and these regulations is to ensure that injectate does not contaminate USDWs in the first place.

The Agency will use these preliminary results and public comments on this research as well as potential site-specific analyses, to refine and inform site characterization, monitoring, and remediation requirements and guidance, if necessary, in the Agency's final rulemaking. The Agency seeks comment on this research and any additional studies related to a) mobilization of constituents and b) the likelihood or frequency of such leakage/risks.

2. Basin-Scale Hydrologic Impacts of CO₂ Storage

Summary

Pressure build-up from large volume CO₂ sequestration has been researched since the early 1990s. Recent studies have focused on better understanding large-scale pressure responses for future geologic sequestration projects (Zhou *et al.*, 2008; Van der Meer and Yavuz, 2008; Nicot, 2008; Birkholzer *et al.*, 2009). LBNL studied a hypothetical, future scenario of GS in a sedimentary basin as an illustrative example to demonstrate the potential for basin-scale hydrologic impacts of CO₂ storage (Birkholzer *et al.*, 2008b).

Sedimentary Basin Case Study

The example basin considered in this case study contains deep saline formations that are potential targets for large-scale CO₂ storage projects because they are geologically favorable for permanent CO₂ storage and the region has many large stationary sources of CO₂. The basin contains a thick, extensive, high porosity, high permeability sandstone that is the primary target for CO₂ storage. A superior confining shale layer is also present, making it an ideal site for geologic sequestration projects.

LBNL used a preliminary computational hydrogeologic model of the basin to simulate regional ground water flow patterns as influenced by large-scale deployment of GS in the region. The model assumed a scenario where 20 independent GS projects spaced throughout the center of a 570 kilometers (km) by 550 km (354 miles by 342 miles) model domain each injected 5 million tonnes (5.51 million tons) of CO₂ per year over 50 years. (The largest injection today is on the order of a million/tons/per year). Modeling results for this simulation indicated that the maximum size of each CO₂ plume was 6–8 km (3.7–5 miles) with lateral separation between each GS project of about 30 km (18.6 miles). These model results suggest that the basin is favorable for effective trapping of CO₂.

In addition, simulation runs indicated that injection pressures did not exceed fracture pressure or the maximum value used in the model for this basin. However, results also indicated that far-field pressure changes could propagate as far away as 200 km (124 miles) from the core injection area where the geologic sequestration projects are located. After CO₂ injection ended in the simulation, pressure buildup in the injection zone began to dissipate while the far-field pressure response continued to increase and expand. For this simulation example, a pressure increase of 0.5 bar existed at an areal extent of nearly 400 km by 400 km (249 miles by 249 miles) after 50 years. These model results indicate that basin-wide pressure influences can be large and may have intersecting pressure perturbations in a multiple-site scenario. While simulated changes in salinity within the storage formation were relatively small, the predicted pressure changes could push saline water upward into overlying aquifers if localized pathways such as conductive faults existed. As these large scale simulations indicated, limitations on injection volumes related to basin-scale pressure build-up should be considered during CO₂ capacity estimation.

EPA believes that the example studied by LBNL illustrates the importance of basin-scale evaluation of reservoir pressures and far-field pressures resulting from CO₂ injection. EPA requests comment on this study and welcomes additional studies that provide information on the need for basin-scale evaluations for GS injection.

D. Additional GS Research

There are international, consensus-based and peer-reviewed reports on CCS, including the Intergovernmental Panel on Climate Change (IPCC) Special Report on Carbon Dioxide Capture and Storage (IPCC, 2005), which specifically includes a chapter on GS drawn from published literature and research studies. Comprehensive reviews of the results from GS research are also available (*e.g.*, Holloway, 2001; Friedman, 2007; Tsang *et al.*, 2008). EPA will continue to track research project development and literature published by DOE and international governments and organizations including the International Energy Agency (IEA), IEA Greenhouse Gas Programme, and other major international CCS initiatives.

With respect to geologic and reservoir modeling, EPA has conducted one such synthesis and analysis of GS research to inform the rulemaking efforts. Schnaar and Digiulio (2009) present a research

review of over forty GS modeling studies spanning from 1993–2008. This review found that GS models are based on pre-existing codes that have been developed for predicting the movement of water and solutes in soil, the behavior of groundwater contaminants at hazardous waste sites, and the recovery of oil and gas from petroleum-bearing formations. However, modeling the injection and sequestration of CO₂ poses unique challenges, such as the need to properly characterize CO₂ transport properties across a large range of temperatures and pressures, and the need to couple multiphase flow, reactive transport, and geomechanical processes. The authors reviewed studies that demonstrated the use of modeling in project design, site characterization, assessments of leakage, and site monitoring.

The complete modeling review is available in the online public docket at <http://www.regulations.gov>. A list of recent publications addressing potential environmental risks and risk management approaches for GS sites is also available in the docket. The Agency may use information generated from these studies to identify implementation guidance needs and refine the proposed requirements. EPA seeks comment on these studies and requests other research on geologic and reservoir modeling as well as research associated with potential environmental risks and risk management approaches for GS.

IV. Injection Depth for GS Projects

A. What did EPA propose for Class VI well injection depth relative to the location of USDWs?

In the proposed rule, EPA defined Class VI injection wells as wells used for GS (injection) of CO₂ beneath the lowermost formation containing a USDW. In Section III.A.4 of the preamble, EPA discussed *Injection Depth in Relation to USDWs* to further clarify the Agency's expectations regarding injection depth for Class VI wells. The proposed requirements would preclude injection of CO₂ into zones in between and above USDWs. EPA is aware that confining Class VI CO₂ injection to below the lowermost USDW may restrict the use of sequestration in areas of the country with deep USDWs where well construction would be technically impractical or infeasible. As proposed, the definition would also preclude injection of CO₂ into shallow formations such as coal seams and basalts. The Agency requested comment on alternative approaches that would allow injection between and/or above the

lowest USDW and thus potentially allow for more areas to be available for GS while continuing to prevent endangerment of USDWs.

Approaches on which the Agency sought comment in the preamble, as alternatives to the proposed injection depth requirements included:

- Allowing Class VI CO₂ injection above the lowest USDW when the Director determines that geologic conditions exist that will prevent fluid movement into adjacent USDWs;
- Allowing the use of an aquifer exemption process for Class VI injection; and,
- Establishing, by regulation, a minimum injection depth for GS of CO₂.

B. Why did EPA propose that Class VI wells inject below the lowest USDW?

EPA initiated the regulatory development process for GS and proposed new, tailored Federal requirements appropriate for the unique nature of injecting large volumes of CO₂ for long-term storage to ensure that USDWs are not endangered. The proposed injection depth requirements for Class VI wells are consistent with the siting and operational requirements for deep, technically sophisticated Class I wells and are an important component of the UIC program.

The basis of these requirements is the principle that placing distance between the injection formation and USDWs decreases risks to USDWs. In these deep-well injection scenarios, the added depth and distance between the injection zone and overlying formations serve both as a buffer allowing for pressure dissipation and as a zone for monitoring that may detect any excursions (of the injectate) out of the injection zone. Additional distance also allows trapping mechanisms, including dissolution of CO₂ in native fluids and mineralization, to occur over time—thereby reducing risks that CO₂ may migrate from the injection zone and endanger USDWs. Additionally, the depth and distance below the lowest USDW allow the potential for the presence of additional confining layers (between the injection zone and overlying formations/USDWs).

C. Injection Depth Comments, Data, and Research

EPA received a range of comments both in support of, and opposed to, the proposed injection depth requirements for Class VI wells.

Comments Supporting the Proposed Injection Depth Requirements

Comments that supported the proposed requirements indicated that

injection should be constrained to below the lowest USDW (should not be allowed above and/or between USDWs) because:

- SDWA requires the UIC program to promulgate regulations (including injection depth requirements) that maximize USDW protection;
- Injection below the lowest USDW is a long-standing principle of UIC deep well injection;
- In many cases, injection below the lowest USDW ensures a greater distance between the injection zone and USDWs;
- GS is a new/unproven technology (at large scale) and, in the early years of deployment, injection depth limitations are prudent. These requirements could be relaxed in the future as information is learned about GS injection;
- Keeping injection below the lowest USDW will reduce the likelihood of wells (e.g., water, mineral, and/or hydrocarbon production) being drilled through a CO₂ plume in the future.

These comments and concerns about injection depth are further supported by ongoing research, data, and activities related to water use, availability, and planning; some of this research and data were submitted to the proposed rule docket (e.g., EPA-HQ-OW-2008-0390-0181.1). Water availability research in the United States indicates that water treatment of higher salinity waters (in excess of the USDW protectiveness threshold of 10,000 ppm TDS) may be more cost effective than the cost of obtaining water rights or surface water elsewhere in the area (Sengebush, 2008). Additionally, as technologies advance, treatment of increasingly deeper and/or higher salinity waters may become a common practice employed in many communities throughout the US. Other studies support the need to consider long-term drinking water protection and the confluence of population growth and constrained water resources in parts of the US when developing injection depth requirements (US Government Accountability Office, 2003; Davidson, *et al.*, 2008).

Comments Opposed to the Proposed Injection Depth Requirements

Those opposed to the proposed requirements supported allowing injection above and between USDWs. These commenters indicated that such injection should be allowed under the following conditions and based on the following arguments:

- At depth without limitations;
- Based on site-specific information and in certain geologic settings, where

there are adequate confining systems above and below the injection zone;

- Where formations have been exempted (for other injection purposes) and/or where the formations are greater than 10,000 ppm TDS;
- Based on geographically delineated exemptions (e.g., specifically delineated formations, basins, or regions where injection could occur at depths above/between USDW);
- Because many parts of the country will be excluded from GS activities and as a result CCS deployment may be restricted (if this requirement is maintained as written);
- Because Class II, Class III, and Class V operations are already injecting above the lowest USDW without any potential for threats to underlying (or overlying) USDWs; and,
- Because there should not be a blanket prohibition for Class VI GS wells.

Research, information, and comments that support allowing injection above and between USDWs have focused on climate change mitigation, CO₂ geologic storage capacity assessments, and current UIC injection practices. Commenters interested in climate change mitigation emphasized the role that GS will play in reducing greenhouse gas (GHG) emissions while national GS capacity estimates focus on formations irrespective of depth (above/below the lowest USDW). Furthermore, some specific research on CO₂ injection for GS into various formations including shallow, volcanic rocks such as flood basalts (McGrail, *et al.*, 2006) and coal seam injection (Dooley, *et al.*, 2006; IPCC, 2005; MIT 2007; White *et al.*, 2005) illustrates the potential for GS in these formations, but only if there is depth requirement flexibility. Certain States have indicated that where USDWs are very deep (e.g., 15,000 ft/4,572 meters and deeper) and layered (stratified) these regions would become unavailable for large-scale GS projects because injectors would not be able to comply with the current injection depth (and well construction) requirements. These States suggest that GS should be allowed in certain areas if a site-specific demonstration can be made that USDWs will be protected.

Some comments support the suggestion that current Class II, Class III, and Class V injection activities occurring above and between USDWs may serve as a viable analogue for GS injection depth requirements. Class II and Class III owners and operators of sites where injection is taking place above and between USDWs must identify and demonstrate upper and lower impermeable confining units.

These confining units serve as barriers to fluid movement and pressure and must ensure continuous injectate isolation, confinement, and USDW protection. Identification of such units is conducted through analysis of sonic and resistivity logs, drill stem tests, and wire line tests.

D. Evaluation of Concerns About Injection Depth for Class VI GS Wells

Discussion

Under Section 1421 of the Safe Drinking Water Act (SDWA), UIC regulations must prevent underground injection that endangers USDWs. While EPA has met this statutory requirement in the past by requiring injection below the lowermost USDW, for some of the injection activities that may pose increased risks, the Act allows other approaches as well (Kobelski, *et al.*, 2005).

In today's NODA, EPA is providing additional information on an alternative for addressing injection depth in limited circumstances where there are deep USDWs. EPA believes that a waiver process may respond to the range of comments, both for and against the proposed requirement that Class VI wells inject below the lowermost USDW. The goals of this approach are to: (1) Provide flexibility to UIC Program Directors and owner/operators that will undertake CO₂ injection for GS; (2) respond to concerns about local and regional geologic storage capacity limitations imposed by the proposed injection depth requirements; (3) allow for a more site-specific assessment; (4) accommodate injection into different formation types; and, (5) consider the concept that CO₂ injection for GS above and/or between USDWs could be as safe and effective as injection below the lowermost USDW as evidenced by past experiences with some Class II, III and V injection wells. EPA believes this approach may additionally accommodate requests for geographic flexibility while placing such determinations at the State or Regional level. Lastly, the approach is designed to acknowledge and accommodate comments and concerns about drinking water resource availability and the potential/known future needs, and to afford such water resources protection.

EPA is considering a number of topics and the implications of the various commenters' concerns related to this potential alternative as follows:

There have been a number of national GS capacity estimates developed (*e.g.*, by DOE's National laboratories, USGS, *etc.*). Some of these assessments have broadly identified porous, permeable

formations that may receive and store CO₂ at a range of depths beneath the ground surface (Burruss, R.C., *et al.*, 2009; DOE, 2007; Davidson *et al.*, 2008; MIT, 2007; Dooley, 2006). In developing injection depth requirements, EPA acknowledges that these capacity estimates do not directly address specific site suitability attributes that would be identified through the UIC permitting site-characterization process. Additionally, these formations (identified through capacity estimates) may be stratified, stacked, or layered and in combination, their cumulative capacity could be limited (*i.e.*, less than assessed). In the absence of such site-specific information, it is currently difficult to identify what percentage of assessed national capacity is actually suitable for GS. In addition, very small geologic storage sites, even when aggregated within a given area, may not be conducive to/appropriate for large-scale, commercial GS projects. However, the approach described in this Notice allows for such a determination to be made on a site-specific basis.

Second, the alternative under consideration does not prohibit injection into any specific formation types (*e.g.*, basalts and/or coal seams). It affords all formations equal treatment and allows specific regions of the country the regulatory flexibility to determine if any injection at a particular site and depth is the appropriate approach. It will also help to manage injection in areas where there may be multiple, stratified formations with significant assessed cumulative capacity.

Third, because the Agency believes that it is necessary to address the specific, unique characteristics of Class VI injection (*e.g.*, large injection volumes, viscosity, and buoyancy) and the Agency does not have information or data indicating that Class II operations are entirely analogous to Class VI, large-scale injection, this alternative allows Class VI injection depth considerations to be tailored for GS. A number of dominant differences between Class II and Class VI operations indicate that these well classes warrant different treatment. EPA received comment during the public comment period supporting the need for such a distinction. These differences include: the risk profiles for these operations; the greater total injection volumes (of CO₂) for Class VI GS; and, differences in formation pressures (potentially higher for GS), greater opportunities for mobilization of constituents, and injection rates and operating conditions.

The alternative EPA is considering relies on the principle of site-suitability

for GS: injection zones/formations that have suitable upper and lower confining units, appropriate lateral and vertical extent to receive and contain the injected CO₂, and an appropriate management scheme to ensure that the water and other resources contained within the injection zone will not be needed in the future. The management scheme will also ensure that there is a strategy developed to address future needs to access formations below the injection zone.

This approach would allow regulators and communities (*e.g.*, States, *etc.*) to assess the most appropriate injection depth for a given project, in a given geographic or geologic area. It may also allow communities, local, and State authorities to plan resource use appropriately and, if necessary, circumvent the need to drill through a CO₂ filled zone/formation/plume to exploit resources (both water and hydrocarbon) in or below the injection zone.

Conversely, EPA is weighing the fact that this alternative would be a divergence from the existing UIC deep-well injection requirements for industrial and hazardous waste injection. It will result in greater injection depth variability throughout the United States and may result in emplacement of fluids by injection in closer proximity to USDWs than would occur under the proposed requirements. Additionally, adoption of this alternative could potentially add a new administrative burden to UIC programs pursuing the waiver approach.

Consideration of New Approach

Based on new information and data from comments received on the proposed rule, the Agency is considering a waiver process to allow GS injection above and between USDWs under specific conditions in lieu of a blanket prohibition on injection above and between USDWs. The proposed Class VI GS injection depth requirements would remain unchanged but would allow an owner or operator seeking to inject above and/or between USDWs to apply for a waiver from the proposed injection depth requirements. The owner or operator would be required to demonstrate to regulatory authorities that such injection can be undertaken and completed in a manner that prevents fluid movement into overlying (and underlying) USDWs, thereby preventing the endangerment of public health from USDW contamination. This process would be separate from aquifer exemptions and has no effect on 40 CFR parts 144.7 and 146.4.

Under this alternative, an owner or operator applying for an injection depth waiver would need to consider and submit additional, specific information to the UIC Program Director and the Public Water Supply Supervision (PWSS) Program Director for review prior to completing a Class VI permit application. EPA is considering that such information would likely include:

- *Site characterization:* Site characterization data will be critical in determining appropriateness of a given formation and depth for GS injection. The waiver application would need to demonstrate: (1) Laterally continuous, impermeable confining units above and below the injection zone adequate to prevent fluid movement and pressure buildup; (2) A laterally continuous injection zone/formation with adequate injectability, including sufficient porosity and permeability, and appropriate soil-rock chemistry (so as to ensure that the injection matrix is not dissolved as a result of injection); (3) An injection zone and confining formations free of transmissive fractures and faults; and, (4) A characterization of regional fracture properties and a demonstration that such fractures will not interfere with injection, serve as conduits, or endanger USDWs.

- *AoR and corrective action:* Due to the potential risk that artificial penetrations pose as fluid/injectate conduits, the owner/operator would need to map and identify all artificial penetrations in the AoR that penetrate the injection zone, the upper and lower confining zones, and all USDWs in the area. The purpose of this demonstration would be to ensure that public water supplies, private wells, and potential future water resources are identified and the location of artificial penetrations into such formations are known and these artificial penetrations can be appropriately plugged during the permitting phase.

- *Emergency and remedial response and financial responsibility:* The owner or operator would need to supplement the emergency and remedial response plan (submitted as part of the waiver application process *and* as part of the UIC Class VI permit) to ensure protection of USDWs above and below the injection zone. The purpose of this plan would be to explain that the owner or operator has considered regional water resource issues and has explored alternative water supplies or water treatment options to address unanticipated movement of the injectate or formation fluids (*e.g.*, CO₂, brine, or other fluids) into any overlying or underlying USDWs. The owner/operator would also demonstrate sufficient,

additional financial responsibility to address any potential contamination of USDWs above or below the injection zone.

Upon compliance with the waiver process requirements, the owner/operator would need to submit the information jointly to the UIC Program Director and the PWSS Program Director. These Directors would consider factors such as:

- The integrity of the upper and lower confining units (certified by a Professional Geologist or a Professional Engineer);
- The suitability of the injection zone (*e.g.*, lateral continuity; lack of transmissive faults and fractures; knowledge of current or planned artificial penetrations into it or formations below the injection zone);
- The potential capacity of the geologic formation to sequester CO₂, accounting for the availability of alternative injection sites;
- All other site characterization data, the proposed emergency and remedial response plan, and a demonstration of financial responsibility;
- Community needs, demands, and supply from drinking water resources;
- Planned needs, potential and/or future use of USDWs and non-USDWs in the area;
- Planned (or permitted) water, hydrocarbon, or mineral resource exploitation potential of the proposed injection formation and other formations both above and below the injection zone—to determine if there are any plans to drill through the formation to access resources in or beneath the proposed injection zone/formation;
- The proposed plan for securing alternative resources or treating USDW formation waters in the event of contamination related to the Class VI injection activity; and,
- Any other locally applicable considerations.

The waiver may also be subject to local notice and public hearing. Following a public hearing and waiver approval by both Program Directors, the owner/operator may complete and submit the Class VI permit application. The owner/operator may be required to comply with additional requirements that apply as a result of receipt of the waiver, designed to ensure the protection of USDWs both above and below the injection zone. These requirements could include: more specific construction and pre-operational testing requirements to reduce the chances of upward fluid movement or inter-formational flow; enhanced operating requirements such as more stringent injection pressure

limitations; a site-specific monitoring regime that includes increased formation fluid and ground water sampling and monitoring above and below the injection zone in concert with local water suppliers; seismic plume tracking and monitoring of pressure changes above and below the injection zone; supplemented financial responsibility and emergency and remedial response requirements (consistent with those in the waiver); and identification of the location of PWS and private drinking water wells in developing and executing the post-injection site care and site closure plan at the GS site.

Adoption of the Waiver Requirements

Due to the range of concerns and comments related to the injection depth requirements and the nature of the suggested waiver approval procedure, EPA believes that adoption of any such injection depth waiver process, as previously described, should be at the discretion of the UIC Program Director. Because deep USDWs do not exist in every State, EPA expects that not all States would choose to adopt the waiver process. UIC Programs in such States may instead adopt and enforce the proposed requirement that injection for GS be below the lowermost USDW.

EPA also recognizes that States and UIC Directors have the discretion to be more stringent in writing regulations for GS and/or adopting Federal UIC requirements. As a result, States could include a minimum injection depth requirement in their regulations or a Director may impose such requirements on a site-specific basis.

The Agency is requesting comment on the merits and possible disadvantages of the injection depth waiver process. Specifically, should an approach such as the one described in this Notice be considered and if so, should there be additional, fewer, or different elements? Some stakeholders are concerned about the risks associated with the use of formations other than deep saline and depleted reservoirs (*e.g.*, coal seams, basalts, *etc.*). EPA is seeking comment on whether the waiver process should apply to formations other than these.

Additionally, the Agency is interested in:

(1) Information on specific areas of the United States where injection depth and USDW depth are of concern (including formation depth, location, and assessed capacity; demonstrated confinement and GS suitability; and, formation salinity/TDS) as determined by well-log analyses, cross sections, and formation fluid analyses;

(2) Data, information, and evidence from owners and operators constructing and operating injection wells through existing CO₂ plumes to access resources (e.g., water, hydrocarbon, etc.) below the injection zone and whether or not such operations are safe and do not endanger USDWs; and,

(3) Strategies that States, Tribes, and regions are considering to manage competing GS and resource issues.

V. State Statutes, Regulations, and Activities Related to Geologic Sequestration

Throughout the regulatory development process for the Class VI proposal, EPA has made it a priority to engage States and State organizations. The EPA has honored a commitment to working with State co-regulators to address regulatory issues related to GS through a series of stakeholder and technical workshops, public hearings, and EPA participation with national organizations including the Ground Water Protection Council, the Interstate Oil and Gas Compact Commission, and the American Association of State Geologists. EPA values coordination with States and State co-regulators and will continue an open dialogue as the Agency moves forward in the regulatory development process.

EPA recognizes the complexity and importance of the States' approaches to managing GS and does not want to unduly hinder State activities as indicated in an April 2008 EPA letter to the States (available in the docket for this regulatory action). The Agency is aware that States are currently in various stages of developing statutory frameworks, regulations, workgroups, technical guidance, and strategies for addressing CCS and GS. Much of the expertise and infrastructure currently exists within State UIC Programs. These programs will form the foundation for managing GS wells. Additionally, States can use multiple authorities beyond those afforded under the SDWA and UIC regulations including surface access and land rights, unitization of fields, pore space ownership, mineral rights, worker safety and emergency preparedness, and maximization of State oil and gas resource exploitation.

At present, several States have published GS regulations, while a number of other States are investigating and developing strategies to address dual purpose injection wells (EOR/EGR and GS simultaneously). Some States are using natural gas storage regulations as a platform for developing these regulations. Additionally, as States develop regulations and statutes, they are examining which State Agency can

most appropriately manage implementation for GS wells. EPA is continuing to collaborate with States and will consider this information as EPA develops guidance on the primacy application and approval process for Class VI wells. Information about these State activities may be found in the Docket for today's publication. EPA also seeks comment on current State activities addressing GS. This information will assist EPA in developing guidance for UIC program implementers.

VI. Conclusions

In conclusion, today's Notice supplements the proposed "Federal Requirements Under the Underground Injection Control (UIC) Program for Carbon Dioxide (CO₂) Geologic Sequestration (GS) Wells" of July 25, 2008 (73 FR 43492), presents new data and information, and requests public comment on related issues that have evolved in response to comments on the original proposal. This Notice contains preliminary field data from Department of Energy-sponsored Regional Carbon Sequestration Partnership projects, the results of GS-related studies conducted by the Lawrence Berkeley National Laboratory, and additional GS related research. Today's Notice also discusses comments and presents an alternative the Agency is considering related to the proposed injection depth requirements.

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Dated: August 21, 2009.

Peter S. Silva,

Assistant Administrator, Office of Water.

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Notices

Federal Register

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD

Proposed Information Collection Activities

ACTION: Notice and request for comments.

SUMMARY: The Recovery Accountability and Transparency Board (Board) invites comments on the proposed information collection request as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 30, 2009.

ADDRESSES: Send comments to Jennifer Dure, Office of General Counsel, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006. Alternatively, you can e-mail comments to comments@ratb.gov. Please be sure to identify the title of the collection in the subject line.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501-3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60 days' notice to the public for comment on information collection activities before seeking approval of such activities by the Office of Management and Budget (OMB). Specifically, the Board invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) Whether the information collection activities are necessary for the Board to properly execute its functions; (ii) the accuracy of the Board's estimates of the burden of the information collection activities; (iii) ways for the Board to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for the Board to

minimize the burden of information collection activities on the public.

Below is a brief summary of the proposed information collection:

Title of Collection:

FederalReporting.gov Recipient Registration System.

OMB Control No.: 0430-0002.

Description: Section 1512 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, 123 Stat. 115 (Recovery Act), requires recipients of Recovery Act funds to report on the use of those funds. These reports are to be submitted to FederalReporting.gov, and certain information from these reports will later be posted to the publically available Web site Recovery.gov.

The FederalReporting.gov Recipient Registration System (FRRS) was developed to protect the Board and FederalReporting.gov users from individuals seeking to gain unauthorized access to user accounts on FederalReporting.gov. FRRS is used for the purpose of verifying the identity of the user; allowing users to establish an account on FederalReporting.gov; providing users access to their FederalReporting.gov account for reporting data; allowing users to customize, update, or terminate their accounts with FederalReporting.gov; renewing or revoking a user's account on FederalReporting.gov, thereby protecting FederalReporting.gov and FederalReporting.gov users from potential harm caused by individuals with malicious intentions gaining unauthorized access to the system.

To assist in this goal, FRRS will collect a registrant's name, email address, telephone number and extension, three security questions and answers, and, by way of a DUNS number, organization information. The person registering for FederalReporting.gov will generate a self-assigned password that will be stored on the FRRS, but will only be accessible to the registering individual.

Affected Public: Private sector and state, local, and tribal governments.

Total Estimated Number of Respondents: 150,961.

Frequency of Responses: Once.

Total Estimated Annual Burden Hours: 12,558.

Ivan J. Flores,

Paralegal Specialist, Recovery Accountability and Transparency Board.

[FR Doc. E9-20931 Filed 8-28-09; 8:45 am]

BILLING CODE 6820-GA-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 25, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB),

OIRA_Submission@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

Food and Nutrition Service

Title: Supplemental Nutrition Assistance Program Application for Stores—Reauthorization.

OMB Control Number: 0584–NEW.

Summary of Collection: The Food and Nutrition Service (FNS) of the U.S. Department of Agriculture is the Federal agency responsible for the Supplemental Nutrition Assistance Program (SNAP) formerly known as the Food Stamp Program. The Food and Nutrition Act of 2008 (7 U.S.C. 2011–2036), as codified under 7 CFR Parts 278 and 279, requires that the FNS determine the eligibility of retail food stores and certain food service organizations to accept and redeem SNAP benefits, to monitor them for compliance and continued eligibility, and to sanction stores for non-compliance with the Act.

Need and Use of the Information: FNS will collect information using form FNS–252–R, “Supplemental Nutrition Assistance Program Reauthorization Application for Stores”. Information is collected primarily for use by FNS in the administration of the SNAP. FNS field offices review a firm’s application in order to determine whether or not applicants meet eligibility requirements and make determinations whether to grant or deny authorization to accept SNAP benefits. FNS is also responsible for requiring updates to application information and reviewing that information to determine whether or not the firms or services continue to meet eligibility requirements.

Description of Respondents: Business or other for-profit.

Number of Respondents: 27,878.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 3,259.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–20858 Filed 8–28–09; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Application for Permit, Non-Federal Commercial Use of Roads

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the

Forest Service is seeking comments from all interested individuals and organizations on the extension of a currently approved information collection, OMB 0596–0016, Application for Permit, Non-Federal Commercial Use of Roads Restricted by Order.

DATES: Comments must be received in writing on or before October 30, 2009 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Director, Engineering Staff, RPC5, USDA Forest Service, 1400 Independence Avenue, SW., Mail Stop 1101, Washington, DC 20250–1101.

Comments also may be submitted via facsimile to 703–605–1542 or by e-mail to: dhager@fs.fed.us.

The public may inspect comments received at Office of the Director of Engineering, USDA Forest Service, 1601 N. Kent St., Room 500, Arlington, VA during normal business hours. Visitors are encouraged to call ahead to 703–605–4646 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Dan Hager, Engineering Staff, at 703–605–4612. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Application for Permit, Non-Federal Commercial Use of Roads Restricted by Order

OMB Number: 0596–0016.

Expiration Date of Approval: Three years after OMB approves the information collection.

Type of Request: Extension of a currently approved collection

Abstract: Authority for road use permits is derived from the National Forest Roads and Trails Act (Pub. L. 88–657, 16 U.S.C. 532–538, as amended).

The law authorizes the Secretary of Agriculture to establish procedures for sharing investments in roads and to require commercial users to perform road maintenance commensurate with their use of roads. Detailed implementing regulations are contained in Title 36, Code of Federal Regulations, sections 212.5, 212.9, and 261.54. Title 36, CFR 212.5 and 212.9 authorizes the Chief of the Forest Service to establish procedures for investment sharing and to require commercial users to perform road maintenance commensurate with use. Title 36, CFR 261.54 contains a national prohibition against using a

National Forest System road for commercial hauling without a permit or written authorization when so provided by order. Forest Service policies implementing the regulations are found in Forest Service Manual chapter 7730 and Forest Service Handbook 7709.59, chapter 24. The policies require forest supervisors to enter into appropriate investment sharing arrangements, to require commercial users of National Forest System roads to perform road maintenance commensurate with their use, and to issue orders that implement the national prohibition at 36 CFR 261.54. These policies assure that those commercial haulers not already operating under investment and maintenance sharing provisions contained in Forest Service permits and contracts will obtain road use permits. The road use permits they obtain contain requirements for maintenance and investment sharing.

FS–7700–40—Application for Permit for Non-Federal Commercial Use of Roads Restricted by Order. This form is used by individuals, corporations, or organizations that apply for a permit to use National Forest System roads for non-Federal commercial use. The following information is collected: (1) Name, address, and telephone number; (2) identification by Forest Service route number of roads to be used; (3) purpose of use; (4) use schedule; and (5) plans for future use. The requester submits the information to the forest supervisor or district ranger responsible for the National Forest System roads on which commercial vehicular use is requested. Engineering personnel on the staff of the responsible National Forest System unit evaluate the information. The information is used by the local offices to identify road maintenance required as a direct result of the applicant’s vehicular traffic and to calculate the applicant’s commensurate share of road maintenance. The information is also used to calculate collections for recovery of past Federal investments in roads when that method of sharing investment is appropriate. The information is only used by the Forest Service’s local offices. It is not reported to or summarized at higher levels of the organization.

The identifying information collected on FS–7700–40 is used on FS–7700–41—Road Use Permit to identify the permittee and the routes authorized for use. Road maintenance requirements, road use schedules, and any necessary fees developed from the data submitted on FS–7700–40 are also included in provisions of the 7700–41. A copy of the 7700–41 must be carried in commercial

vehicles authorized to use roads by the permit.

While no information over and above that collected on the FS-7700-40 is collected on the FS-7700-41, the FS-7700-41 is also an OMB approved form. The approval number is OMB 0596-0016 and expires January 31, 2010.

Estimate of Annual Burden: 15 minutes.

Type of Respondents: Commercial users of National Forest System roads.

Estimated Annual Number of Respondents: 2,000.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 500 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request for Office of Management and Budget approval.

Dated: August 25, 2009.

Gloria Manning,

Associate Deputy Chief, NFS.

[FR Doc. E9-20918 Filed 8-28-09; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 this notice announces the intention of the National Agricultural Statistics Service

(NASS) to request revision and extension of a currently approved information collection, the Honey Survey. Revision to burden hours will be needed due to an increase in the size of the target population, sample design, and slight improvements to the questionnaire to accommodate changes within the industry.

DATES: Comments on this notice must be received by October 30, 2009 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535-0153, by any of the following methods:

- *E-mail:* ombofficer@nass.usda.gov.

Include docket number above in the subject line of the message.

- *Fax:* (202) 720-6396.

- *Mail:* Mail any paper, disk, or CD-ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250-2024.

- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250-2024.

FOR FURTHER INFORMATION CONTACT:

Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720-4333.

SUPPLEMENTARY INFORMATION:

Title: Honey Survey.

OMB Control Number: 0535-0153.

Expiration Date of Approval: January 31, 2010.

Type of Request: Intent to revise and extend a currently approved information collection for a period of three years.

Abstract: The primary objective of the National Agricultural Statistics Service (NASS) is to prepare and issue State and national estimates of crop and livestock production, prices, and disposition; as well as economic statistics, environmental statistics related to agriculture and also to conduct the Census of Agriculture.

The Honey Survey collects information on the number of colonies, honey production, stocks, and prices. The survey provides data needed by the U.S. Department of Agriculture and other government agencies to administer programs and to set trade quotas and tariffs. State universities and agriculture departments also use data from this survey.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under

this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-113) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995).

NASS also complies with OMB Implementation Guidance, "Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA)," **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33376.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response with a frequency of once a year.

Respondents: Farmers.

Estimated Number of Respondents: 9,000.

Estimated Total Annual Burden on Respondents: With an estimated response rate of approximately 80%, we estimate the burden to be 1,860 hours. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at (202) 690-2388.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, August 11, 2009.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. E9-20926 Filed 8-28-09; 8:45 am]

BILLING CODE 3410-20-P

DEPARTMENT OF AGRICULTURE**National Agricultural Statistics Service****Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection**

AGENCY: National Agricultural Statistics Service, Department of Agriculture.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Fruits, Nuts, and Specialty Crops Surveys. Revision to burden hours will be needed due to changes in the size of the target population, sample design, minor changes in questionnaire design and an anticipated increase in response rates.

DATES: Comments on this notice must be received by October 30, 2009 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535-0039, by any of the following methods:

- *E-mail:* ombofficer@nass.usda.gov.

Include docket number above in the subject line of the message.

- *Fax:* (202) 720-6396.

• *Mail:* Mail any paper, disk, or CD-ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250-2024.

• *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250-2024.

FOR FURTHER INFORMATION CONTACT:

Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720-4333.

SUPPLEMENTARY INFORMATION:

Title: Fruits, Nuts, and Specialty Crops Surveys.

OMB Control Number: 0535-0039.

Expiration Date of Approval: January 31, 2010.

Type of Request: To revise and extend a currently approved information collection for a period of three years.

Abstract: The primary objective of the National Agricultural Statistics Service (NASS) is to collect, prepare and issue State and national estimates of crop and livestock production, prices, and disposition; as well as economic

statistics, environmental statistics related to agriculture and also to conduct the Census of Agriculture.

The Fruits, Nuts, and Specialty Crops survey program collects information on acreage, yield, production, price, and value of citrus and noncitrus fruits and nuts and other specialty crops in States with significant commercial production. The program provides data needed by the U.S. Department of Agriculture and other government agencies to administer programs and to set trade quotas and tariffs. Producers, processors, other industry representatives, State Departments of Agriculture, and universities also use forecasts and estimates provided by these surveys.

Authority: These data will be collected under authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-113) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995). NASS also complies with OMB Implementation Guidance, "Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA)," *Federal Register*, Vol. 72, No. 115, June 15, 2007, p. 33376.

Estimate of Burden: Public reporting burden for this information collection is based on 73 individual surveys with expected responses of 4-30 minutes and frequency of 1-12 times per year. Estimated number of responses per respondent is 1.6.

Respondents: Producers, processors, and handlers.

Estimated Number of Respondents: 60,000.

Estimated Total Annual Burden on Respondents: 13,000 hours.

Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at (202) 690-2388.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through

the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, August 11, 2009.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. E9-20924 Filed 8-28-09; 8:45 am]

BILLING CODE 3410-20-P

DEPARTMENT OF AGRICULTURE**Agricultural Research Service****Notice of Intent To Grant Exclusive License**

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Plant Biofuels, Inc. of Gaithersburg, Maryland, an exclusive license to the soybean varieties described in Plant Variety Protection Certificate Number 9800027, "Derry," issued on June 30, 1999, and in Plant Variety Protection Certificate Number 9800028, "Donegal," issued on June 30, 1999.

DATES: Comments must be received by September 30, 2009.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4-1174, Beltsville, Maryland 20705-5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301-504-5989.

SUPPLEMENTARY INFORMATION: The Federal Government's rights in these plant varieties are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license these varieties, as Plant Biofuels, Inc. of Gaithersburg, Maryland, has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the

license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,
Assistant Administrator.

[FR Doc. E9-20929 Filed 8-28-09; 8:45 am]

BILLING CODE 3410-03-P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Virginia State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of Availability of proposed changes in the Virginia NRCS State Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Virginia that changes must be made in the NRCS State Technical Guide specifically in practice standards: #442, Irrigation System, Sprinkler; #441, Irrigation System, Microirrigation; #443, Irrigation System, Surface and Subsurface; #447, Tailwater Recovery; #449, Irrigation Water Management; #309, Agchemical Handling Facility; #432, Dry Hydrant; #455, Land Reclamation, Toxic Discharge Control; #453, Land Reclamation, Landslide Treatment; #543, Land Reclamation, Abandoned Mined Land; #544, Land Reclamation, Currently Mined Land; #457, Mine Shaft and Adit Closing; #468, Lined Waterway or Outlet; #582, Open Channel; #584, Channel Stabilization; #580, Streambank and Shoreline Protection; #350, Sediment Basin. These practices will be used to plan and install conservation practices on cropland, pastureland, woodland, and wildlife land.

DATES: Comments will be received for a 30-day period commencing with the date of this publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to John A. Bricker, State Conservationist, Natural Resources Conservation Service (NRCS), 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229-5014; Telephone number (804) 287-1691; Fax number (804) 287-1737. Copies of the practice standards will be made available upon written request to the address shown above or on the Virginia NRCS Web site: <http://www.va.nrcs.usda.gov/technical/draftstandards.html>.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Virginia will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Virginia regarding disposition of those comments and a final determination of change will be made to the subject standards.

Dated: August 24, 2009.

John A. Bricker,

State Conservationist, Natural Resources Conservation Service, Richmond, Virginia.

[FR Doc. E9-20864 Filed 8-28-09; 8:45 am]

BILLING CODE 3410-16-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration (NTIA).

Title: Public Telecommunications Facilities Program Grant Monitoring.
OMB Control Number: 0660-0001.

Form Number(s): None.

Type of Review: Extension of currently approved collection.

Burden Hours: 5,080.

Number of Respondents: 1,950.

Average Hours Per Response: 28.

Needs and Uses: NTIA administers the Public Telecommunications Facilities Program (PTFP). The purpose of the program is to assist, through matching funds, in the planning and construction of public telecommunications facilities. The reporting requirements include (1) Construction schedules/planning timetables to enable NTIA/PTFP to monitor a project through quarterly performance reports, which alert NTIA/PTFP if the project is on-schedule for completion; (2) close-out reports to ensure the agency that Federal funds were expended in accordance with the grant award; and (3) annual reports to assure the agency that the Federal interest is maintained and protected for the statutorily specified 10-year period.

Affected Public: Not-for-profit institutions; State, local, or tribal governments.

Frequency: Quarterly; annually.

Respondent's Obligation: Required to retain benefits.

OMB Desk Officer: Nicholas Fraser, (202) 395-5887.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 7845, 1401 Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nicholas Fraser, OMB Desk Officer, FAX number (202) 395-7258 or via the Internet at

Nicholas_A_Fraser@omb.eop.gov.

Dated: August 25, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9-20855 Filed 8-28-09; 8:45 am]

BILLING CODE 3510-60-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Notice of Extension of Time Limit for the Final Results of the Third Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* August 31, 2009.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-6905.

Background

On June 4, 2009, the Department of Commerce ("Department") published a notice extending the deadline for the final results of the administrative review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam ("Vietnam"), covering the period February 1, 2007, through January 31, 2008. *See Certain Frozen Warmwater*

Shrimp from the People's Republic of China and the Socialist Republic of Vietnam: Notice of Extension of Time Limit for the Final Results of the Third Administrative Reviews, 74 FR 26839 (June 4, 2009). On July 22, 2009, the Department published a second notice extending the deadline for the final results of the administrative review. See *Certain Frozen Warmwater Shrimp from the People's Republic of China and the Socialist Republic of Vietnam: Notice of Extension of Time Limit for the Final Results of the Third Administrative Reviews*, 74 FR 36164 (July 22, 2009). The final results are currently due no later than August 28, 2009.

Extension of Time Limit for the Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("Act"), requires that the Department issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the deadline for the final results to a maximum of 180 days after the date on which the preliminary results are published. On June 4 and July 22, 2009, the Department extended the deadline of the final results by a total of 52 days. Thus, the Department may extend the deadline of the final results by an additional eight days.

The Department requires additional time to properly consider the numerous and complex issues raised by interested parties in their case briefs and rebuttal briefs regarding surrogate values for factors of production, numerous company-specific issues, and the separate-rate status for numerous non-mandatory companies.

Thus, it is not practicable to complete these reviews by August 28, 2009. Therefore, the Department is again extending the time limit for completion of the final results of these reviews by eight days, in accordance with section 751(a)(3)(A) of the Act. The final results are now due no later than September 5, 2009.¹

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

¹ Because September 5, 2009, falls on a Saturday and the following business day, Monday, September 7, 2009, is a Federal holiday, the deadline of the final results falls on Tuesday, September 8, 2009.

Dated: August 25, 2009.

Edward C. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9-20986 Filed 8-28-09; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-427-801, A-428-801, A-475-801, A-588-804, A-412-801]

Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Revocation of an Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 27, 2009, the Department of Commerce published the preliminary results of the administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, Italy, Japan, and the United Kingdom. The reviews cover 15 manufacturers/exporters. The period of review is May 1, 2007, through April 30, 2008.

Based on our analysis of the comments received, we have made changes, including corrections of certain programming and other ministerial errors, in the margin calculations. Therefore, the final results are different from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of the Reviews."

DATES: *Effective Date:* August 31, 2009.

FOR FURTHER INFORMATION: Yang Jin Chun or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482-5760 or (202) 482-4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 27, 2009, the Department of Commerce (the Department) published the preliminary results of the administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, Italy, Japan, and the United Kingdom. See *Ball Bearings and Parts Thereof From France, et al.: Preliminary*

Results of Antidumping Duty Administrative Reviews and Intent to Revoke Order in Part, 74 FR 19056 (April 27, 2009) (*Preliminary Results*). For these administrative reviews, the period of review is May 1, 2007, through April 30, 2008.

We invited interested parties to comment on the *Preliminary Results*. At the request of an interested party, we held a hearing for Italy-specific issues on June 22, 2009. The Department has conducted these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Orders

The products covered by the orders are ball bearings and parts thereof. These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: Antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 3926.90.45, 4016.93.10, 4016.93.50, 6909.19.50.10, 8431.20.00, 8431.39.00.10, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.35, 8482.99.25.80, 8482.99.65.95, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.93.30, 8708.93.60.00, 8708.99.06, 8708.99.31.00, 8708.99.40.00, 8708.99.49.60, 8708.99.58, 8708.99.80.15, 8708.99.80.80, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

As a result of changes to the HTSUS, effective February 2, 2007, the subject merchandise is also classifiable under the following additional HTSUS item numbers: 8708.30.50.90, 8708.40.75, 8708.50.79.00, 8708.50.89.00, 8708.50.91.50, 8708.50.99.00, 8708.70.60.60, 8708.80.65.90, 8708.93.75.00, 8708.94.75, 8708.95.20.00, 8708.99.55.00, 8708.99.68, 8708.99.81.80.

Although the HTSUS item numbers above are provided for convenience and customs purposes, the written descriptions of the scope of these orders remain dispositive.

The size or precision grade of a bearing does not influence whether the bearing is covered by one of the orders. These orders cover all the subject bearings and parts thereof (inner race,

outer race, cage, rollers, balls, seals, shields, etc.) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of these orders. For unfinished parts, such parts are included if they have been heat-treated or if heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by these orders are those that will be subject to heat treatment after importation. The ultimate application of a bearing also does not influence whether the bearing is covered by the orders. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scope of these orders.

For a list of scope determinations which pertain to the orders, see the "Memorandum to Laurie Parkhill" regarding scope determinations for the 2007–08 reviews, dated April 21, 2009, which is on file in the Central Records Unit (CRU) of the main Department of Commerce building, Room 1117, in the General Issues record (A–100–001).

Analysis of the Comments Received

All issues raised in the case briefs by parties to the current administrative reviews of the antidumping duty orders on ball bearings and parts thereof are addressed in the "Issues and Decision Memorandum" (Decision Memo) from Acting Deputy Assistant Secretary John M. Andersen to Acting Deputy Assistant Secretary Carole A. Showers dated August 25, 2009, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded is in the Decision Memo and attached to this notice as an Appendix. The Decision Memo, which is a public document, is on file in the CRU of the main Department of Commerce building, Room 1117, and is accessible on the

Web at <http://ia.ita.doc.gov/frn/index.html>. The paper copy and electronic version of the Decision Memo are identical in content.

Revocation of an Order in Part

In the *Preliminary Results*, we preliminarily determined that Gebrüder Reinfurt GmbH & Co., KG (GRW), qualifies for revocation from the order on ball bearings and parts thereof from Germany pursuant to 19 CFR 351.222(b)(2)(i). Accordingly, in accordance with 19 CFR 351.222(b)(2)(ii), we preliminarily determined to revoke the order with respect to ball bearings and parts thereof from Germany exported and/or sold by GRW to the United States.

We have received comments concerning our intent to revoke the order on ball bearings and parts thereof from Germany exported and/or sold by GRW to the United States. See the Decision Memo at Comment 2 for further discussion of this issue. In accordance with 19 CFR 351.222(b)(2)(ii), we are revoking the order on ball bearings and parts thereof from Germany exported and/or sold by GRW to the United States, effective May 1, 2008.

Selection of Respondents

Due to the large number of companies in the reviews and the resulting administrative burden to review each company for which a request had been made and not withdrawn, the Department exercised its statutory authority under section 777A(c)(2) of the Act to limit the number of respondents selected for the reviews. Based on our analysis of the responses and our available resources, we chose certain companies for individual examination of their sales of the subject merchandise to the United States during the period of review. For a detailed discussion on the selection of respondents for individual examination, see *Preliminary Results*, 74 FR at 19057.

For the final results, we have not changed the source of the rates we applied to respondents not selected for individual examination. See *Preliminary Results*, 74 FR at 19507–08. Because the margin for SKF Italy changed for the final results, we applied the final margin for SKF Italy to Schaeffler Italia S.r.L. (formerly FAG Italia S.p.A.), which is the sole Italian respondent not selected for individual examination. For discussions of the issues involving the rates for non-selected respondents, see the Decision Memo at Comment 13.

Adverse Facts Available

Two of the respondents we selected for individual examination, Edwards Ltd./Edwards High Vacuum Int'l Ltd. (Edwards Japan) of Japan and myonic GmbH (myonic) of Germany, did not provide responses to our questionnaire other than their responses to our quantity-and-value questionnaire. Because these two companies did not respond to our questionnaire fully, they failed to cooperate by not acting to the best of their ability and we could not complete the administrative reviews of these two companies. See *Preliminary Results*, 74 FR at 19058–59. We received no comments on our preliminary decision to apply adverse facts available to these companies. For our final results, we have based their margins on facts available with an adverse inference in accordance with section 776 of the Act.

As facts available with an adverse inference for these non-responsive companies, we have selected the rates of 70.41 percent for Germany and 73.55 percent for Japan. We corroborated these rates in accordance with section 776(c) of the Act. *Id.*

Sales Below Cost in the Home Market

The Department disregarded home-market sales that failed the cost-of-production test for the following firms for these final results of reviews:

Country	Company
France	SKF France S.A. and SKF Aerospace France S.A.S. (SKF France)
Germany	GRW Schaeffler KG
Italy	SKF Industrie S.p.A./Somecat S.p.A. (SKF Italy)
United Kingdom	Barden/Schaeffler UK SKF (U.K.) Limited (SKF UK)

Changes Since the Preliminary Results

Based on our analysis of comments received and based on our own analysis of the *Preliminary Results*, we have made revisions that have changed the

results for certain firms. We have corrected programming and ministerial errors in the margins we included in the *Preliminary Results*, where applicable. A detailed discussion of each correction we made is in the company-specific

analysis memoranda which are on file in the CRU of the main Department of Commerce building, Room 1117.

Final Results of the Reviews

We determine that the following percentage weighted-average dumping margins on ball bearings and parts thereof exist for the period May 1, 2007, through April 30, 2008:

Company	Margin (percent)
France	
Edwards Ltd. and Edwards High Vacuum Int'l Ltd.	10.13
SKF France	10.13
Germany	
Edwards Ltd. and Edwards High Vacuum Int'l Ltd.	3.32
GRW	0.10
myonic	70.41
RWG Frankenjura Industrie Aircraft Bearings GmbH	3.32
Schaeffler KG	3.32
SKF GmbH	3.32
Italy	
Schaeffler Italy	15.10
SKF Italy	15.10
Japan	
Edwards Japan	73.55
Japanese Aero Engines Corporation	0.00
Sapporo Precision Inc.	6.65
United Kingdom	
Barden/Schaeffler UK	0.14
SKF UK	18.64

Assessment Rates

The Department will determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. We intend to issue appropriate assessment instructions directly to CBP 15 days after publication of these final results of reviews. In accordance with 19 CFR 351.212(b)(1), we have calculated, whenever possible, an importer/customer-specific assessment rate or value for subject merchandise.

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment of Antidumping Duties*). This clarification will apply to entries of subject merchandise during the period of review produced by companies included in these final results of reviews for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will

instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Assessment of Antidumping Duties*.

For the responsive companies which were not selected for individual review, we will instruct CBP to apply the rates listed above to all entries of subject merchandise that were produced and/or exported by such firms.

For companies for which we are relying on total adverse facts available to establish a dumping margin, we will instruct CBP to apply the assigned dumping margins to all entries of subject merchandise during the period of review that were produced and/or exported by the companies.

Export Price

With respect to export-price (EP) sales, we divided the total dumping margins (calculated as the difference between normal value and the EP) for each exporter's importer or customer by the total number of units the exporter sold to that importer or customer. We will direct CBP to assess the resulting per-unit dollar amount against each unit of merchandise on each of that importer's or customer's entries under the relevant order during the period of review.

Constructed Export Price

For constructed export-price (CEP) sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct CBP to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the period of review. *See* 19 CFR 351.212(b)(1).

Cash-Deposit Requirements

To calculate the cash-deposit rate for each respondent, *i.e.*, each exporter and/or manufacturer included in these reviews, we divided the total dumping margins for each company by the total net value of that company's sales of merchandise during the period of review subject to each order.

To derive a single deposit rate for each respondent, we weight-averaged the EP and CEP deposit rates (using the EP and CEP, respectively, as the weighting factors). To accomplish this when we sampled CEP sales (*see Preliminary Results*, 74 FR at 19060), we first calculated the total dumping margins for all CEP sales during the period of review by multiplying the sample CEP margins by the ratio of total

days in the period of review to days in the sample weeks. We then calculated a total net value for all CEP sales during the period of review by multiplying the sample CEP total net value by the same ratio. Finally, we divided the combined total dumping margins for both EP and CEP sales by the combined total value for both EP and CEP sales to obtain the deposit rate.

We will direct CBP to collect the resulting percentage deposit rate against the entered customs value of each of the exporter's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. Entries of parts incorporated into finished bearings before sales to an unaffiliated customer in the United States will receive the respondent's deposit rate applicable to the order.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative reviews for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, consistent with section 751(a)(1) of the Act: (1) The cash-deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent and therefore *de minimis*, the Department shall not require a deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash-deposit rate for all other manufacturers or exporters will continue to be the all-others rate for the relevant order made effective by the final results of review published on July 26, 1993. *See Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 58 FR 39729 (July 26, 1993). For ball bearings from Italy, *see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 66472, 66521 (December 17, 1996). These rates are the all-others

rates from the relevant LTFV investigation.

These deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period of review. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: August 25, 2009.

Carole A. Showers,

Acting Deputy Assistant Secretary for Policy and Negotiations.

Appendix

1. Zeroing of Negative Margins
2. Verification for GRW's Revocation
3. 15-Day Liquidation Policy
4. CEP Offset and CEP Profit
5. Sample Sales
6. Short-Term U.S. Interest Rates
7. Freight, Insurance, and Packing Revenue
8. Rate for Firms Not Selected for Individual Examination
9. Miscellaneous Issues
 - A. Freight Expense
 - B. Packing Expense
 - C. Imputed Credit
 - D. Completeness of Database
 - E. Cost of Grease
10. Ministerial Errors

[FR Doc. E9-20980 Filed 8-28-09; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1633]

Grant of Authority; Establishment of a Foreign-Trade Zone, Lansing, MI

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for “* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,” and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection (CBP) ports of entry;

Whereas, the Capital Region Airport Authority (the Grantee) has made application to the Board (FTZ Docket 52-2008, filed 10/1/08), requesting the establishment of a foreign-trade zone in Lansing, Michigan, at the Capital Region International Airport, which was designated as a CBP user fee port facility on January 22, 2008;

Whereas, notice inviting public comment has been given in the **Federal Register** (73 FR 58930, 10/8/08), and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 275, at the site described in the application, and subject to the FTZ Act and the Board's regulations, including section 400.28.

Signed at Washington, DC, this 12th day of August 2009.

Foreign-Trade Zones Board.

Gary Locke,

Secretary of Commerce, Chairman and Executive Officer.

[FR Doc. E9-20990 Filed 8-28-09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XP18

Marine Mammals; Record of Decision; File Nos. 14324 through 14337, Except 14333

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; Record of Decision and issuance of permits.

SUMMARY: Notice is hereby given that NMFS issued a new Record of Decision (ROD) on August 10, 2009, for the Final Programmatic Environmental Impact Statement (PEIS) for Steller Sea Lion and Northern Fur Seal Research. Subsequently, 12 permits were issued to conduct research on Steller sea lions (*Eumetopias jubatus*) and northern fur seals (*Callorhinus ursinus*) throughout their ranges in the United States.

ADDRESSES: The permits and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713-2289; fax (301)713-0376; and Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668; phone (907)586-7221; fax (907)586-7249.

FOR FURTHER INFORMATION CONTACT: Tammy Adams, Kate Swails, or Amy Sloan, (301)713-2289.

SUPPLEMENTARY INFORMATION: On May 13, 2009, notice was published in the **Federal Register** (74 FR 22518) that requests for permits to conduct research on marine mammals had been submitted by various applicants. The requested permits have been issued under the authorities of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*). The permits are valid through August 31, 2014.

File No. 14324: The permit issued to Alaska SeaLife Center (ASLC), Seward, AK, (Principal Investigator: John Maniscalco) authorizes them to

investigate causes for the Steller sea lion population decline and determine what is currently limiting its recovery. Research will involve: disturbance associated with capture, observational studies, and material/scat/carcass collection; capture, restraint, and sampling; and remote biopsy. Captured sea lions will undergo morphometrics measurement; blood and tissue collection; digital imaging; hot-branding; body condition measurement; whisker, hair, and milk sampling; temporary marking; and ultrasound exams. Research will occur in the Gulf of Alaska and Aleutian Islands, on Steller sea lions of the western Distinct Population Segment (DPS). The permit also authorizes annual unintentional mortality of Steller sea lions from the western DPS.

File No. 14325: The permit issued to the Alaska Department of Fish and Game (ADF&G), Division of Wildlife Conservation, Juneau, AK, (Principal Investigator: Lorrie Rea, Ph.D.), authorizes them to continue a long-term research program investigating the various hypotheses for the decline or lack of recovery of Steller sea lions in AK. Research will involve: incidental disturbance during aerial surveys (eastern DPS); disturbance of animals on rookeries and haulouts during brand resighting surveys (eastern and western DPS) and incidental to scat collection, capture for instrument attachment, capture for branding, capture method development, physiological research and sample collection (eastern and western DPS); permanent marking of pups for long-term demographic and distribution studies, capture of older animals (eastern and western DPS) for physiological assessment and attachment of scientific instruments to investigate foraging ecology, diving behavior and habitat use. Additional animals of any age may be instrumented without capture (eastern and western DPS). The permit also authorizes unintentional mortality of Steller sea lions from the western DPS and the eastern DPS. Harbor seals (*Phoca vitulina richardsi*), northern fur seals, and California sea lions (*Zalophus californianus*) may be disturbed incidentally during the course of this research.

File No. 14326: The permit issued to NMFS National Marine Mammal Laboratory (NMML), Seattle, WA, (Principal Investigator: Tom Gelatt, Ph.D.), authorizes them to measure population status, vital rates, foraging ecology, habitat requirements, and effects of natural and anthropogenic factors for Steller sea lion in the North Pacific Ocean, including rookeries and

haulouts in CA, OR, WA, and AK. Annually in the western DPS sea lions may be exposed to aerial surveys, rookery-based activities, and other incidental activities. Steller sea lions that are captured will have blood, skin, and swab samples collected; be hot-branded, have blubber and lesions biopsied, vibrissa removed; and stomach intubation. Instruments will be attached to some animals and others will receive a non-permanent mark if not hot-branded. Non-target species that may be harassed incidental to Steller sea lion research include northern fur seals in AK, California sea lions and northern elephant seals (*Mirounga angustirostris*) in WA, OR, and CA, and harbor seals (*P. vitulina*) in all states. The permit also authorizes unintentional mortality of Steller sea lions from the western DPS and the eastern DPS.

File No. 14327: The permit issued to NMML, (Principal Investigator: Rolf Ream, Ph.D.), authorizes them to investigate population status and trends, demographic parameters, health and condition, and foraging ecology of northern fur seals in U.S. waters, including rookeries and haulouts in CA and AK. Research on the San Miguel Island stock will involve: capture, restraint, sampling, and incidental disturbance. Research on the Eastern Pacific stock will involve: capture, restraint, sampling, and incidental disturbance. The permit also authorizes research-related mortality of fur seals from the San Miguel Island Stock and the Eastern Pacific stock. Western DPS Steller sea lions and California sea lions may be harassed annually incidental to the research.

File No. 14328: The permit issued to ASLC, (Principal Investigator: Alan Springer, Ph.D.) authorizes them to characterize the winter habitat, movement patterns, diets and general health of adult male northern fur seals in the Bering Sea and northern North Pacific Ocean. Animals in AK would be captured, satellite tagged, blubber biopsied, blood sampled, and a vibrissa would be pulled for stable isotope analysis. Northern fur seals in AK may be incidentally harassed during the research activities. The permit also authorizes research-related mortality of fur seals.

File No. 14329: The permit issued to the North Pacific Universities Marine Mammal Research Consortium (NPUMMRC), University of British Columbia, Vancouver, B.C., Canada, (Principal Investigator: Andrew Trites, Ph.D.) authorizes them to test hypotheses that might explain the decline of northern fur seals in AK and

offer solutions for recovery. The research includes studies on foraging ecology, demographics, behavior, and changes in body size. Research activities involve: disturbance associated with capture, observational studies, and scat collection; and capture, restraint, tissue sampling, and marking. The permit also authorizes research-related mortality of northern fur seals.

File No. 14330 and File No. 14331: The permits issued to the Aleut Community of St. Paul Island (ACSPI), Tribal Government, Ecosystem Conservation Office, St. Paul Island, AK, (File No. 14330), (Principal Investigator: Phillip A. Zavadil), and Aleut Community of St. George Island (ACSGI), St. George Traditional Council, St. George Island, AK, (File No. 14331), (Principal Investigator: Chris Merculief), authorize them to conduct activities to fulfill their Biosampling, Disentanglement, and Island Sentinel program responsibilities as established under the co-management agreement between NMFS and the Aleut Communities. Work by ACSPI will occur on St. Paul Island, AK and work by ACSGI will occur on St. George Island, AK. The permits authorize incidental disturbance of northern fur seals on St. Paul Island and St. George Island during (1) disentanglement events, (2) the collection of biological samples from dead stranded and subsistence hunted marine mammals, and (3) haulout and rookery observations, monitoring, and remote camera maintenance. Samples will be exported to researchers studying the decline of northern fur seals. Steller sea lions and harbor seals may be disturbed during the course of these activities. The permits also authorize research-related mortality of northern fur seals.

File No. 14334: The permit issued to the ASLC, (Principal Investigator: Lori Polasek, Ph.D.), authorizes them to investigate reproductive physiology of captive adult Steller sea lions (permanently captive eastern stock) and survival, growth, and physiology of captive-bred offspring. They may also deploy biotelemetry instruments on the captives to develop and validate methods for monitoring wild Steller sea lions. Research will be conducted on one adult male, up to four adult females, and up to six offspring, and will include the following activities: mass and morphometric measurements; ultrasound; capture, sedation, and anesthesia; blood sampling and administration of Evan's blue dye and deuterium oxide; feces, urine, semen, and milk collection; video/audio recordings; genital swabs; radiographs; dietary supplements; blubber biopsy;

and attachment of biotelemetry instrumentation. The permit also provides for transfer to and import from approved North American facilities up to two male and four female Steller sea lions, not to exceed 11 animals held at ASLC for use in research. The permit allows for research-related mortality of captive Steller sea lions.

File No. 14335: The permit issued to the ASLC, (Principal Investigator: JoAnn Mellish, Ph.D.), authorizes them to investigate the decline of the western stock of Steller sea lions and its failure to recover, and to assist recovery efforts. Data may be obtained on juvenile survival, epidemiology, endocrinology, immunology, virology, physiology, ontogenetic and annual body condition cycles, foraging behavior and habitat selection. Pups and juveniles of both sexes in the Gulf of Alaska will be captured each year, with a subset of juveniles selected for temporary quarantine captivity at the ASLC. Research activities involve capture, drug administration, anesthesia, fecal and urine collection, external and internal instruments, marking, morphometrics, behavioral observations, photogrammetry, tissue sampling, ultrasound, and x-ray. The permit also authorizes research related mortality of Steller sea lions from the western DPS.

File No. 14336: The permit issued to Markus Horning, Ph.D., Marine Mammal Institute, Oregon State University, Newport, OR authorizes him to continue studies related to validation of surgically implanted scientific instruments called Life History Transmitters (LHX tags), for determining survival rates, emigration, causes of mortality, predation, and collecting long-term forage effort data in juvenile Steller sea lions. LHX tags will be opportunistically deployed in carcasses of dead Steller sea lions in AK, OR, and CA, and in California sea lions in OR and CA to assess uplink failure rates. Remote monitoring (using still, video, and infrared cameras) for censusing, brand re-sighting, attendance patterns, and estimating body mass, condition and health trends will be conducted at Long Island, AK and Sea Lion Caves and Cascade Head, OR. The permit also authorizes research-related mortalities of eastern DPS Steller sea lions.

File No. 14337: The permit issued to the NPUMMRC, (Principal Investigator: Andrew Trites, Ph.D.), authorizes them to conduct studies of Steller sea lion diets, distributions, life history traits, physiology and the timing of weaning in AK. NPUMMRC will also permit activities to evaluate pain experienced by Steller sea lions during hot-iron branding conducted by researchers

operating under separate permits. Research activities include: disturbance associated with capture, observational studies, and scat collection; and capture, restraint, tissue sampling, and marking. The permit also authorizes research-related mortality of eastern DPS and western DPS sea lions. The permit authorizes harassment of northern fur seals, California sea lions, northern elephant seals, harbor seals, and killer whales (*Orcinus orca*) in AK incidental to the research on Steller sea lions.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), NMFS completed a Final PEIS for Steller Sea Lion and Northern Fur Seal Research to provide decision-makers, and the public, with an evaluation of the environmental effects of funding and permitting a research program for Steller sea lions and northern fur seals for the next five to ten years. In a ROD signed on August 10, 2009, NMFS identified the Preferred Alternative (Alternative 4: Research Program with Full Implementation of Conservation Goals) as its preferred strategy for issuance of grants and permits for scientific research on these species. This alternative allows the agency to fully implement the recommendations in the species' conservation and recovery plans. Subsequent to completion of the PEIS, and prior to the ROD, NMFS developed additional policy and guidance to improve the implementation of the Steller sea lion and Northern fur seal research permit program. For additional information about the PEIS, please see the project webpage at <http://www.nmfs.noaa.gov/pr/permits/eis/steller.htm>. NMFS has determined that the activities in the above permits are consistent with the Preferred Alternative, and that issuance of the permits would not have a significant adverse impact on the human environment.

Issuance of the permits, as required by the ESA, were based on a finding that such permits: (1) were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: August 25, 2009.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9-20951 Filed 8-28-09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

International Trade Administration

Department of Commerce: Industry Outreach in San Francisco, CA, for Climate Change Negotiations Under the UNFCCC

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of meeting.

SUMMARY: The U.S. Department of Commerce (DOC) will host a half-day roundtable for industry participants on September 10, 2009, in San Francisco, California, during which senior U.S. government officials will outline the draft negotiation text of a new agreement under the United Nations Framework Convention on Climate Change (UNFCCC), provide updates on recent developments, and solicit individual input from participants. The purpose of the industry roundtable is to allow private sector stakeholders, particularly industry and trade associations, to advise U.S. officials on the impact a new UNFCCC agreement could have on their respective operations and on associated commercial opportunities. The DOC anticipates additional outreach events will be held throughout the United States.

DATES: September 10, 2009.

ADDRESSES: To participate in the roundtable, please contact Stephan Crawford, Director, U.S. Commercial Service (U.S. Department of Commerce)—San Francisco, 250 Montgomery St., 14th Floor, San Francisco, CA 94104; 415-705-2301; Stephan.Crawford@mail.doc.gov.

SUPPLEMENTARY INFORMATION:

Participation

Any private sector participant may register to attend; space is limited and available on a first-come, first-serve basis. Participants who are unable to attend the event can call into a conference line to participate. Please contact Stephan Crawford, Director, Commercial Service (U.S. Department of Commerce)—San Francisco, at 415-705-2301 or Stephan.Crawford@mail.doc.gov to request the conference call-in information.

The United Nations Framework Convention on Climate Change—The UNFCCC was signed in Rio de Janeiro, Brazil, and entered into force on March 21, 1994. Currently, 192 states have ratified the Convention, including the United States. The treaty requires

national inventories of greenhouse gas emissions from developed countries, and encourages national action to stem greenhouse gas emissions and slow climate change. Developed nations also pledge to share technology and resources with developing nations.

Kyoto Protocol to the United Nations Framework Convention on Climate Change—The Kyoto Protocol was adopted in December 1997, entered into force on February 16, 2005, and has been ratified by 184 countries and the European Community. While the United States signed the document, the U.S. Senate has never ratified the treaty. The Kyoto Protocol sets binding emissions targets for 37 industrialized countries, includes mechanisms for measuring and reporting emissions, and provides for financing and technology assistance to developing countries. The Protocol will expire at the end of 2012.

Current UNFCCC Negotiations—Negotiations under the UNFCCC are underway to formulate a successor agreement to the Kyoto Protocol. The discussions have the goal of concluding an agreement in Copenhagen this December. Potential impacts on U.S. industrial competitiveness will be discussed during the upcoming roundtable including technology transfer, intellectual property, financing, and related commercial opportunities.

Cheryl McQueen,

Acting Director, Office of Energy and Environmental Industries, U.S. Department of Commerce.

[FR Doc. E9-20904 Filed 8-28-09; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-549-502]

Circular Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting a semiannual new shipper review of the antidumping duty order on circular welded carbon steel pipes and tubes (Pipes and Tubes) from Thailand in response to a request from Pacific Pipe Public Company, Limited (Pacific Pipe). The period of review (POR) is March 1, 2008 through September 30, 2008. The domestic interested parties for this proceeding are Allied Tube & Conduit

Corporation and Wheatland Tube Company (petitioners).

We preliminarily determine that the U.S. sale of subject merchandise made by Pacific Pipe is below normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties based on the difference between the export price (EP) and the NV. Interested parties are invited to comment on these preliminary results. See the “Preliminary Results of Review” section of this notice. The final results will be issued 90 days after the date of issuance of these preliminary results, unless extended.

EFFECTIVE DATE: August 31, 2009.

FOR FURTHER INFORMATION CONTACT: Myrna Lobo, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2371.

Background

The Department published the antidumping duty order on Pipes and Tubes from Thailand on March 11, 1986. See *Notice of Antidumping Duty Order: Circular Welded Carbon Steel Pipes and Tubes from Thailand*, 51 FR 8341 (March 11, 1986) (*Antidumping Duty Order*). On September 30, 2008, the Department received a timely request from Pacific Pipe, in accordance with 19 CFR 351.214(c), to conduct a semiannual new shipper review of the antidumping duty order on Pipes and Tubes from Thailand. The Department found the request for review met all of the requirements set forth in 19 CFR 351.214(b) and initiated the review on October 28, 2008. See *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Initiation of New Shipper Antidumping Duty Review*, 73 FR 65290 (November 3, 2008) (NSR Initiation).¹

On November 7, 2008, the Department issued the initial questionnaire to Pacific Pipe.² On December 9, 2008, the

¹ Pursuant to 19 CFR 351.214(f)(2)(ii), we extended the POR of this new shipper review through September 30, 2008 to include Pacific Pipe's entry. (See NSR Initiation).

² Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign

Department received Pacific Pipe's section A response, the public version of which was revised due to bracketing deficiencies and resubmitted on December 15, 2008. On December 15, 2008, the Department also preliminarily granted Pacific Pipe's request to limit its reporting of home market sales data to the specific grades sold in the United States. See Letter to Pacific Pipe from Barbara E. Tillman, Director, AD/CVD Operations, Office 6, Import Administration, dated December 15, 2008. On January 6, 2009, the Department received Pacific Pipe's sections B and C questionnaire response. On March 10 and July 24, 2009, the Department issued supplemental questionnaires, and Pacific Pipe responded to the questionnaires on April 14 and August 3, 2009, respectively.

On May 8, 2009, petitioners urged the Department to rescind the new shipper review in favor of examining Pacific Pipe's sale in the concurrent administrative review, because the entry occurred outside the normal six-month new shipper review period (March 1, 2008 through August 31, 2008). Petitioners also questioned the *bona fide* nature of Pacific Pipe's sale. We note that at the time of initiation, in accordance with 19 CFR 351.214(f)(2)(ii), the Department extended the POR through September 30, 2008, to cover Pacific Pipe's entry. We have also analyzed all aspects of Pacific Pipe's U.S. sale and preliminarily found it to be *bona fide*. See “Bona Fides Analysis of U.S. Sale” section below.

On March 27, 2009, the Department published a notice extending the deadline for the preliminary results to August 24, 2009. See *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Extension of Time Limit for Preliminary Results of New Shipper Antidumping Duty Review*, 74 FR 13414 (March 27, 2009).

Verification

The Department intends to conduct a sales verification of Pacific Pipe's responses following the preliminary results of this review.

Scope of the Order

The products covered by this antidumping order are certain welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter of 0.375 inches or more, but not exceeding 16 inches.

like product and the constructed value of the merchandise under investigation. Section E requests information on further manufacturing.

These products, which are commonly referred to in the industry as “standard pipe” or “structural tubing,” are hereinafter designated as “pipes and tubes.” The merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090. Although the HTSUS subheadings are provided for convenience and purposes of U.S. Customs and Border Protection (CBP), our written description of the scope of the order is dispositive.

Bona Fides Analysis of U.S. Sale

On January 22, 2009, the petitioners submitted comments calling into question the *bona fide* nature of Pacific Pipe’s U.S. sale. Pacific Pipe responded to the comments on January 29, 2009. We have analyzed the information on the record, and preliminarily determine that Pacific Pipe’s U.S. sale is a *bona fide* transaction. Our analysis of Pacific Pipe’s sale and of the parties’ comments on the *bona fides* of Pacific Pipe’s U.S. sale are detailed in the *Memorandum to Dana Mermelstein, Program Manager, from Myrna Lobo, Case Analyst, regarding Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Circular Welded Carbon Steel Pipes and Tubes from Thailand: Pacific Pipe Public Company, Limited*, dated concurrently with this notice (*Bona Fides Memorandum*) and on file in the Central Records Unit, room 1117 of the main Department of Commerce building (CRU). Therefore, we are preliminarily treating Pacific Pipe’s sale to the United States as an appropriate transaction for review. See *Am. Silicon Techs. V. United States*, 110 F. Supp.2d 992,995 (Ct. Int’l Trade 2000).

Fair Value Comparisons

To determine whether Pacific Pipe’s sale of subject merchandise from Thailand was made in the United States at less than NV, we compared the EP to the NV, as described in the “U.S. Price” and “Normal Value” section of this notice in accordance with section 777A(d)(2) of the Tariff Act of 1930, as amended (“the Act”).

Product Comparisons

Pursuant to section 771(16)(A) of the Act, for purposes of determining appropriate product comparisons to the U.S. sales, the Department considers all products sold in the comparison market as described in the “Scope of the Order” section of this notice, above, that were in the ordinary course of trade. In accordance with sections 771(16)(B) and

(C) of the Act, where there are no sales of identical merchandise in the comparison market made in the ordinary course of trade, we compare U.S. sales to sales of the most similar foreign like product based on the characteristics listed in sections B and C of our antidumping questionnaire: grade, nominal pipe size, wall thickness, schedule of pipe, surface finish and end finish. We found that Pacific Pipe had sales of foreign like product that were identical in these respects to the merchandise sold in the United States, and therefore compared U.S. products with the identical merchandise sold in the comparison market based on the characteristics listed above, in that order of priority.

Date of Sale

Regarding date of sale, 19 CFR 351.401(i) states that the Department will normally use the date of invoice as the date of sale, unless a different date better reflects the date on which the material terms of sale are established. Pacific Pipe reported invoice date as the date of sale for its home market sales and the proforma invoice date as the date of sale for its U.S. sale. We have analyzed the data on the record and preliminarily determine that the dates reported are the appropriate dates of sale for the U.S. and comparison market sales under review.

U.S. Price

We used EP methodology for Pacific Pipe’s U.S. sale, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation, and constructed export price methodology was not otherwise warranted based on the facts of record. In accordance with sections 772(a) and (c) of the Act, we calculated EP using the price Pacific Pipe charged for packed subject merchandise shipped on a free on board (FOB) basis. We made deductions for movement expenses and brokerage expenses incurred in Thailand, including charges for service fees, document verification expenses, port passing charges, Customs formality expenses, Customs clearance charges, terminal handling charges and inland insurance.

In addition, in accordance with section 772(c)(1)(B) of the Act, we made an upward adjustment to export price for duty drawback Pacific Pipe received. See *Analysis Memorandum for Pacific Pipe Public Company, Limited (Preliminary Analysis Memo)* dated concurrently with this notice.

Normal Value

In accordance with section 773(a)(1)(B)(i) of the Act, we have based NV on the price at which the foreign like product was first sold for consumption in the comparison market, in the usual commercial quantities, in the ordinary course of trade, and, to the extent practicable, at the same level of trade (LOT) as the EP sale. See “Level of Trade” section below. After testing comparison market viability, we calculated NV for Pacific Pipe as discussed below.

Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the volume of Pacific Pipe’s home market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1)(B)(ii)(II) of the Act. Based on this comparison, we determined that Pacific Pipe’s home market was viable during the POR.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as EP. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value, that of the sales from which we derive selling expenses, G&A expenses, and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to the unaffiliated U.S. customer.

To determine whether NV sales are at a different LOT than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

In the home market, Pacific Pipe reported it sells to several customer categories through two channels of distribution: ex-factory, and direct shipments from Pacific Pipe to the

customer. Further, Pacific Pipe reported that the selling functions in the home market do not differ between customer categories or channels of distribution. See Pacific Pipe's supplemental response dated April 14, 2009 at page 8.

After analyzing the information on the record with respect to these selling functions, we find that in the home market there were not sufficient differences in the selling functions performed for the different channels of trade to conclude that there is more than one level of trade in the home market. We therefore find a single level of trade exists for all of Pacific Pipe's sales to the home market. Since there is only one LOT in the home market we find there is no basis for an LOT adjustment. See *Preliminary Analysis Memorandum*.

Calculation of Normal Value

We based NV on the starting prices of Pacific Pipe's sales to the home market adjusting for billing adjustments where applicable, pursuant to section 773(a)(1)(A) of the Act. Pursuant to section 773(a)(6)(B)(ii) of the Act, we made deductions for discounts and movement expenses (*i.e.*, inland freight and warehousing expenses) where appropriate. In accordance with sections 773(a)(6)(A) and (B) of the Act, we deducted comparison market packing costs and added U.S. packing costs. In accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we deducted comparison market direct selling expenses (*i.e.*, credit expenses) and added U.S. direct selling expenses. We made the appropriate adjustment for commissions paid in the home market pursuant to 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c). We made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other, *i.e.*, the "commission offset." Specifically, where commissions are incurred in one market, but not in the other, we limit the amount of such allowance to the amount of either the selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less. See *Preliminary Analysis Memo*.

Currency Conversion

In accordance with sections 773A(a) of the Act, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. See also 19 CFR 351.415.

Preliminary Results of New Shipper Review

As a result of our review, we preliminarily determine in accordance with 19 CFR 351.214(i)(1) that the following percentage margin exists for Pacific Pipe for the period March 1, 2008, through September 30, 2008:

Manufacturer/Exporter	Margin
Pacific Pipe Public Co., Ltd.	4.79 %

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this new shipper review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for subject merchandise manufactured and exported by Pacific Pipe will be the rate established in the final results of this new shipper review, except no cash deposit will be required if its weighted-average margin is *de minimis* (*i.e.*, less than 0.5 percent); (2) if the exporter is not a firm covered in this review, but was covered in a previous review or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers and/or exporters of this merchandise, shall be 15.67 percent, the all-others rate established in the LTFV investigation. These requirements, when imposed, shall remain in effect until further notice.

Assessment Rate

Upon completion of the new shipper review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b). The Department intends to issue assessment instructions for Pacific Pipe directly to CBP 15 days after the date of publication of the final results of this new shipper review.

Pursuant to 19 CFR 351.212(b)(1), we will calculate an importer-specific assessment rate on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales

and the total entered value of the examined sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if the importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is zero or *de minimis* (*i.e.*, less than 0.50 percent). See 19 CFR 351.106(c)(1).

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review.

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. See 19 CFR 351.224(b). Unless notified by the Department, pursuant to 19 CFR 351.309(c), interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the deadline for filing the case briefs. See 19 CFR 351.309(d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: 1) a statement of the issue; 2) a brief summary of the argument; and 3) a table of authorities. Additionally, parties are requested to provide their case briefs and rebuttal briefs in electronic format (*e.g.*, WordPerfect, Microsoft Word, Adobe Acrobat, etc.).

Interested parties who wish to request a hearing or to participate if one is requested must submit a written request to the Assistant Secretary for Import Administration, Room B-099, within 30 days of the date of publication of this notice. Requests should contain: 1) the party's name, address and telephone number; 2) the number of participants; and 3) a list of issues to be discussed. See 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs.

The Department will issue the final results of this review, including the results of its analysis of issues raised in any written briefs, within 90 days of publication of these preliminary results, unless the final results are extended. See section 751(a)(3)(A) of the Act and 19 CFR 351.214(i)(2).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review is issued and published in accordance with sections 751(a)(2)(B)(iv) and 777(i)(1) of the Act, as well as 19 CFR 351.214(i).

Dated: August 24, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9-20978 Filed 8-28-09; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF DEFENSE**Department of the Army, Corps of Engineers**

Intent To Prepare a Second Supplemental Environmental Impact Statement to the Final EIS on Herbert Hoover Dike Major Rehabilitation and Evaluation Report, Reaches 2 and 3 (Belle Glade to Moore Haven), in Palm Beach, Hendry, and Glades Counties, FL

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: Herbert Hoover Dike is the levee and water control system that provides flood protection to communities surrounding Lake Okeechobee. The purpose of this project is to evaluate rehabilitation solutions for Reaches 2 and 3 of the dike so that the authorized level of flood protection can be provided to reduce the risk of a catastrophic failure or breach of the embankment. Reaches 2 and 3 of the HHD extend for approximately 27 miles between an area west of Belle Glade, Palm Beach County to east of Moore Haven, Glades County, FL. On July 8 2005, the Jacksonville District, U.S. Army Corps of Engineers (Corps) issued a Final Supplemental Environmental Impact Statement (FSEIS) for the Major Rehabilitation actions proposed for Herbert Hoover Dike (HHD), Reach 1. On September 23, 2005, a Record of Decision was signed adopting the preferred alternative as the Selected Plan for Reach 1.

The preferred plan described in the draft SEIS for the MRR Reaches 2 and 3 was based on the Reach 1 preferred plan. However, as designs were optimized during development of the plans and specifications for Reach 1, it became apparent that a cutoff wall in combination with a seepage berm would not work for all of Herbert Hoover Dike. The alternative for Reaches 2 and 3 will be a combination of a cutoff wall with a seepage berm and a relief feature such as a Relief Trench, Soil Replacement Wedge, Relief Wells, Drainage Feature, or Sand Columns. The specific features selected and dimension of the features will be site specific, dependent on the local geology and site conditions along Reaches 2 and 3. This study is a cooperative effort between the Corps and the South Florida Water Management District (SFWMD).

ADDRESSES: U.S. Army Corps of Engineers, Planning Division, Environmental Branch, P.O. Box 4970, Jacksonville, FL 32232-0019.

FOR FURTHER INFORMATION CONTACT: Ms. Angela Dunn at (904) 232-2108 or e-mail at Angela.E.Dunn@usace.army.mil.

SUPPLEMENTARY INFORMATION:

a. The proposed action will be the selected plan described in the July 2005 Supplemental Environmental Impact Statement (SEIS) with the additional actions of: Extending construction along Reaches 2 and 3 of the levee and implementing the landside rehabilitation features as needed based on geology and adjacent land factors. The proposed action will not affect the Regulation Schedule for Lake Okeechobee. Land may have to be acquired outside of the existing right-of-way (ROW) and this SEIS will account for any impacts that result due to acquisition of additional real estate.

b. The preferred plan design will be optimized according to the local geology and site conditions along Reaches 2 and 3. The features that may be part of the preferred plan include: Cutoff Wall, Seepage Berm, Relief Trench, Soil Replacement Wedge, Relief Wells, Sand Column and Drainage Feature.

c. A scoping letter will be used to invite comments on alternatives and issues from Federal, State, and local agencies, affected Indian tribes, and other interested private organizations and individuals. A Scoping Letter describing the proposed project and soliciting comments was sent to government agencies, non-governmental agencies, Indian Tribes and the interested public on August 10, 2006. A scoping meeting is not anticipated.

d. A public meeting will be held after release of the Draft SEIS; the exact location, date, and times will be announced in a public notice and local newspapers.

e. A Major Rehabilitation Evaluation Report (MRR) was approved by Congress in the Water Resources Development Act (WRDA) 2000 that addressed the need to repair the aging dike.

f. *Draft SEIS Preparation:* The 2nd DSEIS is expected to be available for public review in the first quarter of CY 2010.

Dated: August 19, 2009.

Kenneth R. Dugger,

Acting Chief, Environmental Branch.

[FR Doc. E9-20912 Filed 8-28-09; 8:45 am]

BILLING CODE 3720-58-P

DEPARTMENT OF DEFENSE**Department of the Army****Army Science Board Plenary Meeting**

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. § 552b, as amended) and 41 Code of the Federal Regulations (CFR 102-3.140 through 160, the Department of the Army announces the following committee meeting:

Name of Committee: Army Science Board (ASB).

Date(s) of Meeting: Sept 15, 2009.

Time(s) of Meeting: 1230-1430.

Location: Institute for Defense Analysis, 4850 Mark Center Drive, Alexandria VA 22311.

Purpose: The purpose of this meeting is to adopt a subcommittee's finding and recommendations on survivability and deployability of ground platforms and hear opinions by the Army Science Board.

Proposed Agenda:

1230-1330 Survivability and Deployability Subcommittee Reports;
1330-1430 Discussion and Votes;
1430 Adjourn.

FOR FURTHER INFORMATION CONTACT: For information please contact Mr. Justin Bringhurst at justin.bringhurst@us.army.mil or (703) 604-7468 or Carolyn German at carolyn.t.german@us.army.mil or (703) 604-7490.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E9-20914 Filed 8-28-09; 8:45 am]

BILLING CODE 3710-08-P

DELAWARE RIVER BASIN COMMISSION

Notice of Public Hearing on Chesapeake Appalachia, LLC Surface Water Withdrawal Project

Notice is hereby given that the Delaware River Basin Commission (DRBC or "Commission") will hold a public hearing on Wednesday, September 23, 2009 on revised proposed Docket No. D-2009-20-1 for Chesapeake Appalachia, LLC (also, "Chesapeake"). The hearing will be held at the PPL Corporation Wallenpaupack Environmental Learning Center, 126 PPL Drive, Hawley, Pennsylvania 18428-0122. The hearing will begin at 10 a.m. and will continue until all those who wish to speak have had an opportunity to do so. No other Commission business will be conducted at the September 23, 2009 hearing.

Chesapeake Appalachia, LLC applied to the Commission for approval of a surface water withdrawal project to supply a maximum of 29.99 mg/30 days of water for the applicant's exploration and development of natural gas wells in the State of New York and the Commonwealth of Pennsylvania. Surface water is proposed to be withdrawn from the West Branch of the Delaware River at a location known as the Cutrone Site in Buckingham Township, Wayne County, Pennsylvania. The project is located in the Delaware River Watershed within the drainage area of the section of the non-tidal Delaware River known as the Upper Delaware, which is designated as Special Protection Waters.

The Commission held a public hearing on an initial draft of Docket D-2009-20-1 at its business meeting of July 15, 2009 in Bethlehem, Pennsylvania. It heard testimony on the draft docket from approximately 40 witnesses on that date. Voluminous written comment was submitted on or before the July 15 hearing. In light of the high level of public interest in the project, the Commission took no action on the docket on July 15, and on that date it extended the written comment period through July 29, 2009.

Approximately 1,200 written comments (excluding petitions) were received on the docket by the close of the comment period. After review and consideration

of these comments, the Commission and staff are developing a revised draft docket, which will be posted on the Commission's Web site, <http://www.drbc.net>, on or before the close of business on Friday, September 11, 2009. Public comment is requested on those aspects of the docket that have been substantively modified. A list of these aspects will be provided on the Commission's Web site at the time the revised draft is posted.

Additional public records relating to the draft Chesapeake docket are available for review consistent with Article 8 of the Commission's Rules of Practice and Procedure (RPP) governing public access to records and information. The RPP are also available on the Commission's Web site, <http://www.drbc.net>.

Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the hearing should contact the commission secretary directly at 609-883-9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how the Commission can accommodate your needs.

Dated: August 25, 2009.

Pamela M. Bush,

Commission Secretary.

[FR Doc. E9-20927 Filed 8-28-09; 8:45 am]

BILLING CODE 6360-01-P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Fulbright-Hays Group Projects Abroad Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.021A.

Dates: Applications Available: August 31, 2009.

Deadline for Transmittal of Applications: October 6, 2009.

Deadline for Intergovernmental Review: December 7, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Fulbright-Hays Group Projects Abroad (PA) Program supports overseas projects in training, research, and curriculum development in modern foreign languages and area studies for groups of teachers, students, and faculty engaged in a common endeavor. Projects are short-term and include seminars, curriculum development, or group research or study.

Priorities: In accordance with 34 CFR 75.105(b)(2)(ii), these priorities are from the regulations for this program (34 CFR 664.31(G) and 664.32).

Absolute Priority: For FY 2010, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Specific geographic regions of the world: A group project funded under this priority must focus on one or more of the following geographic regions of the world: Africa, East Asia, South Asia, Southeast Asia and the Pacific, the Western Hemisphere (Central and South America, Mexico, and the Caribbean), East Central Europe and Eurasia, and the Near East.

Competitive Preference and Invitational Priorities: Within this absolute priority, we are establishing the following competitive preference and invitational priorities.

Competitive Preference Priority I: For FY 2010, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) and 664.31(g), we award up to an additional five (5) points to an application that meets this priority.

This priority is:

Projects that provide substantive training and thematic focus, both during the pre-departure and in-country project phases, on any of the seventy-eight (78) languages deemed critical on the U.S. Department of Education's list of Less Commonly Taught Languages (LCTLs) found below.

This list includes the following: Akan (Twi-Fante), Albanian, Amharic, Arabic (all dialects), Armenian, Azeri (Azerbaijani), Balochi, Bamanakan (Bamana, Bambara, Mandikan, Mandingo, Maninka, Dyula), Belarusian, Bengali (Bangla), Berber (all languages), Bosnian, Bulgarian, Burmese, Cebuano (Visayan), Chechen, Chinese (Cantonese), Chinese (Gan), Chinese (Mandarin), Chinese (Min), Chinese (Wu), Croatian, Dari, Dinka, Georgian, Gujarati, Hausa, Hebrew (Modern), Hindi, Igbo, Indonesian, Japanese, Javanese, Kannada, Kashmiri, Kazakh, Khmer (Cambodian), Kirghiz, Korean, Kurdish (Kurmanji), Kurdish (Sorani), Lao, Malay (Bahasa Melayu or Malaysian), Malayalam, Marathi, Mongolian, Nepali, Oromo, Panjabi, Pashto, Persian (Farsi), Polish, Portuguese (all varieties), Quechua, Romanian, Russian, Serbian, Sinhala (Sinhalese), Somali, Swahili, Tagalog, Tajik, Tamil, Telugu, Thai, Tibetan, Tigrigna, Turkish, Turkmen, Ukrainian, Urdu, Uyghur/Uigur, Uzbek, Vietnamese, Wolof, Xhosa, Yoruba, and Zulu.

Competitive Preference Priority II: For FY 2010, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) and 664.31(g), we award up to an additional five (5) points to a short-term project abroad application that meets this priority.

This priority is:

Short-term projects abroad that develop and improve foreign language and/or area studies at elementary and secondary schools.

Invitational Priority: For FY 2010, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Projects that, through collaborative efforts between colleges, departments, or schools of teacher education and other colleges, departments, or schools within a single institution of higher education or consortium of institutions of higher education, propose projects that provide pre-service training for K–12 teachers in foreign languages and international area studies in teacher education programs. Project activities should include pre-service teachers and teacher education students.

Program Authority: U.S.C. 2452(b)(6).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 664.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested \$14,709,000 for the Fulbright-Hays programs (also referred to as the International Overseas programs) for FY 2010, of which we intend to allocate \$2,320,000 for new short-term projects under the Fulbright-Hays Group Projects Abroad Program. The actual level funding, if any, depends on final Congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Note: As part of its FY 2010 budget request, the Administration proposed to continue to allow funds under this program to be used to support the participation of individuals who plan to apply their language skills and knowledge of countries vital to the United

States' national security in fields outside teaching, including government, the professions, or international development. Therefore, institutions of higher education may propose projects for visits and study in foreign countries by individuals in these fields, in addition to those planning a teaching career. However, whether authority exists to use funds for participants outside of the field of teaching depends on final Congressional action. Applicants will be given an opportunity to amend their applications if Congress does not provide this authority.

Estimated Range of Awards: \$30,000–\$90,000.

Estimated Average Size of Awards: \$80,000.

Maximum Award: We will reject any short-term GPA application that proposes a budget exceeding \$90,000 for a single budget period of 12 months.

Estimated Number of Awards: 29.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

III. Eligibility Information

1. *Eligible Applicants:* (1) Institutions of higher education, (2) State departments of education, (3) Private nonprofit educational organizations, and (4) Consortia of these entities. Institutions that have never received an award under this program are encouraged to apply.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: <http://e-grants.ed.gov>. To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: <http://www.ed.gov/pubs/edpubs.html> or at its e-mail address: edpubs@inet.ed.gov.

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.021A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer

diskette) by contacting the person or team listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program. Page Limit: The application narrative (Part III of the application) is the section in which the applicant addresses the selection criteria that reviewers use to evaluate the application. The application narrative must be limited to no more than 40 pages, using the following standards:

- A “page” is 8.5” x 11”, on one side only, with 1” margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, *except* titles, headings, footnotes, quotations, references, and captions. Charts, tables, figures, and graphs in the application narrative may be single spaced and will count toward the page limit.
- Use a font that is either 12 point or larger; or, no smaller than 10 pitch (characters per inch). However, you may use a 10 point font in charts, tables, figures, and graphs.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

- The page limit does not apply to Part I, the Application for Federal Assistance face sheet (SF 424); the supplemental information form required by the Department of Education; Part II, the budget summary form (ED Form 524); Part IV, assurances, certifications, and the response to Section 427 of the General Education Provisions Act (GEPA); the table of contents; the one-page project abstract; the appendices; or the line item budget. If you include any attachments or appendices not specifically requested, these items will be counted as part of the program narrative [Part III] for purposes of the page limit requirement.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:* Applications Available: August 31, 2009. Deadline for Transmittal of Applications: October 6, 2009.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application site (e-Application) accessible through the Department's e-Grants system. For information (including dates and times) about how to submit your application electronically, or in paper format by

mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to Section IV. 6.

Other Submission Requirements of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under *For Further Information Contact* in Section VII of this notice. If the Department provides an accommodation or auxiliary air to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: December 7, 2009.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the GPA Program, CFDA number 84.021A, must be submitted electronically by using e-Application, accessible through the Department's e-Grants portal page at: <http://e-grants.ed.gov>.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

While completing your electronic application, you will be entering data

online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date.

E-Application will not accept an application for this program after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

- Your electronic application must comply with any page limit requirements described in this notice.

- Prior to submitting your electronic application, you may wish to print a copy of it for your records.

- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability:

If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and (2)(a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under *For Further Information Contact* (See VII. Agency Contact) or (2) the e-Grants help desk at 1-888-336-8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

- You do not have access to the Internet; or

- You do not have the capacity to upload large documents to e-Application;

and

- No later than two weeks before the application deadline date (14 calendar days; or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If

you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Michelle Guilfoil, Fulbright-Hays Group Projects Abroad Program, U.S. Department of Education, 1990 K Street, NW., room 6098, Washington, DC 20006-8521. FAX: (202) 502-7860.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.021A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202-4260.

You must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (3) A dated shipping label, invoice, or receipt from a commercial carrier.
- (4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

- (1) A private metered postmark.
- (2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your

paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.021A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202-4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays. *Note for Mail or Hand Delivery of Paper Applications:* If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope (and, if not provided by the Department, in Item 11 of the SF 424) the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

V. Application Review Information

1. *General:* For FY 2010, short-term project applications will be reviewed by separate panels according to world area. Each panel reviews, scores, and ranks its applications separately from the applications assigned to the other world area panels. However, all applications will be ranked together from the highest to the lowest score for funding purposes.

2. *Selection Criteria:* The selection criteria for this program are from 34 CFR 664.31 and are as follows: (a) Plan of operation (20 points); (b) Quality of key personnel (10 points); (c) Budget and cost effectiveness (10 points); (d) Evaluation plan (20 points); (e) Adequacy of resources (5 points); (f) Potential impact of the project on the development of the study of modern foreign languages and area studies in American education (15 points); (g) Relevance to the applicant's education goals and its relationship to its program development in modern foreign languages and area studies (5 points); (h) The extent to which direct experience abroad is necessary to achieve the project's objectives and the effectiveness with which relevant host country resources will be utilized (10 points); and (i) The extent to which the proposed project addresses the competitive preference priorities (10 points).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118.

Grantees are required to use the electronic data instrument *International Resource Information System* (IRIS) to complete the final report. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to <http://www.ed.gov/fund/grant/apply/appforms/appforms.html>.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993, the following measure will be used by the Department to evaluate the success of the program: Percentage of all Fulbright-Hays Group Projects Abroad Program projects judged to be successful by the program officer, based on a review of information provided in annual performance reports.

The information provided by grantees in their performance reports submitted via IRIS will be the source of data for this measure. Reporting screens for institutions can be viewed at: http://iris.ed.gov/iris/pdfs/gpa_director.pdf and http://iris.ed.gov/iris/pdfs/gpa_participant.pdf

VII. Agency Contact

For Further Information Contact: Michelle Guilfoil, Fulbright-Hays Group Projects Abroad Program, U.S. Department of Education, 1990 K Street,

NW., room 6098, Washington, DC 20006-8521. Telephone: (202) 502-7625 or by e-mail: michelle.guilfoil@ed.gov. The agency contact person does not mail application materials and does not accept applications.

If you use a TDD, call the FRS, toll-free, at 1-800-877-8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Further Information Contact* in Section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF), on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzellan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Dated: August 26, 2009.

Daniel T. Madzellan,

Director, Forecasting and Policy Analysis.

[FR Doc. E9-20961 Filed 8-28-09; 8:45am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. IC09-500-001 and IC09-505-001]

Commission Information Collection Activities (FERC-500 and FERC-505); Comment Request; Submitted for OMB Review

August 24, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission or FERC) has submitted the information collections described below to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to the **Federal Register** notice (74 FR 16377, 4/10/2009) and has made this notation in its submissions to OMB. **DATES:** Comments on the collections of information are due by September 30, 2009.

ADDRESSES: Address comments on the collections of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, *c/o oira_submission@omb.eop.gov* and include OMB Control Numbers 1902-0058 (for FERC-500) and 1902-0115 (for FERC-505) as points of reference. For comments that pertain to only one of the collections, specify the appropriate collection. The Desk Officer may be reached by telephone at 202-395-4638.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission and should refer to Docket Nos. IC09-500-001 and IC09-505-001. Comments may be filed either electronically or in paper format. Those persons filing electronically do not need to make a paper filing. Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at <http://www.ferc.gov/help/submission-guide/user-guide.pdf>.

www.ferc.gov/help/submission-guide/user-guide.pdf. To file the document electronically, access the Commission's Web site and click on Documents & Filing, E-Filing (<http://www.ferc.gov/docs-filing/efiling.asp>), and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

For paper filings, an original and 2 copies of the comments should be submitted to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket Nos. IC09-500-001 and IC09-505-001.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the "eLibrary" link. For user assistance, contact fercolinesupport@ferc.gov or toll-free at (866) 208-3676 or for TTY, contact (202) 502-8659.

FOR FURTHER INFORMATION CONTACT:

Ellen Brown may be reached by telephone at (202) 502-8663, by fax at (202) 273-0873, and by e-mail at ellen.brown@ferc.gov.

SUPPLEMENTARY INFORMATION: For the purpose of publishing this notice and seeking public comment, FERC requests comments on both FERC-500 ("Application for License/Relicense for Water Projects with Capacity Greater than 5 MW"; OMB Control No. 1902-0058) and FERC-505 ("Application for License/Relicense for Water Projects with Capacity 5 MW or Less"; OMB Control No. 1902-0115). The associated regulations, reporting requirements, burdens, and OMB clearance numbers will continue to remain separate and distinct for FERC-500 and FERC-505.

FERC-500: The information collected under the requirements of FERC-500 is used by the Commission to determine the broad impact of a hydropower project (including hydrokinetic projects) license application. In deciding whether to issue a license, the Commission gives equal consideration to a full range of licensing purposes related to the potential value of a stream, river, or other navigable waterway including the oceans. Among these purposes are: hydroelectric or hydrokinetic development; energy conservation; fish and wildlife resources (including their spawning grounds and habitat); visual resources; cultural resources; recreational opportunities; other aspects of environmental quality; irrigation; flood control and water supply. Submittal of the information is

necessary to fulfill the requirements of the Federal Power Act in order for the Commission to determine whether the proposal is best adapted to a comprehensive plan for improving or developing a waterway(s).

Under Part I of the Federal Power Act (FPA; 16 U.S.C. 791a *et seq.*), the Commission has the authority to issue licenses for hydroelectric projects on the waters over which Congress has jurisdiction. The Electric Consumers Protection Act (ECPA; Pub. L. 99-495, 100 Stat. 1243) provides the Commission with the responsibility of issuing licenses for nonfederal hydroelectric plants. ECPA also amended the language of the FPA concerning environmental issues to ensure environmental quality. In Order No. 2002 (68 FR 51070, August 25, 2003), the Commission revised its regulations to create a new licensing process in which a potential license applicant's pre-filing consultation and the Commission's scoping process pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321) are conducted concurrently rather than sequentially.

The information collected is needed: (1) To evaluate license applications pursuant to the comprehensive development standard of FPA sections 4(e) and 10(a)(1), (2) to consider the comprehensive development analysis of certain factors with respect to the new license set forth in section 15, and (3) to comply with NEPA, Endangered Species Act (16 U.S.C. 1531 *et seq.*) and the National Historic Preservation Act (16 U.S.C. 470 *et seq.*). FERC staff conducts a systematic review of the application, with supplemental documentation provided through the solicitation of comments from other agencies and the public.

Submittal of the FERC-500 information is necessary for the Commission to carry out its Statutory responsibilities as defined in the filing requirements in 18 CFR 4.32, 4.38, 4.40-41, 4.50-51, 4.61, 4.71, 4.93, 4.107-108, 4.201-.202, Part 5, 16.1, 16.10, 16.20, 292.203 and 292.208.

FERC-505: Submission of the information is necessary for the Commission to carry out its responsibilities in implementing the statutory provisions of Part I of the FPA (16 U.S.C. 791a *et seq.* & 3301-3432, as amended by the ECPA (Pub. L. 99-495, 100 Stat. 1234 (1986))). The FPA as amended by ECPA provides the Commission with the responsibility of issuing licenses for nonfederal hydroelectric power plants, plus requiring the Commission in its licensing activities to give equal consideration to preserving environmental quality. ECPA also amended sections 10(a) and 10(j) of the FPA to specify the conditions on which hydropower licenses are issued, to direct that the project be adopted in accordance with a comprehensive plan that improves waterways for interstate/foreign commerce and for the protection, enhancement and mitigation of damages to fish and wildlife.

Submittal of the information is necessary to fulfill the requirements of Sections 9 and 10(a) of the Act in order for the Commission to make the required finding that the proposal is technically and environmentally sound, and is best adapted to a comprehensive plan for the development of the water resources of the region. Under section 405(c) of the Public Utility Regulatory Policies Act of 1978 (PURPA), the Commission may in its discretion (by rule or order) grant an exemption in whole or in part from the requirements of Part I of the FPA to small

hydroelectric power projects having a proposed installed capacity of 5,000 kilowatts or less (5-MW exemption). The filing requirements to prepare an application for a 5-MW exemption in lieu of a licensing application are also included in this analysis. The information collected under FERC-505 is used by Commission staff to determine the broad impact of a license (including licenses for hydrokinetic projects) or exemption application.

The information collected for license applications is needed to evaluate the hydroelectric project pursuant to the comprehensive development standard of FPA sections 4(e) and 10(a)(1), to consider in the comprehensive development analysis certain factors with respect to the new license as set forth in section 15, and to comply with NEPA, the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and the National Historic Preservation Act (16 U.S.C. 470 *et seq.*). The information collected for 5-MW exemption applications is needed to evaluate the hydroelectric project for compliance with NEPA, the Endangered Species Act (16 U.S.C. 1531 *et seq.*), and the National Historic Preservation Act (16 U.S.C. 470 *et seq.*). FERC staff conducts a systematic review of the prepared application with supplemental documentation provided by the solicitation of comments from other agencies and the public.

The filing requirements are contained in 18 CFR 4.61, 4.71, 4.93, 4.107, 4.108, 4.201, 4.202, Part 5, 292.203, and 292.208.

ACTION: The Commission is requesting three-year extensions of the current expiration dates for FERC-500 and FERC-505, with no change to the existing reporting requirements.

Burden Statement: The estimated annual public reporting burdens and the associated public costs follow.¹

Data collection ² thnsp:3	Projected number of respondents	Number of responses per respondent	Projected average burden hours per response	Total annual burden hours
Annual Estimate for FERC-500	6	1	105,839.5	635,037
Annual Estimate for FERC-505	16	1	3,674	58,782

² Per sections 4.41(e)(9), 4.51(e)(7) and 4.61(c)(3), applicants are now required to submit their total cost of collection; these figures were used in determining the average burden hours. The information presented here is based on actual Fiscal Year (FY) 2007 and FY 2008 filings.

³ The Commission has three licensing processes; each process has its own requirements and schedules. More details are available at <http://www.ferc.gov/industries/hydropower/gen-info/licensing/licen-pro.asp>.

Using actual cost figures provided by filers ², the average annual cost per respondent is estimated as follows.

¹ These figures may not be exact, due to rounding.

Data collection (1)	Number of filers providing actual cost figures (2)	Total annual cost of collection, for the filers providing data in column 2 (\$) ² (3)	Projected average annual cost per respondent (\$) (3)/(2)
FERC-500	17	\$109,331,372	\$6,431,257
FERC-505	14	3,123,000	223,071

The reporting burden² includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents² is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of

information technology, *e.g.*, permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-20850 Filed 8-28-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2547-092]

Village of Swanton, VT; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, and Soliciting Comments, Recommendations, Terms and Conditions, and Fishway Prescriptions

August 21, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of License.

b. *Project No.:* 2547-092.

c. *Date filed:* June 4, 2009.

d. *Applicant:* Village of Swanton, Vermont (Village).

e. *Name of Project:* Highgate Falls Project.

f. *Location:* The project is located on the Missisquoi River in Franklin County, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Paul V. Nolan, 5515 North 17th Street, Arlington, VA 22205-2722; telephone (703) 534-5509.

i. *FERC Contact:* Tom Papsidero, telephone (202) 502-6002, and e-mail address thomas.papsidero@ferc.gov.

j. *Deadline for filing comments, protests, motions to intervene, recommendations, preliminary terms and conditions, and fishway prescriptions is 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice. All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory*

Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P-2547-092) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The Village proposes to install a turbine generator unit to increase total generating capacity by utilizing minimum flows that are currently passing over the rubber dam of the project. The new unit would consist of a single turbine generator with a capacity of 710 kilowatts (kW) and hydraulic capacity of 200 cubic feet per second (cfs). The total authorized capacity for the project would increase from 10,800 kW to 11,510 kW and the total hydraulic capacity of the project would increase from 1,906 cfs to 2,106 cfs.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail FERCOnlineSupport@ferc.gov. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the*

requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests, interventions, recommendations, terms and conditions, and fishway prescriptions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

o. Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "FISHWAY PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, recommendations, terms and conditions or prescriptions should relate to project works which are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-20847 Filed 8-28-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13534-000]

Green Hydropower Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

August 25, 2009.

On July 7, 2009,¹ Green Hydropower Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA)² to study the feasibility of the proposed 2-megawatt (MW) Green Hydropower Rocky Reach Project No. 13534. The project would be located in Douglas and Chelan Counties, Washington. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Green Hydropower Rocky Reach Project is an in-river development that would be located 0.25-miles downstream of the Rocky Reach Dam (FERC Project No. 2145) on the Columbia River. The project would consist of: (1) Multiple 10-foot-diameter to 40-foot-diameter sea anchors (pieces of high-strength synthetic material that inflate to roughly the shape of a parachute in the presence of an underwater current); (2) an up to 1.25-mile-long synthetic rope; (3) an electric-driven traction winch or an electric-driven capstan; (4) a generator attached to the winch or capstan; (5) a floating vessel, such as a boat; (6) a new approximately 480-volt, 500-foot-long transmission line; and (7) appurtenant facilities. The sea anchors would be attached to a rope that is connected to the winch or capstan. The winch or capstan would be mounted on shore or on a floating vessel. The sea anchors would be pulled downstream by the existing current, pulling the rope through a winch or capstan, which will turn the generator. The project would have an estimated annual generation of between 8,750-megawatt hours (MWh) and 17,500 MWh per year.

¹ Applicant submitted supplemental information to answer deficiencies in initial permit application on August 17, 2009.

² 16 U.S.C. 797(f). Three years is the maximum term for a preliminary permit. See FPA Section 5, 16 U.S.C. 798.

Applicant Contact: Mr. Joseph Allan Francis, Owner, Green Hydropower Inc., 5316 North Shirley Street, Ruston, WA 98407; *phone:* (253) 732-6532.

FERC Contact: Jennifer Harper, 202-502-6136.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>. More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13534) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-20940 Filed 8-28-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FERC Docket No. CP09-161-000]

Bison Pipeline, L.L.C.; Notice of Availability of the Draft Environmental Impact Statement and Notice of Public Comment Meetings for the Bison Pipeline Project

August 21, 2009.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft Environmental Impact Statement (EIS) on the natural gas pipeline facilities proposed by Bison Pipeline, L.L.C. (Bison) in the above-referenced docket. The Bison Pipeline Project facilities would be located in Wyoming, Montana, and North Dakota and have been designed to transport

approximately 477 million cubic feet per day (MMcf/day) of natural gas.

Bison proposes to construct, operate, and maintain 302.5 miles of new 30-inch-diameter interstate natural gas transmission pipeline, one compressor station, two meter stations, 20 mainline valves, and three pig launcher/pig receiver facilities. The proposed Bison Pipeline Project would extend northeast from a point near Dead Horse, Wyoming, through southeastern Montana and southwestern North Dakota. It would connect with the Northern Border pipeline system near Northern Border's Compressor Station #6 in Morton County, North Dakota.

As the Federal agency responsible for evaluating applications filed for authorization to construct and operate interstate natural gas pipeline facilities, FERC is the lead Federal agency for the preparation of this EIS. The EIS has been prepared in compliance with the requirements of NEPA, the Council on Environmental Quality (CEQ) regulations for implementing NEPA (40 Code of Federal Regulations [CFR] 1500–1508), and FERC regulations implementing NEPA (18 CFR 380).

The U.S. Department of the Interior, Bureau of Land Management (BLM) is a cooperating agency in preparation of the EIS. A cooperating agency has jurisdiction by law or special expertise with respect to environmental impacts associated with a proposal and is involved in the NEPA analysis. BLM is a cooperating agency because the Project would cross federal lands and resources for which the BLM has jurisdiction and special expertise with respect to environmental issues and impacts. BLM will use the EIS to meet its NEPA responsibilities in considering Bison's application for a Right-of-Way Grant and Temporary Use Permit for the portion of the Project on Federal land.

This draft EIS has been prepared for public review and comment. The principal purposes in preparing this EIS were to:

- Identify and assess potential impacts on the natural and human environment that would result from implementation of the proposed Project;
- Facilitate public involvement in identifying any potentially significant environmental impacts;
- Identify and assess reasonable alternatives to the proposed Project that would avoid or minimize adverse effects on the environment; and
- Identify and recommend specific mitigation measures to minimize environmental impacts.

Based on the analysis included in the EIS, the FERC staff concludes that construction and operation of the Bison

Pipeline Project would result in some adverse environmental impacts. However, we believe that environmental impacts would be reduced to less than significant levels if the proposed Project is constructed and operated in accordance with applicable laws and regulations, Bison's proposed mitigation, and additional measures we recommend in this draft EIS.

Comment Procedures and Public Meetings

You can make a difference by providing us with your specific comments or concerns about the Bison Pipeline Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure consideration of your comments on the proposal in the final EIS, it is important that the Commission receive your comments before October 12, 2009.

For your convenience, there are four methods in which you can use to submit your comments to the Commission. In all instances please reference the project docket number CP09–161–000 with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at (202) 502–8258. or efiling@ferc.gov. Please carefully follow these instructions so that your comments are properly recorded:

(1) You may file your comments electronically by using the Quick Comment feature, which is located on the Commission's Internet Web site at <http://www.ferc.gov> under the link *Documents and Filings*. A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Internet Web site at <http://www.ferc.gov> under the link to *Documents and Filings*. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on "Sign-up" or "eRegister." You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing;"

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426; label one copy of your comments for the attention of the Gas Branch 3, PJ–11.3 and reference Docket No. CP09–161–000 on the original and both copies; and

(4) In lieu of sending written or electronic comments, the FERC invites you to attend one of the public comment meetings the staff will conduct in the project area to receive comments on the draft EIS. All meetings will run from 6 p.m. to 8 p.m., local time, and are scheduled as follows:

Date	Location
September 21, 2009.	Sacred Heart Parish Hall, Sacred Heart Church, 208 Ash Avenue East, Glen Ullin, ND 58631.
September 22, 2009.	Bowman County Fairgrounds, Four Seasons, 12 HWY 12 E, Bowman, ND 58623.
September 23, 2009.	Powder River County District High School, 500 N Trautman, Broadus, MT 59317.
September 24, 2009.	American Legion, 200 Rockpile Blvd, Gillette, WY 82716.

Interested groups and individuals are encouraged to attend and present oral comments on the draft EIS. Transcripts of the meetings will be prepared.

After the comments are reviewed, any significant new issues are investigated, and modifications are made to the draft EIS, a final EIS will be published and distributed. The final EIS will contain the staff's responses to timely comments received on the draft EIS.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Anyone may intervene in this proceeding based on this draft EIS. You must file your request to intervene as specified above.¹ Only intervenors have the right to seek rehearing of the Commission's decision. You do not need intervenor status to have your comments considered.

The draft EIS has been placed in the public files of the FERC and BLM and is available for public inspection at:

¹ Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

Federal Energy Regulatory Commission
Public Reference Room, 888 First Street,
NE., Room 2A, Washington, DC
20426, (202) 502-8371

U.S. Bureau of Land Management

Wyoming State Office, 5353
Yellowstone Road, Cheyenne, WY
82003

Buffalo Field Office, 1425 Fort Street,
Buffalo, WY 82834

Montana State Office, 5001 Southgate
Drive, Billings, MT 59101

Miles City Field Office, 111 Garryowen
Road, Miles City MT 59301

North Dakota Field Office, 99 23rd
Avenue West, Suite A, Dickinson, ND
58601

A limited number of hard copies and CD-ROMs of the draft EIS are available from the FERC's Public Reference Room identified above. This draft EIS is also available for public viewing on the FERC's Internet Web site at <http://www.ferc.gov>. In addition, copies of the draft EIS have been mailed to Federal, State, and local government agencies; elected officials; Native American tribes; local libraries and newspapers; intervenors in the FERC's proceeding; individuals who provided scoping comments; affected landowners and individuals who requested the draft EIS; and new landowners identified as being crossed by route alternatives either recommended by FERC staff or still under consideration.

Additional information about the project is available from the Commission's Office of External Affairs, at 1-866-208-FERC (3372) or on the FERC Internet Web site (<http://www.ferc.gov>). Using the "eLibrary" link, select "General Search" from the eLibrary menu, enter the selected date range and "Docket Number," excluding the last three digits in the Docket Number field (*i.e.*, CP09-161), and follow the instructions. You may also search using the phrase "Bison Pipeline Project" in the "Text Search" field. For assistance with access to eLibrary, the helpline can be reached at 1-866-208-3676, TTY (202) 502-8659, or at FERCOnlineSupport@ferc.gov. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document

summaries, and direct links to the documents. To register for this service, go to <http://www.ferc.gov/esubscribenow.htm>.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-20852 Filed 8-28-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09-432-000]

Tricor Ten Section Hub LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Ten Section Storage Project and Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

August 21, 2009.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Ten Section Storage Project involving construction and operation of facilities proposed by Tricor Ten Section Hub LLC (Tricor) in Kern County, California. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process we will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on *September 21, 2009*.

Comments on the project may be submitted in written form in a letter to the Secretary of the Commission, or verbally at the public scoping meeting. Further details on how to submit written comments are provided in the Public Participation section of this notice (page 5). In lieu of sending written comments, we invite you to attend a public scoping meeting scheduled as follows:

FERC Public Scoping Meeting, Tricor Ten Section Storage Project,
Thursday, September 10, 2009, 6:30 p.m., Bakersfield Marriott at the Convention Center, 801 Truxtun Ave., Bakersfield, CA 93301. 661-323-1900.

This notice is being sent to the Commission's current environmental

mailing for this project, which includes affected landowners; Federal, State, and local government agencies; elected officials; environmental and public interest groups; Indian tribes and Native American organizations; parties to this proceeding; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with State law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Tricor provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (<http://www.ferc.gov>).

Summary of the Proposed Project

On June 12, 2009, Tricor submitted its application to the FERC under section 7(c) of the Natural Gas Act (NGA), in Docket No. CP09-423-000. The FERC issued a Notice of Application on June 23, 2009.

Tricor proposes to construct and operate a natural gas storage field and pipeline in unincorporated Kern County, California. The storage facilities would be within the existing Ten Section oil and gas field, about 12 miles southwest of the city of Bakersfield. This field was first established in 1936, and is still in operation. Between 1977 and 1982, the field was used to store natural gas by two local distribution companies (Pacific Gas and Electric [PG&E] and Southern California Gas).

According to Tricor, its project would provide natural gas storage services to the interstate system in the southwestern United States. Tricor stated that the project would meet a growing demand for firm and interruptible storage services for customers in the gas marketing, distribution, transmission, production,

and electric power generation industries.

The Ten Section Storage Project would consist of a 32.5 billion cubic foot (Bcf) storage field with a working capacity of 22.4 Bcf (with 10.1 Bcf of cushion gas). The storage facilities would be designed to inject natural gas into underground storage at a maximum rate of 0.8 Bcf/d, and withdraw natural gas from storage at a maximum rate of about 1.0 Bcf/d. The Ten Section Storage Project would consist of the following facilities:

- 26 new gas injection and withdrawal wells drilled within 5 well pads at the field;
- 9 existing oil production wells converted into observation wells;
- 5 existing water disposal wells used for the same purpose;
- New 42,000 horsepower electric driven compressor station;
- 2 new 20-inch-diameter field pipelines (high pressure and low pressure), extending for a total of 1.8 miles, connecting the gas injection/ withdrawal wells to the Tricor compressor station;
- New 4-inch-diameter water disposal pipeline, extending for 1.1 miles, connecting the 5 water disposal wells to the produced water tank at the compressor station;
- New 36-inch-diameter bi-directional header pipeline, extending for 20.4 miles, between the Tricor compressor station and the existing Kern River Gas Transmission Company (Kern) interstate pipeline; and
- New metering and regulating station at the interconnection with the Kern pipeline.

Non-jurisdictional facilities associated with the project would include:

- New electric substation to be built and operated by PG&E about 1.5 miles southwest of the storage field;
- New 230-kilovolt transmission line, about 1.6-miles-long, to be built and operated by PG&E, connecting the new electric substation with the Tricor compressor station; and
- New 10-inch-diameter crude oil pipeline, extending for 0.3-mile, between the Tricor compressor station and the existing facilities of Kern Oil and Refining Company.

The general location of the Project facilities is shown in Appendix 1.¹

¹ The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at <http://www.ferc.gov> using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502-8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

Land Requirements for Construction

Construction of the proposed jurisdictional facilities would disturb a total of about 400 acres of land. Following construction, about 179 acres would be maintained for permanent operation of the project's facilities. The remaining temporary construction acreage would be restored and allowed to revert to former uses. About 83 percent of the construction right-of-way is agricultural land, and 14 percent is oil and gas production open land.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. The NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA we² will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Water resources and wetlands;
- Vegetation and wildlife;
- Cultural resources;
- Land use and socioeconomic;
- Air quality and noise; and
- Safety and reliability.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to those on our environmental mailing list (see discussion of how to remain on our mailing list on page 6 of this notice). A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow

² "We", "us", and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

the instructions in the Public Participation section of this notice (below).

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice (below).

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your written comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before *September 21, 2009*.

For your convenience, there are three methods which you can use to submit your written comments to the Commission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at 202-502-8258 or efiling@ferc.gov.

(1) You may file your comments electronically by using the Quick Comment feature, which is located at <http://www.ferc.gov> under the link called "*Documents and Filings*". A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the "eFiling" feature that is listed under the "*Documents and Filings*" link. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file to your submission. New eFiling users must first create an account by clicking on the links called "*Sign up*" or "*eRegister*". You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file your comments with the Commission via mail by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal

Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

In all instances, please reference the project docket number CP09-432-000 with your submission. Label one copy of the comments for the attention of Gas Branch 3, PJ-11.3.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities (as defined in the Commission's regulations).

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (Appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an "intervenor," which is an official party to the Commission's proceeding. Intervenor play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1-866-208-FERC or on the Internet at <http://www.ferc.gov> using the "eLibrary" link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits, in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at 1-866-208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription

which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to <http://www.ferc.gov/esubscribenow.htm>.

Finally, public meetings or site visits will be posted on the Commission's calendar located at <http://www.ferc.gov/EventCalendar/EventsList.aspx> along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-20848 Filed 8-28-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12662-001]

Renewable Resources, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

August 24, 2009.

On July 1, 2009, Renewable Resources, Inc. filed a successive preliminary permit application, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Swift River Mill Hydroelectric Project No. 12662, to be located on the Pawcatuck River near the Towns of Westerly and Hopkinton, in Washington County, Rhode Island.

The proposed Swift River Mill Project would consist of: (1) The 10-foot-high, 112-foot-long Swift River Mill dam; (2) an existing 36-acre reservoir with a normal water surface elevation of 26.0 feet National Geodetic Vertical Datum; (3) an existing powerhouse with two new turbine generating units with a combined capacity of 360 kilowatts (kW), and two new vortex aerator turbine generating units with a combined capacity of 30 kW for a total installed capacity of 390 kW; (4) a new 300-foot-long underground transmission line; and (5) appurtenant facilities. The project would have an estimated annual generation of about 2,870 megawatt-hours.

Applicant Contact: Mr. Edward Carapezza, P.O. Box 365, Hopkinton, RI 02833, (401) 207-2643.

FERC Contact: Tom Dean, (202) 502-6041.

Deadline for filing comments, motions to intervene, competing applications

(without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>.

More information about this project can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-12662) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-20851 Filed 8-28-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98-1-000]

Records Governing Off-the Record Communications; Notice Regarding Prior Notice

August 25, 2009.

On August 24, 2009, the Federal Energy Regulatory Commission published in the **Federal Register** a Public Notice in Docket No. RM98-1-000.¹

The Commission inadvertently published this document in the **Federal Register** and the notice should be disregarded.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-20937 Filed 8-28-09; 8:45 am]

BILLING CODE 6717-01-P

¹ 74 FR 42671 (2009).

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. ER02–2001–013; Docket No. ER08–19–000; Docket No. ER04–197–000; Docket No. ER06–792–000; Docket No. ER04–848–000]

Electric Quarterly Reports; Energy Algorithms, LLC; Forest Energy Partners, LLC; Norge Power Marketing Corporation; Ohms Energy Company, LLC; Notice of Revocation of Market-Based Rate Tariff

August 25, 2009.

On August 5, 2009, the Commission issued an order announcing its intent to revoke the market-based rate authority of the above captioned public utilities, which had failed to file their required Electric Quarterly Reports.¹ The Commission provided the utilities fifteen days in which to file their overdue Electric Quarterly Reports or face revocation of their market-based rate tariffs.

In Order No. 2001, the Commission revised its public utility filing requirements and established a requirement for public utilities, including power marketers, to file Electric Quarterly Reports summarizing the contractual terms and conditions in their agreements for all jurisdictional services (including market-based power sales, cost-based power sales, and transmission service) and providing transaction information (including rates) for short-term and long-term power sales during the most recent calendar quarter.²

In the August 5 Order, the Commission directed Energy Algorithms, LLC; Forest Energy Partners, LLC; Norge Power Marketing Corporation and Ohms Energy Company, LLC; among others, to file the required Electric Quarterly Reports within 15 days of the date of issuance of the order or face revocation of their authority to sell power at market-based rates and termination of their electric market-based rate tariffs.³

The time period for compliance with the August 5 Order has elapsed. Four of the companies identified in the August 5 Order (Energy Algorithms, LLC; Forest

Energy Partners, LLC; Norge Power Marketing Corporation; and Ohms Energy Company, LLC) have failed to file their delinquent Electric Quarterly Reports.

The Commission hereby revokes the market-based rate authority and terminates the electric market-based rate tariffs of the above-captioned public utilities.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20943 Filed 8–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. ER09–1514–000]

New York Independent System Operator; Notice of FERC Staff Attendance

August 25, 2009.

The Federal Energy Regulatory Commission (Commission) hereby gives notice that on September 3, 2009 at 11 a.m. (EST) and/or Wednesday, September 9, 2009 at 2 p.m. (EST) members of its staff will participate in WebEx Training sessions to review the enhancements associated with the transactions aspect of the NYISO Energy Market, specifically, Trading Hubs. Information on the training sessions is available on the NYISO's Web site at <https://nyiso.webex.com>. Sponsored by the NYISO, the training sessions are open to all market participants, and staff's attendance is part of the Commission's ongoing outreach efforts. The training sessions may include discussions relating to matters at issue in the above captioned proceeding. For further information, contact Connie Caldwell at connie.caldwell@ferc.gov; (202) 502–6489 or Jeffrey Honeycutt at jeffrey.honeycutt@ferc.gov; (202) 502–6505.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20942 Filed 8–28–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket Nos. ER06–615–000; ER07–1257–000; ER08–1113–000; ER08–1178–000; ER09–1048–000; ER09–1281–000; ER01–313–009]

California Independent System Operator Corporation; Notice of FERC Staff Attendance

August 25, 2009.

The Federal Energy Regulatory Commission (Commission) hereby gives notice that on the following dates members of its staff will participate in teleconferences and meetings to be conducted by the California Independent System Operator (CAISO). The agenda and other documents for the teleconferences and meetings are available on the CAISO Web site, <http://www.caiso.com>.

- August 26, 2009 2001–2003 Grid Management Charge Refund
- August 27, 2009 Convergence Bidding, Large Generator Interconnection Procedures, Tariff Revisions
- August 28, 2009 Real Time Imbalance Energy Offset
- August 31, 2009 Scarcity Pricing Meeting
- September 1, 2009 Systems Interface User Group
- September 2, 2009 Congestion Revenue Rights Settlements and Market Clearing User Group
- September 3, 2009 Market Issues
- September 8, 2009 Systems Interface User Group, Congestion Revenue Rights Enhancement
- September 9, 2009 Congestion Revenue Rights Settlements and Market Clearing User Group

Sponsored by the CAISO, the teleconferences and meetings are open to all market participants, and Commission staff's attendance is part of the Commission's ongoing outreach efforts. The teleconferences and meetings may discuss matters at issue in the above captioned dockets.

For further information, contact Saeed Farrokhpay at saeed.farrokhpay@ferc.gov; (916) 294–0322 or Maury Kruth at maury.kruth@ferc.gov, (916) 294–0275.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20941 Filed 8–28–09; 8:45 am]

BILLING CODE 6717–01–P

¹ *Electric Quarterly Reports*, 128 FERC ¶ 61,139 (2009) (August 5 Order).

² *Revised Public Utility Filing Requirements*, Order No. 2001, 67 FR 31043, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001–A, 100 FERC ¶ 61,074, *reconsideration and clarification denied*, Order No. 2001–B, 100 FERC ¶ 61,342, *order directing filings*, Order No. 2001–C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001–D, 102 FERC ¶ 61,334 (2003).

³ August 5 Order at Ordering Paragraph A.

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket Nos. ER08-1113-004; ER08-1113-005]

California Independent System Operator Corporation; Notice of Technical Conference Comment Dates

August 21, 2009.

On August 20, 2009, the Commission convened a staff technical conference in the above-captioned proceedings. The purpose of the technical conference was to explore issues concerning Market Efficiency Enhancement Agreements between the California Independent System Operator Corporation and eligible market participants.

During the course of the technical conference, the Commission instructed the presenting parties to file their presentations in the above dockets.

All interested persons may file written comments on these presentations and/or issues addressed in the technical conference on or before September 10, 2009. Reply comments will be due on or before September 17, 2009.

Kimberly D. Bose,*Secretary.*

[FR Doc. E9-20849 Filed 8-28-09; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8951-4; Docket ID No. EPA-HQ-ORD-2007-0517]

Extension of Public Comment Period: Second External Review Draft Integrated Science Assessment for Particulate Matter**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Extension of public comment period.

SUMMARY: The EPA is announcing an extension of the public comment period for the draft document titled, "Integrated Science Assessment for Particulate Matter—Second External Review Draft" (EPA/600/R-08/139B and EPA/600/R-08/139BA). The document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development as part of the review of the national ambient air quality standards (NAAQS) for particulate matter.

On July 31, 2009 (74 FR 38185), EPA released this draft document to seek

review by the Clean Air Scientific Advisory Committee (CASAC) and the public (meeting date and location to be specified in a separate **Federal Register** notice). The draft document does not represent and should not be construed to represent any final EPA policy, viewpoint, or determination. EPA will consider any public comments submitted in response to this notice when revising the document.

DATES: The public comment period started on July 31, 2009 (74 FR 38185). This notice announces the extension of the deadline for public comment from September 30, 2009, to October 12, 2009. Comments must be received on or before October 12, 2009.

ADDRESSES: The "Second External Review Draft Integrated Science Assessment for Particulate Matter" is available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and Publications menus at <http://www.epa.gov/ncea>. A limited number of CD-ROM or paper copies will be available. Contact Ms. Debbie Wales by phone (919-541-4731), fax (919-541-5078), or e-mail (wales.deborah@epa.gov) to request either of these, and please provide your name, your mailing address, and the document title, "Second External Review Draft Integrated Science Assessment for Particulate Matter" (EPA/600/R-08/139B and EPA/600/R-08/139C) to facilitate processing of your request.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Dr. Lindsay Wichers Stanek, NCEA; telephone: 919-541-7792; fax: 919-541-2985; or e-mail: stanek.lindsay@epa.gov.

SUPPLEMENTARY INFORMATION:**I. Information About the Document**

Section 108(a) of the Clean Air Act directs the Administrator to identify certain pollutants which, among other things, "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare" and to issue air quality criteria for them. These air quality criteria are to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air. * * *" Under section 109 of the Act, EPA is then to establish national ambient air quality standards (NAAQS) for each pollutant for which EPA has issued criteria. Section 109(d) of the Act subsequently requires periodic review

and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. EPA is also to revise the NAAQS, if appropriate, based on the revised air quality criteria.

Particulate matter (PM) is one of six "criteria pollutants" for which EPA has established NAAQS. Periodically, EPA reviews the scientific basis for these standards by preparing an Integrated Science Assessment (ISA) (formerly called an Air Quality Criteria Document). The ISA and supplementary annexes, in conjunction with additional technical and policy assessments, provide the scientific basis for EPA decisions on the adequacy of the current NAAQS and the appropriateness of possible alternative standards. The Clean Air Scientific Advisory Committee (CASAC), an independent science advisory committee whose existence and whose review and advisory functions are mandated by Section 109(d)(2) of the Act, is charged (among other things) with independent scientific review of EPA's air quality criteria.

On June 28, 2007 (72 FR 35462), EPA formally initiated its current review of the air quality criteria for PM, requesting the submission of recent scientific information on specified topics. A draft of EPA's "Integrated Review Plan for the National Ambient Air Quality Standard for Particulate Matter" (EPA/452/P-08-006) was made available in October 2007 for public comment and was discussed by the CASAC PM Review Panel via a publicly accessible teleconference consultation on November 30, 2007 (72 FR 63177). EPA finalized the plan and made it available in March 2008 (EPA/452/R-08-004; http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_pd.html). In June 2008 (73 FR 30391), EPA held a workshop to discuss, with invited scientific experts, initial draft materials prepared in the development of the PM ISA and its supplementary annexes.

The First External Review Draft ISA for PM (EPA/600/R-08/139 and EPA/600/R-08/139A; <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=201805>) was released on December 22, 2008 (73 FR 77686). This document was reviewed by the CASAC and discussed at a public meeting on April 1 and 2, 2009 (74 FR 7688). The CASAC held a follow-up public teleconference on May 7, 2009 (74 FR 18230) to review and approve the CASAC PM Review Panel's draft letter providing comments to the Agency on the First External Review Draft ISA for PM (<http://yosemite.epa.gov/sab/>

sabproduct.nsf/73ACCA834AB44A10852575BD0064346B/\$File/EPA-CASAC-09-008-unsigned.pdf).

The Second External Review Draft ISA for PM was released on July 31, 2009 (74 FR 38185), and an updated version was posted on August 13, 2009 that included linkage of references in all chapters and annexes. The updated version of the draft ISA also included corrections to formatting issues in the text and some figures, but no substantive changes were made. In addition, the annexes were posted on August 13, 2009. The Second External Review Draft ISA for PM will be reviewed and discussed by CASAC at a public meeting. A future **Federal Register** notice will inform the public of the exact date and time of that CASAC meeting.

II. How To Submit Technical Comments to the Docket at <http://www.regulations.gov>

Submit your comments, identified by Docket ID No. EPA-HQ-ORD-2007-0517, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail*: ORD.Docket@epa.gov.

- *Fax*: 202-566-1753.

- *Mail*: Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202-566-1752.

- *Hand Delivery*: The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334 EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202-566-1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA-HQ-ORD-2007-0517. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to

include all comments it receives in the public docket without change and to make the comments available online at <http://www.regulations.gov>, including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information through <http://www.regulations.gov> or e-mail that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: Documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: August 18, 2009.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E9-20921 Filed 8-28-09; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[DA 09-1287 and DA 09-1844]

Consumer Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice; announcement of meeting.

SUMMARY: This document announces the appointment of the National Consumers League, represented by Debra R. Berlyn, to its Consumer Advisory Committee ("Committee"), and the continuation of Debra R. Berlyn as Committee Chairperson. This document also announces the date and agenda of the Committee's next meeting.

DATES: The next meeting of the Committee will take place on September 10, 2009, 9 a.m. to 4 p.m., at the Commission's Headquarters Building, Room TW-C305, 445 12th Street, SW., Washington, DC 20554.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, Consumer & Governmental Affairs Bureau, (202) 418-2809 (voice), (202) 418-0179 (TTY), or e-mail scott.marshall@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notices DA 09-1287 and DA 09-1844. The *Public Notice* (DA 09-1287) released on June 5, 2009, announced the appointment of the National Consumers League represented by Debra R. Berlyn to the Committee.

The *Public Notice* also announced that Debra R. Berlyn would continue as the Committee's chairperson and that the membership of the Digital Television Transition Coalition was terminated.

On August 24, 2009, the Commission released a *Public Notice*, DA 09-1844, announcing the agenda, date and time of the Committee's next meeting.

The Committee is organized under and will operate in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2 (1988). On November 17, 2008, the Committee was rechartered for another two-year term.

The mission of the Committee is to make recommendations to the Commission regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of consumers (including people with disabilities and underserved populations, such as American Indians and persons living in

rural areas) in proceedings before the Commission.

Each meeting of the full Committee will be open to the public. A notice of each meeting will be published in the **Federal Register** at least fifteen (15) days in advance of the meeting. Records will be maintained of each meeting and made available for public inspection.

Synopsis

The Committee will focus on broadband and the development of the National Broadband Plan at its September 10, 2009 meeting. The Committee is expected to consider an outline of its recommendations to be submitted in connection with the National Broadband Plan Notice of Inquiry (NOI), Docket 09–51. The Committee may also consider other consumer issues within the jurisdiction of the Commission.

Meetings are open to the public and are broadcast on the Internet in Real Audio/Real Video format with captioning at <http://www.fcc.gov/cgb/cac>. Members of the public may address the Committee or may send written comments to: Scott Marshall, Designated Federal Officer of the Committee, Federal Communications

Commission, Room 5–A824, 445 12th Street, SW., Washington, DC 20554.

The Committee meeting will be open to the public and interested persons may attend the meeting and communicate their views. Members of the public will have an opportunity to address the Committee on issues of interest to both them and the Committee. The meeting site is fully accessible to people using wheelchairs or other mobility aids. Meeting agendas and handouts will be provided in accessible formats; sign language interpreters, open captioning, and assistive listening devices will be provided on site. The meeting will also be Webcast with open captioning at <http://www.fcc.gov/cgb/cac>.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Federal Communications Commission.
Pam Slipakoff,
Chief of Staff, Consumer & Governmental Affairs Bureau.
 [FR Doc. E9–20962 Filed 8–28–09; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Revised Sunshine Notice; Open Commission Meeting; Thursday, August, 27, 2009

Date: August 26, 2009.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, August 27, 2009, which is scheduled to commence at 10:00 a.m. in Room TW–C305, at 445 12th Street, S.W., Washington, D.C.

The Meeting will also include presentations on the status of the Commission’s processes for development of a National Broadband Plan, and for development of FCC Reform, followed by presentation of the Excellence in Engineering, Excellence in Economics Analysis and the Employee of the Year Awards.

ITEM NO.	BUREAU	SUBJECT
1	WIRELESS TELE-COMMUNICATIONS & OFFICE OF ENGINEERING AND TECHNOLOGY.	TITLE: Fostering Innovation and Investment in the Wireless Communications Market; A National Broadband Plan For Our Future (GN Docket No. 09–51) SUMMARY: The Commission will consider a Notice of Inquiry to seek to understand better the factors that encourage innovation and investment in wireless and to identify concrete steps the Commission can take to support and encourage further innovation and investment in this area.
2	WIRELESS TELE-COMMUNICATIONS	TITLE: Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 (WT Docket No. 09–66); Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless including Commercial Mobile Services SUMMARY: The Commission will consider a Notice of Inquiry soliciting information for the next annual report to Congress on the status of competition in the mobile wireless market, including commercial mobile services.
3	CONSUMER AND GOVERNMENTAL AFFAIRS.	TITLE: Consumer Information and Disclosure; Truth-in-Billing and Billing Format (CC Docket No. 98–170); IP-Enabled Services (WC Docket No. 04–36) SUMMARY: The Commission will consider a Notice of Inquiry that seeks comment on whether there are opportunities to protect and empower American consumers by ensuring sufficient access to relevant information about communications services.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9-21016 Filed 8-27-09; 4:15 pm]

BILLING CODE 6712-01-S

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act; Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:40 p.m. on Wednesday, August 26, 2009, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision and resolution activities.

In calling the meeting, the Board determined, on motion of Director John E. Bowman (Acting Director, Office of Thrift Supervision), seconded by Vice Chairman Martin J. Gruenberg, concurred in by Director John C. Dugan (Comptroller of the Currency), Director Thomas J. Curry (Appointive), and Chairman Sheila C. Bair, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: August 27, 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9-21007 Filed 8-27-09; 11:15 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes

and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 24, 2009.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Bank Applications Officer) 33 Liberty Street, New York, New York 10045-0001:

1. *Max Bancorp, LLC, New York, New York*; to become a bank holding company by acquiring a majority of the voting shares of Sandhills Holding Company, Inc. and indirectly, Sandhills Bank, both of North Myrtle Beach, South Carolina.

B. Federal Reserve Bank of Kansas City (Todd Offerbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Manhattan Banking Corporation, Manhattan, Kansas*; to retain 5.85 percent of the voting shares of Sonoran Bank, N.A., Phoenix, Arizona.

Board of Governors of the Federal Reserve System, August 26, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9-20922 Filed 8-28-09; 8:45 am]

BILLING CODE 6210-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP): Report on Carcinogens (RoC); Availability of the Draft Background Document for Formaldehyde; Request for Comments on the Draft Background Document; Announcement of the Formaldehyde Expert Panel Meeting

AGENCY: National Institute of Environmental Health Sciences (NIEHS); National Institutes of Health (NIH).

ACTION: Availability of background document; request for comments; and announcement of a meeting

SUMMARY: The NTP announces the availability of the draft background document for formaldehyde by September 3, 2009, on the RoC Web site (<http://ntp.niehs.nih.gov/go/29679>) or in printed text from the RoC (see **ADDRESSES** below). The NTP invites the submission of public comments on the draft background document for formaldehyde. The expert panel will meet on November 2–4, 2009, at the Hilton Raleigh-Durham Airport at Research Triangle Park, 4810 Page Creek Lane, Durham, NC 27703 to peer review the draft background document for formaldehyde and, once completed, make a recommendation regarding the listing status (*i.e.*, *known to be a human carcinogen*, *reasonably anticipated to be a human carcinogen*, or not to list) for formaldehyde in the 12th Edition of the RoC (12th RoC). The RoC expert panel meeting is open to the public with time scheduled for oral public comments. Attendance is limited only by the available meeting room space. Following the expert panel meeting and completion of the expert panel report, the NTP will post the final background document and the expert panel report on the RoC Web site.

DATES: The expert panel meeting for formaldehyde will be held on November 2–4, 2009. The draft background document for formaldehyde will be available for public comment by September 3, 2009. The deadline to submit written comments is October 16, 2009, and the deadline for pre-registration to attend the meeting and/or to provide oral comments at the meeting is October 26, 2009.

ADDRESSES: The RoC expert panel meeting on formaldehyde will be held at the Hilton Raleigh-Durham Airport at Research Triangle Park, 4810 Page Creek Lane, Durham, NC 27703. Access to online registration and materials for the meeting are available on the RoC Web

site (<http://ntp.niehs.nih.gov/go/29679>). Comments on the draft background document should be sent to Dr. Ruth M. Lunn, NIEHS, P.O. Box 12233, MD K2-14, Research Triangle Park, NC 27709, FAX: (919) 541-0144, or lunn@niehs.nih.gov. Courier address: Report on Carcinogens Center, 530 Davis Drive, Room 2006, Morrisville, NC 27560. Persons needing interpreting services in order to attend should contact (301) 402-8180 (voice) or (301) 435-1908 (TTY). Requests should be made at least seven business days in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Dr. Ruth M. Lunn, Director, RoC Center, (919) 316-4637, lunn@niehs.nih.gov.

SUPPLEMENTARY INFORMATION:

Background

The NTP announced the RoC review process for the 12th RoC on April 16, 2007, in the **Federal Register** (72 FR 18999, available at <http://ntp.niehs.nih.gov/go/15208>). As part of that process, an expert panel meeting is being convened on November 2-4, 2009, to review formaldehyde for possible listing in the 12th RoC. The draft background document for formaldehyde will be available on the RoC Web site by September 3, 2009, or in printed text from the RoC Center (see **ADDRESSES** above). Persons can register free-of-charge with the NTP listserv (<http://ntp.niehs.nih.gov/go/231>) to receive notification when draft RoC background documents for candidate substances and meetings related to the 12th RoC are made available on the RoC Web site.

Formaldehyde is a high production chemical with a wide array of uses. The predominant use of formaldehyde in the United States is in the production of industrial resins (mainly urea, phenol, polyacetal, and melamine resins) that are used primarily to manufacture products such as adhesives and binders for wood products. Other uses include as a chemical intermediate, in agriculture (for example as a fumigant), in the production of paraformaldehyde and chelating agents, embalming and fixative or preservative in the medical and research fields, and as a preservative in numerous consumer products such as cleaning agents and cosmetic products. Formaldehyde has been detected in indoor and outdoor air, surface water and groundwater, soil, and food products and is generally considered to be ubiquitous in the environment. Formaldehyde (gas) is currently listed in the 11th RoC as *reasonably anticipated to be a human carcinogen* and was nominated for

reclassification of its listing status in the 12th RoC.

Preliminary Agenda and Registration

Preliminary agenda topics include:

- Oral public comments on formaldehyde;
- Peer review of the draft background document on formaldehyde;
- Recommendation on the listing status of formaldehyde in the 12th RoC and scientific justification.

The meeting is scheduled for November 2-4, 2009, from 8:30 a.m. to adjournment each day. It is anticipated that the meeting will adjourn by 4 p.m. on November 4, although adjournment may occur earlier or later depending upon the time needed for the expert panel to complete its work. A copy of the preliminary agenda, expert panel roster, and any additional information, when available, will be posted on the RoC Web site or may be requested from the Director of the RoC Center (see **ADDRESSES** above). Individuals who plan to attend the meeting are encouraged to register on-line by October 26, 2009, to facilitate planning for the meeting.

Request for Comments

The NTP invites both written and oral public comments on the draft background document on formaldehyde. Persons submitting written comments are asked to include their name and contact information (affiliation, mailing address, telephone and facsimile numbers, e-mail, and sponsoring organization, if any) and send them to Dr. Lunn (see **ADDRESSES** above) for receipt by October 16, 2009. All written comments identified by the individual's name and affiliation or sponsoring organization (if applicable) will be posted on the RoC Web site prior to the meeting and distributed to the expert panel and RoC staff for their consideration in the peer review of the draft background document and/or preparation for the meeting.

Time will be set aside at the expert panel meeting for the presentation of oral public comments. Seven minutes will be available for each speaker (one speaker per organization). Persons can register on-line to present oral comments or by contacting Dr. Lunn (see **ADDRESSES** above). When registering to comment orally, please provide your name, affiliation, mailing address, telephone number, e-mail and sponsoring organization (if any). If possible, send a copy of the statement or talking points to Dr. Lunn by October 26, 2009. This statement will be provided to the expert panel to assist them in identifying issues for discussion

and will be noted in the meeting record. Registration for presentation of oral comments will also be available at the meeting on November 2-4, 2009, from 7:30-8:30 a.m. Time allowed for comments by on-site registrants may be less than for pre-registered speakers and will be determined by the number of persons who register at the meeting to give oral comments. Persons registering at the meeting are asked to bring 25 copies of their statement or talking points for distribution to the expert panel and for the record.

Background Information on the RoC

The RoC is a congressionally mandated document [Section 301(b)(4) of the Public Health Services Act, 42 U.S.C. 241(b)(4)], that identifies and discusses agents, substances, mixtures, or exposure circumstances (collectively referred to as "substances") that may pose a hazard to human health by virtue of their carcinogenicity. Substances are listed in the report as either *known* or *reasonably anticipated to be human carcinogens*. The NTP prepares the RoC on behalf of the Secretary of Health and Human Services. Information about the RoC and the nomination process can be obtained from its homepage (<http://ntp.niehs.nih.gov/go/roc>) or by contacting Dr. Lunn (see *For Further Information Contact* above). The NTP follows a formal, multi-step process for review and evaluation of selected substances. The formal evaluation process is available on the RoC Web site (<http://ntp.niehs.nih.gov/go/15208>) or in printed copy from the RoC Center.

Dated: August 21, 2009.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. E9-20878 Filed 8-28-09; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health

Decision To Evaluate a Petition To Designate a Class of Employees for the Metals and Controls Corporation in Attleboro, MA, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice as required by 42 CFR 83.12(e) of a decision to

evaluate a petition to designate a class of employees for the Metals and Controls Corporation in Attleboro, Massachusetts, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Metals and Controls Corporation.

Location: Attleboro, Massachusetts.
Job Titles and/or Job Duties: All Atomic Weapons Employer employees who were exposed to thorium.

Period of Employment: January 1, 1952 through December 31, 1967.

FOR FURTHER INFORMATION CONTACT:

Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C-46, Cincinnati, OH 45226, Telephone 513-533-6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to OCAS@CDC.GOV.

Christine M. Branche,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. E9-20899 Filed 8-28-09; 8:45 am]

BILLING CODE 4163-19-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Research Integrity; Privacy Act of 1974; Report of an Altered System of Records

AGENCY: Office of Research Integrity (ORI), Office of Public Health and Science (OPHS), Office of the Secretary (OS), Department of Health and Human Services (HHS).

ACTION: Notice of revision to the Privacy Act system of records.

SUMMARY: HHS proposes to revise the Privacy Act exempt system of records 09-37-0021, entitled "Public Health Service Records Related to Inquiries and Investigations of Scientific Misconduct, HHS/OASH/ORI." This system became effective on August 29, 1994 (59 FR 36717, July 19, 1994). Changes were made in response to comments received, and the revised systems notice was published on January 6, 1995 (60 FR 2140). The proposed revisions include changing the routine uses and changing the title of the system to "HHS Records Related to Research Misconduct Proceedings, HHS/OS/ORI." The revisions are necessary to reflect the

changes made by the Public Health Service Policies on Research Misconduct ("PHS Policies on Research Misconduct"), 42 CFR Part 93 ("Part 93"), and to update the system to reflect current practices and procedures under that regulation.

DATES: This notice will be effective without further notice on September 30, 2009 unless modified by a subsequent notice making changes in response to public comments. Although the Privacy Act requires only that changes in the routine uses be published for comment, HHS invites comments on all parts of the systems notice. You may submit comments by electronic mail to AskORI@hhs.gov. Comments must be received on or before September 30, 2009.

FOR FURTHER INFORMATION CONTACT:

Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852. (240) 453-8800. *E-mail:* AskORI@hhs.gov.

SUPPLEMENTARY INFORMATION: After making changes in response to public comments, ORI published its current systems notice entitled "Public Health Service Records Related to Inquiries and Investigations of Scientific Misconduct, HHS/OASH/ORI" on January 6, 1995 (60 FR 2140). Since that time, the organizational location of ORI has changed from the former Office of the Assistant Secretary for Health to OPHS, and a new HHS regulation concerning research misconduct was promulgated and codified at 42 CFR Part 93. That regulation substantially changed the previous regulation on scientific misconduct (42 CFR Part 50, Subpart A), including changing the term "misconduct in science" to "research misconduct."

This revision updates the ORI system notice to be consistent with the definitions and procedures promulgated by the PHS Policies on Research Misconduct. The description of the categories of individuals covered by the records system and categories of records in the system have been amended to reflect the changes made by Part 93, specifically, the applicability of that part in terms of the individuals, types of research, and types of PHS support that are covered. Pertinent provisions of Part 93 are referenced to explain the records system coverage. The category of individuals covered by the system remains the same: individuals who are the subject of allegations of research misconduct. Similarly, the categories of records in the system remain essentially the same: records related to all stages of the research misconduct proceeding.

The location of the system is now limited to the premises of ORI and the Federal Records Centers (for inactive records). PHS officials outside of ORI who are involved in extramural and intramural research misconduct proceedings have access to this system of records as necessary to carry out their duties.

We have amended the statement of purposes to state more generally that ORI will use the system of records to exercise its oversight authority relating to research misconduct proceedings, and to document these activities.

The order of the routine uses has been changed, and the terminology used has been updated to reflect the terms used in Part 93. The listing of routine uses begins with disclosures that may be made in the course of a research misconduct proceeding in roughly the order that they might occur, and ends with disclosures that may be necessary for more general administrative purposes.

Routine use 1 is an expanded version of routine uses 2 and 5 in the current system notice. It now provides for disclosure to a person able to "obtain" information, as well as provide information or assistance, in a research misconduct proceeding or related proceeding, ORI oversight of an institutional research misconduct proceeding or ORI oversight of the implementation of HHS administrative actions. The reference to ORI oversight functions has also been added. We have also added a condition for each disclosure under this routine use. Prior to disclosure, ORI will determine whether limited disclosures or confidentiality agreements are needed to protect the privacy of respondent(s), complainant(s), witnesses, research subjects or others who may be identified in the records to be disclosed.

Routine use 2 is new. It is based on 42 CFR 93.401 that, in part, authorizes ORI to notify and consult with other Federal, State, or local offices, if ORI has reason to believe that a research misconduct proceeding may involve that office. The second routine use in the current system notice, relating to disclosures to qualified experts, has been deleted because that disclosure is now covered by the more general disclosure in the new routine uses 1 and 9.

Except for editorial changes, routine use 3 is the same as use 8 in the current system notice and routine use 4 is the same as use 3 in the current notice.

Routine use 5 is new. It permits additional disclosures after a final HHS/ORI finding of research misconduct that are aimed at conserving public funds,

protecting Federal records, and otherwise protecting the interests of the Federal Government.

Routine use 6 is an amended version of use 10 in the current notice. We have moved "after * * * a final HHS/ORI finding of research misconduct" to the front, deleted the reference to remedial actions, and minimally expanded the list of those to whom disclosures may be made.

Routine use 7 is an amended version of use 6 in the current notice. We have moved the reference to an HHS/ORI finding of research misconduct to the front, added "final" to it, deleted the reference to the imposition of remedial actions, and added "other similar entity." Use 7 in the current notice, disclosures to IRBs, research sponsoring institutions, research subjects, and the public has been deleted, because these types of disclosures would now normally be made by the institutions and, in any case, these types of disclosures would be covered by the more general disclosure covered by new routine uses 2 and 3.

Routine use 8 is an amended version of routine use 11 in the current notice. We have added a reference to suspension actions and a reference to the General Services Administration's (GSA's) Excluded Parties List System.

Routine use 9 is essentially the same as routine use 9 in the current notice. It permits disclosures to volunteers and contractors engaged by ORI in support of its research misconduct oversight functions, if they need access to the records to perform their assigned tasks for the agency; provided, however, that in each case ORI determines whether limited disclosures or confidentiality agreements are needed to protect the privacy of respondent(s), complainant(s), witnesses, research subjects or others who may be identified in the records to be disclosed. Routine use 10 is authorized by 42 CFR 93.410(a) to permit disclosure in cases that do not result in an ORI finding of research misconduct and that ORI decides to close.

Routine uses 11 and 12 are derived from use 1 in the current notice. That previous use addressed both disclosures to the Department of Justice (DOJ) and to courts or other tribunals. Routine use 11 addresses disclosures to the DOJ and routine use 12 addresses disclosure to courts or other tribunals. In addition, the language has been clarified.

The description of record source categories has been revised to describe more accurately the many sources from which the records are received or obtained. Other changes to improve accuracy, update information, terms,

and citations, and clarify language have been made throughout the systems notice.

This record system remains exempt from certain requirements of the Privacy Act in accordance with the Department's determination published in the system notice. (59 FR 36717, July 19, 1994).

Dated: August 14, 2009.

Donald Wright,

Principal Deputy Assistant Secretary for Health.

09-37-0021

SYSTEM NAME:

HHS Records Related to Research Misconduct Proceedings, HHS/OS/ORI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION(S):

Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, and Federal Records Centers for inactive, permanent records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals covered by this system are referred to as "respondents." Part 93 defines the term "respondent" to mean "the person against whom an allegation of research misconduct is directed or who is the subject of a research misconduct proceeding." 42 CFR 93.225.

Part 93 and this system notice apply to an allegation of research misconduct involving: (1) Applications or proposals for PHS support for biomedical or behavioral extramural or intramural research, research training or activities related to that research or research training, such as the operation of tissue and data banks and the dissemination of research information; (2) PHS supported biomedical or behavioral extramural or intramural research; (3) PHS supported biomedical or behavioral extramural or intramural research training programs; (4) PHS supported extramural or intramural activities that are related to biomedical or behavioral research or research training; and (5) plagiarism of research records produced in the course of PHS supported research, research training or activities related to that research or research training.

The term "research misconduct" is defined to mean "fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results." "Fabrication" is defined to mean "making up data or results and recording or reporting them." "Falsification" is "manipulating

research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record." "Plagiarism" is "the appropriation of another person's ideas, processes, results, or words without giving appropriate credit." Research misconduct does not include honest error or differences of opinion. 42 CFR 93.103.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records related to research misconduct proceedings. The term "research misconduct proceeding" is defined to mean "any actions related to alleged research misconduct taken under this part, [Part 93] including but not limited to allegation assessments, inquiries, investigations, ORI oversight reviews, hearings, and administrative appeals." 42 CFR 93.223.

The records include all information that must be submitted to ORI by institutions under Part 93 in connection with a research misconduct proceeding, and all information that ORI receives or generates in overseeing or conducting research misconduct proceedings. This information includes, but is not necessarily limited to information about respondents (this may include social security numbers), complainants, and witnesses; the nature of the allegations; the PHS funding involved, including grant numbers; the institutions and officials responsible for conducting the actions that are part of the research misconduct proceeding; the documentation used in the inquiry and investigation, including relevant research data and materials, applications, proposals and documentation related to review and award actions, reports, abstracts, manuscripts and publications by the respondent(s) and other relevant reports, abstracts, manuscripts and publications, correspondence; memoranda of telephone calls, summaries of interviews and transcripts or recordings of interviews; statistical, scientific, and forensic analyses; interim and final institutional reports, and records of institutional appeal proceedings, if any.

The system also includes records relating to: (1) ORI oversight of institutional assessments, inquiries and investigations, ORI findings of research misconduct, and ORI proposals for HHS administrative actions or for settlement of the case; (2) final HHS findings of research misconduct, final HHS decisions regarding administrative actions, and documentation of the implementation of those actions; and (3)

ORI coordination with other Federal, State, and local offices/agencies, including the Department of Justice.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authorities for maintaining the system are: Sections 301 and 493 of the Public Health Service Act, 42 U.S.C. 241, and 289b; 5 U.S.C. 552a, 5 U.S.C. 301 and 44 U.S.C. 3101; 42 CFR Part 93; 2 CFR Part 376; 48 CFR Subpart 309.4.

PURPOSE(S):

The purposes of this system are to:

(1) Enable HHS, ORI, and the Federal Government to protect the health and safety of the public, to promote the integrity of PHS supported research, and to conserve public funds;

(2) Enable ORI to implement its authority relating to research misconduct proceedings as set forth in 42 U.S.C. 289b and 42 CFR Part 93, and to document HHS and ORI activities in implementing that authority;

(3) Ensure that research misconduct proceedings, including institutional implementation of HHS administrative actions, are carried out in accordance with 42 CFR Part 93 and other applicable Federal statutes and regulations;

(4) Enable ORI to inform PHS agency officials who have a need for the records in the performance of their duties, of the status and results of research misconduct proceedings; and

(5) Enable ORI to notify, consult with, and provide assistance to other Federal, State, or local governmental agencies to permit them to take action to protect the health and safety of the public, to promote the integrity of PHS supported research, to conserve public funds, or to pursue potential violations of civil and criminal statutes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING THE PURPOSES OF SUCH USES AND CATEGORIES OF USERS:

The HHS Privacy Act regulation lists, at 45 CFR 5b.9(b), disclosures of records that may be made without the consent of the individual who is the subject of the records. Among the permitted disclosures are disclosures to those officers and employees of the Department who have a need for the record in the performance of their duties and routine uses that are listed in the notice of the system of records. A "routine use" is defined in 45 CFR 5.1(j) to mean "the disclosure of a record outside the Department, without the consent of the subject individual, for a purpose which is compatible with the purpose for which the record was collected." The routine uses for this system of records are listed below.

1. Disclosure may be made to any person able to obtain information or provide information or assistance in a research misconduct proceeding or related proceeding, ORI oversight of an institutional research misconduct proceeding, or ORI oversight of the implementation of HHS administrative actions. Recipients of disclosures under this routine use may include experts asked to perform statistical, forensic or other analyses, the relevant PHS supported institution(s), institutions with which the respondent(s) was previously or is currently affiliated, Federal, State and local agencies, the respondent(s), the complainant(s), witnesses, and organizations or individuals acting on behalf of those agencies, institutions and individuals; provided, however, that in each case ORI determines whether limited disclosures or confidentiality agreements are needed to protect the privacy of respondent(s), complainant(s), witnesses, research subjects or others who may be identified in the records to be disclosed.

2. Disclosure may be made to other Federal, State, or local agencies and offices, if ORI has reason to believe that a research misconduct proceeding may involve that agency or office.

3. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local or Tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation, if the information disclosed is relevant to the responsibilities of the agency or public authority.

4. Disclosure may be made to responsible officials of PHS-supported institutions or organizations, when in connection with a research misconduct proceeding concerning an individual previously or currently employed by, or affiliated with the institution or organization, or when ORI or HHS makes a finding or takes an action potentially affecting the institution or organization or its PHS support for research, research training, or related activities.

5. After there is a final HHS/ORI finding of research misconduct, disclosure may be made to a Federal, State, local or Tribal agency in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, or the issuance of a license or other benefit by the agency, to the extent that the record

is relevant to the agency's decision on the matter.

6. After there is a final HHS/ORI finding of research misconduct, disclosure may be made to professional journals, other publications, news media, other individuals and entities, and the public concerning research misconduct findings and the need to correct or retract research results or reports that have been affected by research misconduct. No information will be released that would reveal a confidential source.

7. After there is a final HHS/ORI finding of research misconduct, disclosure may be made to a State licensing board, certifying body, or other similar entity conducting a review of the respondent, to aid the entity in meeting its responsibility to protect the health of the population in its jurisdiction or the integrity of the profession.

8. After there is an HHS decision to suspend, or a final HHS decision to debar the respondent from Federal procurement and nonprocurement programs, disclosure may be made to GSA for the purpose of adding the respondent to GSA's Excluded Parties List System.

9. Disclosure may be made to volunteers and contractors engaged to perform a service in support of an ORI research misconduct oversight function, if such persons need access to the records to perform their assigned task; provided, however, in each case ORI determines whether limited disclosures or confidentiality agreements are needed to protect the privacy of respondent(s), complainant(s), witnesses, research subjects or others who may be identified in the records to be disclosed; and ORI determines that the disclosure is for a purpose compatible with the purpose for which the agency collected the records.

10. When ORI closes a case without a settlement or finding of research misconduct, disclosure may be made to the respondent, relevant institution, and complainant(s); provided, however, that in each case ORI determines whether limited disclosures or confidentiality agreements are needed to protect the privacy of respondent(s), complainant(s), witnesses, research subjects or others who may be identified in the records to be disclosed.

11. Disclosure may be made to DOJ when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity where the DOJ has agreed to represent the employee; or (c) the United States Government, is a party to litigation or has an interest in such litigation and,

prior to disclosure, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the DOJ is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

12. Disclosure may be made to a court or other tribunal, when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity where the DOJ has agreed to represent the employee; or (c) the United States Government is a party to the proceeding or has an interest in such proceeding and, prior to disclosure, the agency determines that the records are both relevant and necessary to the proceeding and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, electronic and magnetic media and other types of data storage devices.

RETRIEVABILITY:

Records are retrieved by manual or computer search of the case-tracking system using the name of the respondent(s) (i.e., the individual or individuals who are the subject of an allegation of research misconduct or of a research misconduct proceeding).

SAFEGUARDS:

1. *Authorized users:* Records are available to the system manager, to the Director, ORI, and to other appropriate ORI staff when they have a need for the records in the performance of their duties. Records are also available to the head of intramural research for the PHS agency involved, and to other appropriate HHS officials, including attorneys in the Office of the General Counsel, the Agency Research Integrity Liaison Officer (ARILOs), the Agency Intramural Research Integrity Officer (AIRIOs), the Agency Extramural Research Integrity Officer (AERIOs), and the Research Integrity Officers (RIOs) located in the Institutes and Centers of the National Institutes of Health (NIH) that are involved in the research misconduct proceeding, when there is a need to know in the performance of their duties. All authorized users are informed that the records are confidential and are not to be further disclosed.

2. *Procedural safeguards:* Access is strictly controlled by the system manager and the Director, ORI, in compliance with the Privacy Act and this system notice. Access to the records is limited to ensure confidentiality. All questions and inquiries from any party should be addressed to the system manager.

3. *Physical safeguards:* ORI records are kept in locked file cabinets in a room that is locked during non-working hours. Access to this room is restricted to specific personnel. The ORI office suite is protected by access and intrusion alarms at the front and emergency entrances. Access to computer files is strictly limited through passwords and user-invisible encryption. Special measures commensurate with the sensitivity of the record are taken to prevent unauthorized copying or disclosure of the records.

RETENTION AND DISPOSAL:

The files are retained and disposed of in accordance with the General Records Schedule (accessions) and a disposition schedule approved by the National Archives and Records Administration (cases).

SYSTEM MANAGER AND ADDRESS:

Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852.

NOTIFICATION PROCEDURES:

This system is exempt from access; however, consideration will be given to requests addressed to the system manager. The requester must verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act, subject to a five thousand dollar fine. The request should include: (a) Full name, (b) address, and (c) year of records in question.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should reasonably specify the record contents being sought. Although the system is exempt, respondents may, upon request, receive records from this system and an accounting of disclosure of their records, if the system manager determines the disclosure would not compromise the activities of ORI or the confidentiality of information.

CONTESTING RECORD PROCEDURES:

Exempt. However, consideration may be given to requests addressed to the system manager. Requests for corrections should reasonably identify the record and specify the information to be contested, the corrective action sought and the reasons for the corrections with supporting justification. The right to contest records is limited to information that is incomplete, irrelevant, incorrect, or obsolete.

RECORD SOURCE CATEGORIES:

Information in this system is received or obtained from many sources, including: (1) Directly from the respondent or complainant or his/her representative; (2) derived from materials supplied by the respondent or complainant or his/her representative; (3) from information supplied by the institutions, witnesses, scientific publications and other nongovernmental sources; (4) from observation and analysis made by ORI staff and scientific experts; (5) departmental and other Federal, State, and local government records; (6) from hearings and other administrative proceedings; and (7) from any other relevant source.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt pursuant to 5 U.S.C. 552a(k)(2) and (k)(5) of the Privacy Act from access, notification, correction, and amendment provisions of the Act (5 U.S.C. 552a(c)(3), (d)(1)-(4), (e)(4)(G)-(H), and (f)).

[FR Doc. E9-20893 Filed 8-28-09; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276-1243.

Project: Jail Diversion and Trauma Recovery—Priority to Veterans Program Evaluation—(OMB NO. 0930-0277)—Revision

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services (CMHS) has implemented the Targeted Capacity Expansion Grants for Jail Diversion Programs, and the Jail Diversion and Trauma Recovery Program represents the newest cohort of grantees. The Program currently collects client outcome measures from program participants who agree to participate in the evaluation. Data collection consists of interviews conducted at baseline, 6- and 12-month intervals.

The current proposal requests:

1. Substituting CMHS NOMS items for GPRA items. At the time of the previous OMB submission, the NOMS measures were not finalized.
2. Replacing the DC trauma Screen with a new set of traumatic event questions. The new trauma questions better reflect the experiences of the target population.
3. Replacing the Colorado Symptom Index with the BASIS 24.
4. Adding questions related to military service experience at the baseline. These items will be added to capture characteristics of the target

population of the new grantee cohort, veterans.

5. Adding questions on military combat experience at the six month interview only. These items will capture the types of traumatic experiences among clients with a combat history.

6. Adding questions on lifetime mental health/substance use and service use and the CAGE to the baseline. These questions will be added to capture client's history of involvement with mental health and substance abuse systems, and the four CAGE items assess alcohol dependence.

7. Adding several lifetime criminal justice questions. These questions will assess client's lifetime involvement with the criminal justice system.

8. Adding the Recovery Enhancing Environment (REE) instrument to all interviews. The REE is a consumer oriented measure of recovery, a new and important program outcome.

9. Removing the MacArthur Perceived Coercion Scale from all instruments.

10. Removing the Mental Health Statistics Improvement Program questions from follow-up interviews. (These are replaced by a similar, but shorter, NOMS scale.)

The NOMS measures that are proposed for substitution of the GPRA measures have the same administration time and do not lengthen the interview.

Two of the proposed additions (the REE and the lifetime MH/SA) will add 5 minutes each and the criminal justice questions will add 3 minutes. The military service questions will add an average of 4 minutes, as not all respondents are expected to answer these questions because grantees may serve non-veteran clients. The removal of the MacArthur Coercion Instrument reduces the baseline interview by 5 minutes and removal of the MHSIP reduces the follow-up interview by 5 minutes. The net lengthening of the instrument is 12 minutes for the baseline interview, and there is no net increase in length to the 6- and 12-month interviews.

The Program also collects data on program participants from records. The revisions to these instruments are formatting in nature.

New grantees were awarded on September 30, 2008 under the Jail Diversion and Trauma Recovery Program will commence data collection efforts in FY 2009; anticipated grantees awarded on September 30, 2009 would commence data collection in FY 2010; and anticipated grantees awarded on September 30, 2010 would commence data collection in FY 2011. The following tables summarize the burden for the data collection.

CY 2009 ANNUAL REPORTING BURDEN

Data collection activity	Number of respondents	Responses per respondent	Total responses	Average hours per response	Total hour burden
Client Interviews for FY 2008: Revised Instrument					
Baseline (at enrollment) ¹	510	1	510	0.95	485
6 months	408	1	408	0.92	375
12 months	102	1	102	0.92	94
Sub Total	1,020	.....	1,020	.....	954
Client Interviews for FY 2006–2007 Grantees: Current Instrument					
Baseline (at enrollment)	70	1	70	0.83	58
6 months	70	1	70	0.92	64
12 months	58	1	58	0.92	53
Sub Total	35	.....	35	.....	32
Record Management by FY 2007 and FY 2008 Grantee Staff ⁵					
Events Tracking ²	8	800	6,400	0.03	192
Person Tracking ³	8	70	560	0.1	36
Service Use ⁴	8	25	200	0.17	34
Arrest History ⁴	8	25	200	0.17	34
Sub Total	32	.....	7,360	.....	296
FY 2006 Grantees					
Interview and Tracking data submission	8	12	48	0.17	8
Overall Total	1,095	.....	8,415	.....	1,290

¹ Only program enrollees who agree to participate in the evaluation receive a Baseline interview.

²The number of responses per respondent for the Events Tracking depends on the design of the jail diversion program and can range from a single screening for eligibility to four separate screenings; here 800 responses represents the average number of responses per respondent for the period based on the experience of the previous Grantees.

³This estimate is an added burden proportion which is an adjustment reflecting the extent to which programs typically already collect the data items. The formula for calculating the proportion of added burden is: total number of items in the standard instrument, minus the number of core items currently included, divided by the total number of items in the standard instrument. For the Person Tracking program the burden estimate was calculated as follows: 56 times 0.65 (the proportion of added burden) = 36.

⁴Record management forms (Service Use and Arrest) are only completed for those evaluation participants who receive both a Baseline interview and at least one follow-up (6- and/or 12-month) interview.

⁵Assumes 1 respondent at grantee site is responsible for compiling the information.

CY 2010 ANNUAL REPORTING BURDEN

Data collection activity	Number of respondents	Responses per respondent	Total responses	Average hours per response	Total hour burden
Client Interviews for FY 2008 and Anticipated FY 2009: Revised Instrument					
Baseline (at enrollment) ¹	1,110	1	1,110	0.95	1,055
6 months	888	1	888	0.92	817
12 months	491	1	490.6	0.92	451
Sub total	2,489	.....	2,489	.....	2,323
Client Interviews for FY 2007 Grantees: Current Instrument					
Baseline (at enrollment)	0	1	0	0.83	0
6 months	20	1	20	0.92	18
12 months	15	1	15	0.92	14
Sub total	35	.....	35	.....	32
Record Management by FY 2007, FY 2008 FY 2009 Grantee Staff ⁵					
Events Tracking ²	14	800	11,200	0.03	336
Person Tracking ³	14	80	1,120	0.1	62
Service Use ⁴	14	50	700	0.17	119
Arrest History ⁴	14	50	700	0.17	119
Sub total	56	.....	13,720	.....	636
FY 2008 and FY 2009 Grantees					
Interview and Tracking data submission	12	12	48	0.17	8
Overall Total	2,592	.....	16,292	.....	2,999

¹ Since enrollment is anticipated to have ended for these Grantees by the end of CY 2009 there is no Baseline burden in CY 2010.

² The number of responses per respondent for the Events Tracking depends on the design of the jail diversion program and can range from a single screening for eligibility to four separate screenings; here 800 responses represents the average number of respondents.

³ This estimate is an added burden proportion which is an adjustment reflecting the extent to which programs typically already collect the data items. The formula for calculating the proportion of added burden is: total number of items in the standard instrument, minus the number of core items currently included, divided by the total number of items in the standard instrument. For the Person Tracking program the burden estimate was calculated as follows: 96 times 0.65 (the proportion of added burden) = 62.

⁴ Record management forms (Service Use and Arrest) are only completed for those evaluation participants who receive both a Baseline interview and at least one follow-up (6- and/or 12-month) interview.

⁵ Assumes 1 respondent at grantee site is responsible for compiling the information.

CY 2011 ANNUAL REPORTING BURDEN

Data collection activity	Number of respondents	Responses per respondent	Total responses	Average hours per response	Total hour burden
Client Interviews for FY 2008 and Anticipated FY 2009 and 2010: Revised Instrument					
Baseline (at enrollment) ¹	1,710	1	1,710	0.83	1,419.3
6 months	1,368	1	1,368	0.92	1,258.56
12 months	879	1	879	0.92	808.68
Sub total	3,957	.....	3,957	.....	3,487
Record Management by FY 2008 and Anticipated FY 2009 and FY 2010 Grantee Staff ⁵					
Events Tracking ²	18	800	14,400	0.03	432
Person Tracking ³	18	80	1,440	0.1	94
Service Use ⁴	18	50	900	0.17	153

CY 2011 ANNUAL REPORTING BURDEN—Continued

Data collection activity	Number of respondents	Responses per respondent	Total responses	Average hours per response	Total hour burden
Arrest History ⁴	18	50	900	0.17	153
Sub total	72	.....	17,640	.....	832

FY 2008 and FY 2009 Grantees

Interview and Tracking data submission	18	12	48	0.17	8
Overall total	4,047	.....	21,645	.....	4,327

¹ Since enrollment is anticipated to have ended for these Grantees by the end of CY 2009 there is no Baseline burden in CY 2010.

² The number of responses per respondent for the Events Tracking depends on the design of the jail diversion program and can range from a single screening for eligibility to four separate screenings; here 800 responses represents the average number of respondents.

³ This estimate is an added burden proportion which is an adjustment reflecting the extent to which programs typically already collect the data items. The formula for calculating the proportion of added burden is: total number of items in the standard instrument, minus the number of core items currently included, divided by the total number of items in the standard instrument. For the Person Tracking program the burden estimate was calculated as follows: 144 times 0.65 (the proportion of added burden) = 94.

⁴ Record management forms (Service Use and Arrest) are only completed for those evaluation participants who receive both a Baseline interview and at least one follow-up (6- and/or 12-month) interview.

⁵ Assumes 1 respondent at grantee site is responsible for compiling the information.

CY 2012 ANNUAL REPORTING BURDEN

Data collection activity	Number of respondents	Responses per respondent	Total responses	Average hours per response	Total hour burden
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Client Interviews for Anticipated FY 2009 and FY 2010: Revised Instrument

Baseline (at enrollment) ¹	1,200	1	1,200	0.83	996
6 months	1,080	1	1,080	0.92	993.6
12 months	1,084	1	1,084	0.92	997.28
Sub total	3,364	.....	3,364	.....	2,987

Record Management by Anticipated FY 2009 and FY 2010 Grantee Staff⁵

Events Tracking ²	12	800	9,600	0.03	288
Person Tracking ³	12	70	840	0.1	55
Service Use ⁴	12	25	300	0.17	51
Arrest History ⁴	12	25	300	0.17	51
Sub total	48	.....	11,040	.....	445

FY 2008 and FY 2009 Grantees

Interview and Tracking data submission	12	12	48	0.17	8
Overall total	3,424	.....	14,452	.....	3,440

¹ Since enrollment is anticipated to have ended for these Grantees by the end of CY 2009 there is no Baseline burden in CY 2010.

² The number of responses per respondent for the Events Tracking depends on the design of the jail diversion program and can range from a single screening for eligibility to four separate screenings; here 800 responses represents the average number of respondents.

³ This estimate is an added burden proportion which is an adjustment reflecting the extent to which programs typically already collect the data items. The formula for calculating the proportion of added burden is: total number of items in the standard instrument, minus the number of core items currently included, divided by the total number of items in the standard instrument. For the Person Tracking program the burden estimate was calculated as follows: 84 times 0.65 (the proportion of added burden) = 55.

⁴ Record management forms (Service Use and Arrest) are only completed for those evaluation participants who receive both a Baseline interview and at least one follow-up (6- and/or 12-month) interview.

⁵ Assumes 1 respondent at grantee site is responsible for compiling the information.

Written comments and recommendations concerning the proposed information collection should be sent by September 30, 2009 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202-395-5806.

Dated: August 19, 2009.

Elaine Parry,

Director, Office of Program Services.

[FR Doc. E9-20900 Filed 8-28-09; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. 60Day-09-09CJ]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-5960 or send comments to Maryam Daneshvar, CDC Reports Clearance Officer, 1600 Clifton

Road, MS-D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Promoting HIV Testing among Low Income, Young, Heterosexual Black Men—New—National Center for HIV/AIDS, Viral Hepatitis, Sexually Transmitted Diseases, and Tuberculosis Elimination Programs (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The lifetime risk of acquiring HIV infection for black men is 1 in 16. Heterosexual transmission is the second highest category for HIV infection among black men, yet we know little about how to successfully access heterosexual black men with HIV prevention and texting messages. CDC is requesting OMB approval for 2 years to collect data for this 3-phase study.

The purpose of the proposed study is to elicit attitudes about HIV testing among a community-based sample of non-Hispanic black, heterosexual men, ages 18-25, who are recently arrested

and/or released from jail/prison. The study will develop culturally-tailored and gender-specific educational materials that promote HIV testing among this population. The data collection process will take approximately 2 years.

In Phase 1, local investigators will conduct qualitative interviews with 20 non-Hispanic black, heterosexual men, ages 18-25, who are recently arrested and/or released from jail/prison and meet screening criteria. The interviews will identify their attitudes towards HIV testing, socio-cultural norms, and perceived behavioral control factors that influence HIV testing. The interviews will also elicit their opinions of how to promote HIV testing among their peers. Each interview will last approximately 1.5 hours. During Phase 2, the results from Phase 1 will be used to identify variables for a survey that will examine attitudes towards HIV testing, socio-cultural norms, and perceived behavioral control factors to HIV testing intentions and behaviors. The survey will include 250 non-Hispanic black heterosexual men, ages 18-25, who meet screening criteria. Each survey will last approximately 30 minutes.

During Phase 3, using Phase 1 and 2 results, educational materials promoting HIV testing among 24 non-Hispanic black heterosexual men will be developed and pilot tested in focus groups of young black men who meet screening criteria to evaluate the acceptability of the materials.

This study will provide important epidemiologic information useful for the development of HIV prevention interventions for young black men.

There is no cost to respondents except for their time.

ESTIMATED ANNUALIZED BURDEN TABLE

Form name	Type of respondents	Number of respondents	Number of responses per respondent	Average burden per responses (hours)	Hours
Screener for one-on-one interviews	Non-Hispanic, black, heterosexual men, ages 18-25, recently arrested and/or released from jail/prison.	30	1	10/60	5
One-on-one interviews	20	1	1.5	30
Screener for surveys	300	1	10/60	50
Surveys	250	1	30/60	125
Screener for focus groups	40	1	10/60	7
Focus groups	24	1	2	48
Total Burden Hours	265

Dated: August 3, 2009.
Maryam I. Daneshvar,
Acting Reports Clearance Officer, Centers for Disease Control and Prevention.
 [FR Doc. E9-20967 Filed 8-28-09; 8:45 am]
BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2008-N-0565]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance for Industry on Formal Dispute Resolution; Appeals Above the Division Level

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Guidance for Industry on Formal Dispute Resolution; Appeals Above the Division Level" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management (HFA-710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, *Elizabeth.Berbakos@fda.hhs.gov*, 301-796-3792.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 28, 2009 (74 FR 19225), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910-0396. The approval expires on August 31, 2012. A copy of the supporting statement for this information collection is available on

the Internet at *http://www.reginfo.gov/public/do/PRAMain*.

Dated: August 21, 2009.
David Horowitz,
Assistant Commissioner for Policy.
 [FR Doc. E9-20895 Filed 8-28-09; 8:45 am]
BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Evaluation of the NIAID HIV Vaccine Research Education Initiative

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Allergy and Infectious Diseases (NIAID), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: *Title:* Evaluation of the NIAID HIV Vaccine Research Education Initiative, Highly Impacted Population Survey. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* Developing measures that protect against HIV infection is one of NIAID's highest priorities. Methods in development for the prevention of HIV infection include: HIV vaccines, microbicides, and pre-exposure prophylaxis (PrEP). Given the daunting complexity of the HIV virus, developing these methods will ultimately require tens of thousands of volunteers to participate in HIV prevention clinical trials. In the U.S., minority participation in clinical trials of HIV prevention technologies is essential; nearly two-thirds of people diagnosed with HIV in the United States are African American or Hispanic/Latino. Historically, recruitment of racial/ethnic populations has been a critical challenge for medical researchers, and initiatives to increase recruitment of these groups into cancer and chronic disease trials have only been partially successful.

To address the need for volunteers in HIV vaccine clinical trials, and enable NIAID to fulfill its Congressional mandate to prevent infectious diseases like HIV/AIDS, NIAID created the NIAID HIV Vaccine Research Education Initiative (NHVREI). The goal of NHVREI is to increase knowledge about and support for HIV vaccine research among U.S. populations most heavily affected by HIV/AIDS—in particular, African Americans, Hispanics/Latinos, men who have sex with men (MSM), women and youth, recognizing the intersection of these groups.

A critical component of NHVREI is outreach to members of these specific highly impacted populations. With the assistance of funded community-based and national organizations, NHVREI is designing, developing, and disseminating HIV vaccine research-related messages to NHVREI target audiences. These messages are delivered through print (e.g., brochures, posters, fact sheets, information kits), radio, TV, and Internet resources. Print materials are distributed through various NHVREI program activities (e.g., trainings, conferences, symposia) and other NIAID-funded partners, governmental and non-governmental organizations.

NIAID is conducting an evaluation of the NHVREI program in order to assess its impact and generate key findings applicable toward the design of future educational initiatives. Part of the evaluation includes a population survey to guide future NHVREI activities.

With this document, NIAID requests clearance for the third part of the evaluation, a survey of the general population and members of the U.S. populations most heavily impacted by HIV/AIDS. The survey will be conducted once in 2010. The total number of respondent burden hours will not exceed 1167 annually. *Frequency of Response:* Once. *Affected Public:* Individuals. *Type of Respondents:* General U.S. population with oversampling of subpopulations highly impacted by HIV. The annual reporting burden is shown in the table below. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

	Total No. of respondents	Hours per response	Total hours
Highly Impacted Population Surveys	3,500	0.33333	1,167

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited

on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper

performance of the function of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Katharine Kripke, Assistant Director, Vaccine Research Program, Division of AIDS, NIAID, NIH, 6700B Rockledge Dr., Bethesda, MD 20892-7628, or call non-toll-free number 301-402-0846, or E-mail your request, including your address to NIADSsurvey@NIH.gov.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: August 25, 2009.

J.J. McGowan,

Executive Officer, NIAID, National Institutes of Health.

[FR Doc. E9-20882 Filed 8-28-09; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Advisory Board on Radiation and Worker Health: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92-463) of October 6, 1972, that the Advisory Board on Radiation and Worker Health, Department of Health and Human Services, has been renewed for a 2-year period through August 3, 2011.

For information, contact Mr. Theodore Katz, Executive Secretary, Advisory Board on Radiation and Worker Health, Department of Health and Human Services, 1600 Clifton Road, M/S E20, Atlanta, Georgia, 30341, telephone 404/498-2533, or fax 404/498-2570.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of

meetings and other committee management activities, for both the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 19, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9-20958 Filed 8-28-09; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at <http://www.workplace.samhsa.gov> and <http://www.drugfreeworkplace.gov>.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2-1042, One Choce Cherry Road, Rockville, Maryland 20857; 240-276-2600 (voice), 240-276-2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed

in accordance with Executive Order 12564 and section 503 of Public Law 100-71. Subpart C of the Mandatory Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

- ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227. 414-328-7840/800-877-7016. (Formerly: Bayshore Clinical Laboratory.)
- ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624. 585-429-2264.
- Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118. 901-794-5770/888-290-1150.
- Aegis Analytical Laboratories, 345 Hill Ave., Nashville, TN 37210. 615-255-2400. (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc.)
- Baptist Medical Center-Toxicology Laboratory, 9601 I-630, Exit 7, Little Rock, AR 72205-7299. 501-202-2783. (Formerly: Forensic Toxicology Laboratory Baptist Medical Center.)
- Clendo Reference Laboratory, Avenue Santa Cruz #58, Bayamon, Puerto Rico 00959. 787-620-9095.
- Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215-2802. 800-445-6917.
- Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602. 229-671-2281.
- DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974. 215-674-9310.
- DynaLIFE Dx, * 10150-102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2. 780-451-3702/800-661-9876. (Formerly: Dynacare Kasper Medical Laboratories.)
- ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655. 662-236-2609.
- Gamma-Dynacare Medical Laboratories, * A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4. 519-679-1630.
- Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053. 504-361-

8989/800-433-3823. (Formerly: Laboratory Specialists, Inc.)

Kroll Laboratory Specialists, Inc., 450 Southlake Blvd., Richmond, VA 23236. 804-378-9130. (Formerly: Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040. 713-856-8288/800-800-2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869. 908-526-2400/800-437-4986. (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709. 919-572-6900/800-833-3984. (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group.)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671. 866-827-8042/800-233-6339. (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center.)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219. 913-888-3927/800-873-8845. (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Maxxam Analytics,* 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8. 905-817-5700. (Formerly: Maxxam Analytics Inc., NOVAMANN (Ontario), Inc.)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112. 651-636-7466/800-832-3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232. 503-413-5295/800-950-5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417. 612-725-2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304. 661-322-4250/800-350-3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504. 888-747-3774. (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory.)

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311. 800-328-6942. (Formerly: Centinela Hospital Airport Toxicology Laboratory.)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204. 509-755-8991/800-541-7891x7.

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121. 858-643-5555.

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340. 770-452-1590/800-729-6432. (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories.)

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403. 610-631-4600/877-642-2216. (Formerly:

SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories.)

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405. 866-370-6699/818-989-2521. (Formerly: SmithKline Beecham Clinical Laboratories.)

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109. 505-727-6300/800-999-5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601. 574-234-4176 x276.

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040. 602-438-8507/800-279-0027.

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101. 405-272-7052.

STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421. 800-442-0438.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203. 573-882-1273.

Toxicology Testing Service, Inc., 5426 NW. 79th Ave., Miami, FL 33166. 305-593-2260.

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755-5235. 301-677-7085.

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Elaine Parry,

Director, Office of Program Services, SAMHSA.

[FR Doc. E9-20932 Filed 8-28-09; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Coordinating Center for Health Promotion (BSC, CCHP or the BSC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

Time and Date: 1 p.m.-5 p.m., September 15, 2009.

The call may end before 5 p.m. if business is completed. Someone will remain on the line until that time to notify callers that the call is ended and business complete.

Place: Teleconference originating from CDC, 1825 Century Boulevard, NE., Room 4066, Atlanta, Georgia 30345.

Call-in number: (800) 779-9076.

Participant pass code: 39780.

If you have a problem in accessing the call, call (404) 498-6700.

Status: This meeting is open to the public via the conference line above which will accommodate approximately 100 callers.

Purpose: This BSC is charged with providing advice and guidance to the Secretary of Health and Human Services, the Director of CDC, and the Director of CCHP concerning strategies and goals for the programs and research within the National Center on Birth Defects and Developmental Disabilities and the National Center for Chronic Disease Prevention and Health Promotion.

Matters To Be Discussed: The agenda will include a continuation of the discussion and finalization of recommendations to CDC leadership as prescribed in the Coordinating Center for Health Promotion Charter. Those recommendations relate to strategic planning for the National Center on Birth Defects and Developmental Disabilities as well as the results of the BSC's review of the National Center for Chronic Disease Prevention and Health Promotion as an organizational unit at CDC.

Providing Oral or Written Comments: It is the policy of the BSC, CCHP to provide a brief period for oral public comments. In general, each individual or group requesting to make an oral presentation will be limited to a total time of five minutes, if time permits.

Contact Person for Additional Information: Karen Steinberg, PhD, Senior Science Officer, Coordinating Center for Health Promotion, CDC, 4770 Buford Highway, NE., Mailstop E-70, Atlanta, Georgia 30341; telephone (404) 498-6700; fax (404) 498-6880; or via e-mail at Karen.Steinberg@cdc.hhs.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 25, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9-20898 Filed 8-28-09; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel; ARRA STRB October Meeting 1.

Date: October 6-9, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mohan Viswanathan, PhD, Scientific Review Officer, National Center for Research Resources, National Institutes of Health, One Democracy Plaza, 6701 Democracy Blvd., Room 1084, Bethesda, MD 20892-4874, 301-435-0829, mv10f@nih.gov.

Name of Committee: National Center for Research Resources Special Emphasis Panel; ARRA STRB October Meeting 2.

Date: October 6-9, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mohan Viswanathan, PhD, Scientific Review Officer, National Center for Research Resources, National Institutes of Health, One Democracy Plaza, 6701 Democracy Blvd., Room 1084, Bethesda, MD 20892-4874, 301-435-0829, mv10f@nih.gov.

Name of Committee: National Center for Research Resources Special Emphasis Panel; ARRA STRB October Meeting 3.

Date: October 6-9, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carol Lambert, PhD, Scientific Review Officer, Office of Review, National Institutes of Health, NCRR, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1076, MSC 4874, Bethesda, MD 20892 (301)-435-0814, lambert@mail.nih.gov.

Name of Committee: National Center for Research Resources Special Emphasis Panel; ARRA STRB October Meeting 4.

Date: October 6-9, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carol Lambert, PhD, Scientific Review Officer, Office of Review, National Institutes of Health, NCRR, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1076, MSC 4874, Bethesda, MD 20892, (301)-435-0814, lambert@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333; 93.702, ARRA Related Construction Awards, National Institutes of Health, HHS)

Dated: August 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-20871 Filed 8-28-09; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Initial Review Group, Interventions Committee for Disorders Involving Children and Their Families.

Date: October 5-6, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: David I. Sommers, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892-9606. 301-443-7861. dsommers@mail.nih.gov.

Name of Committee: National Institute of Mental Health Initial Review Group, Interventions Committee for Adult Disorders.

Date: October 13-14, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: David I. Sommers, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892-9606. 301-443-7861. dsommers@mail.nih.gov.

Name of Committee: National Institute of Mental Health Initial Review Group, Mental Health Services in Non-Specialty Settings.

Date: October 13, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Aileen Schulte, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6140, MSC 9608, Bethesda, MD 20892-9608. 301-443-1225. aschulte@mail.nih.gov.

Name of Committee: National Institute of Mental Health Initial Review Group, Mental Health Services in MH Specialty Settings.

Date: October 15, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Marina Broitman, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892-9608. 301-402-8152. mbroitma@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: August 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-20873 Filed 8-28-09; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel. GO Grant Review—Basic Sciences.

Date: September 10, 2009.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Nitsa Rosenzweig, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7760, Bethesda, MD 20892. (301) 435-1747. rosenzweign@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel. Bioengineering and Wound Healing GO ARRA.

Date: September 11, 2009.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Aftab A. Ansari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892. 301-594-6376. ansaria@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel. GO Grants Review: Research Infrastructure.

Date: September 15, 2009.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Fungai F. Chanetsa, MPH, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892. 301-435-1262. chanetsaf@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-20875 Filed 8-28-09; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Integrated Immune Control of Virus Infection.

Date: September 16, 2009.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Eric Lorenzo, PhD, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616, 301-451-2640, lorenzoe@niaid.nih.gov.

Name of Committee: National Institute of Allergy and Infectious Diseases Special

Emphasis Panel; Immune Responses to Category A-C Pathogens.

Date: September 24, 2009.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Yong Gao, PhD, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 2217, 6700B Rockledge Drive, Bethesda, MD 20892-7616, 301-443-8115, gaol2@niaid.nih.gov.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; B Cell In Auto Immune Diseases.

Date: September 30, 2009.

Time: 3 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Paul A. Amstad, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616, 301-402-7098, pamstad@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-20859 Filed 8-28-09; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Correction Notice of Meeting; Moving Into the Future—New Dimensions and Strategies for Women's Health Research for the National Institutes of Health

The meeting notice published by the National Institutes of Health in the August 21, 2009, edition of the **Federal Register**, 74 FR 42312-423136, announcing the October 14-16 2009 scientific workshop to be convened by the Office of Research on Women's Health (ORWH) entitled "Moving Into the Future—New Dimensions and Strategies for Women's Health Research for the National Institutes of Health" contained incomplete information concerning program-specific and information concerning how to register for the meeting. We provide the necessary additional information below.

For program specific questions, persons are encouraged to go to jkhirsh@northwestern.edu. To register for the October 14–16 meeting, interested persons should go to <http://www.orwhmeetings.com/movingintothefuture/northwestern>.

Dated: August 24, 2009.

Vivian W. Pinn,

Associate Director for Research on Women's Health and Director, Office of Research on Women's Health, NIH, National Institutes of Health.

[FR Doc. E9–20883 Filed 8–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

Date: November 4, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: Update on the progress of the implementation of the Clinical Trials Working Group and the Translational Research Working Group reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Sheila A. Prindiville, MD, MPH, Director, Coordinating Center for Clinical Trials, Office of the Director, National Cancer Institute, National Institutes of Health, 6120 Executive Blvd., 3rd Floor Suite, Bethesda, MD 20892, 301–451–5048, prindivs@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one

form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–20877 Filed 8–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552(b)(4) and 552(b)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group Urologic and Kidney Development and Genitourinary Diseases Study Section.

Date: September 21, 2009.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Amalfi Hotel Chicago, 20 West Kinzie Street, Chicago, IL 60654.

Contact Person: Ryan G. Morris, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, [morisr@csr.nih.gov](mailto:morrisr@csr.nih.gov).

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group Instrumentation and Systems Development Study Section.

Date: September 22, 2009.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Hotel—Dulles Airport, 2200 Centreville Road, Herndon, VA 20170.

Contact Person: Raymond Jacobson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7849, Bethesda, MD 20892, 301–435–0483, jacobsonrh@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel Cancer Prevention.

Date: September 22, 2009.

Time: 10 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lawrence Ka-Yun Ng, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, 301–435–1719, ngkl@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel Radiation SEP.

Date: September 22, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sally A. Mulhern, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–5877, mulherns@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflicts: Social Science and Population Studies.

Date: September 23–24, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Suzanne Ryan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, Bethesda, MD 20892, (301) 435–1712, ryansj@csr.nih.gov.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group Integrative Physiology of Obesity and Diabetes Study Section.

Date: September 24–25, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Reed A. Graves, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 402–6297, gravesr@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel Research on Ethical Issues in Human Studies.

Date: September 24, 2009.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ellen K. Schwartz, EDD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, 301-435-0681, schwarte@csr.nih.gov.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group Biomaterials and Biointerfaces Study Section.

Date: September 30–October 1, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Steven J. Zullo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7849, Bethesda, MD 20892, 301-435-2810, zullost@csr.nih.gov.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group Nanotechnology Study Section.

Date: September 30–October 1, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Annapolis Hotel, 100 Westgate Circle, Annapolis, MD 21401.

Contact Person: Joseph D. Mosca, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 435-2344, moscajos@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–20876 Filed 8–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and

Stroke. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Neurological Disorders and Stroke, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

Date: October 4–6, 2009.

Time: 7 p.m. to 12:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alan P. Koretsky, PhD, Scientific Director, Division of Intramural Research, National Institute of Neurological Disorders & Stroke, NIH, 35 Convent Drive, Room 6A 908, Bethesda, MD 20892, 301-435-2232, koretsky@ninds.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–20874 Filed 8–28–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Services Subcommittee of the Interagency Autism Coordinating Committee (IACC).

The purpose of the Services Subcommittee is to review the current state of services and supports for individuals with Autism Spectrum Disorder (ASD) and their families in order to improve these services. The meeting will be open to the public with attendance limited to space available. The meeting will also be open to the public through a conference call phone

number and a Web presentation tool on the Internet. Individuals who participate in person or by using electronic services and who need special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request to the Contact Person at least 7 days prior to the meeting.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of meeting: Services Subcommittee.

Date: September 15, 2009.

Time: 1 p.m. to 4 p.m. Eastern Time.

Agenda: Discussion of the IACC Services Town Hall Meeting that took place on July 24, 2009 in St. Charles, IL, and a presentation by IACC Services Subcommittee member Dr. Gail Houle and Dr. Sam Odom about programs for children with autism supported by the Department of Education.

Place:

In Person: National Institutes of Health, Main Campus Building 1, Wilson Hall, 3rd Floor, 1 Center Drive, Bethesda, MD 20892.

Webinar: <https://www2.gotomeeting.com/register/724090747>. To Access the Conference Call: Dial: 888-455-2920. Access code: 5697907.

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, Office of the Director, National Institute of Mental Health, NIH, 6001 Executive Boulevard, NSC, Room 8200, Bethesda, MD 20892-9669. 301-443-6040. IACCPublicInquiries@mail.nih.gov.

Please Note: Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard. For those who use the Web presentation tool to view the presentation, please call GoToWebinar at (800) 263-6317 to report any technical difficulties.

To access the Web presentation tool on the Internet the following computer capabilities are required:

- (A) Internet Explorer 5.0 or later, Netscape Navigator 6.0 or later or Mozilla Firefox 1.0 or later;
- (B) Windows® 2000, XP Home, XP Pro, 2003 Server or Vista;
- (C) Stable 56k, cable modem, ISDN, DSL or better Internet connection;
- (D) Minimum of Pentium 400 with 256 MB of RAM (Recommended);
- (E) Java Virtual Machine enabled (Recommended).

NIH has instituted stringent security procedures for entrance onto the NIH campus. All visitors must enter through the NIH Gateway Center. This center combines visitor parking, non-commercial vehicle inspection and visitor ID processing, all in one location. The NIH will process all visitors in vehicles or as pedestrians. You will be asked to submit to a vehicle or personal inspection and will be asked to state the purpose of your visit. Visitors over 15 years of age must provide a form of government-issued ID such as a driver's

license or passport. All visitors should be prepared to have their personal belongings inspected and to go through metal detection inspection.

When driving to NIH, plan some extra time to get through the security checkpoints at the visitor entrances to campus. Be aware that visitor parking lots on the NIH campus can fill up quickly. The NIH campus is also accessible via the metro Red Line, Medical Center Station. The Natcher Conference Center is a 5-minute walk from the Medical Center Metro Station. Additional NIH campus visitor information is available at: <http://www.nih.gov/about/visitor/index.htm>.

Information about the IACC and a registration link for this meeting are available on the Web site: <http://www.iacc.hhs.gov>.

Dated: August 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-20872 Filed 8-28-09; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Request for Nominations to the SAMHSA National Advisory Council

The Substance Abuse and Mental Health Services Administration (SAMHSA) is accepting nominations through October 7, 2009, to fill vacancies for its five advisory committees (the SAMHSA National Advisory Council, the Center for Substance Abuse Prevention, Center for Substance Abuse Treatment and Center for Mental Health Services National Advisory Councils and the Advisory Committee for Women's Services). Under section 502 of the Public Health Service Act, the National Advisory Councils (NAC) provide advice to the Secretary of the U.S. Department of Health and Human Services (HHS), SAMHSA Administrator, and/or Center Directors on a broad range of policies and services related to substance use and mental health.

Legislation requires that each NAC be composed of 12 members: nine members must be leading representatives of the health disciplines (including public health, behavioral health, and social sciences) relevant to the mission of SAMHSA and its Centers and three members must be from the general public and include leaders in the fields of public policy, public

relations, law, health policy, economics, or management.

Under section 501 of the Public Health Service Act, the Advisory Committee for Women's Services (ACWS) is statutorily mandated to advise the SAMHSA Administrator and the Associate Administrator for Women's Services on appropriate activities to be undertaken by SAMHSA and its Centers with respect to women's substance abuse and mental health services. The SAMHSA Administrator will appoint the 10 members of this Committee. The members must be from among physicians, practitioners, treatment providers, and other health professionals, whose clinical practice, specialization, or professional expertise includes a significant focus on women's substance abuse and mental health conditions.

The current lists of members for the advisory committees are available on the SAMHSA Web site at <https://nac.samhsa.gov/index.aspx>.

Members are appointed for a term of up to four years. Individuals are nominated, selected, and appointed to a NAC or the ACWS to contribute to the advisory committee's objectives based on their qualifications. The Federal Advisory Committee Act (FACA) and HHS policy require that committee membership be fairly balanced in terms of points of view represented and the committee's functions to be performed. Consideration is given to a broad representation of geographic areas, gender, race/ethnicity, and disability. The advisory committees will meet not less than two times per year and on an as needed basis.

Any interested person or organization may nominate qualified individuals for membership. Self-nominations are also welcome. Nominations must include a resume and short biography describing the educational and professional qualifications of the nominee and the nominee's current occupation, position, address and daytime telephone number. Individuals may be recommended for membership on more than one advisory committee, but will be appointed to only one advisory body. Nominations can be sent by U.S. Mail or electronically to Ms. Toian Vaughn, Designated Federal Official, at the address below.

Contact: Toian Vaughn, M.S.W., Designated Federal Official, SAMHSA National Advisory Council and SAMHSA Committee Management Officer, 1 Choke Cherry Road, Room 8-1089, Rockville, Maryland 20857. *Telephone:* (240) 276-2307; *Fax:* (240)

276-2220 and *E-mail:* toian.vaughn@samhsa.hhs.gov.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. E9-20884 Filed 8-28-09; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Development of Anti-Angiogenesis Cancer Therapeutics Targeting Adrenomedullin or Proadrenomedullin N-Terminal 20 Peptide (PAMP)

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in U.S. Patent Application No. 60/002,514, filed on August 18, 1995, entitled "Functional Role of Adrenomedullin (AM) and the Gene-Related Product (PAMP) in Human Pathology and Physiology" (HHS Reference No. E-206-1995/0-US-01); U.S. Patent Application No. 60/002,936, filed on August 30, 1995, entitled "Functional Role of Adrenomedullin (AM) and the Gene-Related Product (PAMP) in Human Pathology and Physiology" (HHS Reference No. E-206-1995/1-US-01); U.S. Patent Application No. 60/013,172, filed on March 12, 1996, entitled "Functional Role of Adrenomedullin (AM) and the Gene-Related Product (PAMP) in Human Pathology and Physiology" (HHS Reference No. E-206-1995/2-US-01); PCT Application No. PCT/US96/13286, filed on August 16, 1996, entitled "Functional Role of Adrenomedullin (AM) and the Gene-Related Product (PAMP) in Human Pathology and Physiology" (HHS Reference No. E-206-1995/3-PCT-01); Australian Patent No. 710662, issued on October 5, 2000, entitled "Functional Role of Adrenomedullin (AM) and the Gene-Related Product (PAMP) in Human Pathology and Physiology" (HHS Reference No. E-206-1995/3-AU-02); Canadian Patent Application No. 2229741, filed on August 16, 1996, entitled "Functional Role of

Adrenomedullin (AM) and the Gene-Related Product (PAMP) in Human Pathology and Physiology” (HHS Reference No. E-206-1995/3-CA-03); U.S. Patent No. 6,320,022, issued on November 20, 2001, entitled “Adrenomedullin Peptides” (HHS Reference No. E-206-1995/3-US-04); European Patent No. 0845036, issued on June 2, 1999, entitled “Functional Role of Adrenomedullin (AM) and the Gene-Related Product (PAMP) in Human Pathology and Physiology” (HHS Reference No. E-206-1995/3-EP-07), and validated in France, Germany, and the United Kingdom; Japanese Patent Application No. 509499/97, filed on August 16, 1996, entitled “Functional Role of Adrenomedullin (AM) and the Gene-Related Product (PAMP) in Human Pathology and Physiology” (HHS Reference No. E-206-1995/3-JP-09); U.S. Patent No. 7,101,548, issued on September 5, 2006, entitled “Functional Role of Adrenomedullin (AM) and the Gene-Related Product (PAMP) in Human Pathology and Physiology” (HHS Reference No. E-206-1995/3-US-10); U.S. Patent Application No. 11/517,599, filed on September 5, 2006, entitled “Functional Role of Adrenomedullin (AM) and the Gene-Related Product (PAMP) in Human Pathology and Physiology” (HHS Reference No. E-206-1995/3-US-11); Japanese Patent No. 4077861, issued on February 8, 2008, entitled “Functional Role of Adrenomedullin (AM) and the Gene-Related Product (PAMP) in Human Pathology and Physiology” (HHS Reference No. E-206-1995/3-JP-12); U.S. Patent Application No. 60/153,397, filed on September 10, 1999, entitled “Determination of AM-Binding Proteins and the Association of Adrenomedullin (AM) Therewith” (HHS Reference No. E-256-1999/0-US-01); PCT Application No. PCT/US00/24722, filed on September 8, 2000, entitled “Determination of AM-Binding Proteins and the Association of Adrenomedullin (AM) Therewith” (HHS Reference No. E-256-1999/0-PCT-02); Australian Patent No. 774725, issued on May 25, 2004, entitled “Determination of AM-Binding Proteins and the Association of Adrenomedullin (AM) Therewith” (HHS Reference No. E-256-1999/0-AU-03); Canadian Patent Application No. 2383419, filed on September 8, 2000, entitled “Determination of AM-Binding Proteins and the Association of Adrenomedullin (AM) Therewith” (HHS Reference No. E-256-1999/0-CA-04); European Patent No. 1214600, issued on December 21, 2005, entitled “Determination of AM-Binding Proteins and the Association of

Adrenomedullin (AM) Therewith” (HHS Reference No. E-256-1999/0-EP-05), and validated in France, Germany, the United Kingdom, Italy, Spain, and Portugal; U.S. Patent Application No. 10/070,853, filed on March 8, 2002, entitled “Determination of AM-Binding Proteins and the Association of Adrenomedullin (AM) Therewith” (HHS Reference No. E-256-1999/0-US-06); U.S. Patent Application No. 11/530,411, filed on September 8, 2006, entitled “Determination of AM-Binding Proteins and the Association of Adrenomedullin (AM) Therewith” (HHS Reference No. E-256-1999/0-US-13); U.S. Patent Application No. 12/236,418, filed on September 23, 2008, entitled “Determination of AM-Binding Proteins and the Association of Adrenomedullin (AM) Therewith” (HHS Reference No. E-256-1999/0-US-14); U.S. Patent Application No. 60/425,018, filed on November 7, 2002, entitled “A New Target for Angiogenesis and Anti-Angiogenesis Therapy” (HHS Reference No. E-294-2002/0-US-01); PCT Application No. PCT/US03/35633, filed on November 7, 2003, entitled “A New Target for Angiogenesis and Anti-Angiogenesis Therapy” (HHS Reference No. E-294-2002/0-PCT-02); U.S. Patent No. 7,462,593, issued on December 9, 2008, entitled “Compositions and Methods for Promoting Angiogenesis” (HHS Reference No. E-294-2002/0-US-03); European Patent Application No. 03786608.4, filed on November 7, 2003, entitled “A New Target for Angiogenesis and Anti-Angiogenesis Therapy” (HHS Reference No. E-294-2002/0-EP-04); Australian Patent Application No. 2003295422, filed on April 18, 2005, entitled “A New Target for Angiogenesis and Anti-Angiogenesis Therapy” (HHS Reference No. E-294-2002/0-AU-05); Canadian Patent Application No. 2504953, filed on November 7, 2003, entitled “A New Target for Angiogenesis and Anti-Angiogenesis Therapy” (HHS Reference No. E-294-2002/0-CA-06); Japanese Patent Application No. 2004-551922, filed on May 9, 2005, entitled “A New Target for Angiogenesis and Anti-Angiogenesis Therapy” (HHS Reference No. E-294-2002/0-JP-07); U.S. Patent Application No. 12/240,656, filed on September 29, 2008, entitled “Target for Anti-Angiogenesis Therapy” (HHS Reference No. E-294-2002/0-US-08); U.S. Patent Application No. 60/500,650, filed on September 8, 2003, entitled “Non-Peptide Agonists and Antagonists of Adrenomedullin (AM) And Gastrin Releasing Peptide” (HHS Reference No. E-246-2003/0-US-01); PCT Application No. PCT/US04/29293, filed on September 8, 2004, entitled

“Non-Peptide Agonists and Antagonists of Adrenomedullin (AM) And Gastrin Releasing Peptide” (HHS Reference No. E-246-2003/1-PCT-01); European Patent Application No. 04783513.7, filed on September 8, 2004, entitled “Non-Peptide Agonists and Antagonists of Adrenomedullin (AM) And Gastrin Releasing Peptide” (HHS Reference No. E-246-2003/1-EP-03); Canadian Patent Application No. 2539467, filed on September 8, 2004, entitled “Non-Peptide Agonists and Antagonists of Adrenomedullin (AM) And Gastrin Releasing Peptide” (HHS Reference No. E-246-2003/1-CA-04); Australian Patent Application No. 2004273057, filed on September 8, 2004, entitled “Non-Peptide Agonists and Antagonists of Adrenomedullin (AM) And Gastrin Releasing Peptide” (HHS Reference No. E-246-2003/1-AU-05); and U.S. Patent Application No. 10/571,012, filed on March 8, 2006, entitled “Non-Peptide Agonists and Antagonists of Adrenomedullin (AM) And Gastrin Releasing Peptide” (HHS Reference No. E-246-2003/1-US-06) to Arana Therapeutics (VIC) Pty. Ltd., having a place of business at Level 5, Building 4, 399 Royal Parade, Parkville, Victoria 3052, Australia, a wholly-owned subsidiary of Arana Therapeutics Limited, having a place of business at Level 2, 37 Epping Road, Macquarie Park, NSW 2113, Australia, a wholly-owned subsidiary of Cephalon, Inc., having a place of business at 41 Moores Road, Frazer, PA 19355, USA. The patent rights in this invention have been assigned to the United States of America.

The contemplated exclusive license territory may be worldwide, and the field of use may be limited to “use of peptide and affinity binding reagents (including but not limited to antibodies) that neutralize the action of PAMP or adrenomedullin to treat cancer”.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before October 30, 2009 will be considered.

ADDRESSES: Requests for copies of the patents, inquiries, comments, and other materials relating to the contemplated license should be directed to: Tara L. Kirby, Ph.D., Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852-3804; *Telephone:* 301-435-4426; *Facsimile:* 301-402-0220; *E-mail:* tarak@mail.nih.gov.

SUPPLEMENTARY INFORMATION: These technologies relate to adrenomedullin and proadrenomedullin N-terminal 20

peptide (PAMP), two potent angiogenic factors that are products of the same gene. Therapies that reduce (antagonize) the action of these factors have the potential to treat conditions where angiogenesis plays a pathological role, such as cancer and macular degeneration. Conversely, increasing (agonizing) the action of these factors may be useful for conditions where enhanced angiogenesis is desired, such as wound healing and cardiovascular disease. Adrenomedullin and PAMP have also been shown to play a role in other diseases, such as neurodegenerative disorders, diabetes, and allergic and inflammatory disease.

More specifically, these technologies include peptides, antibodies and small molecules that agonize or antagonize the activity of adrenomedullin and PAMP. They also include methods for inhibiting or inducing angiogenesis, methods for inhibiting tumor growth, methods for treating cancer, and methods of treating a number of other conditions, such as wounds, neurological disease, allergic or inflammatory disease, diabetes, and cardiovascular disease.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the prospective field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: August 24, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9-20881 Filed 8-28-09; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG-2009-0396]

Collection of Information Under Review by Office of Management and Budget: OMB Control Number: 1625-0008.

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) requesting an extension of its approval for the following collection of information: 1625-0008, Regattas and Marine Parades. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before September 30, 2009.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG-2009-0396] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) or to OIRA. To avoid duplication, please submit your comments by only one of the following means:

(1) *Electronic submission:* (a) To Coast Guard docket at <http://www.regulation.gov>. (b) To OIRA by e-mail via: oira_submission@omb.eop.gov.

(2) *Mail or Hand delivery:* (a) DMF (M-30), DOT, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001. Hand deliver between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329. (b) To OIRA, 725 17th Street, NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Fax:* (a) To DMF, 202-493-2251. (b) To OIRA at 202-395-6566. To ensure your comments are received in time, mark the fax, attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will

become part of the docket and will be available for inspection or copying at room W12-140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at <http://www.regulations.gov>.

A copy of the ICR is available through the docket on the Internet at <http://www.regulations.gov>. Additionally, copies are available from: Commandant (CG-611), ATTN Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd St., SW., Stop 7101, Washington, DC 20593-7101.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone 202-475-3523 or fax 202-475-3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202-366-9826, for questions on the docket.

SUPPLEMENTARY INFORMATION: The Coast Guard invites comments on whether this ICR should be granted based on it being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG 2009-0396]. For your comments to OIRA to be considered, it is best if they are received on or before the September 30, 2009.

Public participation and request for comments: We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to <http://www.regulations.gov>. They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the "Privacy Act" paragraph below.

Submitting comments: If you submit a comment, please include the docket number [USCG-2009-0396], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name,

mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. In response to your comments, we may revise the ICR or decide not to seek an extension of approval for this collection. The Coast Guard and OIRA will consider all comments and material received during the comment period.

Viewing comments and documents: Go to <http://www.regulations.gov> to view documents mentioned in this Notice as being available in the docket. Click on the “read comments” box, which will then become highlighted in blue. In the “Keyword” box insert “USCG–2009–0396” and click “Search.” Click the “Open Docket Folder” in the “Actions” column. You may also visit the DMF in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act statement regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (74 FR 26874, June 4, 2009) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

Information Collection Request.

Title: Regattas and Marine Parades.
OMB Control Number: 1625–0008.
Type of Request: Revision of a currently approved collection.

Respondents: Sponsors of marine events.

Abstract: The Coast Guard needs to determine whether a marine event may present a substantial threat to safety of

human life on navigable waters and determine which measures are necessary to ensure safety of life during these events. The Coast Guard must be made aware of these events and sponsors must notify the Coast Guard via the most efficient means and address environmental impacts.

Forms: CG–4423.

Burden Estimate: The estimated annual burden remains 3,000 hours per year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: August 20, 2009.

M.B. Lytle,

Captain, U.S. Coast Guard, Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E9–20863 Filed 8–28–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: New Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review; Electronic Bonds Online (eBonds) Access; OMB Control No. 1653—NEW.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), is submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The Information Collection was previously published in the **Federal Register** on June 16, 2009, Vol. 74, No. 114 28517, allowing for a 60 day public comment period. USICE received no comments on this Information Collection from the public during this 60 day period. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted for thirty days September 30, 2009.

Written comments and suggestions from the public and affected agencies regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for U.S. Immigration and Customs Enforcement, Department of Homeland Security, and

sent via electronic mail to oira_submission@omb.eop.gov or faxed to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* Electronic Bonds Online (eBonds) Access.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–352SA (Surety eBonds Access Application and Agreement); Form I–352RA (eBonds Rules of Behavior Agreement); U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or Households, Business or other non-profit. The information taken in this collection is necessary for U.S. Immigration and Customs Enforcement (USICE) to grant access to eBonds and to notify the public of the duties and responsibilities associated with accessing eBonds. The I–352SA and the I–352RA are the two instruments used to collect the information associated with this collection. The I–352SA is to be completed by a Surety that currently holds a Certificate of Authority to act as a Surety on Federal bonds and details the requirements for accessing eBonds as well as the documentation, in addition to the I–352SA and I–352RA, which the Surety must submit prior to

being granted access to eBonds. The I-352RA provides notification that eBonds is a Federal government computer system and as such users must abide by certain conduct guidelines to access eBonds and the consequences if such guidelines are not followed.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 50 annual burden hours

Requests for a copy of the proposed information collection instruments, with instructions; or inquiries for additional information should be requested via e-mail to: forms.ice@dhs.gov with "Electronic Bonds Online (eBonds) Access" in the subject line.

Dated: August 24, 2009.

Carl Albritton,

Program Manager, Bond Management Unit, Detention and Removal Operations, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E9-20894 Filed 8-28-09; 8:45 am]

BILLING CODE 9111-28-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-1856-DR; Docket ID FEMA-2008-0018]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA-1856-DR), dated August 21, 2009, and related determinations.

DATES: *Effective Date:* August 21, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 21, 2009, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Tennessee resulting from severe storms and flooding during the period of July 15-17, 2009, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Terry L. Quarles, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Tennessee have been designated as adversely affected by this major disaster:

Chester, Clay, Decatur, Jackson, Overton, and Wayne Counties for Public Assistance.

All counties within the State of Tennessee are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9-20888 Filed 8-28-09; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-1855-DR; Docket ID FEMA-2008-0018]

Kentucky; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA-1855-DR), dated August 14, 2009, and related determinations.

DATES: *Effective Date:* August 24, 2009.

FOR FURTHER INFORMATION CONTACT:

Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include Public Assistance in the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 14, 2009.

Trimble County for Public Assistance. Jefferson County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9-20889 Filed 8-28-09; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Water Delivery and Electric Service Data for the Operation of Irrigation and Power Projects and Systems: Proposed Information Collection

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Submission to the Office of Management and Budget.

SUMMARY: As required by the Paperwork Reduction Act, the Bureau of Indian Affairs (BIA) is submitting the following information collections to the Office of Management and Budget for renewal: (1) Electrical Service Application, 25 CFR 175, OMB Control Number 1076-0021; and (2) Water Request, 25 CFR 171, OMB Control Number 1076-0141. Current approvals for the collections expire August 31, 2009.

DATES: Submit comments on or before September 30, 2009.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer, by facsimile at (202) 395-5806 or via e-mail to OIRA_Docket@omb.eop.gov. Also, please send a copy of your comments to: John Anevski, Chief, Division of Irrigation, Power and Safety of Dams, Office of Trust Services, Mail Stop 4655-MIB, 1849 C Street, NW., Washington, DC 20240; e-mail: john.anevski@bia.gov.

FOR FURTHER INFORMATION CONTACT: John Anevski, Chief, Division of Irrigation, Power and Safety of Dams, telephone: (202) 208-5480, e-mail: john.anevski@bia.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The BIA owns, operates, and maintains three electric power utilities that provide a service to the end user. The BIA also owns, operates, and maintains 15 irrigation projects that provide a service to the end user. To be able to properly bill for the services provided, the BIA must collect customer information to identify the individual responsible for repaying the government

the costs of delivering the service, and billing for those costs. Additional information necessary for providing the service is the location of the service delivery. The Debt Collection Improvement Act of 1996 (DCIA) requires that certain information be collected from individuals and businesses doing business with the government. This information includes the taxpayer identification number for possible future use to recover delinquent debt. To implement the DCIA requirement to collect customer information, the BIA has included a section concerning the collection of information in its regulations governing its electrical power utilities (25 CFR 175) and in its regulations governing its irrigation projects (25 CFR 171). A request for comments on this information collection request appeared in the **Federal Register** on May 19, 2009 (74 FR 23428). No comments were received regarding these information collections in response to the announcement.

II. Request for Comments

You are invited to send your comments on these information collections to the two locations listed in the **ADDRESSES** section. Your comments should address:

(a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used;

(c) Ways we could enhance the quality, utility and clarity of the information to be collected; and

(d) Ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

OMB has up to 60 days after publication of this document in the **Federal Register** to make a decision on the submission for renewal, but may make the decision after 30 days. Therefore, to receive the best consideration of your comments, you should submit them during the first 30-day period.

Before including your address, phone number, e-mail address or other

personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

A. Electrical Service Application

OMB Control Number: 1076-0021.
Title: Electrical Service Application
25 CFR 175.

Brief Description of Collection: In order for electric power consumers to be served, information is needed by the BIA to operate and maintain its electric power utilities and fulfill reporting requirements.

Sections 175.6 and 175.22 of 25 CFR part 175, Indian electric power utilities, specifies the information collection requirement. Power consumers must apply for electric service. The information to be collected includes: name; electric service location; and other operational information identified in the local administrative manuals. Collection of this information is currently authorized under an approval by OMB (OMB Control Number 1076-0021). All information is collected from each electric power consumer. Responses are required to receive or maintain a benefit.

Type of Review: Renewal.

Respondents: BIA electric power consumers—individuals and businesses.

Number of Respondents: 3,000 per year.

Number of Responses: 3,000 per year.
Estimated Time per Response: ½ hour.

Frequency of Response: Normally just once. Only need to re-do if requesting new electrical service elsewhere or if they have been disconnected for failure to pay their electric bill.

Total Annual Burden to Respondents: 1,500 hours.

B. Water Request

OMB Control Number: 1076-0141.

Title: Water Request 25 CFR 171.

Brief Description of Collection: In order for irrigators to receive water deliveries, information is needed by the BIA to operate and maintain its irrigation projects and fulfill reporting requirements. Section 171.140 and other sections cited in section 171.40 of 25 CFR part 171, [Irrigation] Operation and Maintenance, specifies the information collection requirement. Water users must apply for water delivery and for a number of other associated services, such as, subsidizing a farm unit,

requesting leaching service, requesting water for domestic or stock purposes, building structures or fences in BIA rights-of-way, requesting payment plans on bills, establishing a carriage agreement with a third-party, negotiating irrigation incentive leases, and requesting an assessment waiver. The information to be collected includes: full legal name; correct mailing address; taxpayer identifying number; water delivery location; if subdividing a farm unit—a copy of the recorded plat or map of the subdivision where water will be delivered; the time and date of requested water delivery; duration of water delivery; amount of water delivered; rate of water flow; number of acres irrigated; crop statistics; any other agreements allowed under 25 CFR part 171; and any additional information required by the local project office that provides your service. Collection of this information is currently authorized under an approval by OMB (OMB Control Number 1076–0141). Information for water request is collected at least annually from each water user with a response required each time BIA provides irrigation water; the remaining information is collected only occasionally, upon request for the specific service. The information water users submit is for the purpose of obtaining or retaining a benefit, namely irrigation water.

Type of Review: Renewal.

Respondents: Waters users of the BIA irrigation project—individuals and businesses.

Number of Respondents: 6,539 per year.

Number of Responses: 27,075 per year.

Estimated Time per Response: A range of 18 minutes to 6 hours, depending on the specific service being requested.

Frequency of Response: On occasion throughout the irrigation season, averaging approximately 2 times per year.

Total Annual Burden to Respondents: 14,059 hours.

Dated: August 25, 2009.

Alvin Foster,

Deputy Chief Information Officer—Indian Affairs.

[FR Doc. E9–20974 Filed 8–28–09; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2008–MRM–0039]

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a revision of a currently approved information collection (OMB Control Number 1010–0139).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to the Office of Management and Budget (OMB) an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under title 30 of the Code of Federal Regulations (CFR) parts 210 and 212. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. This ICR pertains to onshore and offshore royalty and production reporting on oil, gas, and geothermal leases on Federal and Indian lands.

We changed the title of this ICR to reflect regulatory actions, including publication of the final rule, RIN 1010–AD20, Reporting Amendments, on March 26, 2008 (73 FR 15885). The final rule removed 30 CFR part 216 and replaced part 210 in its entirety. In this revision, we also consolidated the following ICRs to allow programwide review of royalty and production reporting for oil, gas, and geothermal leases on Federal and Indian lands:

- 1010–0139, 30 CFR Part 210—Forms and Reports and Part 216—Production Accounting; and
- 1010–0140, 30 CFR Part 210—Forms and Reports.

DATES: Submit written comments on or before *September 30, 2009*.

ADDRESSES: Submit written comments by either FAX (202) 395–5806 or e-mail (*OIRA_Docket@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0139).

Please submit copies of your comments to MMS by one of the following methods:

- Electronically go to <http://www.regulations.gov>. In the “Comment or Submission” column, enter “MMS–2008–MRM–0039” to view supporting

and related materials for this ICR. Click on “Send a comment or submission” link to submit public comments. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site’s “User Tips” link. All comments submitted will be posted to the docket.

- Mail comments to Hyla Hurst, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 300B2, Denver, Colorado 80225. Please reference ICR 1010–0139 in your comments.

- Hand-carry comments or use an overnight courier service. Our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225. Please reference ICR 1010–0139 in your comments.

FOR FURTHER INFORMATION CONTACT: Hyla Hurst, telephone (303) 231–3495, or e-mail hyla.hurst@mms.gov. You may also contact Hyla Hurst to obtain copies, at no cost, of (1) the ICR, (2) any associated forms, and (3) the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Parts 210 and 212, Royalty and Production Reporting.

OMB Control Number: 1010–0139.

Bureau Form Number: Forms MMS–2014, MMS–4054, and MMS–4058.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary is required by various laws to manage mineral resource production from Federal and Indian lands and the OCS, collect the royalties and other mineral revenues due, and distribute the funds collected in accordance with applicable laws. Public laws pertaining to mineral leases on Federal and Indian lands are posted on our Web site at http://www.mrm.mms.gov/Laws_R_D/PublicLawsAMR.htm.

The Secretary also has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the minerals revenue management functions and assists the Secretary in carrying out the Department’s trust responsibility for Indian lands.

General Information

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from

Federal or Indian lands, that company or individual agrees to pay the lessor a share in an amount or value of production from the leased lands. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals.

We use the information collected in this ICR to ensure that royalty is appropriately paid, based on accurate production accounting on oil, gas, and geothermal resources produced from Federal and Indian leases. The requirement to report accurately and timely is mandatory. Please refer to the chart for all reporting requirements and associated burden hours.

Royalty Reporting

The regulations require that lessees report and remit royalties on oil, gas, and geothermal resources produced from leases on Federal and Indian lands. The following form is used for royalty reporting:

Form MMS–2014, Report of Sales and Royalty Remittance, is submitted monthly to report royalties on oil, gas, and geothermal leases, certain rents, and other lease-related transactions (e.g., transportation and processing allowances, lease adjustments, and quality and location differentials).

Production Reporting

The MMS financial accounting system includes production reports submitted by lease/agreement operators and is designed to track minerals produced from Federal and Indian lands from the point of production to the point of disposition, or royalty determination, and/or point of sale. The following forms are used for production accounting and reporting:

Form MMS–4054, Oil and Gas Operations Report (OGOR), is submitted monthly for all production reporting for Outer Continental Shelf, Federal, and Indian lands. Production information is compared with sales and royalty data submitted on Form MMS–2014 to ensure proper royalties are paid on the oil and gas production reported to MMS. The MMS uses the information from Parts A, B, and C of the OGOR to track all oil and gas from the point of production to the point of first sale or other disposition.

Form MMS–4058, Production Allocation Schedule Report (PASR), is submitted monthly by operators of the facilities and measurement points where production from an offshore Federal lease or metering point is commingled with production from other sources

before it is measured for royalty determination. The MMS uses the data to determine whether sales reported by the lessee are reasonable.

OMB Approval

We will request OMB approval to continue to collect this information. Not collecting this information would limit the Secretary’s ability to discharge his/her duties and may also result in loss of royalty payments. Proprietary information submitted to MMS under this collection is protected, and no items of a sensitive nature are included in this information collection. Responses are mandatory.

Frequency: Monthly.

Estimated Number and Description of Respondents: 4,570 oil, gas, and geothermal reporters.

Estimated Annual Reporting and Recordkeeping “Hour” Burden: 253,509 hours.

We have not included in our estimates certain requirements performed in the normal course of business and considered usual and customary. The following chart shows the estimated burden hours by CFR section and paragraph:

RESPONDENTS’ ESTIMATED ANNUAL BURDEN HOURS

30 CFR part 210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
30 CFR 210—FORMS AND REPORTS				
Subpart B—Royalty Reports—Oil, Gas, and Geothermal Resources				
210.52(a) and (b)	210.52 What royalty reports must I submit?	Form MMS–2014		
		Electronic* (approximately 99 percent)		
210.53(a) and (b)	You must submit a completed Form MMS–2014, Report of Sales and Royalty Remittance, to MMS with:	3 min	3,510,849	175,542
		Manual* (approximately 1 percent)		
210.54(a) and (b)	(a) All royalty payments: And (b) Rents on nonproducing leases, where specified in the lease. 210.53 When are my royalty reports and payments due? (a) Completed Forms MMS–2014 for royalty payments and the associated payments are due by the end of the month following the production month (see also §218.50). (b) Completed Forms MMS–2014 for rental payments, where applicable, and the associated payments are due as specified by the lease terms (see also §218.50). 210.54 Must I submit this royalty report electronically? (a) You must submit Form MMS–2014 electronically unless you qualify for an exception under §210.55(a). (b) You must use one of the following electronic media types, unless MMS instructs you differently: * * * * *	7 min	35,463	4,137
Subtotal for Royalty Reporting			3,546,312	179,679

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR part 210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
Subpart C—Production Reports—Oil and Gas				
210.102(a)(1)(i) and (ii), (a)(2)(i) and (ii).	<p>210.102 What production reports must I submit?</p> <p>(a) Form MMS–4054, Oil and Gas Operations Report. If you operate a Federal or Indian onshore or OCS oil and gas lease or federally approved unit or communitization agreement that contains one or more wells that are not permanently plugged or abandoned, you must submit Form MMS–4054 to MMS:</p> <p>(1) You must submit Form MMS–4054 for each well for each calendar month, beginning with the month in which you complete drilling, unless:</p> <p style="margin-left: 20px;">(i) You have only test production from a drilling well; or</p> <p style="margin-left: 20px;">(ii) The MMS tells you in writing to report differently.</p> <p>(2) You must continue reporting until:</p> <p style="margin-left: 20px;">(i) The Bureau of Land Management (BLM) or MMS approves all wells as permanently plugged or abandoned or the lease or unit or communitization agreement is terminated; and</p> <p style="margin-left: 20px;">(ii) You dispose of all inventory.</p>	Burden hours covered under 210.104(a) and (b)		
210.102(b)(1), (b)(2)(i)–(vi)	<p>(b) Form MMS–4058, Production Allocation Schedule Report. If you operate an offshore facility measurement point (FMP) handling production from a Federal oil and gas lease or federally approved unit agreement that is commingled (with approval) with production from any other source prior to measurement for royalty determination, you must file Form MMS–4058.</p> <p>(1) You must submit Form MMS–4058 for each calendar month beginning with the month in which you first handle production covered by this section.</p> <p>(2) Form MMS–4058 is not required whenever all of the following conditions are met:</p> <p style="margin-left: 20px;">(i) All leases involved are Federal leases;</p> <p style="margin-left: 20px;">(ii) All leases have the same fixed royalty rate;</p> <p style="margin-left: 20px;">(iii) All leases are operated by the same operator;</p> <p style="margin-left: 20px;">(iv) The facility measurement device is operated by the same person as the leases/agreements;</p> <p style="margin-left: 20px;">(v) Production has not been previously measured for royalty determination; and</p> <p style="margin-left: 20px;">(vi) The production is not subsequently commingled and measured for royalty determination at an FMP for which Form MMS–4058 is required under this part.</p>	Burden hours covered under 210.104(a) and (b)		
210.103(a) and (b)	<p>210.103 When are my production reports due?</p> <p>(a) The MMS must receive your completed Forms MMS–4054 and MMS–4058 by the 15th day of the second month following the month for which you are reporting.</p> <p>(b) A report is considered received when it is delivered to MMS by 4 p.m. mountain time at the addresses specified in §210.105. Reports received after 4 p.m. mountain time are considered received the following business day.</p>	Burden hours covered under 210.104(a) and (b)		
210.104(a) and (b)	210.104 Must I submit these production reports electronically?	Form MMS–4054 (OGOR)		
		Electronic* (approximately 98 percent)		
	(a) You must submit Forms MMS–4054 and MMS–4058 electronically unless you qualify for an exception under §210.105.	1 min	4,137,803	68,963
		Manual* (approximately 2 percent)		
		3 min	84,445	4,222

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR part 210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	(b) You must use one of the following electronic media types, unless MMS instructs you differently: * * * * *	Total OGOR	4,222,248	73,185
		Form MMS-4058 (PASR)		
		Electronic* (approximately 98 percent)		
		1 min	36,456	608
		Manual* (approximately 2 percent)		
		3 min	744	37
		Total PASR	37,200	645

Subpart D—Special-Purpose Forms and Reports—Oil, Gas, and Geothermal Resources

210.155	210.155 What reports must I submit for Federal onshore stripper oil properties? (a) <i>General.</i> Operators who have been granted a reduced royalty rate by the Bureau of Land Management (BLM) under 43 CFR 3103.4-2 must submit Form MMS-4377, Stripper Royalty Rate Reduction Notification, under 43 CFR 3103.4-2(b)(3). * * * * *	Burden covered under OMB Control Number 1010-0090 (expires December 31, 2010)		
Subtotal for Production Reporting		4,259,448	73,830	

PART 212—RECORDS AND FILES MAINTENANCE

Subpart B—Oil, Gas and OCS Sulphur—General

212.50	212.50 Required recordkeeping and reports All records pertaining to offshore and onshore Federal and Indian oil and gas leases shall be maintained by a lessee, operator, revenue payor, or other person for 6 years after the records are generated unless the recordholder is notified, in writing, that records must be maintained for a longer period * * * [In accordance with 30 U.S.C. 1724(f), Federal oil and gas records must be maintained for 7 years from the date the obligation became due.]	Burden hours covered under 210.54(a) and (b); and 210.104(a) and (b)		
212.51(a) and (b)	(a) <i>Records.</i> Each lessee, operator, revenue payor, or other person shall make and retain accurate and complete records necessary to demonstrate that payments of rentals, royalties, net profit shares, and other payments related to offshore and onshore Federal and Indian oil and gas leases are in compliance with lease terms, regulations, and orders * * * (b) Period for keeping records. Lessees, operators, revenue payors, or other persons required to keep records under this section shall maintain and preserve them for 6 years from the day on which the relevant transaction recorded occurred unless the Secretary notifies the record holder of an audit or investigation involving the records and that they must be maintained for a longer period * * * [In accordance with 30 U.S.C. 1724(f), Federal oil and gas records must be maintained for 7 years from the date the obligation became due.]	Burden hours covered under 210.54(a) and (b); and 210.104(a) and (b).		
Total for Royalty and Production Reporting		7,805,760	253,509	

* Note: Each line of data is considered one response/report.

Estimated Annual Reporting and Recordkeeping “Non-hour” Cost

Burden: We have identified no “non-

hour” cost burden associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency to “* * * provide 60-day notice in the **Federal Register** * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.” Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on November 13, 2008 (73 FR 67197), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by September 30, 2009.

Public Comment Policy: We will post all comments in response to this notice at http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm. We also will post all comments, including names and addresses of respondents, at <http://www.regulations.gov>. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public view your personal identifying information, we cannot guarantee that we will be able to do so.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208-7744.

Dated: August 11, 2009.

Jennifer L. Goldblatt,

Acting Associate Director for Minerals Revenue Management.

[FR Doc. E9-20905 Filed 8-28-09; 8:45 am]

BILLING CODE 4310-MR-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-010-L10600000 HI0000]

Notice of Temporary Closure on Public Lands in the Pryor Mountain Wild Horse Range (Including the Britton Springs Administrative Site) in the Southeastern Portion of Carbon County, MT, and the Northern Portion of Big Horn County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Temporary Closure.

SUMMARY: Notice is hereby given that a temporary closure to public access, use, or occupancy is in effect on public lands administered by the Billings Field Office, Bureau of Land Management, in the Pryor Mountain Wild Horse Range in Carbon County, Montana, and Big Horn County, Wyoming.

DATES: This temporary closure will be in effect on the Pryor Mountain Wild Horse Range from 12:01 a.m. MDT on Monday, August 31, 2009 until September 10, 2009 at 11:59 p.m. MDT. The closure will remain in effect at the Britton Springs Administrative Site until 11:59 p.m. MDT on October 1, 2009.

ADDRESSES: The Billings Field Office address is 5001 Southgate Drive, Billings, Montana 59101.

FOR FURTHER INFORMATION CONTACT: James M. Sparks, Field Manager, at the address above or by phone at 406-896-5013. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individuals during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individuals. You will receive a reply during normal hours.

SUPPLEMENTARY INFORMATION: This temporary closure to public access affects public lands at the Pryor Mountain Wild Horse Range in Carbon County, Montana, and Bighorn County, Wyoming. The legal description of the affected public lands is:

Principal Meridian, Montana

T. 8 S., R. 28 E.,
 Sec. 5, S $\frac{1}{2}$ and S $\frac{1}{2}$ N $\frac{1}{2}$;
 Sec. 6, E $\frac{1}{2}$ E $\frac{1}{2}$;
 Sec. 8, N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, and NE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 9;
 Secs. 16 and 17;
 Sec. 18, E $\frac{1}{2}$ E $\frac{1}{2}$;
 Sec. 19, E $\frac{1}{2}$ E $\frac{1}{2}$;
 Sec. 20;
 Sec. 21, W $\frac{1}{2}$ and W $\frac{1}{2}$ E $\frac{1}{2}$;
 Sec. 28, W $\frac{1}{2}$;
 Sec. 29;
 Sec. 30, E $\frac{1}{2}$ E $\frac{1}{2}$;
 Sec. 31, E $\frac{1}{2}$ E $\frac{1}{2}$;
 Sec. 32;
 Sec. 33, W $\frac{1}{2}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$.

Principal Meridian, Montana

T. 9 S., R. 27 E.,
 Secs. 1, 2, 11 to 14, inclusive, 23, and 24;
 Sec. 25, E $\frac{1}{2}$ and E $\frac{1}{2}$ NW $\frac{1}{4}$;
 Sec. 36, N $\frac{1}{2}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$.

Principal Meridian, Montana

T. 9 S., R. 28 E.,
 Sec. 4, NW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$, and SE $\frac{1}{4}$;
 Secs. 5 to 9, inclusive;
 Sec. 10, W $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 15, NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, and SW $\frac{1}{4}$;
 Secs. 16 to 21, inclusive, and 28;
 Sec. 27, W $\frac{1}{2}$;
 Secs. 29 to 33, inclusive;
 Sec. 34, W $\frac{1}{2}$.

Sixth Principal Meridian, Wyoming

T. 58 N., R. 95 W.,
 Sec. 19, NE $\frac{1}{4}$ NE $\frac{1}{4}$;
 Sec. 20, N $\frac{1}{2}$ N $\frac{1}{2}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, and SE $\frac{1}{4}$;
 Secs. 21 and 22;
 Sec. 23, NW $\frac{1}{4}$ and W $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 27;
 Sec. 28, N $\frac{1}{2}$;
 Sec. 29, N $\frac{1}{2}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$.

This temporary closure is necessary to prevent public access, use, or occupancy during wild horse capture operations to ensure the safety and welfare of the public, contractors, and government employees, the orderly execution of authorized actions, and to protect the wild horses as a natural resource on public lands. The gather operation includes the authorized use of low-flying aircraft to herd and capture wild horses from various portions of the Pryor Mountain Wild Horse Range and adjacent lands administered by the U.S. Forest Service. Animals will be held at the Britton Springs Administrative Site until September 26, 2009, for day-to-day care, veterinary treatment, and preparation for adoption. This will be

the fourth time that helicopters are used as the primary tool for herding horses into capture pens on the Pryor Mountain National Wild Horse Range. In order to operate the aircraft in a safe and effective manner, and based on experience gained in the 1997, 2001, and 2003 gathers, it is necessary to close the affected areas to all public use during actual capture operations. The wild horses primarily occupy three geographic areas of the range, including lands administered by the U.S. Forest Service, the area around Pen's Cabin, and the Dry Head/Layout Creek portions of the Bighorn Canyon National Recreation Area. Gather operations will be conducted at various times and locations to be determined by the contracting officer's representative in consultation with the contractor.

It is anticipated that the gather operation will take approximately seven days, but could last 10 days depending on weather, location of herds, success of capture operations, and other variable conditions. Areas subject to temporary closure include all lands within the Pryor Mountain Wild Horse Range administered by the Bureau of Land Management. Not all subject lands will be closed during the entire period; the public will be authorized to use those areas where capture operations are not in progress. Areas from which the public will be temporarily excluded will be dependent upon the actual area of operation which will be variable according to the needs of the contractor.

Areas temporarily closed to public access will be so posted at main entry points with signs, barricades, and copies of this temporary closure notice. Maps of the affected area and other documents associated with this closure area are available at the Billings Field Office, 5001 Southgate Drive, Billings, Montana 59101.

This temporary closure may be rescinded prior to September 10, 2009, if gather operations are successfully completed before that date. The Britton Springs area will remain temporarily closed until October 1, 2009, after horses are adopted or sold. Once gathering operations have been completed, the public will be allowed to view the horses held at Britton Springs prior to release or adoption at times to be arranged.

Further information may be obtained from the Pryor Mountain Wild Horse Range 2009 Gather and Population Management Plan and Environmental Assessment, #DOI-BLM-MT-C010-2009-35-EA. This document is available upon request from the Field Manager, Billings Field Office, Bureau

of Land Management, 5001 Southgate Drive, Billings, Montana 59101.

Under the authority of section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), 43 CFR 8360.0-7, and 43 CFR 8364.1, the Bureau of Land Management will enforce the following rule(s) within the Pryor Mountain Wild Horse Range:

Temporary Closure to public access, use or occupancy on public lands in the Pryor Mountain Wild Horse Range in the southeastern portion of Carbon County, Montana, and the northern portion of Big Horn County, Wyoming.

The following persons are exempt from this temporary closure: Federal, state, and local officers and employees in the performance of their official duties; members of organized rescue or fire-fighting forces in the performance of their official duties; and persons with written authorization from the Bureau of Land Management.

Any person who violates the above rule may be tried before a United States Magistrate and fined no more than \$1,000, imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Howard A. Lemm,

Associate State Director.

[FR Doc. E9-20987 Filed 8-28-09; 8:45 am]

BILLING CODE 4310-DN-P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

[OMB Number 1103-0096]

Agency Information Collection Activities: Emergency Extension and Revision of a Previously Approved Collection, With Change; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: COPS Application Guide.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The emergency revision of a previously approved information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 60 days for public comment until October 30, 2009. This process is

conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed emergency information collection instrument with instructions or additional information, please contact Rebekah Dorr, Department of Justice Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Emergency extension and revision of a previously approved collection, with change; comments requested.

(2) *Title of the Form/Collection:* COPS Application Guide.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Law enforcement agencies and other public and private entities that apply for COPS Office grants or cooperative agreements will be asked to review the COPS Application Guide. The COPS Application Guide provides instructions for all applicants and is the result of a COPS Office business process reengineering effort.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 16,200 respondents annually will complete the form within 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 16,200 total annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 25, 2009.

Lynn Bryant,

*Department Clearance Officer, PRA,
Department of Justice.*

[FR Doc. E9-20890 Filed 8-28-09; 8:45 am]

BILLING CODE 4410-AT-P

DEPARTMENT OF JUSTICE

[OMB Number 1103-0097]

Office of Community Oriented Policing Services; Agency Information Collection Activities: Extension and Revision of a Previously Approved Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review.

COPS Budget Detail Worksheets.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 60 days for public comment until October 30, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the information collection instrument with instructions or additional information, please contact Rebekah Whiteaker, Department of Justice Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies

concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the extension of the previously approved collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension and revision of a previously approved collection, with change; comments requested.

(2) *Title of the Form/Collection:* COPS Budget Detail Worksheets.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Law enforcement agencies and other public and private entities that apply for COPS Office grants or cooperative agreements will be asked to complete the COPS Budget Detail Worksheets. The COPS Budget Detail Worksheets are the result of a COPS Office business process reengineering effort. The new worksheets standardize the budget forms across all COPS Office programs and should reduce the burden on applicants due the applicant's ability to use the same form for multiple programs, thus reducing the need for applicant's to learn how to complete multiple differing forms.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 16,200 respondents annually will complete the form within 2 hours.

(6) *An estimate of the total public burden (in hours) associated with the*

collection: There are an estimated 32,400 total annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 25, 2009.

Lynn Bryant,

*Department Clearance Officer, PRA, U.S.
Department of Justice.*

[FR Doc. E9-20901 Filed 8-28-09; 8:45 am]

BILLING CODE 4410-AT-P

DEPARTMENT OF JUSTICE

[OMB Number 1103-0098]

Office of Community Oriented Policing Services; Agency Information Collection Activities: Extension and Revision of a Previously Approved Collection, With Change; Comments Requested

AGENCY: Department of Justice.

ACTION: 60-Day Notice of Information Collection Under Review: COPS Application Attachment to SF-424.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 60 days for public comment until October 30, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Rebekah Whiteaker, Department of Justice Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension and revision of a previously approved collection, with change; comments requested.

(2) *Title of the Form/Collection:* COPS Application Attachment to SF-424.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Law enforcement agencies and other public and private entities that apply for COPS Office grants or cooperative agreements will be asked to complete the COPS Application Attachment to SF-424. The COPS Application Attachment to SF-424 is the result of a COPS Office business process reengineering effort. This form streamlined application forms across all COPS Office programs and reduced the burden on applicants due to the applicant's ability to use the same form for multiple programs, thus reducing the need for applicants to learn how to complete multiple differing forms.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 16,200 respondents annually will complete the form within 10 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 162,000 total annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States

Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 25, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9-20885 Filed 8-28-09; 8:45 am]

BILLING CODE 4410-AT-P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121-0140]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: OJP Standard Assurances Form.

The Department of Justice, Office of Justice Programs will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 117, page 29237-29238 on June 19, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 30, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of the General Counsel, Office of Justice Programs, U.S. Department of Justice, *Attention:* Kristopher Brambila, Attorney-Advisor, 810 7th St., NW., Washington, DC 20503.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, without change of a currently approved collection.

(2) *Title of the Form/Collection:* OJP Standard Assurances.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* No form number. Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Applicants for grants funded by the Office of Justice Programs. Other: None. The purpose of the Standard Assurances form is to obtain the assurance/certification of each applicant for OJP funding that it will comply with the various cross-cutting regulatory and statutory requirements that apply to OJP grantees, and to set out in one easy-to-reference document those requirements that most frequently impact OJP grantees.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* Total of 8,250 respondents estimated, at 20 minutes each.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden associated with this information is 2,750.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Planning and Policy Staff, Justice Management Division, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: August 26, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9-20956 Filed 8-28-09; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF LABOR**Office of the Secretary****Submission for OMB Review:
Comment Request**

August 25, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at <http://www.reginfo.gov/public/do/PRAMain> or by contacting Darrin King on 202-693-4129 (this is not a toll-free number)/e-mail: DOL_PRA_PUBLIC@dol.gov.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202-395-7316/ Fax: 202-395-5806 (these are not toll-free numbers), E-mail: OIRA_submission@omb.eop.gov within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: International Price Program (IPP) U.S. Export and Import Price Indexes.

OMB Control Number: 1220-0025.

Affected Public: Private Sector.

Total Estimated Number of

Respondents: 9,300.

Total Estimated Annual Burden

Hours: 30,646.

Total Estimated Annual Costs Burden (does not include per hour costs): \$0.

Description: The price data collected by the IPP is used to produce indexes which measure, on a monthly basis, changes in transaction prices of goods and services exported from or imported into the U.S. This published data is in turn used to deflate import and export trade statistics, deflate the foreign trade component of the GDP, determine monetary and fiscal policy, negotiate trade agreements, and determine trade and commercial policy. The respondents are establishments conducting import/export trade and receive no compensation for their participation. For additional information, see related notice published at Vol. 74 FR 27824 on June 11, 2009.

Agency: Bureau of Labor Statistics.

Type of Review: New collection

(Request for a new OMB Control Number).

Title of Collection: Data Sharing Agreement Program.

OMB Control Number: 1220-XXXX.

Affected Public: Individuals.

Total Estimated Number of

Respondents: 137.

Total Estimated Annual Burden

Hours: 557.

Total Estimated Annual Costs Burden (does not include per hour costs): \$0.

Description: An important aspect of the mission of the BLS is to disseminate to the public the maximum amount of information possible. Not all data are publicly available because of the importance of maintaining the confidentiality of BLS data. However, the BLS has opportunities available on a limited basis for eligible researchers to access confidential data for purposes of conducting valid statistical analyses that further the mission of the BLS as permitted by the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA). In order to provide access to confidential data, the BLS must determine that the researcher's project will be exclusively statistical in nature and that the researcher is eligible based on guidelines set out in CIPSEA, the Office of Management and Budget

implementation guidance on CIPSEA, and BLS policy. This information collection provides the vehicle through which the BLS will obtain the necessary details to ensure all researchers and projects comply with appropriate laws and policies. For additional information, see related notice published at Vol. 74 FR 28552 on June 16, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9-20909 Filed 8-28-09; 8:45 am]

BILLING CODE 4510-24-P

DEPARTMENT OF LABOR**Occupational Safety and Health
Administration**

[Docket No. OSHA-2009-0014]

**Hazard Communication Standard;
Extension of the Office of Management
and Budget's (OMB) Approval of
Information Collection (Paperwork)
Requirements**

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits comments concerning its proposal to extend OMB approval of the information collection requirements contained in the Hazard Communication Standard (29 CFR 1910.1200; 1915.1200; 1917.28; 1918.90; 1926.59; and 1928.21).

DATES: Comments must be submitted (postmarked, sent, or received) by October 30, 2009.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693-1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA-2009-0014, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal

business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2009–0014). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at <http://www.regulations.gov>. For further information on submitting comments see the “Public Participation” heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Jamaica Hill at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Jamaica Hill or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA’s estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act

also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The information collection requirements in the Hazard Communication Standard (“the Standard”) ensure that the hazards of chemicals produced or imported are evaluated, and that information concerning these hazards is transmitted to downstream employers and their workers. The Standard requires chemical manufacturers and importers to evaluate chemicals they produce or import to determine if they are hazardous; for those chemicals determined to be hazardous, they must develop material safety data sheets and warning labels. Employers are required to establish hazard communication programs to transmit information on the hazards of chemicals to their workers by means of labels on containers, material safety data sheets, and training programs.

Implementation of these collection of information requirements will ensure that workers understand the hazards and identities of the chemicals to which they are exposed, thereby reducing the incidence of chemically-related occupational illnesses and injuries.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency’s functions, including whether the information is useful;
- The accuracy of OSHA’s estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA proposes to extend the Office of Management and Budget’s (OMB) approval of the collection of information (paperwork) requirements necessitated by the Hazard Communication Standard (29 CFR 1910.1200; 1915.1200; 1917.28; 1918.90; 1926.59; and 1928.21). The Agency is requesting a 625,089 burden hour decrease (from 11,000,793 to 10,375,704). In the current ICR, the

Agency overestimated the number of “existing” establishments by using the number of “affected” establishments (both “new” and “existing” establishments) rather than just the number of “existing” establishments. “New” establishments have separate burden hours already included in this paperwork package. To correct this overestimation, the Agency subtracted the number of “new” establishments from the number of “affected” establishments, which results in the number of “existing” establishments.

The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of the collection of information requirements contained in the Standard.

Type of Review: Extension of a currently approved collection.

Title: The Hazard Communication Standard (29 CFR 1910.1200; 1915.1200; 1917.28; 1918.90; 1926.59; and 1928.21).

OMB Number: 1218–0072.

Affected Public: Business or other for-profits.

Number of Respondents: 2,880,308.

Frequency of Response: On occasion.

Average Time Per Response: Varies from 12 seconds for establishments to label an in-plant container to 8 hours for manufacturers or importers to conduct a hazard determination.

Estimated Total Burden Hours: 10,375,704.

Estimated Cost (Operation and Maintenance): \$1,750,460.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2009–0014). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a

significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693-2350 (TTY (877) 889-5627).

Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <http://www.regulations.gov> Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Jordan Barab, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5-2007 (72 FR 31160).

Signed at Washington, DC, this 26th day of August 2009.

Jordan Barab,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E9-20908 Filed 8-28-09; 8:45 am]

BILLING CODE 4510-26-P

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

[OMB Control No.—3440-NEW]

Office of the Chief Human Capital Officer; Information Collection; Ancestry and Ethnicity Data Elements; Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Director of National Intelligence (ODNI).

ACTION: Information Collection Activities: Proposed Collection; Comment Request—30-Day Comment Period.

SUMMARY: As there were no comments received during the 60-day comment period announced in the **Federal Register**, Vol. 74, No. 89, dated May 11, 2009 and ending July 10, 2009, in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the ODNI again invites the general public and Federal agencies to comment on the standard data elements being reviewed under regular review procedures for use by the Intelligence Community agencies and elements, as defined by the National Security Act of 1947, as amended. The title of the standard data element set is "Ancestry and Ethnicity Data Elements", and is for the purpose of collecting ancestry and ethnicity data not otherwise captured in Standard Form (SF) 181, "Ethnicity and Race Identification". Data collected, obtained by responding to three questions, will assist the Intelligence Community in recruiting and retaining employees of various national, sub-national, cultural and ethnic backgrounds important to the Intelligence Community's mission. Once the standard data elements are approved, each Federal agency and element of the Intelligence Community may make the form available to every Intelligence Community job applicant to voluntarily report this information and data through use of a paper form or other agency information collection process. Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected. These data elements can be viewed on the Web site <http://www.intelligence.gov>. Click on Careers, A Place For You, which will direct you to <http://www.intelligence.gov/3place.shtml>. Click on the Federal Register—Data Elements link.

DATES: Comments must be submitted on or before September 30, 2009.

FOR FURTHER INFORMATION CONTACT: The Office of the Chief Human Capital Officer, ODNI, Washington, DC 20511, 703-275-3369. Please cite OMB Control No. 3440-NEW, Ancestry and Ethnicity Data Elements. The form can be downloaded from <http://www.intelligence.gov> as noted above.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden via <http://www.regulations.gov>—a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type a key term in the information collection title such as "Ancestry and Ethnicity" in quotes in the Comment or Submission search box, click Go, and follow the instructions for submitting comments. Comments received by the date specified above will be included as part of the official record.

SUPPLEMENTARY INFORMATION:

A. Purpose—This request concerns a new information collection vehicle and is for the purpose of collecting ancestry and ethnicity data not otherwise captured in Standard Form (SF) 181, "Ethnicity and Race Identification".

Data collected, obtained by responding to three questions, will assist the Intelligence Community in recruiting and retaining employees of various national, sub-national, cultural and ethnic backgrounds important to the Intelligence Community's mission.

B. Annual Reporting Burden

Respondents: 50,000.

Responses per Respondent: 3.

Hours per Response: 1 minute.

Total Burden Hours: 3 minutes.

Obtaining Copies of Proposals:

Requesters may obtain a copy of the information collection documents from the Office of the Chief Human Capital Officer, ODNI, at Washington, DC 20511, or call 703-275-3369. Please cite Ancestry and Ethnicity Data Elements in all correspondence.

Deatri L. Brewer,

DNI PRA Clearance Officer.

[FR Doc. E9-21003 Filed 8-28-09; 8:45 am]

BILLING CODE 3910-A7-P

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The review and evaluation may also include assessment of the progress of awarded proposals. The majority of these meetings will take

place at NSF, 4201 Wilson Blvd., Arlington, Virginia 22230.

These meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(b)(4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will not be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that includes the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Web site: <http://www.nsf.gov/events/advisory.jsp>. This information may also be requested by telephoning 703/292-8180.

Dated: August 26, 2009.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9-20892 Filed 8-28-09; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2009-0380]

Office of New Reactors; Interim Staff Guidance on Ensuring Hazard-Consistent Seismic Input for Site Response and Soil Structure Interaction Analyses

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Solicitation of public comment.

SUMMARY: The NRC staff is soliciting public comment on its Proposed Interim Staff Guidance (ISG) DC/COL-ISG-017 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML092230543). This ISG supplements the guidance provided to the NRC staff in Sections 2.5 and 3.7 of NUREG-0800, "Standard Review Plan (SRP) for the Review of Safety Analysis Reports for Nuclear Power Plants," March 2007, and DC/COL-ISG-01, "Interim Staff Guidance on Seismic Issues Associated with High Frequency Ground Motion in Design Certification and Combined License Applications,"

issued May 19, 2008 (ADAMS Accession No. ML081400293). The NRC staff issues DC/COL-ISGs to facilitate timely implementation of current staff guidance and to facilitate activities associated with review of applications for design certifications and combined licenses by the Office of New Reactors. The NRC staff intends to incorporate the final approved DC/COL-ISG-017 into the next revision of SRP Sections 2.5 and 3.7 and Regulatory Guide 1.206, "Combined License Applications for Nuclear Power Plants (LWR Edition)," June 2007.

DATES: Comments must be filed no later than 30 days from the date of publication of this notice in the **Federal Register**. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC-2009-0380 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site *Regulations.gov*. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2009-0380. Address questions about NRC dockets to Carol Gallagher 301-492-3668; e-mail Carol.Gallagher@nrc.gov.

Mail comments to: Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Division of Administrative Services, Office of Administration, Mail Stop: TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by fax to RDB at (301) 492-3446.

The NRC ADAMS provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic

Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail at pdr.resource@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Mr. William F. Burton, Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC, 20555-0001; telephone 301-415-6332 or e-mail at william.burton@nrc.gov.

SUPPLEMENTARY INFORMATION: The agency posts its issued staff guidance in the agency external Web page (<http://www.nrc.gov/reading-rm/doc-collections/isc/>).

The NRC staff is issuing this notice to solicit public comments on the proposed DC/COL-ISG-017. After the NRC staff considers any public comments, it will make a determination regarding the proposed DC/COL-ISG-017.

Dated at Rockville, Maryland, this 25th day of August 2009.

For the Nuclear Regulatory Commission,

William F. Burton,

Branch Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E9-20916 Filed 8-28-09; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2008-0252; Docket No. 052-00011]

Notice of Issuance of Early Site Permit and Limited Work Authorization for the Vogtle Electric Generating Plant ESP Site

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance of Early Site Permit and Limited Work Authorization.

FOR FURTHER INFORMATION CONTACT: Christian Araguas, Project Manager, AP1000 Projects Branch, Division of New Reactor Licensing, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone: (301) 415-3637; e-mail: christian.araguas@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.106, the Nuclear Regulatory Commission (NRC) is providing notice of the issuance of Early Site Permit (ESP) ESP-004 to Southern Nuclear Operating Company (SNC), Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia, an incorporated municipality in the State of Georgia acting by and through its Board of Water, Light and Sinking Fund Commissioners, for approval of a site located in Burke County, Georgia, 26 miles southeast of Augusta, Georgia for two nuclear power reactors; this action is separate from the filing of an application for a construction permit or combined license for such a facility. The NRC has found that the application for an early site permit (ESP), and accompanying limited work authorization (LWA), filed by Southern Nuclear Operating Company (SNC), on behalf of itself and the other four entities named above, complies with the applicable requirements of the Atomic Energy Act of 1954, as amended, and the applicable rules and regulations of the Commission. All required notifications to other agencies or bodies have been duly made. There is reasonable assurance that the permit holders will comply with the regulations in 10 CFR Chapter I and the health and safety of the public will not be endangered. There is reasonable assurance that the site is in conformity with the provisions of the Act and the Commission's regulations. SNC is technically qualified to engage in the activities authorized. Issuance of the ESP will not be inimical to the common defense and security or to the health and safety of the public. Issuance of the LWA will provide reasonable assurance of adequate protection to public health and safety and will not be inimical to the common defense and security. The proposed complete and integrated emergency plans are in accordance with the applicable standards of 10 CFR 50.47, and the requirements of Appendix E to 10 CFR Part 50, and provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. The proposed inspections, tests, analyses and acceptance criteria, including those on emergency planning, are necessary and sufficient, within the scope of the ESP and LWA, to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of the Act, and the

Commission's regulations. The issuance of this ESP, subject to the Environmental Protection Plan (EPP) and the conditions for the protection of the environment set forth in the permit, is in accordance with the National Environmental Policy Act of 1969, as amended, and with the applicable sections of 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," as referenced by Subpart A, "Early Site Permits," of 10 CFR Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," and all applicable requirements therein have been satisfied.

Accordingly, this early site permit was issued on August 26, 2009, and is effective immediately.

II. Further Information

The NRC has prepared a Safety Evaluation Report (SER) and Final Environmental Impact Statement (FEIS) that document the information that was reviewed and NRC's conclusion. In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," details with respect to this action, including the SER and accompanying documentation included in the early site permit package, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, persons can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

ML092260348 NUREG-1923, "Safety Evaluation Report for an Early Site Permit (ESP) at the Vogtle Electric Generating Plant (VEGP) ESP Site"
ML082260190 NUREG-1872, "Final Environmental Impact Statement for an Early Site Permit (ESP) at the Vogtle Electric Generating Plant Site."
ML082550040 Errata to NUREG-1872, "Final Environmental Impact Statement for an Early Site Permit (ESP) at the Vogtle Electric Generating Plant Site." (Errata)
ML091550858 VEGP Early Site Permit Application—Revision 5

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room (PDR) Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov.

These documents may also be viewed electronically on the public computers

located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 26th day of August, 2009.

For the Nuclear Regulatory Commission.

Eileen M. McKenna,

Acting Chief, AP1000 Projects Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E9-20915 Filed 8-28-09; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket No. CP2009-62; Order No. 289]

New Competitive Postal Product

AGENCY: Postal Regulatory Commission.
ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add an Inbound Direct Entry Contract with Foreign Postal Administrations contract to the Competitive Product List. This notice addresses procedural steps associated with this filing.

DATES: Comments are due September 2, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202-789-6820 and stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION:

- I. Introduction
- II. Notice of Filing
- III. Ordering Paragraphs

I. Introduction

On August 21, 2009, the Postal Service filed a notice, pursuant to 39 U.S.C. 3633 and 39 CFR 3015.5, announcing that it has entered into an additional Inbound Direct Entry Contract (IDE), which it states fits within the previously established Inbound Direct Entry Contracts.¹ The Postal Service states that the instant contract is functionally equivalent to previously submitted IDE contracts and is supported by Governors' Decision 08-6 filed in Docket No. MC2008-6.² *Id.* at

¹ Notice of United States Postal Service of Filing Functionally Equivalent Inbound Direct Entry Contracts Negotiated Service Agreement, August 21, 2009 (Notice).

² See Docket No. MC2008-6, Decision of the Governors of the United States Postal Service on the

1–2. In Order No. 105, the Commission approved the individual IDE contracts in MC2008–6 as functionally equivalent and added the contracts to the Competitive Product List as one product under the IDE classification.³

The instant contract. The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. The contract is with New Zealand Post Limited (NZP), the public postal administration for New Zealand.⁴ The contract term is one year from the effective date and may be automatically renewed for further periods unless the parties agree otherwise. Notice at 3. The Postal Service will notify the customer of the effective date of the contract within 30 days after receiving all regulatory approvals. *Id.*, Attachment 2, at 10, Article 19.

In support of its Notice, the Postal Service filed four attachments as follows:

1. *Attachment 1*—an application for non-public treatment of materials to maintain the contract and supporting documents under seal;

2. *Attachment 2*—a redacted copy of the contract;

3. *Attachment 3*—a certified statement required by 39 CFR 3015.5(c)(2); and

4. *Attachment 4*—a redacted copy of Governors' Decision No. 08–6 which establishes prices and classifications for IDE contracts.

Functional equivalency. The Postal Service asserts that the instant IDE contract is functionally equivalent to IDE contracts previously submitted because it shares similar cost and market characteristics and therefore, the contracts should be classified as a single product. *Id.* at 3–4.⁵ Further, it contends that the contract fits within the Mail Classification Schedule language for IDE contracts included with Governors' Decision 08–6. *Id.* at 2.

Establishment of Prices and Classifications for Inbound Direct Entry Contracts with Foreign Postal Administrations (Governors' Decision No. 08–6), May 6, 2008.

³ See Docket Nos. MC2008–6, CP2008–14 and CP2008–15, Order Concerning Prices Under Inbound Direct Entry Contract With Certain Foreign Postal Administrations, September 4, 2008, at 8 (Order No. 105).

⁴ More specifically, NZP is responsible for New Zealand's compliance with international obligations, such as those relative to Express Mail Service (EMS). *Compare with* Notice, Attachment 2 at 3, Article 6(3) (EMS and Air Parcels may not be commingled in sacks containing items under this Agreement).

⁵ The IDE service allows the Postal Service to provide foreign postal administrations with the ability to ship sacks of parcels that are pre-labeled for direct entry into the Postal Service's mail stream in exchange for applicable domestic postage plus a sack handling fee.

In addition, the Postal Service contends that the contract is in accordance with Order No. 105, which established the individual IDE contracts in Docket Nos. CP2008–14 and CP2008–15 as functionally equivalent and added the contracts to the competitive product list as one product under the IDE classification.⁶ It further asserts that the “instant IDE Contract is virtually identical to that in Docket No. CP2009–41,” except for differences relating to the term, confidentiality, and payment account methods. *Id.* at 3–4. The Postal Service maintains that the differences do not affect the fundamental service being offered or the essential structure of the contracts. *Id.* at 4.

Baseline treatment. The Postal Service requests that the instant contract be considered the baseline contract for future functional equivalency comparisons because future IDE contracts “are likely to resemble this contract in form and substance * * *” *Id.* at 2. The Postal Service has made a similar request in a recent filing.⁷ The matter is pending before the Commission on a request for clarification filed by the Postal Service.⁸ The Commission intends to address the issue in that proceeding in a subsequent order.

II. Notice of Filing

The Commission establishes Docket No. CP2009–62 for consideration of the matters related to the contract identified in the Postal Service's Notice.

Interested persons may submit comments on whether the instant contract is consistent with the policies of 39 U.S.C. 3632, 3633, or 3642. Comments are due no later than September 2, 2009.

The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Paul L. Harrington to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

⁶ See Order No. 105, at 8.

⁷ Docket No. C2009–50, Notice of the United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 1 Negotiated Service Agreement, July 15, 2009; see also Docket No. C2009–58, Notice of United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 1 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, August 7, 2009.

⁸ Docket No. CP2009–50, United States Postal Service Response to Order No. 262 Concerning Termination Date of Additional Global Expedited Package Services 1 Negotiated Service Agreement and Request for Clarification, July 30, 2009.

1. The Commission establishes Docket No. CP2009–62 for consideration of the issues raised in this docket.

2. Comments by interested persons in these proceedings are due no later than September 2, 2009.

3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

Issued August 25, 2009.

By the Commission.

Judith M. Grady,

Acting Secretary.

[FR Doc. E9–20955 Filed 8–28–09; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2009–40 and CP2009–61; Order No. 288]

Parcel Select & Parcel Return Service

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Parcel Select & Parcel Return Service Contract 2 to the Competitive Product List. The Postal Service has also filed a related contract. This notice addresses procedural steps associated with these filings.

DATES: Comments are due September 2, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6829 or stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION:

- I. Introduction
- II. Notice of Filings
- III. Ordering Paragraphs

I. Introduction

On August 21, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Parcel Select & Parcel Return Service Contract 2 to the Competitive Product List.¹ The Postal

¹ Request of the United States Postal Service to Add Parcel Select & Parcel Return Service Contract 2 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, August 21, 2009 (Request).

Service asserts that Parcel Select & Parcel Return Service Contract 2 is a competitive product "not of general applicability" within the meaning of 39 U.S.C. 3632(b)(3). The Request has been assigned Docket No. MC2009-40.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2009-61.

Request. The Request includes (1) a redacted version of the Governors' Decision authorizing the new product; (2) a redacted version of the contract; (3) requested changes in the Mail Classification Schedule product list; (4) a Statement of Supporting Justification as required by 39 CFR 3020.32; (5) a certification of compliance with 39 U.S.C. 3633(a); and (6) an application for the non-public treatment of materials.² Substantively, the Request seeks to add Parcel Select & Parcel Return Service Contract 2 to the Competitive Product List. *Id.* at 1-2.

II. Notice of Filings

The Commission establishes Docket Nos. MC2009-40 and CP2009-61 for consideration of the Request pertaining to the proposed Parcel Select & Parcel Return Service Contract 2 product and the related contract, respectively. In keeping with practice, these dockets are addressed on a consolidated basis for purposes of this Order; however, future filings should be made in the specific docket to which issues being addressed pertain.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015 and 39 CFR 3020 subpart B. Comments are due no later than September 2, 2009. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Paul L. Harrington to serve as Public Representative in these dockets.

III. Supplemental Information

Pursuant to 39 CFR 3015.6, the Commission requests the Postal Service

² Attachment A to the Request is a redacted version of the Governors' Decision authorizing the new product; Attachment B to the Request is the redacted version of the contract. Attachment C shows the requested changes to the Mail Classification Schedule product list. Attachment D provides a statement of supporting justification for this Request. Attachment E provides the certification of compliance with 39 U.S.C. 3633(a). Attachment F is the Postal Service's Application for the treatment of Non-Public materials.

to provide the following supplemental information by August 31, 2009:

1. In the Postal Service's Application for Non-Public Treatment of Materials, section (3), the Postal Service states: "However, in a limited number of cases, narrative passages or notes were redacted in their entirety due to the practical difficulties of redacting particular words or numbers within the text as presented in a spreadsheet format." Request, Attachment F, at 3. In accordance with 39 CFR 3007.10(c), please indicate the number of lines or number of pages removed at each redaction; and

2. The cost coverage in the Governors' Decision differs from the calculated cost coverage in the accompanying spreadsheets filed under seal. Please explain this discrepancy.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2009-40 and CP2009-61 for consideration of the matter raised in each docket.

2. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. The Postal Service is to provide the information requested in section III of this Order no later than August 31, 2009.

4. Comments by interested persons in these proceedings are due no later than September 2, 2009.

5. The Secretary shall arrange for publication of this order in the **Federal Register**.

Issued: August 25, 2009.

By the Commission.

Judith M. Grady,

Acting Secretary.

[FR Doc. E9-20934 Filed 8-28-09; 8:45 am]

BILLING CODE 7710-FW-P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting; Board Votes To Close September 2, 2009, Meeting

At its closed session meeting on August 4, 2009, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting to be held on September 2, 2009, in Washington, DC via teleconference. The Board determined that no earlier public notice was possible.

Items Considered

1. Financial Matters.
2. Strategic Issues.
3. Pricing.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—discussion of prior agenda items and Board Governance.

General Counsel Certification

The General Counsel of the United States Postal Service has certified that the meeting is properly closed under the Government in the Sunshine Act.

Contact Person for More Information

Requests for information about the meeting should be addressed to the Secretary of the Board, Julie S. Moore, at (202) 268-4800.

Julie S. Moore,

Secretary.

[FR Doc. E9-20952 Filed 8-27-09; 11:15 am]

BILLING CODE 7710-12-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11851 and #11852]

Kentucky Disaster #KY-00028

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Kentucky (FEMA-1855-DR), dated 08/24/2009. *Incident:* Severe Storms, Straight-line Winds, and Flooding. *Incident Period:* 08/04/2009. *Effective Date:* 08/24/2009. *Physical Loan Application Deadline Date:* 10/23/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 05/24/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT:

A. ESCOBAR, OFFICE OF DISASTER ASSISTANCE, U.S. SMALL BUSINESS ADMINISTRATION, 409 3RD STREET, SW., SUITE 6050, WASHINGTON, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/24/2009, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Jefferson, Trimble.

The Interest Rates are:

	Percent
<i>Other (Including Non-Profit Organizations) With Credit Available Elsewhere</i>	4.500
<i>Businesses And Non-Profit Organizations Without Credit Available Elsewhere</i>	4.000

The number assigned to this disaster for physical damage is 11851B and for economic injury is 11852B

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9-20984 Filed 8-28-09; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

Audit and Financial Management Advisory (AFMAC)

AGENCY: U.S. Small Business Administration.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for the next meeting of the Audit and Financial Management Advisory (AFMAC). The meeting will be open to the public.

DATES: The meeting will be held on September 22, 2009 from 1 p.m. to approximately 4:30 p.m. Eastern Daylight Time.

ADDRESSES: The meeting will be held at the U.S. Small Business Administration, 409 3rd Street, SW., Office of the Chief Financial Officer Conference Room, 6th Floor, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the AFMAC. The AFMAC is tasked with providing recommendation and advice regarding the Agency's financial management, including the financial reporting process, systems of internal controls, audit process and process for monitoring compliance with relevant laws and regulations.

The purpose of the meeting is to discuss the SBA's Financial Reporting, Audit Findings to Date, Recovery Act Implementation, FMFIA/A-123, Emerging Issues/Changes, Agency

Financial Report and Performance Management Update.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public, however advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the AFMAC must contact Jonathan Carver, by fax or e-mail, in order to be placed on the agenda. Jonathan Carver, Chief Financial Officer, 409 3rd Street, SW., 6th Floor, Washington, DC 20416, phone: (202) 205-6449, fax: (202) 205-6969, e-mail: Jonathan.Carver@sba.gov.

Additionally, if you need accommodations because of a disability or require additional information, please contact Jeff Brown at (202) 205-6117, e-mail: Jeffrey.Brown@sba.gov, SBA, Office of Chief Financial Officer, 409 3rd Street, SW., Washington, DC 20416.

For more information, please visit our Web site at <http://www.sba.gov/aboutsba/sbaprograms/cfo/index.html>.

Dated: August 24, 2009.

Meaghan Burdick,

White House Liaison.

[FR Doc. E9-20886 Filed 8-28-09; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

National Women's Business Council

AGENCY: U.S. Small Business Administration.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for the next meeting of the National Women's Business Council (NWBC). The meeting will be open to the public.

DATES: The meeting will be held on September 29, 2009 from approximately 2 p.m. to 5 p.m. EST.

ADDRESSES: The meeting will be held at the U.S. Small Business Administration, 409 Third Street, SW., Eisenhower Conference Room, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the National Women's Business Council. The National Women's Business Council is tasked with providing policy recommendations on issues of importance to women business owners to the President, Congress, and the SBA Administrator.

The purpose of the meeting is to introduce the NWBC's agenda and action items for fiscal year 2010

included but not limited to procurement, access to capital, access to training and technical assistance, and affordable health care. The topics to be discussed will include: 2010 projects and upcoming October Town Hall Meeting in New Orleans, LA.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public however advance notice of attendance is requested. Anyone wishing to attend or make a presentation to the NWBC must contact Katherine Stanley by Friday, September 25, 2009, by fax or e-mail in order to be placed on the agenda. Katherine Stanley, Operations Manager, NWBC, 409 Third Street, SW., Suite 210, Washington, DC 20416, telephone 202-205-6695, fax 202-205-6825, e-mail Katherine.stanley@nwbc.gov.

Additionally, if you need accommodations because of a disability or require additional information, please contact Katherine Stanley at the above information.

For more information, please visit our Web site at www.nwbc.gov.

Dated: August 20, 2009.

Meaghan K. Burdick,

SBA Committee Management Officer.

[FR Doc. E9-20887 Filed 8-28-09; 8:45 am]

BILLING CODE 8025-01-P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available

From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension:

Form 18, OMB Control No. 3235-0121, SEC File No. 270-105.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form 18 (17 CFR 249.218) is used for the registration of securities of any foreign government or political subdivision on a U.S. exchange. The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of the information. The information provided

is mandatory and all information is made available to the public upon request. Form 18 takes approximately 8 hours per response and is filed by approximately 5 respondents for a total of 40 annual burden hours. It is estimated that 100% of the total reporting burden is prepared by the company.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to Shagufta_Ahmed@omb.eop.gov; and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 24, 2009.

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9-20867 Filed 8-28-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28851; File No. 812-13504]

OOK, Inc., et al.; Notice of Application

August 25, 2009.

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the “Act”) for an exemption from sections 2(a)(32), 5(a)(1), and 22(d) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(f) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit (a) certain open-end management investment companies and their series, to issue shares (“Fund Shares”) that can be redeemed only in large aggregations

(“Creation Unit Aggregations”); (b) secondary market transactions in Fund Shares to occur at negotiated prices; (c) certain affiliated persons of the investment companies or series to deposit securities into, and receive securities from, the investment companies or series in connection with the purchase and redemption of Creation Unit Aggregations; and (d) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the investment companies or series to acquire Fund Shares.

APPLICANTS: OOK, Inc. (“OOK”), TXF Funds, Inc. (“TXF”), OOK Advisors, LLC (“Advisor”), and ALPS Distributors, Inc. (“Distributor”).

FLING DATES: The application was filed on March 5, 2008, and amended on March 26, 2008, May 1, 2008, January 7, 2009, January 28, 2009, and June 23, 2009. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 16, 2009, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer’s interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; Applicants: OOK, Inc., TXF Funds, Inc., and OOK Advisors, LLC, One Leadership Square, Suite 200, 211 North Robinson, Oklahoma City, OK 73102; ALPS Distributors, Inc., 1290 Broadway, Suite 1100, Denver, CO 80203.

FOR FURTHER INFORMATION CONTACT: Steven I. Amchan, Senior Counsel at (202) 551-6826, or Julia Kim Gilmer, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application

may be obtained via the Commission’s Web site by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants’ Representations

1. Each of OOK and TXF is registered as an open-end management investment company and is organized as a Maryland corporation. TXF Large Companies ETF is the initial fund of TXF (collectively with OOK, the “Initial Funds”). Applicants may offer additional registered open-end investment companies in the future as well as additional series of TXF and series of any future open-end investment companies registered under the Act, which will be advised by the Advisor or an entity controlling, controlled by, or under common control with the Advisor (“Future Funds” and together with the Initial Funds, the “Funds”).¹

2. The Advisor will serve as the investment adviser to the Initial Funds. The Advisor is registered as an investment adviser under the Investment Advisers Act of 1940, as amended (the “Advisers Act”). In the future, the Advisor may enter into sub-advisory agreements with one or more additional investment advisers to act as sub-advisors to particular Funds (“Sub-Advisors”). Any Sub-Advisor will be registered under the Advisers Act. The Distributor is a broker-dealer registered under the Securities Exchange Act of 1934 (the “Exchange Act”) and will act as the underwriter and distributor for the Creation Unit Aggregations of Fund Shares.

3. Each Fund will hold certain securities (“Portfolio Securities”) selected to correspond, before fees and expenses, generally to the price and yield performance of a specified domestic equity securities index (each, an “Underlying Index” and collectively, “Underlying Indices”).² No entity that compiles, creates, sponsors or maintains an Underlying Index (“Index Provider”) is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Funds, of the Advisor, of

¹ All entities that currently intend to rely on the requested order have been named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

² The Underlying Indices for the Initial Funds are the SPADE® Oklahoma Index and the SPADE® Texas Index.

any Sub-Advisor to or promoter of a Fund, or of the Distributor.³

4. The investment objective of each Fund will be to seek to track the performance, before fees and expenses, of a domestic equity securities index.⁴ The value of each Fund's Underlying Index will be disseminated every 15 seconds throughout the trading day. A Fund will utilize either a replication or representative sampling strategy which will be disclosed with regard to each Fund in its prospectus ("Prospectus").⁵ A Fund using a replication strategy will invest in the Component Securities in its Underlying Index in approximately the same proportions as in the Underlying Index. In certain circumstances, such as when there are practical difficulties or substantial costs involved in holding every security in an Underlying Index or when a Component Security is less liquid, illiquid or unavailable, a Fund may use a representative sampling strategy pursuant to which it will invest in some, but not all of the Component Securities of its Underlying Index.⁶ Applicants anticipate that a Fund that utilizes a representative sampling strategy will not track the performance of its Underlying Index with the same degree of accuracy as an investment vehicle that invests in every Component Security of the Underlying Index with the same weighting as the Underlying Index. Applicants expect that each Fund will have an annual tracking error relative to the performance of its Underlying Index of less than 5 percent.

5. The Funds will issue Creation Unit Aggregations in groups of 50,000 Fund Shares. Applicants expect that the initial price of a Creation Unit Aggregation will fall in the range of

\$1,000,000 to \$2,000,000. All orders to purchase Creation Unit Aggregations must be placed with the Distributor, by or through a party that has entered into an agreement with the Distributor ("Authorized Participant"). The Distributor will be responsible for transmitting the orders to the Funds. An Authorized Participant must be either: (a) A broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation ("NSCC"), a clearing agency registered with the Commission, or (b) a participant in the Depository Trust Company ("DTC", and such participant, "DTC Participant"). Fund Shares of each Fund generally will be sold in Creation Unit Aggregations in exchange for an in-kind deposit by the purchaser of a portfolio of securities designated by the Advisor or Sub-Advisor to correspond generally to the price and yield performance of the relevant Underlying Index (the "Deposit Securities"), together with the deposit of a specified cash payment ("Balancing Amount"). The Balancing Amount is an amount equal to the difference between (a) the net asset value ("NAV") (per Creation Unit Aggregation) of a Fund and (b) the total aggregate market value (per Creation Unit Aggregation) of the Deposit Securities.⁷ Each Fund may permit a purchaser of Creation Unit Aggregations to substitute cash in lieu of depositing some or all of the Deposit Securities if the Advisor or Sub-Advisor believes such method would reduce the Fund's transaction costs or enhance the Fund's operating efficiency.⁸

6. An investor purchasing or redeeming a Creation Unit Aggregation from a Fund will be charged a fee ("Transaction Fee") to prevent the dilution of the interests of the remaining shareholders resulting from costs in connection with the purchase or redemption of Creation Unit

⁷ Each Fund will sell and redeem Creation Units only on a "Business Day," which is any day that a Fund is required to be open under section 22(e) of the Act. Each Business Day, prior to the opening of trading on the Exchange (defined below), the list of names and the required number of shares of each security constituting the current Deposit Securities and the Balancing Amount will be made available. Any national securities exchange (as defined in section 2(a)(26) of the Act) ("Exchange") on which Fund Shares are listed will disseminate, every 15 seconds during its regular trading hours, an amount per individual Fund Share representing the sum of the estimated Balancing Amount and the current value of the Deposit Securities.

⁸ Applicants note that when a substantial rebalancing of a Fund's portfolio is required, the Advisor or Sub-Advisor might prefer to receive cash rather than stocks so that the Fund may avoid transaction costs involved in liquidating part of its portfolio to achieve the rebalancing.

Aggregations.⁹ The maximum Transaction Fees, and any variations or waivers thereof, will be fully disclosed in each Fund's Prospectus. The Distributor will be responsible for delivering the Fund's Prospectus to those persons purchasing Creation Unit Aggregations, and for maintaining records of both the orders placed and the confirmations of acceptance furnished. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Fund Shares.

7. Purchasers of Fund Shares in Creation Unit Aggregations may hold such Fund Shares or may sell such Fund Shares into the secondary market. Fund Shares will be listed and traded on an Exchange. It is expected that one or more member firms of a listing Exchange will be designated to act as a specialist or a market maker (each a "Market Maker") and maintain a market for Fund Shares trading on the listing Exchange. Prices of Fund Shares trading on an Exchange will be based on the current bid/offer market. Fund Shares sold in the secondary market will be subject to customary brokerage commissions and charges.

8. Applicants expect that purchasers of Creation Unit Aggregations will include institutional investors and arbitrageurs (which could include institutional investors). A Market Maker, in providing a fair and orderly secondary market for the Fund Shares, also may purchase Creation Unit Aggregations for use in its market-making activities. Applicants expect that secondary market purchasers of Fund Shares will include both institutional investors and retail investors.¹⁰ Applicants expect that the price at which Fund Shares trade will be disciplined by arbitrage opportunities created by the option to continually purchase or redeem Creation Unit Aggregations, which should ensure that Fund Shares will not trade at a material discount or premium.

9. Fund Shares will not be individually redeemable, and owners of Fund Shares may acquire those Fund

⁹ Where a Fund permits a purchaser to substitute cash in lieu of depositing a portion of the requisite Deposit Securities, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Securities, including operational processing and brokerage costs, and part or all of the spread between the expected bid and the offer side of the market relating to such Deposit Securities.

¹⁰ Fund Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Fund Shares. DTC or DTC Participants will maintain records reflecting beneficial owners of Fund Shares.

³ The Index Provider to the Initial Funds is ISBC LLC, sometimes referred to as ISBC/SPADEF® Indexes.

⁴ Applicants represent that each Fund will invest at least 90% of its assets in the component securities that comprise its Underlying Index ("Component Securities"). Each Fund also may invest up to 10% of its assets in cash and cash equivalents, such as money market instruments or other types of investments not included in its Underlying Index, but which the Advisor or Sub-Advisor believes will help the Fund track its Underlying Index.

⁵ All representations and conditions contained in the application that require a Fund to disclose particular information in the Fund's Prospectus and/or annual report shall be effective with respect to the Fund until the time that the Fund complies with the disclosure requirements adopted by the Commission in Investment Company Act Release No. 28584 (Jan. 13, 2009).

⁶ Under the representative sampling strategy, the Advisor or the Sub-Advisor will seek to construct a Fund's portfolio so that its market capitalization, industry weightings, fundamental investment characteristics (such as return variability, earnings valuation and yield) and liquidity measures perform like those of the Underlying Index.

Shares from the Fund, or tender such Fund Shares for redemption to the Fund, in Creation Unit Aggregations only. To redeem, an investor will have to accumulate enough Fund Shares to constitute a Creation Unit Aggregation. Redemption orders must be placed by or through an Authorized Participant. An investor redeeming a Creation Unit Aggregation generally will receive (a) Portfolio Securities designated to be delivered for Creation Unit Aggregation redemptions ("Fund Securities") on the date that the request for redemption is made¹¹ and (b) a "Cash Redemption Payment," consisting of an amount calculated in the same manner as the Balancing Amount, although the actual amount of the Cash Redemption Payment may differ if the Fund Securities are not identical to the Deposit Securities on that day. An investor may receive the cash equivalent of a Fund Security in certain circumstances, such as if the investor is constrained from effecting transactions in the security by regulation or policy.

10. No Fund will be marketed or otherwise held out as a traditional open-end investment company or a mutual fund. Instead, each Fund will be marketed as an "exchange-traded fund," an "ETF," an "investment company," or a "fund." All marketing materials that describe the features or method of obtaining, buying or selling Creation Unit Aggregations or Fund Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Fund Shares are not individually redeemable and that the owners of Fund Shares may purchase or redeem Fund Shares from the Fund in Creation Unit Aggregations only. The same approach will be followed in the statement of additional information ("SAI"), shareholder reports and investor educational materials issued or circulated in connection with the Fund Shares. Each Fund will provide copies of its annual and semi-annual shareholder reports to DTC Participants for distribution to shareholders.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption

¹¹ As a general matter, the Deposit Securities and Fund Securities will correspond pro rata to the securities held by each Fund, but Fund Securities received on redemption may not always be identical to Deposit Securities deposited in connection with the purchase of Creation Units for the same day. The Funds will comply with the federal securities laws in accepting Deposit Securities and satisfying redemptions with Fund Securities, including that the Deposit Securities and Fund Securities are sold in transactions that would be exempt from registration under the Securities Act.

from sections 2(a)(32), 5(a)(1), and 22(d) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(f) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general purposes of the Act. Section 12(d)(1)(f) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Fund Shares will not be individually redeemable, applicants request an order that would permit the Funds to register as open-end management investment companies and issue Fund Shares that are redeemable in Creation Unit Aggregations only. Applicants state that investors may purchase Fund Shares in Creation Unit Aggregations and redeem Creation Unit Aggregations from each Fund. Applicants state that because Creation Unit Aggregations may always be purchased and redeemed at NAV, the market price of the Fund Shares should not vary substantially from their NAV.

Section 22(d) of the Act and Rule 22c-1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c-1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Fund Shares will take place at negotiated prices, not at a current offering price described in a Fund's Prospectus, and not at a price based on NAV. Thus, purchases and sales of Fund Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c-1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c-1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Fund Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Fund Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Fund Shares does not directly involve Fund assets and will not result in dilution of an investment in Fund Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Fund Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because competitive forces will ensure that the difference between the market price of

Fund Shares and their NAV remains narrow.

Section 12(d)(1)

7. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

8. Applicants request an exemption to permit management investment companies ("Investing Management Companies") and unit investment trusts ("Investing Trusts" and, collectively with the Investing Management Companies, "Investing Funds") registered under the Act that are not sponsored or advised by the Advisor or any entity controlling, controlled by, or under common control with the Advisor and are not part of the same "group of investment companies," as defined in section 12(d)(1)(G)(ii) of the Act, as the Funds, to acquire Fund Shares beyond the limits of section 12(d)(1)(A). Investing Funds do not include the Funds. In addition, applicants seek relief to permit the Distributor and any brokers or dealers that are registered under the Exchange Act to sell Fund Shares to an Investing Fund in excess of the limits of section 12(d)(1)(B).

9. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the "Investing Fund Advisor") and may be sub-advised by one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each an "Investing Fund SubAdvisor"). Any Investing Fund Advisor or Investing Fund SubAdvisor will be registered under the Advisers Act. Each Investing Trust will be sponsored by a sponsor ("Sponsor").

10. Applicants submit that the proposed conditions to the requested relief adequately address the concerns

underlying the limits in sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

11. Applicants believe that neither the Investing Funds nor an Investing Fund Affiliate would be able to exert undue influence over the Funds.¹² To limit the control that an Investing Fund may have over a Fund, applicants propose a condition prohibiting an Investing Fund Advisor or a Sponsor, any person controlling, controlled by, or under common control with an Investing Fund Advisor or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by an Investing Fund Advisor or Sponsor, or any person controlling, controlled by, or under common control with an Investing Fund Advisor or Sponsor ("Investing Fund's Advisory Group") from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Investing Fund SubAdvisor, any person controlling, controlled by or under common control with the Investing Fund SubAdvisor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Investing Fund SubAdvisor or any person controlling, controlled by or under common control with the Investing Fund SubAdvisor ("Investing Fund's SubAdvisor Group"). Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in any offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate ("Affiliated Underwriting"). An "Underwriting

¹² An "Investing Fund Affiliate" is an Investing Fund Advisor, Investing Fund SubAdvisor, Sponsor, promoter, and principal underwriter of an Investing Fund, and any person controlling, controlled by, or under common control with any of these entities. A "Fund Affiliate" is an investment adviser, promoter, or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

Affiliate" is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Advisor, Investing Fund SubAdvisor, employee or Sponsor of an Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund Advisor, Investing Fund SubAdvisor, employee, or Sponsor is an affiliated person (except that any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

12. Applicants assert that the proposed conditions address any concerns regarding excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not "interested persons" within the meaning of section 2(a)(19) of the Act ("disinterested directors or trustees"), will find that the advisory fees charged to the Investing Management Company are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. In addition, except as provided in condition 11, an Investing Fund Advisor or a trustee ("Trustee") or Sponsor of an Investing Trust will, as applicable, waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b-1 under the Act) received by the Investing Fund Advisor or Trustee or Sponsor or an affiliated person of the Investing Fund Advisor, Trustee or Sponsor, from the Fund in connection with the investment by the Investing Fund in the Fund. Applicants state that any sales loads or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds set forth in Conduct Rule 2830 of the National Association of Securities Dealers ("NASD").¹³

13. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund may acquire securities of any investment company or company relying on sections 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except as permitted pursuant to rule 12d1-1

¹³ Any references to NASD Conduct Rule 2830 include any successor or replacement rule to NASD Conduct Rule 2830 that may be adopted by the Financial Industry Regulatory Authority.

under the Act. To ensure that Investing Funds comply with the terms and conditions of the requested relief from section 12(d)(1), any Investing Fund that intends to invest in a Fund in reliance on the requested order will enter into a Participation Agreement between the Fund and the Investing Fund requiring the Investing Fund to adhere to the terms and conditions of the requested order. The Participation Agreement also will include an acknowledgement from the Investing Fund that it may rely on the requested order only to invest in the Fund and not in any other investment company.

14. Applicants also note that a Fund may choose to reject a direct purchase of Fund Shares in Creation Unit Aggregations by an Investing Fund. To the extent that an Investing Fund purchases Fund Shares in the secondary market, a Fund would still retain its ability to reject initial purchases of Fund Shares made in reliance on the requested order by declining to enter into the Participation Agreement prior to any investment by an Investing Fund in excess of the limits of section 12(d)(1)(A).

Sections 17(a)(1) and (2) of the Act

15. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person ("second tier affiliates"), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines "affiliated person" to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities.

16. Applicants request an exemption from section 17(a) of the Act pursuant to sections 17(b) and 6(c) of the Act to permit persons to effectuate in-kind purchases and redemptions with a Fund when they are affiliated persons or second tier affiliates of the Funds solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding Fund Shares; (b) having an affiliation with a person with an ownership interest

described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more other registered investment companies (or series thereof) advised by the Advisor, or an entity controlling, controlled by, or under common control with the Advisor.

17. Applicants assert that no useful purpose would be served by prohibiting these types of affiliated persons from purchasing or redeeming Creation Unit Aggregations through "in-kind" transactions. The deposit procedures for both in-kind purchases and in-kind redemptions of Creation Unit Aggregations will be the same for all purchases and redemptions. Deposit Securities and Fund Securities will be valued in the same manner as Portfolio Securities. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for the specified affiliated persons, or second tier affiliates, of a Fund to effect a transaction detrimental to other holders of Fund Shares. Applicants also believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of a Fund.

18. Applicants also seek relief from section 17(a) to permit a Fund that is an affiliated person of an Investing Fund to sell its Fund Shares to and redeem its Fund Shares from an Investing Fund, and to engage in the accompanying in-kind transactions with the Investing Fund.¹⁴ Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by an Investing Fund for the purchase or redemption of Fund Shares directly from a Fund will be based on the NAV of the Fund.¹⁵ Applicants believe that any proposed transactions directly between the Funds and Investing Funds will be consistent with the policies of each Investing Fund. The purchase of Creation Unit Aggregations by an Investing Fund directly from a Fund will be accomplished in accordance with the investment restrictions of any such

¹⁴ Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of Fund Shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Fund Shares to an Investing Fund, may be prohibited by section 17(e)(1) of the Act. The Participation Agreement also will include this acknowledgment.

¹⁵ Applicants believe that an Investing Fund will purchase Fund Shares in the secondary market and will not purchase or redeem Creation Unit Aggregations directly from a Fund. However, the requested relief would apply to direct sales of Creation Unit Aggregations by a Fund to an Investing Fund and redemptions of those Fund Shares.

Investing Fund and will be consistent with the investment policies set forth in the Investing Fund's registration statement. The Participation Agreement will require any Investing Fund that purchases Creation Unit Aggregations directly from a Fund to represent that the purchase of Creation Unit Aggregations from a Fund by an Investing Fund will be accomplished in compliance with the investment restrictions of the Investing Fund and will be consistent with the investment policies set forth in the Investing Fund's registration statement.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:¹⁶

1. Each Fund's Prospectus will clearly disclose that, for purposes of the Act, the Fund Shares are issued by the Funds, which are registered investment companies, and the acquisition of Fund Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in a Fund beyond the limits in section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into a Participation Agreement with the Fund regarding the terms of the investment.

2. As long a Fund operates in reliance on the requested order, its Fund Shares will be listed on an Exchange.

3. The Funds will not be advertised or marketed as an open-end investment company or a mutual fund. Each Fund's Prospectus will prominently disclose that Fund Shares are not individually redeemable shares and will disclose that the owners of Fund Shares may acquire those Fund Shares from the Fund and tender those Fund Shares for redemption to the Fund in Creation Unit Aggregations only. Any advertising material that describes the purchase or sale of Creation Unit Aggregations or refers to redeemability will prominently disclose that Fund Shares are not individually redeemable and that owners of Fund Shares may acquire those Fund Shares from the Fund and tender those Fund Shares for redemption to the Fund in Creation Unit Aggregations only.

4. The Web sites maintained for the Funds, which are and will be publicly accessible at no charge, will contain the following information, on a per Fund Share basis: (a) The prior Business Day's NAV and the mid-point of the bid-ask

¹⁶ See note 5, *supra*.

spread at the time of the calculation of the NAV ("Bid/Ask Price") and a calculation of the premium or discount of the Bid/Ask Price at the time of calculation of the NAV against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

5. Each Fund's Prospectus and annual report will also include: (a) The information listed in condition 4(b), (i) in the case of the Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Fund Share basis for one, five and ten year periods (or life of the Fund), (i) the cumulative total return and the average annual total return based on NAV and Bid/Ask Price, and (ii) the cumulative total return of the relevant Underlying Index.

6. The requested relief to permit exchange traded fund ("ETF") operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based ETFs.

Section 12(d)(1) Relief

7. The members of an Investing Fund's Advisory Group will not control (individually or in the aggregate) any Fund within the meaning of section 2(a)(9) of the Act. The members of an Investing Fund's SubAdvisor Group will not control (individually or in the aggregate) any Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding Fund Shares, an Investing Fund's Advisory Group or an Investing Fund's SubAdvisor Group, each in the aggregate, becomes the holder of more than 25 percent of the Fund Shares, it will vote its Fund Shares in the same proportion as the vote of all other holders of the Fund Shares. This condition does not apply to an Investing Fund's SubAdvisor Group if the Investing Fund SubAdvisor or a person controlling, controlled by, or under common control with the Investing Fund SubAdvisor acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

8. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in a Fund to influence the terms of any services or transactions between the Investing Fund or Investing Fund Affiliate and the Fund or Fund Affiliate.

9. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to assure that the Investing Fund's Advisor and any Investing Fund SubAdvisor are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

10. Once an investment by an Investing Fund in Fund Shares exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of directors of a Fund ("Board"), including a majority of directors who are not "interested persons" within the meaning of section 2(a)(19) of the Act ("disinterested Board members"), will determine that any consideration paid by the Fund to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (b) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

11. An Investing Fund Advisor or a Trustee or Sponsor of an Investing Trust will waive fees otherwise payable to it by the Investing Management Company or Investing Trust in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by the Fund under rule 12b-1 under the Act) received from a Fund by the Investing Fund Advisor or Trustee or Sponsor, or an affiliated person of the Investing Fund Advisor, Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Advisor or Trustee or Sponsor, or an affiliated person of the Investing Fund Advisor, Trustee or Sponsor by the Fund, in connection with the investment by the Investing Management Company or Investing Trust in the Fund. Any Investing Fund SubAdvisor will waive fees otherwise payable to the Investing Fund SubAdvisor, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by

the Investing Fund SubAdvisor, or an affiliated person of the Investing Fund SubAdvisor, other than any advisory fees paid to the Investing Fund SubAdvisor or its affiliated person by a Fund, in connection with the investment by the Investing Management Company in a Fund made at the direction of the Investing Fund SubAdvisor. In the event that the Investing Fund SubAdvisor waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

12. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an Affiliated Underwriting.

13. The Board, including a majority of the disinterested Board members, will adopt procedures reasonably designed to monitor any purchase of securities by a Fund in an Affiliated Underwriting once an investment by the Investing Fund in the Fund Shares exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders.

14. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period not less than six years from the end of the fiscal year in which any purchase in an Affiliated

Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in Fund Shares exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or material upon which the Board's determinations were made.

15. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), the Investing Fund and the Fund will execute a Participation Agreement stating, without limitation, that their boards of directors or trustees and their investment advisers, and the Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Fund Shares in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list of names as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

16. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

17. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in Conduct Rule 2830 of the NASD.

18. No Fund will acquire securities of any investment company or company relying on sections 3(c)(1) or 3(c)(7) of

the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except as permitted pursuant to rule 12d1-1 under the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9-20870 Filed 8-28-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28850; File No. 812-13105]

Clough Global Allocation Fund, et al.; Notice of Application

August 24, 2009.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 19(b) of the Act and rule 19b-1 under the Act.

Summary of Application: Applicants request an order to permit certain registered closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as often as monthly in any one taxable year, and as frequently as distributions are specified by or in accordance with the terms of any outstanding preferred stock that such investment companies may issue.

Applicants: Clough Global Allocation Fund, Clough Global Equity Fund, Clough Global Opportunities Fund (collectively, the "Funds") and Clough Capital Partners, L.P. (the "Adviser").

Filing Dates: The application was filed on July 9, 2004 and amended on February 12, 2007, October 14, 2008, July 29, 2009 and August 24, 2009.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 18, 2009, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be

notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; Applicants, c/o Clough Capital Partners, L.P., One Post Office Square, 40th Floor, Boston, MA 02109, *Attention:* James E. Canty.

FOR FURTHER INFORMATION CONTACT: Keith A. Gregory, Senior Counsel, at (202) 551-6815, or Mary Kay Frech, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm>, or by calling (202) 551-8090.

Applicants' Representations

1. Each Fund is a closed-end management investment company registered under the Act.¹ Each Fund has a primary investment objective of seeking a high level of total return. The common shares issued by each Fund are listed on the NYSE Amex. Although the Funds have not issued preferred shares, each Fund is authorized to do so. Applicants believe that the shareholders of each Fund are generally conservative, dividend-sensitive investors who desire current income periodically and may favor a fixed distribution policy.

2. The Adviser is a Delaware limited partnership registered under the Investment Advisers Act of 1940 ("Advisers Act"). The Adviser serves as investment adviser to each Fund and may in the future serve as investment adviser to one or more additional Funds. Each Fund will be advised by investment advisers that are registered under the Advisers Act.

3. Applicants state that on December 13, 2006, the boards of trustees (the "Board") of each Fund, including a

¹ All existing closed-end investment companies that currently intend to rely on the requested order are named as applicants. Applicants request that any order granting the requested relief also apply to any registered closed-end investment company that in the future: (a) is advised by the Adviser (including any successor in interest) or by any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with the Adviser; and (b) complies with the terms and conditions of the application (included in "Funds"). A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

majority of the members of each Board who are not "interested persons" of the Fund as defined in section 2(a)(19) of the Act (the "Independent Trustees"), reviewed information regarding the purpose and terms of a proposed distribution policy, the likely effects of such policy on the respective Fund's long-term total return (in relation to market price and net asset value ("NAV") per common share) and the relationship between the Fund's distribution rate on its common shares under the policy and the Fund's total return (in relation to NAV per share). Applicants state that the Independent Trustees also considered what conflicts of interest the Adviser and the affiliated persons of the Adviser and each Fund might have with respect to the adoption or implementation of such policy. Applicants further state that after considering such information, the Board, including the Independent Trustees, of each Fund approved a distribution policy with respect to the Fund's common shares (the "Plan") and determined that such Plan is consistent with such Fund's investment objectives and in the best interests of such Fund's common shareholders. Prior to implementing the Plan, the Board of each Fund, including the Independent Trustees, will review the factors considered in connection with its approval of the Plan, as well as any changes in such factors since the date of its approval, and will confirm that the Plan is consistent with the Fund's investment objectives and policies and in the best interests of such Fund's common shareholders.

4. Applicants state that the purpose of each Fund's Plan is to provide to its respective common shareholders a regular, quarterly distribution that is not dependent on the timing or amount of investment income earned or capital gains realized by such Fund. Applicants represent that, under the Plans, each Fund will distribute all available investment income to shareholders, consistent with such Fund's primary investment objective of providing a high level of total returns. Applicants state that, if and when sufficient investment income is not available on a quarterly basis, each Fund will distribute long-term capital gains and/or return of capital to its shareholders to maintain the level distribution rate that has been approved by the Board. Applicants state that the minimum annual distribution rate of each Fund will be independent of such Fund's performance during any particular period but is expected to correlate with such Fund's performance over time. Applicants note that the

amount and frequency of distributions may be amended at any time by the Board of each Fund without prior notice to such Fund's shareholders. Applicants explain that if a Fund's net investment income and net realized capital gains for any year exceed the amount required to be distributed under its Plan, such Fund will at a minimum make distributions necessary to comply with the distribution requirements of subchapter M of the Internal Revenue Code of 1986 (the "Code"). Applicants state that each Plan provides that it can be amended, suspended or terminated at any time by the Board without prior notice to such Fund's shareholders.

5. Applicants state that at the December 13, 2006 meeting, each Board adopted policies and procedures under rule 38a-1 under the Act that are reasonably designed to ensure that all notices sent to the Fund's shareholders pursuant to section 19(a) of the Act, rules 19a-1 under the Act, and condition IV below ("19(a) Notices") comply with condition II below, and that all other written communications by a Fund or its agents regarding distributions under the Plan include the disclosure required by condition III below. Applicants state that the Board of each Fund also adopted policies and procedures at that meeting that require each Fund to keep records that demonstrate its compliance with all of the conditions of the requested order and that are necessary for such Fund to form the basis for, or demonstrate the calculation of, the amounts disclosed in its 19(a) Notices.

Applicants' Legal Analysis

1. Section 19(b) generally makes it unlawful for any registered investment company to make long-term capital gains distributions more than once every twelve months. Rule 19b-1 limits the number of capital gains dividends, as defined in section 852(b)(3)(C) of the Code ("distributions"), that a fund may make with respect to any one taxable year to one, plus a supplemental "clean up" distribution made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year, plus one additional capital gain dividend made in whole or in part to avoid the excise tax under section 4982 of the Code.

2. Section 6(c) provides that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent

with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants state that the one of the concerns underlying section 19(b) and rule 19b-1 is that shareholders might be unable to differentiate between regular distributions of capital gains and distributions of investment income. Applicants state, however, that rule 19a-1 effectively addresses this concern by requiring that a separate statement showing the sources of a distribution (e.g., estimated net income, net short-term capital gains, net long-term capital gains and/or return of capital) accompany any distributions (or the confirmation of the reinvestment of distributions) estimated to be sourced in part from capital gains or capital. Applicants state that the same information also is included in each Fund's annual report to shareholders and on its IRS Form 1099-DIV, which is sent to each common and preferred shareholder who received distributions during the year (including shareholders who have sold shares during the year).

4. Applicants further state that each of the Funds will make the additional disclosures required by the conditions set forth below, and each of them has adopted compliance policies and procedures in accordance with rule 38a-1 to ensure that all required 19(a) Notices and disclosures are sent to shareholders. Applicants argue that by providing the information required by section 19(a) and rule 19a-1, and by complying with the procedures adopted under each Plan and the conditions listed below, the Funds would ensure that each Fund's shareholders are provided sufficient information to understand that their periodic distributions are not tied to the Fund's net investment income (which for this purpose is the Fund's taxable income other than from capital gains) and realized capital gains to date, and may not represent yield or investment return. Applicants also state that compliance with each Fund's compliance procedures and condition III set forth below will ensure that prospective shareholders and third parties are provided with the same information. Accordingly, applicants assert that continuing to subject the Funds to section 19(b) and rule 19b-1 would afford shareholders no extra protection.

5. Applicants note that section 19(b) and rule 19b-1 also were intended to prevent certain improper sales practices, including, in particular, the practice of urging an investor to purchase shares of a fund on the basis of an upcoming capital gains dividend ("selling the dividend"), where the dividend would

result in an immediate corresponding reduction in NAV and would be in effect a taxable return of the investor's capital. Applicants assert that the "selling the dividend" concern should not apply to closed-end investment companies, such as the Funds, which do not continuously distribute shares. According to applicants, if the underlying concern extends to secondary market purchases of shares of closed-end funds that are subject to a large upcoming capital gains dividend, adoption of a periodic distribution plan actually helps minimize the concern by avoiding, through periodic distributions, any buildup of large end-of-the-year distributions.

6. Applicants also note that common shares of closed-end funds that invest primarily in equity securities often trade in the marketplace at a discount to their NAV. Applicants believe that this discount may be reduced for closed-end funds that pay relatively frequent dividends on their common shares at a consistent rate, whether or not those dividends contain an element of long-term capital gain.

7. Applicants assert that the application of rule 19b-1 to a Plan actually could have an undesirable influence on portfolio management decisions. Applicants state that, in the absence of an exemption from rule 19b-1, the adoption of a periodic distribution plan imposes pressure on management (i) not to realize any net long-term capital gains until the point in the year that the fund can pay all of its remaining distributions in accordance with rule 19b-1, and (ii) not to realize any long-term capital gains during any particular year in excess of the amount of the aggregate pay-out for the year (since as a practical matter excess gains must be distributed and accordingly would not be available to satisfy pay-out requirements in following years), notwithstanding that purely investment considerations might favor realization of long-term gains at different times or in different amounts. Applicants thus assert that the limitation on the number of capital gain distributions that a fund may make with respect to any one year imposed by rule 19b-1, may prevent the efficient operation of a periodic distribution plan whenever that fund's realized net long-term capital gains in any year exceed the total of the periodic distributions that may include such capital gains under the rule.

8. Applicants also assert that rule 19b-1 may cause fixed regular periodic distributions under a periodic distribution plan to be funded with

returns of capital² (to the extent net investment income and realized short-term capital gains are insufficient to fund the distribution), even though realized net long-term capital gains otherwise could be available. To distribute all of a fund's long-term capital gains within the limits in rule 19b-1, a fund may be required to make total distributions in excess of the annual amount called for by its periodic distribution plan, or to retain and pay taxes on the excess amount. Applicants thus assert that the requested order would minimize these effects of rule 19b-1 by enabling the Funds to realize long-term capital gains as often as investment considerations dictate without fear of violating rule 19b-1.

9. Applicants state that Revenue Ruling 89-81 under the Code requires that a fund that has both common stock and preferred stock outstanding designate the types of income, e.g., investment income and capital gains, in the same proportion as the total distributions distributed to each class for the tax year. To satisfy the proportionate designation requirements of Revenue Ruling 89-81, whenever a fund has realized a long-term capital gain with respect to a given tax year, the fund must designate the required proportionate share of such capital gain to be included in common and preferred stock dividends. Applicants state that although rule 19b-1 allows a fund some flexibility with respect to the frequency of capital gains distributions, a fund might use all of the exceptions available under the rule for a tax year and still need to distribute additional capital gains allocated to the preferred stock to comply with Revenue Ruling 89-81.

10. Applicants assert that the potential abuses addressed by section 19(b) and rule 19b-1 do not arise with respect to preferred stock issued by a closed-end fund. Applicants assert that such distributions are fixed or determined in periodic auctions by reference to short-term interest rates rather than by reference to performance of the issuer and Revenue Ruling 89-81 determines the proportion of such distributions that are comprised of the long-term capital gains.

11. Applicants also submit that the "selling the dividend" concern is not applicable to preferred stock, which entitles a holder to no more than a periodic dividend at a fixed rate or the rate determined by the market, and, like a debt security, is priced based upon its liquidation value, credit quality, and

frequency of payment. Applicants state that investors buy preferred shares for the purpose of receiving payments at the frequency bargained for, and do not expect the liquidation value of their shares to change.

12. Applicants request an order under section 6(c) granting an exemption from the provisions of section 19(b) and rule 19b-1 to permit each Fund to make periodic capital gain distributions (as defined in section 852(b)(3)(C) of the Code) as often as monthly in any one taxable year in respect of its common shares and as often as specified by or determined in accordance with the terms thereof in respect of its preferred shares, if any.³

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

I. *Compliance Review and Reporting.* Each Fund's chief compliance officer will: (a) Report to the Fund's Board, no less frequently than once every three months or at the next regularly scheduled quarterly Board meeting, whether (i) the Fund and its Adviser have complied with the conditions of the order, and (ii) a material compliance matter, as defined in rule 38a-1(e)(2) under the Act, has occurred with respect to such conditions; and (b) review the adequacy of the policies and procedures adopted by the Board no less frequently than annually.

II. *Disclosures to Fund Shareholders:*

A. Each 19(a) Notice to the holders of the Fund's common shares, in addition to the information required by section 19(a) and rule 19a-1:

1. Will provide, in a tabular or graphical format:

(a) The amount of the distribution, on a per share basis, together with the amounts of such distribution amount, on a per share basis and as a percentage of such distribution amount, from estimated: (A) Net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(b) The fiscal year-to-date cumulative amount of distributions, on a per share basis, together with the amounts of such cumulative amount, on a per share basis and as a percentage of such cumulative amount of distributions, from estimated: (A) Net investment income; (B) net

² Returns of capital as used in the application means return of capital for financial accounting purposes and not for tax accounting purposes.

³ Applicants state that a future Fund that relies on the requested order will satisfy each of the representations in the application except that such representations will be made in respect of actions by the board of trustees or directors of such future Fund and will be made at a future time.

realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(c) The average annual total return in relation to the change in NAV for the 5-year period (or, if the Fund's history of operations is less than five years, the time period commencing immediately following the Fund's first public offering) ending on the last day of the month prior to the most recent distribution record date compared to the current fiscal period's annualized distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution record date; and

(d) The cumulative total return in relation to the change in NAV from the last completed fiscal year to the last day of the month prior to the most recent distribution record date compared to the fiscal year-to-date cumulative distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution record date.

Such disclosure shall be made in a type size at least as large and as prominent as the estimate of the sources of the current distribution; and

2. Will include the following disclosure:

(a) "You should not draw any conclusions about the Fund's investment performance from the amount of this distribution or from the terms of the Fund's Plan";

(b) "The Fund estimates that it has distributed more than its income and net realized capital gains; therefore, a portion of your distribution may be a return of capital. A return of capital may occur for example, when some or all of the money that you invested in the Fund is paid back to you. A return of capital distribution does not necessarily reflect the Fund's investment performance and should not be confused with 'yield' or 'income'";⁴ and

(c) "The amounts and sources of distributions reported in this 19(a) Notice are only estimates and are not being provided for tax reporting purposes. The actual amounts and sources of the amounts for tax reporting purposes will depend upon the Fund's investment experience during the remainder of its fiscal year and may be subject to changes based on tax regulations. The Fund will send you a Form 1099-DIV for the calendar year that will tell you how to report these

distributions for federal income tax purposes."

Such disclosure shall be made in a type size at least as large as and as prominent as any other information in the 19(a) Notice and placed on the same page in close proximity to the amount and the sources of the distribution.

B. On the inside front cover of each report to shareholders under rule 30e-1 under the Act, the Fund will:

1. Describe the terms of the Plan (including the fixed amount or fixed percentage of the distributions and the frequency of the distributions);

2. Include the disclosure required by condition II.A.2.(a) above;

3. State, if applicable, that the Plan provides that the Board may amend or terminate the Plan at any time without prior notice to Fund shareholders; and

4. Describe any reasonably foreseeable circumstances that might cause the Fund to terminate the Plan and any reasonably foreseeable consequences of such termination.

C. Each report provided to shareholders under rule 30e-1 and in each prospectus filed with the Commission on Form N-2 under the Act, will provide the Fund's total return in relation to changes in NAV in the financial highlights table and in any discussion about the Fund's total return.

III. *Disclosure to Shareholders, Prospective Shareholders and Third Parties:*

A. Each Fund will include the information contained in the relevant 19(a) Notice, including the disclosure required by condition II.A.2 above, in any written communication (other than a Form 1099) about the Plan or distributions under the Plan by the Fund, or agents that the Fund has authorized to make such communication on the Fund's behalf, to any Fund common shareholder, prospective common shareholder or third-party information provider;

B. Each Fund will issue, contemporaneously with the issuance of any 19(a) Notice, a press release containing the information in the 19(a) Notice and will file with the Commission the information contained in such 19(a) Notice, including the disclosure required by condition II.A.2 above, as an exhibit to its next filed Form N-CSR; and

C. Each Fund will post prominently a statement on its (or the Adviser's) Web site containing the information in each 19(a) Notice, including the disclosure required by condition II.A.2 above, and will maintain such information on such Web site for at least 24 months.

IV. *Delivery of 19(a) Notices to Beneficial Owners:* If a broker, dealer,

bank or other person ("financial intermediary") holds common stock issued by the Fund in nominee name, or otherwise, on behalf of a beneficial owner, the Fund: (a) Will request that the financial intermediary, or its agent, forward the 19(a) Notice to all beneficial owners of the Fund's shares held through such financial intermediary; (b) will provide, in a timely manner, to the financial intermediary, or its agent, enough copies of the 19(a) Notice assembled in the form and at the place that the financial intermediary, or its agent, reasonably requests to facilitate the financial intermediary's sending of the 19(a) Notice to each beneficial owner of the fund's shares; and (c) upon the request of any financial intermediary, or its agent, that receives copies of the 19(a) Notice, will pay the financial intermediary, or its agent, the reasonable expenses of sending the 19(a) Notice to such beneficial owners.

V. *Additional Board Determinations for Funds Whose Shares Trade at a Premium:* If:

A. The Fund's common shares have traded on the exchange that they primarily trade on at the time in question at an average premium to NAV equal to or greater than 10%, as determined on the basis of the average of the discount or premium to NAV of the Fund's common shares as of the close of each trading day over a 12-week rolling period (each such 12-week rolling period ending on the last trading day of each week); and

B. The Fund's annualized distribution rate for such 12-week rolling period, expressed as a percentage of NAV as of the ending date of such 12-week rolling period, is greater than the Fund's average annual total return in relation to the change in NAV over the 2-year period ending on the last day of such 12-week rolling period; then:

1. At the earlier of the next regularly scheduled meeting or within four months of the last day of such 12-week rolling period, the Board including a majority of the Independent Trustees:

(a) Will request and evaluate, and the Adviser will furnish, such information as may be reasonably necessary to make an informed determination of whether the Plan should be continued or continued after amendment;

(b) Will determine whether continuation, or continuation after amendment, of the Plan is consistent with the Fund's investment objective(s) and policies and in the best interests of the Fund and its shareholders, after considering the information in condition V.B.1.a above; including, without limitation:

⁴ The disclosure in this condition II.A.2.(b) will be included only if the current distribution or the fiscal year-to-date cumulative distributions are estimated to include a return of capital.

(1) Whether the Plan is accomplishing its purpose(s);

(2) The reasonably foreseeable effects of the Plan on the Fund's long-term total return in relation to the market price and NAV of the Fund's common shares; and

(3) The Fund's current distribution rate, as described in condition V.B above, compared with the Fund's average annual taxable income or total return over the 2-year period, as described in condition V.B, or such longer period as the Board deems appropriate; and

(c) Based upon that determination, will approve or disapprove the continuation, or continuation after amendment, of the Plan; and

2. The Board will record the information considered by it, including its consideration of the factors listed in condition V.B.1.(b) above, and the basis for its approval or disapproval of the continuation, or continuation after amendment, of the Plan in its meeting minutes, which must be made and preserved for a period of not less than six years from the date of such meeting, the first two years in an easily accessible place.

VI. *Public Offerings*: The Fund will not make a public offering of the Fund's common shares other than:

A. A rights offering below NAV to holders of the Fund's common shares;

B. An offering in connection with a dividend reinvestment plan, merger, consolidation, acquisition, spin-off or reorganization of the Fund; or

C. An offering other than an offering described in conditions VI.A and VI.B above, unless, with respect to such other offering:

1. The Fund's annualized distribution rate for the six months ending on the last day of the month ended immediately prior to the most recent distribution record date,⁵ expressed as a percentage of NAV per share as of such date, is no more than 1 percentage point greater than the Fund's average annual total return for the 5-year period ending on such date;⁶ and

2. The transmittal letter accompanying any registration statement filed with the Commission in connection with such offering discloses that the Fund has received an order under section 19(b) to permit it to make periodic distributions of long-term capital gains with respect to its common

stock as frequently as twelve times each year, and as frequently as distributions are specified in accordance with the terms of any outstanding preferred stock that such Fund may issue.

VII. *Amendments to Rule 19b-1*: The requested order will expire on the effective date of any amendments to rule 19b-1 that provide relief permitting certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as twelve times each year.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-20868 Filed 8-28-09; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF STATE

[Public Notice 6746]

Culturally Significant Objects Imported for Exhibition Determinations: "Heroes: Mortals and Myths in Ancient Greece"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects in the exhibition: "Heroes: Mortals and Myths in Ancient Greece," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Walters Art Museum, Baltimore, MD, from on or about October 11, 2009, until on or about January 3, 2010; Frist Center for the Visual Arts, Nashville, TN, from on or about January 29, 2010, until on or about April 25, 2010; San Diego Museum of Art, San Diego, CA, from on or about May 22, 2010, until on or about September 5, 2010; Onassis Cultural Center, New York, NY, from on or about October 5, 2010, until on or about January 3, 2011, and at possible additional exhibitions or venues yet to

be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone*: 202-632-6467). The address is U.S. Department of State, L/PD, SA-5, 2200 C Street, NW., Suite 5H03, Washington, DC 20522-0505.

Dated: August 25, 2009.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E9-20938 Filed 8-28-09; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice 6745]

Culturally Significant Object Imported for Exhibition Determinations: "American Stories: Paintings of Everyday Life, 1765-1915"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object in the exhibition: "American Stories: Paintings of Everyday Life, 1765-1915," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Metropolitan Museum of Art, New York, NY, from on or about October 5, 2009, until on or about January 24, 2010, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit object, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone*: 202-632-6467). The

⁵ If the Fund has been in operation fewer than six months, the measured period will begin immediately following the Fund's first public offering.

⁶ If the Fund has been in operation fewer than five years, the measured period will begin immediately following the Fund's first public offering.

address is U.S. Department of State, L/PD, SA-5, 2200 C Street, NW., Suite 5H03, Washington, DC 20522-0505.

Dated: August 25, 2009.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E9-20936 Filed 8-28-09; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice 6744]

Town Hall Meeting To Review the Implementation of the Terezin Declaration Provisions Relating to the Restitution of Nazi-Confiscated Art

The Department of State's Special Envoy for Holocaust Issues is seeking the views of interested individuals and organizations regarding the implementation of the art restitution provisions of the June 30, 2009 Terezin Declaration. The Declaration was the concluding document of the Conference on Holocaust Era Assets which met in Prague June 26-30, 2009. The Declaration text is on the Department of State Web site at <http://www.state.gov/p/eur/rls/or/126162.htm>.

The Department will host a Town Hall Meeting on September 22 from 9:45 a.m. to 12 noon to obtain expert views on the following:

- (a) Expanding systematic provenance research;
- (b) Making the results of such research available to the art community;
- (c) Developing alternative mechanisms to resolve claims for artworks displaced as a result of the Holocaust and World War II.

Individuals wishing to attend this town hall meeting should register no later than September 20 by e-mailing the following information to Ms. Carolyn Jones-Johnson (Jones-JohnsonCD@state.gov): Full Name; Date of Birth;

Number of Government-issued Picture ID (Driver's License Number, including State of Issuance, U.S. Passport or Alternate Government-Issued Picture ID);

Organization which you represent, and its Address and Phone Number;

Home Address (only if attending as an individual).

Those who register are urged to arrive at the Department by 9:30 a.m. to allow time for security screening. Upon arrival, you will need to show valid government-issued identification: For example, a U.S. state driver's license or

a U.S. passport. The official address of the State Department is 2201 C Street, NW., Washington, DC. Attendees should use the "23rd Street Entrance" on the West Side of the State Department's Harry S. Truman Building, located on 23rd Street between C Street and D Street, NW., Washington, DC.

Written comments on the above subjects may also be provided to the same e-mail address for Ms. Jones-Johnson cited above.

Dated: August 25, 2009.

Ambassador J. Christian Kennedy,

Special Envoy for Holocaust Issues, Department of State.

[FR Doc. E9-20935 Filed 8-28-09; 8:45 am]

BILLING CODE 4710-23-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments and Notice of Public Hearing Concerning China's Compliance With WTO Commitments

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing concerning China's compliance with its WTO commitments.

SUMMARY: The interagency Trade Policy Staff Committee (TPSC) will convene a public hearing and seek public comment to assist the Office of the United States Trade Representative (USTR) in the preparation of its annual report to the Congress on China's compliance with the commitments made in connection with its accession to the World Trade Organization (WTO).

DATES: Persons wishing to testify at the hearing must provide written notification of their intention, as well as a copy of their testimony, by noon, Friday, September 18, 2009. Written comments are due by noon, Tuesday, September 22, 2009. A hearing will be held in Washington, DC, on Friday, October 2, 2009.

ADDRESSES: Comments should be submitted electronically via the Internet at <http://www.regulations.gov>. For alternatives to on-line submissions please contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395-3475.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments or participation in the public hearing, contact Gloria Blue, (202) 395-3475. All other questions should be directed to Terrence J. McCartin, Deputy Assistant United States Trade Representative for China Enforcement,

(202) 395-3900, or Claire E. Reade, Chief Counsel for China Trade Enforcement, (202) 395-9625.

SUPPLEMENTARY INFORMATION:

1. Background

China became a Member of the WTO on December 11, 2001. In accordance with section 421 of the U.S.-China Relations Act of 2000 (Pub. L. 106-286), USTR is required to submit, by December 11 of each year, a report to Congress on China's compliance with commitments made in connection with its accession to the WTO, including both multilateral commitments and any bilateral commitments made to the United States. In accordance with section 421, and to assist it in preparing this year's report, the TPSC is hereby soliciting public comment. Last year's report is available on USTR's Internet Web site (at http://www.ustr.gov/sites/default/files/asset_upload_file192_15258.pdf).

The terms of China's accession to the WTO are contained in the Protocol on the Accession of the People's Republic of China (including its annexes) (Protocol), the Report of the Working Party on the Accession of China (Working Party Report), and the WTO agreements. The Protocol and Working Party Report can be found on the Department of Commerce Web page, <http://www.mac.doc.gov/China/WTOAccessionPackage.htm>, or on the WTO Web site, <http://docsonline.wto.org> (document symbols: WT/L/432, WT/MIN(01)/3, WT/MIN(01)/3/Add.1, WT/MIN(01)/3/Add.2).

2. Public Comment and Hearing

USTR invites written comments and/or oral testimony of interested persons on China's compliance with commitments made in connection with its accession to the WTO, including, but not limited to, commitments in the following areas: (a) Trading rights; (b) import regulation (e.g., tariffs, tariff-rate quotas, quotas, import licenses); (c) export regulation; (d) internal policies affecting trade (e.g., subsidies, standards and technical regulations, sanitary and phytosanitary measures, government procurement, trade-related investment measures, taxes and charges levied on imports and exports); (e) intellectual property rights (including intellectual property rights enforcement); (f) services; (g) rule of law issues (e.g., transparency, judicial review, uniform administration of laws and regulations) and status of legal reform; and (h) other WTO commitments. In addition, given the United States' view that China should be held accountable as a full

participant in, and beneficiary of, the international trading system (see "U.S.-China Trade Relations: Entering a New Phase of Greater Accountability and Enforcement," issued by USTR in February 2006, <http://www.ustr.gov/sites/default/files/Top-to-Bottom%20Review%20FINAL.pdf>), USTR requests that interested persons also specifically identify unresolved compliance issues that warrant review and evaluation by USTR's China Enforcement Task Force.

Written comments must be received no later than noon, Tuesday, September 22, 2009.

A hearing will be held on Friday, October 2, 2009, in Room 1, 1724 F Street, NW., Washington, DC 20508. If necessary, the hearing will continue on the next business day.

Persons wishing to testify orally at the hearing must provide written notification of their intention by noon, Friday, September 18, 2009. The notification should include: (1) The name, address, and telephone number of the person presenting the testimony; and (2) a short (one or two paragraph) summary of the presentation, including the commitments at issue and, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects to be discussed. A copy of the testimony must accompany the notification. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC.

All documents should be submitted in accordance with the instructions in section 3 below.

3. Requirements for Submissions

Persons submitting intent to testify and/or comments must do so in English and must identify (on the first page of the submission) "China's WTO Compliance."

In order to ensure the most timely and expeditious receipt and consideration of comments, USTR has arranged to accept on-line submissions via <http://www.regulations.gov>. To submit comments via <http://www.regulations.gov>, enter docket number USTR-2009-0025 on the home page and click "go". The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting "Notice" under "Document Type" on the left side of the search-results page, and click on the link entitled "Send a Comment or Submission." (For further information on using the www.regulations.gov Web site, please consult the resources provided on the Web site by clicking on "How to

Use This Site" on the left side of the home page.)

The <http://www.regulations.gov> Web site provides the option of making submissions by filling in a "General Comments" field, or by attaching a document. We expect that most submissions will be provided in an attached document. If a document is attached, it is sufficient to type "See attached" in the "General Comments" field.

Submit any documents containing business confidential information, beginning with the characters "BC". Submit, as a separate submission, a public version of the submission with a file name beginning with the character "P". The "BC" and "P" should be followed by the name of the person or entity submitting the comments. For comments that contain no business confidential information, the file name should begin with the character "P", followed by the name of the person or entity submitting the comments. Electronic submissions should not attach separate cover letters; rather, information that might appear in a cover letter should be included in the comments you submit. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments to a submission in the same file as the submission itself and not as separate files.

We strongly urge submitters to use electronic filing. If an on-line submission is impossible, alternative arrangements must be made with Ms. Blue prior to delivery for the receipt of such submissions. Ms. Blue may be contacted at (202) 395-3475.

General information concerning USTR may be obtained by accessing its Internet Web site (<http://www.ustr.gov>).

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. E9-20891 Filed 8-28-09; 8:45 am]

BILLING CODE 3190-W9-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT-OST-2009-0185]

Notice of Funding Availability for Disadvantaged Business Enterprise American Recovery and Reinvestment Act Bonding Assistance Reimbursable Fee Program (DBE ARRA BAP)

AGENCY: Office of the Secretary of Transportation (OST), Office of Small and Disadvantaged Business Utilization (OSDBU), Department of Transportation (DOT).

ACTION: Notice of funding availability.

SUMMARY: The Department of Transportation (DOT), Office of the Secretary (OST), Office of Small and Disadvantaged Business Utilization (OSDBU) announces the availability of \$20 million provided by the American Recovery and Reinvestment Act of 2009 (ARRA) for the reimbursement of bonding premiums and fees incurred by Disadvantaged Business Enterprises (DBE) competing for, or performing on, transportation infrastructure projects receiving DOT ARRA funding.

Catalog of Federal Domestic Assistance (CFDA) Number: 20.904 Bonding Assistance Program.

Type of Award: DBE Financial Assistance.

Estimated Average Size of Award: \$11,300.

Estimated Number of Awards: 1,770. DOT is not bound by any estimates in this notice. Awards will be made in the order of application receipt until funding is fully expended or the program closes on September 8, 2010.

Program Authority: Funding for the DBE ARRA BAP has been provided to DOT by ARRA (Pub. L. 111-5, Feb. 17, 2009) to be administered pursuant to 49 U.S.C. 332(e).

DOT established its OSDBU in accordance with Public Law 95-507, an amendment to the Small Business Act and the Small Business Investment Act of 1958. OSDBU administers the provisions of Title 49, United States Code, Section 332.

DOT/OSDBU has posted a synopsis of this announcement on <http://www.govbenefits.gov>.

DATES: Applications will be available beginning August 28, 2009. Applications must be received by mail or electronically transmitted to DOT OST OSDBU on or before September 8, 2010 for bond issue dates for ARRA projects on or after the date of this notice, August 28, 2009. Provided OSDBU is given an email address, applicants should receive a confirmation email. Regardless, the applicant is advised to request delivery confirmation for mail submissions or return receipt for email submissions. In the event funding is fully expended prior to September 8, 2010, OSDBU will cease to accept new applications.

ADDRESSES: Applications may be submitted to OSDBU electronically via email at bap.arra@dot.gov. Mailed applications may be submitted to DOT/OSDBU, 1200 New Jersey Avenue, SE., Suite W56-497, Washington, DC 20590, Attn: DBE ARRA BAP.

FOR FURTHER INFORMATION CONTACT: For further information concerning this

notice, contact OSDDBU at U.S. Department of Transportation, 1200 New Jersey Ave., SE., Room W56-497, Washington, DC 20590. Telephone: 1-800-532-1169. E-mail: bap.arra@dot.gov. Additional guidance may be found at <http://www.dot.gov/recovery/ost/>.

SUPPLEMENTARY INFORMATION:

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- III. Application Process
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Full Text of Announcement

I. Overview

On February 17, 2009, the President of the United States signed the American Recovery and Investment Act of 2009 (Pub. L. 111-5) (ARRA) to, among other purposes, (1) preserve and create jobs and promote economic recovery, (2) invest in transportation infrastructure that will provide long-term economic benefits, and (3) assist those most affected by the current economic downturn. Pursuant to ARRA, DOT was appropriated a combined \$48.1 billion in funding for the purpose of stimulating the economy and investing in the nation's transportation infrastructure. ARRA also appropriated \$20 million to the Department of Transportation for Disadvantaged Business Enterprise bonding assistance.

The DOT OSDDBU has established the DBE ARRA Bonding Assistance Reimbursable Fee Program (DBE ARRA BAP) to distribute the DBE bonding assistance provided by the ARRA. The term "Disadvantaged Business Enterprise" (DBE), includes a for-profit small business concern that is owned and controlled by a socially and economically disadvantaged individual, including women, and is set forth in Title 49 Code of Federal Regulations Part 26 (49 CFR part 26).

The Miller Act (40 U.S.C. 3131 to 3134) provides that, before a contract that exceeds \$100,000 in amount for the construction, alteration, or repair of any building or public work of the United States is awarded to any person, that person shall furnish the Federal government with a performance bond in an amount that the contracting officer regards as adequate for the protection of the Federal government and; a separate payment bond for the protection of suppliers of labor and materials. A bid/proposal bond may also be required. States have enacted "Little Miller Acts"

that impose similar bond requirements for state and local projects.

Surety companies charge a premium fee to all contractors to ensure the surety company's financial backing and guarantee. These premium rates vary between 2 percent and 3 percent of the contract amount. If a contractor wants to use SBA's Surety Bond Guarantee Program (SBGP), SBA charges the contractor or small business concern (principal) a fee of .729 percent of the contract price to finance potential claims against the bond.

The purpose of the DBE ARRA program is to assist DBEs to participate in the ARRA investment in transportation infrastructure and to address the disproportionate effect that the increase in unemployment has had on minority-owned and women-owned businesses by assisting them to obtain transportation infrastructure contracts at the local, state and federal levels through a reduction in the cost of bonding.

The bonding assistance provided by the DBE ARRA BAP will allow DBEs with traditionally less working capital than large transportation-related contractors to perform on transportation infrastructure projects receiving ARRA funding from any DOT mode of transportation, such as Federal Highway Administration, (FHWA), Federal Transit Administration (FTA), Federal Aviation Administration (FAA), Federal Railroad Administration (FRA), and the Maritime Administration (MARAD). In addition, the assistance provided to the DBE to compete for, and execute contracts for ARRA projects, will position the DBE to compete for future transportation contracts at any tier from any Federal, state, or local transportation agency.

The DBE ARRA BAP is bonding assistance in the form of a bonding fee cost reimbursement. DOT will directly reimburse DBEs the premiums paid to the surety company for performance, payment or bid/proposal bonds. In the event the DBE also obtains a bond guarantee from Small Business Administration's (SBA) Surety Bond Guarantee Program (SBGP), the DOT will also reimburse the DBE for the small business concern (principal) fee of .729 percent of the contract price.

II. Eligibility Information and Program Requirements

A. General Requirements

1. Civil Rights Act of 1964, as amended (42 U.S.C. 2000d). Compliance with civil rights statutes is required, including compliance with equity in service.

2. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and the Americans with Disabilities Act (ADA) requirements in 49 CFR parts 27, 37, and 38.

3. A DBE must execute a Certificate Regarding Lobbying in compliance with 49 CFR Part 20.

4. An application must include a certification, signed by the applicant, stating that it will comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code (Federal wage rate requirements), as required by the Recovery Act.

5. Certification Regarding Debarment, Suspension in compliance with 29 CFR Part 98.

B. ARRA BAP Reimbursement Program Eligibility

To be eligible for a performance, payment, or bid/proposal bond fee cost reimbursement under the DBE ARRA BAP, a contractor must:

1. Be a certified DBE in accordance with Title 49 Code of Federal Regulations Part 26 (49 CFR 26);
2. Have a current Dun and Bradstreet Number (DUNS#);
3. Be registered in the Central Contractor Registration (CCR), CCR.gov, complete with bank information for electronic payment; and
4. Provide goods or services on a contract for a transportation-related project receiving DOT funding pursuant to ARRA or if a bid/proposal bond is required, bid on a contract for a transportation infrastructure project receiving DOT funding pursuant to ARRA.

5. Applications must be received by mail or electronically submitted to DOT OST OSDDBU on or before September 8, 2010 for bonds issued on ARRA projects with issue dates on or after August 28, 2009. In the event funding is fully expended prior to September 8, 2010, OSDDBU will cease to accept new applications. Bonding premiums and fees incurred by the DBE prior to this notice are not eligible for reimbursement under the DBE ARRA BAP.

C. Types of Surety Bonds Eligible for Reimbursement of Bond Premiums and Fees Under the DBE ARRA BAP

A surety bond is a three-party instrument between a surety, the contractor and the project owner. The agreement binds the contractor to comply with the terms and conditions of a contract. If the contractor is unable to successfully perform the contract, the surety assumes the contractor's responsibilities. The following are types of surety bonds eligible for

reimbursement of bond premiums and fees:

1. Bid/Proposal—A bond which guarantees that the bidder on a contract will enter into the contract and furnish the required payment and performance bonds. A proposal bond also guarantees that the offeror on a contract will enter into the contract and furnish the required payment and performance bonds. It is used in response to a Request for Proposal (RFP).

2. Payment—A bond which guarantees payment from the contractor to persons who furnish labor, materials equipment and/or supplies for use in the performance of the contract.

3. Performance—A bond which guarantees that the contractor will perform the contract in accordance with its terms.

III. Application Process

A. The DBE will select an approved surety company listed in Department of the Treasury's Listing of Approved Sureties (Department Circular 570) and establish a business relationship.

B. The DBE will submit a bond application to the surety company in accordance with the surety company's requirements. In the event the DBE is participating in the SBA's SBGP, the contractor will comply with SBA's requirements.

C. Upon approval, the DBE will pay all required bonding premiums. In the event the DBE is participating in the SBA's SBGP, the DBE will also pay SBA's principal fee.

D. To receive reimbursement from DOT for the bonding premium/fees paid to the surety company and possibly SBA, the DBE will be required to submit an Application for Reimbursement of Bond Fees to DOT. A separate application must be submitted for each bond for which the applicant is seeking reimbursement of the bond premiums and fees paid by the applicant. Applications submitted by mail may be delayed due to mail screening security requirements. For faster reimbursement, the DBE should consider electronic submission by email. The application is an electronically fillable application form. We strongly suggest applicants utilize the electronically fillable form to complete the application entries. Illegible applications will delay processing time. The DBE will be required to submit the following information on the form:

1. Legal name of the company and full street address of the primary business location.
2. TIN (Federal Tax ID Number).
3. Dun & Bradstreet Number (DUNS#).

4. Affirmation that the DBR is registered in central contractor registration (ccr.gov), inclusive of banking information.

5. Surety bond information:

- (a) Bond number;
- (b) Date of issue;
- (c) Name of surety company;
- (d) Type of bond;
- (e) Bond amount;
- (f) Total bond premiums and fees for which the DBE is seeking reimbursement.

6. Transportation-related contract information:

- (a) Contract Awarder (Agency/Prime/Subcontractor);
- (b) Contract number;
- (c) Federal project number and Name;
- (d) Contract amount;
- (e) Contract start date;
- (f) Contract estimated completion date.

7. DBE certification information:

- (a) Certification that the applicant is a DBE and the contract being bonded is a transportation-related contract;
- (b) Name of the entity which certified the contractor's business as a DBE;
- (c) State of certification;
- (d) Certification expiration/renewal date;
- (e) The most current annual affidavit date. A current annual affidavit is not required in the event the DBE is certified less than one (1) year.

8. Signature of applicant and contact information.

9. Certification that the DBE has not sought reimbursement for the bond fees for which they are seeking reimbursement from DOT, nor will the DBE seek reimbursement in the event they receive reimbursement from DOT. The DBE will also provide consent for DOT to contact the agency/prime/subcontractor to confirm non-reimbursement of the bond fees.

E. The DBE will be required to submit the following documentation with the application:

1. A copy of the bond.
2. A copy of the contract.
3. DBE certification letter from the DBE certification office in their state and a current annual affidavit. A current annual affidavit is not required in the event the DBE is certified less than one (1) year.

4. Regardless of whether the DBE is a prime contractor or a subcontractor, a letter from the federal, state or local transportation authority, on their letterhead, indicating the DBE is a prime contractor or a subcontractor and the federal project number. In the event the DBE is already in possession of other documentation from the federal, state or local transportation authority indicating

the federal project number, that documentation may be submitted in lieu of the letter.

5. A copy of their invoice(s) from the surety company and if applicable, SBA and cancelled checks or other proof of payment of the bond fees in support of the total amount claimed for reimbursement.

The Application for Reimbursement of Bond Fees, application instructions, and additional guidance is located at <http://www.dot.gov/recovery/ost/>.

IV. Application Content

Submitted Applications must contain:

- A. A completed and signed application.
- B. Supporting Documentation outlined in Section III.E.
- C. Certificate Regarding Lobbying in compliance with 49 CFR Part 20.
- D. Certification stating that the DBE will comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code (Federal wage rate requirements), as required by the Recovery Act.
- E. Certification Regarding Debarment, Suspension in compliance with 29 CFR Part 98.

V. Application Approval

OSDBU will review submitted applications in the order of receipt. Applications will be reviewed for eligibility and completeness. Applications that are incomplete or contain inaccurate information will not be considered for approval. OSDBU will verify supporting documentation and the DBE's registration status on <http://www.ccr.gov>. Incomplete applications will not be considered for approval. OSDBU will notify the applicant in the event of approval or disapproval of an application. The Director or OSDBU or his designee will provide signatory approval on applications approved for cost reimbursement. DOT intends to expedite payment of approved applications. Payment will not be made for approved applications until the DBE's bank information is completed in their registration profile on <http://www.ccr.gov>.

VI. Reporting Requirements

A. ARRA Section 1512 Recipient Reporting: DBEs that receive bonding assistance under DBE ARRA BAP are not subject to reporting requirements under Section 1512 unless such awards of assistance exceed the reporting threshold of \$25,000 for prime recipients. DOT also notes that eligible recipients are already subject to ARRA Section 1512 recipient reporting requirements by the DOT modes of

transportation, such as FHWA, FTA, FAA, FRA, and MARAD. Please reference additional guidance located <http://www.dot.gov/recovery/ost/for> specific Section 1512 reporting instructions for recipients of bonding assistance under the DBE ARRA BAP

B. Other Reporting: To satisfy the needs for transparency and accountability related to funding appropriated under the ARRA, DBEs may be required to provide additional information not yet specified in this notice to satisfy requests from the Office of Management and Budget (OMB), the Congressional Budget Office (CBO), the Government Accountability Office (GAO), or the DOT Office of Inspector General (IG). DOT/OSDBU will inform the DBEs if and when such additional reports are required. Through its participation in the DBE ARRA BAP, the DBE agrees to provide the additional required information.

VII. Technical Assistance

Technical assistance pertaining to the DBE ARRA BAP is available from OSDBU headquarters, S-40, 1200 New Jersey Avenue SE., Washington, DC 20590 1-800-532-1169 or through the regional DOT Small Business Transportation Resource Centers (SBTRC).

Small Business Transportation Resource Centers (SBTRCs):

Northeast Region:

New York, Headquarters, New Jersey, Massachusetts, Connecticut, Rhode Island, Maine, New Hampshire, Vermont

Contact: LaGuardia Community College:

Elizabeth Perdomo, Project Director, SBTRC, LaGuardia Community College, 29-10 Thompson Avenue, 9th Floor, Long Island City, NY 11101, *Telephone:* (718) 482-5941, *FAX:* (718) 609-2036, *E-mail:* eperdomo@lagcc.cuny.edu.

Mid Atlantic Region:

Pennsylvania, Headquarters, Maryland, Virginia, District of Columbia, Delaware, West Virginia

Contact: Greater Philadelphia

Minority Business Strategic Alliance:

Tiffany L. King, Project Director, 105 N. 22nd Street, Philadelphia, Pennsylvania 19103, *Telephone:* (215) 399-0062, *Fax:* (215) 399-0063, *E-mail:* tking@gpmba.com

South Atlantic Region:

North Carolina, Headquarters, Tennessee, South Carolina, Kentucky
Contact: North Carolina Agricultural and Technical (NC A&T) State University:

George C. Jones, Jr., Project Director, SBTRC, Rm 312-G Craig Hall, The Transportation Institute, NC A&T State University, 1601 E. Market Street, Greensboro, NC 27411, *Ph:* (336) 256-2111, *Fax:* (336) 334-7093, *E-mail:* gjones@ncat.edu

Southeast Region:

Florida, Headquarters, Georgia, Alabama, Mississippi, Puerto Rico, U.S. Virgin Islands

Contact: Miami Dade College:

Adrianna Clark, Project Director, SBTRC, Miami Dade College, Homestead, 500 College Terrace, Office B230, Homestead, FL 33160, *Telephone:* (305) 237-5115, *Fax:* (305) 237-5108, *E-mail:* aclark1@mdc.edu

Gulf Region:

Texas, Headquarters, Louisiana, Oklahoma, New Mexico, Arkansas

Contact: Greater Dallas Hispanic Chamber of Commerce:

Yolanda Tafoya, Diana L. Flores, Project Director, SBTRC, 4622 Maple Ave., #207, Dallas, Texas 75219-1101, *Telephone:* (214) 523-3432, *Fax:* (214) 520-1687, *E-mail:* diana@gdhcc.com

Great Lakes Region:

Illinois, Headquarters, Indiana, Michigan, Ohio, Wisconsin

Contact: Hispanic American

Construction Industry Association:

Jackie Gomez, Project Director, SBTRC, 901 W. Jackson Blvd., Suite 205, Chicago, Illinois 60607, *Telephone:* (312) 666-6070, ext 22, *Fax:* (312) 666-5692, *E-mail:* jgomez@haciaworks.org

Central Region:

Missouri, Headquarters, Colorado, Minnesota, Iowa, Kansas, Nebraska, South Dakota, North Dakota, Wyoming

Contact: University of Missouri—Columbia:

Rhonda K. Wilson, Project Director, SBTRC, W1026 Laffer Hall 400 South 6th Street, Columbia, Missouri 65211, *Phone:* (816) 294-9803, *Fax:* (573) 882-9931 *E-mail:* wilsonrh@missouri.edu

Southwest Region:

California, Headquarters, Arizona, Utah, Nevada, Hawaii

Contact: U.S. Pan Asian American Chamber of Commerce:

Carrolyn Kubota, Project Director, SBTRC, 275 5th Street, San Francisco, CA 94103, *Phone:* (415) 348-6262, *Toll Free:* 1-866-928-6289 x9, *Fax:* (415) 541-8589, *E-mail:* carrolyn@uspaacc.com

Northwest Region:

Washington, Headquarters, Oregon, Alaska, Idaho, Montana

Contact: Economic Development Council of Snohomish County:

Lily Keeffe, Project Director, SBTRC, 728 134th St., SW., Ste 128, Everett, WA 98204, *Telephone:* (206) 718-7250, *Fax:* (425) 745-5563, *E-mail:* lkeeffe@snoedc.org

Issued in Washington, DC, on August 25, 2009.

Brandon Neal,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. E9-20919 Filed 8-28-09; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. 2009-0042]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: The Federal Transit Administration invites public comment about our intention to request the Office of Management and Budget's (OMB) approval to reinstate the following information collections:

- (1) Bus Testing Program.
- (2) Transit Research, Development, Demonstration and Deployment Projects.

The information collections involve our Bus Testing and Transit Research Programs. The information to be collected for the Bus Testing Program is necessary to ensure that buses have been tested at the Bus Testing Center for maintainability, reliability, safety, performance, structural integrity, fuel economy, emissions and noise. The information to be collected for Transit Research, Development, Demonstration and Deployment Projects is necessary to determine eligibility of applicants and ensure mass transportation service at a minimum cost. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995. The **Federal Register** with a 60-day comment period soliciting comments was published on June 1, 2009.

DATES: Comments must be submitted before September 30, 2009. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Marion, Office of

Administration, Office of Management Planning, (202) 366-6680.

SUPPLEMENTARY INFORMATION:

Title: Bus Testing Program.

Abstract: 49 U.S.C. 5323(c) provides that no federal funds that are appropriated or made available after September 30, 1989, may be obligated or expended for the acquisition of a new bus model (including any model using alternative fuels) unless the bus has been tested at the Bus Testing Center (Center) in Altoona, Pennsylvania. 49 U.S.C. 5318(a) further specifies that each new bus model is to be tested for maintainability, reliability, safety, performance (including braking performance), structural integrity, fuel economy, emissions, and noise.

The operator of the Bus Testing Center, the Thomas D. Larson Pennsylvania Transportation Institute (LTI), has entered into a cooperative agreement with FTA. LTI operates and maintains the Center, and establishes and collects fees for the testing of the vehicles at the facility. A test report is given to the manufacturer of the new bus model after the vehicle has been tested at the Center. The bus manufacturer certifies to an FTA grantee that the bus the grantee is purchasing has been tested at the Center. Also, grantees who are considering the purchase of a bus use this report to assist them in making their purchasing decisions. LTI maintains a reference file for all the test reports which are made available to the public.

Estimated Total Annual Burden: 404 hours.

Title: 49 U.S.C. 5312(a) Transit Research, Development, Demonstration and Deployment Projects.

Abstract: 49 U.S.C. 5312(a) authorizes the Secretary of Transportation to make grants or contracts for research, development, demonstration and deployment projects, and evaluation of technology of national significance to public transportation, that the Secretary determines will improve mass transportation service or help transportation service meet the total urban transportation needs at a minimum cost. In carrying out the provisions of this section, the Secretary is also authorized to request and receive appropriate information from any source. As an example, FTA's United We Ride Program is funded under the Transit Research Program. Research for the United We Ride Program is being conducted to gather information on how the objectives of Executive Order 13330 on Human Services Transportation Coordination are being achieved.

The information collected is submitted as part of the application for

grants and cooperative agreements and is used to determine eligibility of applicants. Collection of this information also provides documentation that the applicants and recipients are meeting program objectives and are complying with FTA Circular 6100.1B and other Federal requirements.

Estimated Total Annual Burden: 11,240 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, *Attention:* FTA Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: August 26, 2009.

Ann M. Linnertz,

Associate Administrator for Administration.

[FR Doc. E9-20982 Filed 8-28-09; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is scheduled for Wednesday, September 23, 2009, starting at 9 a.m. Eastern Daylight Time. Arrange for oral presentation by September 16, 2009.

ADDRESSES: The Boeing Company, 1200 Wilson Boulevard, Room 234, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Ralen Gao, Office of Rulemaking, ARM-

209, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267-3168 FAX (202) 267-5075, or e-mail at relan.gao@faa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held September 23, 2009.

The agenda for the meeting is as follows:

- Opening Remarks, Review Agenda and Minutes;
- FAA Report;
- Airplane-level Safety Analysis WG Report;
- Task 4 Status
- EXCOM Report;
- Transport Canada Report;
- Airworthiness Assurance HWG Report;
- Ice Protection HWG Report;
- Avionics HWG Report;
- Any Other Business;
- Action Item Review.

Attendance is open to the public, but will be limited to the availability to meeting room space. Please confirm your attendance with the person listed in the *For Further Information Contact* section no later than September 16, 2009. Please provide the following information. Full legal name, country of citizenship, and name of your industry association, or applicable affiliation. If you are attending as a public citizen, please indicate so.

For persons participating by telephone, *Please Contact* Ralen Gao by e-mail or phone for the teleconference call-in number and passcode. Anyone calling from outside the Arlington VA, metropolitan area will be responsible for paying long-distance charges.

The public must make arrangements by September 16, 2009, to present oral statements by the meeting. Written statements may be presented by the ARAC at any time by providing 25 copies to the person listed in the *For Further Information Contact* section or by providing copies at the meeting. Copies of the documents to be presented to ARAC may be made available by contacting the person listed in the *For Further Information Contact* section.

If you need assistance or require an reasonable accommodation for the meeting or meeting documents, please contact the person listed in the *For Further Information Contact* section. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC, on August 26, 2009.

Julie Ann Lynch,

Acting Director, Office of Rulemaking.

[FR Doc. E9-20959 Filed 8-28-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 24, 2009.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13 on or after the publication date of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11020, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 30, 2009 to be assured of consideration.

Office of Financial Stability (OFS)

OMB Number: 1505-0212.

Type of Review: Extension.

Title: Use of TARP Funds and Compliance with Executive Compensation Issues.

Description: The Emergency Economic Stabilization Act of 2008 ("Act"), Public Law 110-343, established the Troubled Asset Relief Program ("TARP") and created the Office of the Special Inspector General for the Troubled Asset Relief Program ("SIGTARP"). SIGTARP is responsible for coordinating and conducting audits and investigations of any program established by the Secretary of the Treasury under the Act. One of SIGTARP's primary areas of focus has been ensuring, to the fullest extent possible, transparency in the operation of TARP. Increasingly, members of the Congress, the press, and the public are expressing frustration and raising questions about: (1) The lack of information about how TARP recipients are using or plan to use funding provided by the Federal government under the various TARP programs; and (2) insufficient transparency regarding efforts to restrain excessive executive compensation. The questionnaire is designed to address these questions.

Respondents: Businesses and other for-profit institutions.

Estimated Total Reporting Burden: 200 hours.

Clearance Officer: Suzanne Tosini, (202) 927-9627, 1801 L St, NW., Room 8219, Washington, DC 20036.

OMB Reviewer: OIRA Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.
oira_submission@omb.eop.gov.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E9-20902 Filed 8-28-09; 8:45 am]

BILLING CODE 4810-25-P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Gulf War Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that the Advisory Committee on Gulf War Veterans will meet on September 16-17, 2009, in Room 819 at the Lafayette Building, 811 Vermont Avenue, NW., Washington, DC, from 9 a.m. to 4 p.m. each day. The meeting is open to the public.

The purpose of the Committee is to provide advice and recommendations to the Secretary of Veterans Affairs on issues that are unique to Veterans who served in the Southwest Asia theater of operations during 1990-1991 period of the Gulf War.

The principal purpose of the meeting is to finalize the Committee's report to the Secretary of Veterans Affairs. A public comment period will take place on September 16 from 9:15 a.m.-9:45 a.m.

Individuals wishing to speak must register not later than September 11, 2009 by contacting Lelia Jackson and by submitting 1-2 page summaries of their comments for inclusion in the official record. Public comments will be limited to five minutes each. A sign-in sheet will be available each day. Members of the public may also submit written statements for the Committee's review to the Advisory Committee on Gulf War Veterans, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Interested parties may also listen in by teleconferencing into the meeting. The toll-free teleconference line will be open daily from 9 a.m. until 4 p.m. (Eastern Standard Time). To register for the teleconference, contact Lelia Jackson at (202) 461-5758 or via e-mail at lelia.jackson@va.gov.

Any member of the public seeking additional information should contact Laura O'Shea, Designated Federal Officer, at (202) 461-5765.

Dated: August 26, 2009.

By Direction of the Secretary.

E. Philip Riggan,

Committee Management Officer.

[FR Doc. E9-20979 Filed 8-28-09; 8:45 am]

P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of Amendment to Systems of Records.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), Notice is hereby given that the Department of Veteran Affairs (VA) is amending the system of records entitled "Enrollment and Eligibility Records—VA" (147VA16) as set forth in 73 FR 15847-15852, March 25, 2008 to add a routine use relating to computer matching activities.

DATES: Comments on the amendment of this system of records must be received no later than September 30, 2009. If no public comment is received, the amended system will become effective September 30, 2009.

ADDRESSES: Written comments may be submitted through www.Regulations.gov; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at www.Regulations.gov.

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; telephone (704) 245-2492.

SUPPLEMENTARY INFORMATION: VA provides health care services to many of America's Veterans through the

Veterans Health Administration. During the course of providing health care, VHA collects medical and health information on veterans. In order to protect Veterans' medical or health information VHA is adding one routine use to one existing system of records (147VA16).

Additional Routine Use

The routine use added to 147VA16 would allow VA to conduct computer matching activities with other Federal agencies where necessary to assist VA in determining or verifying eligibility for certain benefits.

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: August 14, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

Notice of Amendment of Systems of Records

1. In the system identified as 147VA16, "Enrollment and Eligibility Records—VA", as set forth in 73 FR 15847–15852, March 25, 2008. One new routine use is added as follows:

147VA16

SYSTEM NAME:

Enrollment and Eligibility Records—VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

14. Identifying information, including social security number of Veterans, spouse(s) of Veterans, and dependents of Veterans, may be disclosed to other Federal agencies for purposes of conducting computer matches, to obtain information to determine or verify eligibility of Veterans who are receiving VA medical care under relevant sections of Title 38 U.S.C.

[FR Doc. E9–20906 Filed 8–28–09; 8:45 am]

BILLING CODE:P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of Amendment to System of Records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552a(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their system of records. Notice is hereby given that VA is amending the system of records entitled "Veteran, Employee and Citizen Health Care Facility Investigation Records-VA" (32VA00) as set forth in the **Federal Register** (58 FR 40852) dated July 30, 1993. VA is amending the system by revising the System Number, Routine Uses of Records Maintained in the System and System Manager and Address. VA is republishing the system notice in its entirety.

DATES: Comments on the amendment of this system of records must be received no later than September 30, 2009. If no public comment is received, the amended system will become effective September 30, 2009.

ADDRESSES: Written comments may be submitted through www.Regulations.gov; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Stephania H. Putt, Veterans Health Administration (VHA) Privacy Officer (19F2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (704) 245–2492.

SUPPLEMENTARY INFORMATION: The System number is changed from 32VA00 to 32VA10Q to reflect the current organizational alignment.

Routine use 14 was added for the VA to disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in

each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

Routine use 15 was added to disclose information to other Federal agencies that may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs. This routine use permits disclosures by the Department to report a suspected incident of identity theft and provide information and/or documentation related to or in support of the reported incident.

Routine use 16 was added so that VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

Routine uses 17 was added to disclose relevant information made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws

administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement. This routine use is being added to allow for the disclosure of information to contractors when performing an agency function. VA must be able to share information with contractors.

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: August 14, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

32VA10Q

SYSTEM NAME:

Veteran, Employee and Citizen Health Care Facility Investigation Records-VA

SYSTEM LOCATION(S):

Records are maintained at each of the VA health care facilities. Address locations are listed in VA Appendix 1 at the end of this document.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Veterans, employees and private citizens who have been injured as a result of accident or assault.
2. Veterans who have died as a result of violence or accident, such as, suicide, homicide, reaction to anesthesia or drugs, assault, transfusion accident, blood incompatibility, error in treatment, neglect of patient, fire, firearms, explosion, etc.
3. Employees and private citizens who have died as a result of violence or accident.
4. Veterans who have left the health care facility without authorization.
5. Veterans, employees and private citizens who have alleged the loss of personal property, funds or valuables.
6. Veterans and private citizens who have alleged abuse by members of the health care facility staff.
7. Employees who have alleged discrimination, abuse or threats of violence by other employees, Veterans and private citizens.
8. Veterans, employees and visitors who have assaulted other individuals.
9. Veterans, employees or private citizens who have been involved in the sale of illegal drugs or alcohol within the health care facility.
10. Veterans, employees and private citizens who have been accused of

stealing from other individuals or from the VA health care facility.

11. Employees who have been accused of improper and unethical conduct.

12. Veterans, employees and private citizens who have willfully or accidentally destroyed or damaged Federal property.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of reports of investigations, findings, and follow-up concerning employees, patients and private citizens, injuries, property damage, accidents, thefts, assaults, discrimination, complaints, elopements, unethical conduct, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, Chapter 3, Section 210(c)(1), and Title 38, United States Code, Chapter 57, Section 3311.

PURPOSE(S):

The purpose of this system of records is to conduct statistical studies and analyses which will support the formulation of Departmental policies and plans by identifying the total current health care usage of the VA patient population. The records and information may be used by VA for audit and evaluation of Department programs and for determinations of eligibility for benefits. The information may be used to conduct research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

VA may disclose protected health information pursuant to the following routine uses where required by law, or required or permitted by 45 CFR Parts 160 and 164.

1. Transfer of required information to private insurance companies to determine whether payments of benefits are appropriate and determine liability.
2. Transfer of required information to local and State unemployment agencies to determine whether payments of benefits are appropriate.
3. Transfer of required information to the Office of Workers Compensation Program to determine whether payments of benefits are appropriate.
4. Transfer of required information to attorneys representing employees, Veterans or private citizens accused of unethical conduct to assist attorneys in representing their clients.
5. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or

particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

6. A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

7. A record from this system of records may be disclosed as a routine use to a Federal, State or local agency maintaining civil, criminal or other relevant information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other health, educational or welfare benefit.

8. Relevant information from this system of records, including the nature and amount of a financial obligation, may be disclosed as a routine use, in order to assist the Veterans Administration in the collection of unpaid financial obligations owed the VA, to a debtor's employing agency or commanding officer so that the debtor-employee may be counseled by his or her Federal employer or commanding officer. This purpose is consistent with 5 U.S.C. 5514, 4 CFR 102.5, and section 206 of Executive Order 11222 of May 8, 1965 (30 FR 6469).

9. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

10. Disclosure may be made to NARA (National Archives and Records Administration) GSA (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

11. Records from this system of records may be disclosed to a Federal Agency or to a State or local government licensing board and/or to the Federation of State Medical Boards or a similar

nongovernment entity which maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications, or registration necessary to practice an occupation, profession or specialty, in order for the Agency to obtain information relevant to an Agency decision concerning the hiring, retention or termination of an employee or to inform a Federal Agency or licensing boards or the appropriate nongovernment entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal Agency. These records may also be disclosed as part of an ongoing computer matching program to accomplish these purposes.

12. Identifying information in this system, including name, address, social security number and other information as is reasonably necessary to identify such individual, may be disclosed to the National Practitioner Data Bank at the time of hiring or clinical privileging/reprivileging of health care practitioners, and other times as deemed necessary by VA, in order for VA to obtain information relevant to a Department decision concerning the hiring, privileging/reprivileging, retention or termination of the applicant or employee.

13. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist

either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

14. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

15. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

16. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit

protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

17. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents and Photographs.

RETRIEVABILITY:

Alphabetically by name.

SAFEGUARDS:

Physical Security: Access to VA working space and medical record storage areas are restricted to VA employees on a "need to know" basis. Generally, VA file areas are locked after normal duty hours and are protected from outside access by the Federal Protective Service.

Employee file records and file records of public figures or otherwise sensitive medical record files are stored in separate locked files. Strict control measures are enforced to ensure that disclosure is limited to a "need to know" basis.

RETENTION AND DISPOSAL:

Disposed of 2 years after case is closed.

SYSTEM MANAGER AND ADDRESS:

Chief Officer, Office of Quality and Performance (10Q), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

NOTIFICATION PROCEDURE:

Individuals seeking information concerning the existence and content of a record pertaining to themselves must submit a written request or apply in person to the appropriate VA health care facility. All inquiries must reasonably identify the incident involved and date of the incident. Inquiries should include the individual's full name and return address.

RECORDS ACCESS PROCEDURES:

Veterans, employees and private citizens or duly authorized representatives seeking information regarding access to and contesting of VA

records may write, call or visit the appropriate VA health care facility.

CONTESTING RECORD PROCEDURES:

(See Records Access Procedures above.)

RECORD SOURCE CATEGORIES:

1. Veterans.
2. Employees of a VA health care facility.
3. Other VA health care facilities, private physicians and dentists, or private hospitals and clinics.
4. Private citizens involved in the incident.
5. Federal, State, local and foreign law enforcement agencies.
6. Private insurance companies.

[FR Doc. E9-20910 Filed 8-28-09; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of Amendment to System of Records.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records currently entitled "Non-VA Fee Basis Records—VA (23VA163), as set forth in 67 FR 61205-61209, September 27, 2002. VA is amending the system by revising the paragraphs for System Number, System Location, Categories of Individuals Covered by the System, Categories of Records in the System, Authority for Maintenance of the System; Purpose(s), Routine Uses or Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses, System Manager(s) and Address; and, Record Source Categories. VA is republishing the system notice in its entirety.

DATES: Comments on the amendment of this system of records must be received no later than September 30, 2009. If no public comment is received, the amended system will become effective September 30, 2009.

ADDRESSES: Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026.

Comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; telephone (704) 245-2492.

SUPPLEMENTARY INFORMATION: VA is renumbering the system of records from 23VA163 to 23VA16 to reflect organizational changes in the Department. The system location has been redescribed to include records that will be maintained at the VA Health Administration Center, Denver, Colorado upon processing of electronic fee basis claim transactions. A statement is added clarifying that electronic images of Fee claims may be maintained at field facilities and at the VA Financial Service Center, Austin, Texas. Reference to Veterans Benefits Administration (VBA) Regional Directors and Division Offices has been deleted as a system location site as no information from this system of records is maintained at those offices.

The Categories of Individuals Covered by the System has been amended to update legal citations. The authority for maintenance of the system has been amended to provide updated references.

The Categories of Records in the System was amended to further explain the personal information contained in the system. Additional information was added to explain claim data information necessary to properly consider claims for payment, correspondence concerning individuals and documents pertaining to claims for medical services, reasons for denial of payment and appellate determinations.

The Purpose has been updated to reflect VA's reasons for maintaining this system of records, including establishing and monitoring of eligibility for and payment of non-VA health care services.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system has been amended by removing specific references to automated system nomenclature and deleting references to Veterans Benefit Administration offices.

Additional statements were added to describe the records stored at the Health Administration Center, ways to retrieve the information at the Allocation Resource Center, and to provide notice that paper documents may be destroyed following imaging. The organizational name for Regional Directors and Division Offices has been updated to reflect its current title, Veterans Integrated Service Networks.

The system manager(s) and address has been updated to reflect the correct title for the official responsible for policies and procedures and the new address for the location of the national fee office. The Record Source Categories has been revised to identify the name of each Federal agency that is a source of information to the record system and removing reference to their Privacy Act system of records as the source.

Routine Uses of Records Maintained in the System, including Categories of Users and the Purposes of Such Uses has been amended. The introductory paragraph was reworded to indicate compliance with the Health Insurance Portability and Accountability Act requirements and VA's statutory requirements governing confidentiality of certain medical records.

Routine use one (1) has been amended by deleting the provision to release information to foreign government agencies. Routine uses four (4) and five (5) have been consolidated and amended with the addition of disclosing information to the Department of the Treasury for the purpose of debt collection. Routine uses 6 through 12 have been renumbered as routine uses 5 to 11. Renumbered routine use 9 has been amended to allow VA to disclose to the billing or collection agents of non-VA health care providers for payment purposes. Routine use thirteen (13) has been renumbered as routine use twelve (12) and amended to permit disclosure of payment information to any other Federal agency for the purpose of identifying and collecting duplicate payments potentially made for the same services. Routine use fourteen (14) has been renumbered as routine use thirteen (13).

New routine use statements 14 through 29 have been added to permit disclosure of information to Federal agencies and other parties for the described purposes:

- Routine use fourteen (14) authorizes disclosure of information to attorneys, insurance companies, employers, boards, or commissions when needed to aid VA in the preparation, presentation, and prosecution of claims authorized under law and regulation. This routine use is necessary in order for VA to

properly assert its rights to prosecute and defend legal actions, in which VA is a party, and to realize any asset, right, and benefit that VA is entitled by law and regulation.

- Routine use fifteen (15) permits disclosure of information to Department of Justice to aid the United States in the preparation, presentation, and prosecution or defense of claims and actions involving the United States. This routine use is necessary in order for the government of the United States to properly assert its rights to prosecute and defend legal actions, in which it is named a party, and to realize any asset, right, and benefit so entitled or assigned by law and regulation. This routine use would not constitute authority to disclose records in response to a court order under the Privacy Act subsection (b)(11), 5 U.S.C. § 552 (b)(11), or any other provision of the Privacy Act subsection (b), pursuant to the court's analysis in *Doe v. DiGenova*, 779 F.2d 74, 78–84 (D.C. Cir. 1985) and *Doe v. Stephens*, 851 F.2d 1457, 1465–67 (D.C. Cir. 1988).

- Routine use sixteen (16) allows disclosure of information in connection with any proceeding for the collection of a debt owed by an individual by virtue of his or her participation in a benefits program administered by VA. As required by 38 U.S.C. 5701(b)(6) the disclosure may be made for the purpose of collecting the debt, and to initiate legal action to prosecute any individual who willfully and fraudulently obtained VA benefits. This routine use is needed for VA to collect debts owed the United States.

- Routine use seventeen (17) allows disclosure of the name and address, and other information needed for personal identification, to a consumer-reporting agency, about an individual who has been administratively determined to be indebted to the United States by virtue of participating in a benefits program administered by VA. The purpose for VA making this disclosure is to locate the individual, to obtain a credit report to assess the individual's ability to pay the debt, and to assist in the collection of the debt. This routine use is needed for VA to collect debts owed the United States by virtue of a person's participation in a benefits program administered by VA. Any disclosure made under this routine use must comply with the provisions of 38 U.S.C. 5701(g)(2) and 38 U.S.C. 5701(g)(4).

- Routine use eighteen (18) permits VA to disclose to anyone upon request the amount of any VA payment received by a named individual. This routine use is needed by VA to comply with the provision of 38 U.S.C. 5701(c)(1).

- Routine use nineteen (19) authorizes the disclosure of the name and address of an individual to another Federal agency upon request for the purpose of their conducting government research to accomplish a statutory purpose of the agency. As permitted by statute certain Federal agencies, such as the Centers for Disease Control and Prevention, conduct research studies for the purpose of understanding and improving public health, safety, *etc.* This routine use is necessary in order for VA to respond to a request for the name and address of veterans or beneficiaries as potential research participants in the conduct of approved research studies.

- Routine use twenty (20) allows VA to disclose information relevant to a claim filed on behalf of a veteran or beneficiary to the individual's designated service organization, agent or attorney for the purpose of assisting the claimant in the preparation, presentation, and prosecution of his or her claim under the laws administered by VA.

- Routine use twenty-one (21) permits VA to disclose information to an individual's appointed Federal fiduciary or to the individual's guardian ad litem that they need to fulfill their appointed duties. This routine use is needed by VA to assist those veterans and beneficiaries properly determined unable to handle their own affairs.

- Routine use twenty-two (22) is needed by VA to report the amount of an individual's indebtedness waived under 38 U.S.C. 3102, the amount of indebtedness compromised under 4 CFR Part 103, otherwise forgiven, or uncollectible due to expiration of the applicable statute of limitations to Department of Treasury as gross income for tax purposes as defined by 26 U.S.C. 61(a)(12).

- Routine use twenty-three (23) authorizes VA to disclose to Department of Treasury information concerning an individual's uncollected indebtedness by virtue of his or her participation in a benefits program administered by VA for the purpose of collecting the debt by set off of the individual's Federal income tax refund. This routine use is necessary for VA to maximize collection of monies owed to the United States.

- Routine use twenty-four (24) authorizes the disclosure of the name, date of birth, and social security number for an individual applying for, or who is in receipt of VA benefits, to the Social Security Administration (SSA) for validation purposes, as VA benefit, payment, and indebtedness records are indexed using the individual's social security number. Verification of the

individual's social security number ensures proper and accurate accounting and reporting practices. The verification of social security numbers may be accomplished with SSA by computer matching.

- Routine use twenty-five (25) permits VA, in response to an inquiry from a member of the general public, to disclose the name and address of any health care provider who received VA payment for healthcare services furnished to a veteran or beneficiary. The purpose of this disclosure is to assist veterans and others who have difficulty in finding a healthcare provider in their community who accepts VA payment for healthcare services.

- Routine use twenty-six (26) permits disclosure of relevant information by VA to an accredited Quality Review and Peer Review organization for the purpose of reviewing claims or other review activities associated with VA healthcare facility accreditation to professionally accepted standards. VA seeks certification by accredited reviewer organizations, such as The Joint Commission, Utilization Review Accreditation Commission (URAC) *etc.*, to ensure compliance with accepted industry quality standards. Accreditation improves the quality of VA services delivered to veterans and beneficiaries.

- Routine use twenty-seven (27) permits disclosure of eligibility and claim information to a health care provider regarding eligibility, authorization, billing and payment for needed medical services. The purpose of making these disclosures is to assist the healthcare provider in obtaining reimbursement for claimed medical services, to facilitate billing processes, verify eligibility for requested healthcare services, and provide payment information for claimed services.

- Routine use twenty-eight (28) has been added to allow VA to conduct computer matching activities with other Federal agencies where necessary to assist VA in determining or verifying eligibility for certain benefits.

- Routine use twenty-nine (29) permits disclosure to third party payers or their contractors for purposes relating to payment, including audit of payment and claims management processes.

- Routine use thirty (30) permits disclosures by the Department to report a suspected incident of identity theft and provide information and/or documentation related to or in support of the reported incident.

- Routine use thirty-one (31) permits disclosures by the Department to

respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

The Report of Intent to Amend a System on Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: August 14, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

23VA16

SYSTEM NAME:

“Non-VA Fee Basis Records-VA.”

SYSTEM LOCATION:

Paper and electronic records, including electronic images of fee claims are maintained at the authorizing VA healthcare facility and Federal record centers. Electronic images of fee claims processed as certified payments are retained at the VA Financial Service Center (FSC) & Austin Information Technology Center (AITC), Austin, Texas. Information is also stored in automated storage media records that are maintained at the authorizing VA healthcare facility; VA Health Administration Center (HAC), Denver, Colorado; Department of Veterans Affairs Headquarters, Washington, DC; VA Allocation Resource Center (ARC), Braintree, Massachusetts; VA Office of Information Field Offices (OIFOs); and FSC & AITC. Address locations for VA facilities are listed in VA Appendix 1 of the biennial Privacy Act Issuances publication.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Veterans who seek healthcare services under 38 U.S.C. Chapter 17.
2. Beneficiaries of other Federal agencies authorized VA medical services.
3. Pensioned members of allied forces seeking healthcare services under 38 U.S.C. 109.
4. Healthcare providers treating individuals who receive care under 38 U.S.C. Chapters 1 and 17.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system include application, eligibility, and claim information regarding payment determination for medical services

provided to VA beneficiaries by non-VA healthcare institutions and providers. Application and eligibility data may include personal information of the claimant (e.g., name, address, social security number, date of birth, date of death, VA claim number, other health insurance data), description of VA adjudicated compensable or non-compensable medical conditions, and military service data (e.g., dates, branch and character of service, medical information). Claim data in this system may include information needed to properly consider claims for payment such as a description of the medical conditions treated and services provided, authorization and treatment dates, amounts claimed for healthcare services, medical records including films, and payment information (e.g., invoice number, account number, date of payment, payment amount, check number, payee identifiers). Additional information may include the healthcare provider's name, address, and taxpayer identification number, correspondence concerning individuals and documents pertaining to claims for medical services, reasons for denial of payment, and appellate determinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, United States Code, section 301 and Title 38, United States Code, sections 109, 111, 501, 1703, 1705, 1710, 1712, 1717, 1720, 1721, 1724, 1725, 1727, 1728, and 7105.

PURPOSE(S):

Records may be used to establish, determine, and monitor eligibility to receive VA benefits and for authorizing and paying Non-VA healthcare services furnished to veterans and beneficiaries. Other uses of this information include reporting healthcare provider earnings to the Internal Revenue Service; preparing responses to inquiries; performing statistical analyses for use in managerial activities, resource allocation and planning; processing and adjudicating administrative benefit claims by VBA Regional Office (RO) staff; conducting audits, reviews and investigations by staff of the VA healthcare facility, Veterans Integrated Service Network (VISN) Offices, VA Headquarters, and the VA Office of Inspector General (OIG); in the conduct of law enforcement investigations; and in the performance of quality assurance audits, reviews and investigations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information

protected by 45 CFR Parts 160 and 164, *i.e.*, individually identifiable health information, and 38 U.S.C. 7332, *i.e.*, medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR Parts 160 and 164 permitting disclosure.

1. VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their beneficiaries, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature, and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, Tribal agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. VA may disclose on its own initiative the names and addresses of veterans and their beneficiaries to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

2. A record from this system of records may be disclosed to a Federal, State, or local government agency, maintaining civil, criminal or other relevant information, such as current licenses, registration or certification, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the use of an individual as a consultant, attending or to provide fee basis health care, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other health, educational or welfare benefits. Any information in this system also may be disclosed to any of the above-listed governmental organizations as part of a series of ongoing computer matches to determine if VA healthcare practitioners and private practitioners used by the VA hold current, unrestricted licenses, or are currently registered in a State, and are board certified in their specialty, if any.

3. VA may disclose information from this system of records to a Federal agency or the District of Columbia government, in response to its request, in connection with the hiring or retention of an employee and the issuance of a security clearance as

required by law, the reporting of an investigation of an employee, the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision.

4. Information from this system of records may be disclosed to the Department of the Treasury to facilitate VA payment to physicians, clinics, and pharmacies for reimbursement of services rendered, to facilitate payments to veterans for reimbursements of authorized expenses, or to collect, by set off or otherwise, debts owed the United States.

5. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

6. Disclosure may be made to National Archives and Records Administration (NARA), and General Services Administration (GSA) in records management inspections conducted under authority of 44 United States Code.

7. Records from this system of records may be disclosed to a Federal agency or to a State or local government licensing board and/or to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications, or registration necessary to practice an occupation, profession or specialty, in order for the agency to obtain information relevant to an agency decision concerning the hiring, retention or termination of an employee or to inform a Federal agency or licensing boards or the appropriate non-government entities about the healthcare practices of a terminated, resigned or retired healthcare employee whose professional healthcare activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal agency. These records may also be disclosed as part of an ongoing computer-matching program to accomplish these purposes.

8. Identifying information in this system, including name, address, social security number, and other information as is reasonably necessary to identify such individual, may be disclosed to the National Practitioner Data Bank at the time of hiring and/or clinical privileging of healthcare practitioners, and other times as deemed necessary by VA, in order for VA to obtain information

relevant to a Department decision concerning the hiring, privileging, retention or termination of the applicant or employee.

9. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (a) Any payment for the benefit of a physician, dentist, or other licensed healthcare practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (b) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or (c) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the healthcare entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer-matching program to accomplish these purposes.

10. Relevant identifying and medical treatment information (excluding medical treatment information related to drug or alcohol abuse, infection with the human immunodeficiency virus or sickle cell anemia) may be disclosed to a Federal agency or non-VA healthcare provider or institution, including their billing or collection agent, when VA refers a patient for treatment or medical services, or authorizes a patient to obtain non-VA medical services and the information is needed by the Federal agency or non-VA institution or provider to perform the services, or for VA to obtain sufficient information in order to consider or make payment for health care services, to evaluate the services rendered, or to determine the need for additional services.

11. Information maintained in this system concerning non-VA healthcare institutions and providers, including name, address, social security or employer's taxpayer identification numbers, may be disclosed to the Department of the Treasury, Internal Revenue Service, to report calendar year

earnings of \$600 or more for income tax reporting purposes.

12. The name, date of birth and social security number of a veteran or beneficiary, and any other identifying and claim information as is reasonably necessary, such as provider identification, description of services furnished, and VA payment amount, may be disclosed to another Federal agency for its use in identifying potential duplicate payments for healthcare services paid by Department of Veteran Affairs and that agency. This information may also be disclosed as part of a computer matching agreement to accomplish this purpose.

13. Relevant information from this system of records may be disclosed to individuals, organizations, or private or public agencies, with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

14. Any relevant information in this system of records may be disclosed to attorneys, insurance companies, employers, and courts, boards, or commissions; such disclosures may be made only to the extent necessary to aid VA in the preparation, presentation, and prosecution of claims authorized under Federal, State, or local laws, and regulations promulgated thereunder.

15. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

16. Any information in this system may be disclosed in connection with any proceeding for the collection of an amount owned to the United States by virtue of a person's participation in any benefit program administered by the Veterans Health Administration when

in the judgment of the Secretary, or an official generally delegated such authority under standard agency delegation of authority rules (38 CFR 2.6), such disclosure is deemed necessary and proper, in accordance with 38 U.S.C. 5701(b)(6).

17. The name and address of a veteran or beneficiary, and other information as is reasonably necessary to identify such individual, including personal information obtained from other Federal agencies through computer matching programs, and any information concerning the individual's indebtedness to the United States by virtue of the individual's participation in a benefits program administered by VA, may be disclosed to a consumer reporting agency for the purpose of locating the individual, obtaining a consumer report to determine the ability of the individual to repay an indebtedness, or assisting in the collection of such indebtedness provided that the applicable requirements of 38 U.S.C. 5701(g)(2) and 38 U.S.C. 5701(g)(4) have been met.

18. In response to an inquiry about a named individual from a member of the general public, information from this system may be disclosed to report the amount of VA monetary benefits being received by the individual. This disclosure is consistent with 38 U.S.C. 5701(c)(1).

19. VA may disclose information from this system to a Federal agency for the purpose of conducting research and data analysis to perform a statutory purpose of that Federal agency upon the prior written request of that agency, provided that there is legal authority under all applicable confidentiality statutes and regulations to provide the data and VA has determined prior to the disclosure that the VA data handling requirements are satisfied.

20. Any information in this system of records relevant to a claim of a veteran or beneficiary, such as the name, address, the basis and nature of a claim, amount of benefit payment information, medical information and military service and active duty separation information may be disclosed to accredited service organizations, VA approved claim agents and attorneys acting under a declaration of representation, so that these individuals can aid claimants in the preparation, presentation and prosecution of claims under the laws administered by VA. The name and address of a claimant will not, however, be disclosed to these individuals under this routine use if the claimant has not requested the assistance of an accredited service

organization, claims agent or an attorney.

21. Any information in this system, including medical information, the basis and nature of claim, the amount of benefits, and other personal information may be disclosed to a VA Federal fiduciary or a guardian ad litem in relation to his or her representation of a claimant, but only to the extent necessary to fulfill the duties of the VA Federal fiduciary or the guardian ad litem.

22. The individual's name, address, social security number and the amount (excluding interest) of any indebtedness which is waived under 38 U.S.C. 3102, compromised under 4 CFR Part 103, otherwise forgiven, or for which the applicable statute of limitations for enforcing collection has expired, may be disclosed to the Department of the Treasury, Internal Revenue Service, as a report of income under 26 U.S.C. 61(a)(12).

23. The name of a veteran or beneficiary, other information as is reasonably necessary to identify such individual, and any other information concerning the individual's indebtedness by virtue of a person's participation in a benefits program administered by VA, may be disclosed to the Department of the Treasury, Internal Revenue Service, for the collection of Title 38 benefit overpayments, overdue indebtedness, and/or costs of services provided to an individual not entitled to such services, by the withholding of all or a portion of the person's Federal income tax refund.

24. The name, date of birth, and social security number of a veteran or beneficiary, and other identifying information as is reasonably necessary may be disclosed to Social Security Administration for the purpose of validating social security numbers. This information may also be disclosed as part of a computer matching agreement to accomplish this purpose.

25. The name and address of any healthcare provider in this system of records who has received payment for claimed services in behalf of a veteran or beneficiary may be disclosed in response to an inquiry from a member of the general public.

26. Relevant information from this system of records may be disclosed to an accrediting Quality Review and Peer Review Organization with which VA has an agreement or contract to conduct such reviews in connection with the review of claims or other review activities associated with VA healthcare facility accreditation to professionally accepted standards, such as The Joint Commission or Utilization Review

Accreditation Commission (URAC) or American Accreditation HealthCare Commission.

27. Eligibility and claim information from this system of records may be disclosed verbally or to a healthcare provider seeking reimbursement for claimed medical services to facilitate billing processes, verify eligibility for requested healthcare services, and provide payment information for claimed services. Eligibility or entitlement information disclosed may include the name, social security number, effective dates of eligibility, reasons for any period of ineligibility, and evidence of other health insurance information of the named individual. Claim information disclosed may include payment information such as payment identification number, date of payment, date of service, amount billed, amount paid, name of payee, and reasons for non-payment.

28. Identifying information, including social security number of veterans, spouse(s) of veterans, and dependents of veterans, may be disclosed to other Federal agencies for purposes of conducting computer matches, to obtain information to determine or verify eligibility of veterans who are receiving VA medical care under relevant sections of Title 38 U.S.C.

29. VA may disclose patient identifying information to Federal agencies and VA and government-wide third-party insurers responsible for payment of the cost of medical care for the identified patients, in order for VA to seek recovery of the medical care costs. These records may also be disclosed as part of a computer matching program to accomplish this purpose.

30. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

31. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially

compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper documents or stored electronically by magnetic discs, magnetic tape, and optical or digital imaging at the authorizing VA healthcare facility. Reports and information on automated storage media (e.g., microfilm, microfiche, magnetic tape and disks, and digital and laser optical media) is stored at the authorizing VA healthcare facility, VA Headquarters, ARC, OIFOs, FSC & AITC and Veterans Integrated Service Network (VISN) offices.

Information pertaining to electronic claims submitted to VA for payment consideration may be stored at the authorizing VA healthcare facility and at HAC. Records maintained at HAC are stored electronically.

RETRIEVABILITY:

Paper and electronic records pertaining to the individual may be retrieved by the name or Social Security number of the record subject. Records pertaining to the healthcare provider are retrieved by the name or Social Security and taxpayer identification number of the non-VA healthcare institution or provider. Records at the ARC are retrieved only by Social Security number.

SAFEGUARDS:

1. VA will maintain the data in compliance with applicable VA security policy directives that specify the standards that will be applied to protect sensitive personal information. Contractors and their subcontractors who access the data are required to maintain the same level of security as VA staff. Working spaces and record storage areas in VA facilities are restricted to VA employees. Generally, file areas are locked after normal duty hours and healthcare facilities are protected from outside access by security personnel. Access to the

records is restricted to VA employees who have a need for the information in the performance of their official duties. Employee records or records of public figures or otherwise sensitive records are generally stored in separate locked files.

2. Electronic data security complies with applicable Federal Information Processing Standards (FIPS) issued by the National Institute of Standards and Technology (NIST). Access to computer rooms at healthcare facilities is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. Peripheral devices are generally placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Access to file information is controlled at two levels: the system recognizes authorized employees by a series of individually unique passwords/codes that must be changed periodically by the employee, and employees are limited by role-based access to only that information in the file which is needed in the performance of their official duties. Information that is downloaded and maintained on personal computers is afforded similar storage and access protections as the data that is maintained in the original files. Remote access to file information by staff of the OIFOs, and access by OIG staff conducting an audit or investigation at the healthcare facility or an OIG office location remote from the healthcare facility is controlled in the same manner.

3. Access to FSC and AITC is generally restricted to Center employees, custodial personnel and security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other persons gaining access to computer rooms are escorted. Authorized VA employees at remote locations, including VA healthcare facilities, OIFOs, VA Headquarters, VISN offices, and OIG headquarters and field staff, may access information stored in the computer. Access is controlled by individually unique passwords/codes that must be changed periodically by the employee.

4. Access to records maintained at VA Headquarters, ARC, OIFOs, and VISN offices is restricted to VA employees who have a need for the information in the performance of their official duties. Access to information stored on automated storage media is controlled by individually unique passwords/codes that must be changed periodically by the employee. Authorized VA employees at remote locations including

VA healthcare facilities may access information stored in the computer. Access is controlled by individually unique passwords/codes. Records are maintained in manned rooms during nonworking hours. The facilities are protected from outside access during working hours by security personnel.

5. Information downloaded and maintained by the OIG Headquarters and field offices on automated storage media is secured in storage areas or facilities to which only OIG staff members have access. Paper documents are similarly secured. Access to paper documents and information on automated storage media is limited to OIG employees who have a need for the information in the performance of their official duties. Access to information stored on automated storage media is controlled by individually unique passwords/codes.

6. Access to records maintained at HAC Office of Information and Technology (OI&T) is restricted to VA employees who have a need for the information in the performance of their official duties. Access to information stored on automated storage media is controlled by individually unique passwords/codes that must be changed periodically by the employee. Authorized VA employees at remote locations including VA healthcare facilities may access and print information stored in the computer. Access is controlled by individually assigned unique passwords/codes. Records are maintained in a secured, pass card protected and alarmed room. The facilities are protected from outside access during non-working hours by security personnel.

RETENTION AND DISPOSAL:

Paper and electronic documents at the authorizing healthcare facility related to authorizing the fee basis care and the services authorized, billed and paid for are maintained in "Patient Medical Records—VA" (24VA19). These records are retained at healthcare facilities for a minimum of three years after the last episode of care. After the third year of inactivity the paper records are transferred to a records facility for seventy-two (72) more years of storage.

Automated storage media, imaged fee claims, and other paper documents that are included in this system of records and not maintained in "Patient Medical Records—VA" (24VA19) are retained and disposed of in accordance with disposition authority approved by the Archivist of the United States.

Paper records that are imaged for viewing electronically are destroyed after they have been scanned, and the

electronic copy determined to be an accurate and complete copy of the paper record imaged.

SYSTEM MANAGER(S) AND ADDRESS:

Official responsible for policies and procedures: Chief Business Officer (16), Department of Veterans Affairs, Veterans Health Administration, VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. Official Maintaining the System: Director, National Fee Program Office, VHA Chief Business Office, P.O. Box 469066, Denver, CO 80246.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under the individual's name or other personal identifier, or who wants to determine the contents of such record, should submit a written request or apply in person to the last VA healthcare facility where care was authorized or rendered. Addresses of VA healthcare facilities may be found in VA Appendix 1 of the Biennial Publication of Privacy Act Issuances. All inquiries must reasonably identify the portion of the fee basis record involved and the place and approximate date that medical care was provided. Inquiries should include the patient's full name, social security number, and return address.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of VA fee basis records may write, call or visit the VA facility where medical care was last authorized or provided.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

The veteran or other VA beneficiary, family members or accredited representatives, and other third parties; military service departments; private medical facilities and healthcare professionals; electronic trading partners; other Federal agencies; Veterans Health Administration facilities and automated systems; Veterans Benefits Administration facilities and automated systems; and deployment status and availability.

[FR Doc. E9-20911 Filed 8-28-09; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Report of Matching Program

AGENCY: Department of Veterans Affairs.
ACTION: Notice of Computer Matching Program.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring computer matching program matching Office of Personnel Management (OPM), civil service payment records with VA pension, compensation, and dependency and indemnity compensation (DIC) records. The goal of this match is to identify beneficiaries receiving VA income-dependent benefits and civil service retirement benefits in order to adjust VA income-dependent benefits payment as prescribed by law. The match will include records of current VA beneficiaries.

DATES: The match will start no sooner than 30 days after publication of this notice in the **Federal Register**, or 40 days after copies of this Notice and the agreement of the parties is submitted to Congress and the Office of Management and Budget, whichever is later, and end not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their DIBs, within three months of the ending date of the original match, that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

ADDRESSES: Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Pamela Burd (212B), (202) 461-9149.

SUPPLEMENTARY INFORMATION: VA will use this information to identify beneficiaries receiving VA income-dependent benefits and civil service retirement benefits in order to adjust VA income-dependent benefits payment as prescribed by law. The proposed matching program will enable VA to accurately identify beneficiaries who are improperly receiving benefits.

The legal authority to conduct this match is 38 U.S.C. 5106. Section 5106 requires any Federal department or agency to provide VA such information as VA requests for the purposes of determining eligibility for, or the amount of VA benefits, or verifying other information with respect thereto.

The VA records involved in the match are the VA system of records, VA Compensation, Pension and Education and Rehabilitation Records—VA (58 VA 21/22/28), first published at 41 FR 9294 (March 3, 1976), and last amended at 74 FR 14865 (April 1, 2009), with other amendments as cited therein. The OPM records consist of information from the OPM Civil Service Retirement Pay File identified as OPM Central—1, Civil Service Retirement and Insurance Records, published as 64 FR 54930, October 8, 1999, and amended as 65 FR 25775 (May 3, 2000).

In accordance with Title 5 U.S.C. subsection 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget. This notice is provided in accordance with the provisions of Privacy Act of 1974 as amended by Public Law 100-503.

Approved: August 14, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.
[FR Doc. E9-20917 Filed 8-28-09; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Report of Matching Program

AGENCY: Department of Veterans Affairs.
ACTION: Notice of computer matching program.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring computer-matching program matching Social Security Administration (SSA) Master Beneficiary Records (MBRs) with VA pension, compensation, and dependency and indemnity compensation (DIC) records. The goal of this match is to identify beneficiaries who are receiving VA benefits, and to

reduce or terminate benefits, if appropriate. The match will include records of current VA beneficiaries.

DATES: The match will start no sooner than 30 days after publication of this notice in the **Federal Register**, or 40 days after copies of this Notice and the agreement of the parties is submitted to Congress and the Office of Management and Budget, whichever is later, and end not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their DIBs, within three months of the ending date of the original match, that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

ADDRESSES: Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026.

Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Pamela Burd (212B), (202) 461-9149.

SUPPLEMENTARY INFORMATION: VA will use this information to verify the income information submitted by income dependent beneficiaries and adjust VA benefit payments as prescribed by law. The proposed matching program will enable VA to accurately identify beneficiaries who are in receipt of SSA benefits and have not reported the income as required by law.

The legal authority to conduct this match is 38 U.S.C. 5106, which requires any Federal department or agency to provide VA such information as VA requests for the purposes of determining eligibility for, or the amount of VA

benefits, or verifying other information with respect thereto.

The VA records involved in the match are the VA system of records, VA Compensation, Pension and Education and Rehabilitation Records—VA (58 VA 21/22/28)", first published at 41 FR 9294 (March 3, 1976), and last amended at 74 FR 14865 (April 1, 2009), with other amendments as cited therein. The SSA records consist of information from the system of records identified as the SSA MBR, SSA/ORSIS, 60-0090, routine use number 23 and SSA MEF, SSA/OEEAS, 60-0059, routine use numbers 15 and 25.

In accordance with Title 5 U.S.C. subsection 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget. This notice is provided in accordance with the provisions of Privacy Act of 1974 as amended by Public Law 100-503.

Approved: August 14, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. E9-20913 Filed 8-28-09; 8:45 am]

BILLING CODE 8320-01-P



Federal Register

**Monday,
August 31, 2009**

Part II

Department of Energy

10 CFR Part 431

**Energy Conservation Program: Energy
Conservation Standards for Refrigerated
Bottled or Canned Beverage Vending
Machines; Final Rule**

DEPARTMENT OF ENERGY**10 CFR Part 431**

[Docket Number EERE-2006-STD-0125]

RIN 1904-AB58

Energy Conservation Program: Energy Conservation Standards for Refrigerated Bottled or Canned Beverage Vending Machines

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE) is adopting new energy conservation standards for refrigerated bottled or canned beverage vending machines. DOE has determined that energy conservation standards for these types of equipment would result in significant conservation of energy, and are technologically feasible and economically justified.

DATES: The effective date of this rule is October 30, 2009, except that the standards in 10 CFR 431.296 are effective August 31, 2011. The incorporation by reference of certain publications listed in this rule was approved by the Director of the Federal Register on October 30, 2009.

ADDRESSES: For access to the docket to read background documents, the technical support document, transcripts of the public meetings in this proceeding, or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024, (202) 586-2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room. (**Note:** DOE's Freedom of Information Reading Room no longer houses rulemaking materials.) You may also obtain copies of certain previous rulemaking documents in this proceeding (*i.e.*, framework document, advance notice of proposed rulemaking, notice of proposed rulemaking), draft analyses, public meeting materials, and related test procedure documents from the Office of Energy Efficiency and Renewable Energy's Web site at http://www1.eere.energy.gov/buildings/appliance_standards/commercial/beverage_machines.html.

FOR FURTHER INFORMATION CONTACT:

Charles Llenza, U.S. Department of Energy, Energy Efficiency and

Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-2192, Charles.Llenza@ee.doe.gov.

Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, GC-72, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-9507, Francine.Pinto@hq.doe.gov.

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I. Summary of the Final Rule and Its Benefits**A. The Standard Levels**

The Energy Policy and Conservation Act, as amended (42 U.S.C. 6295 *et seq.*; EPCA), directs the Department of Energy (DOE) to establish mandatory energy conservation standards for refrigerated bottled or canned beverage vending machines. (42 U.S.C. 6295(v)(1), (2) and (3)) These types of equipment are referred to collectively hereafter as "beverage vending machines." Any such standard must be designed to "achieve the maximum improvement in energy efficiency * * * which the Secretary determines is technologically feasible and economically justified." (42 U.S.C. 6295(o)(2)(A) and 6316(e)(1)) Furthermore, the new standard must "result in significant conservation of energy." (42 U.S.C. 6295(o)(3)(B)) The standards in today's final rule, which apply to all beverage vending machines, satisfy these requirements. Currently, no mandatory Federal energy conservation

standards exist for the beverage vending machine equipment covered by this rulemaking.

Table I.1 shows the standard levels that DOE is adopting today. These standards will apply to all beverage vending machines manufactured for sale in the United States, or imported to the United States, starting 3 years after publication of the final rule.

TABLE I.1—STANDARD LEVELS FOR BEVERAGE VENDING MACHINES

Equipment class *	Proposed standard level ** maximum daily energy consumption (MDEC) kWh/day ***
A	MDEC = 0.055 × V + 2.56. †
B	MDEC = 0.073 × V + 3.16. ††

* See section IV.A.2 of the NOPR for a discussion of equipment classes.

**“V” is the refrigerated volume (ft³) of the refrigerated bottled or canned beverage vending machine, as measured by the American National Standards Institute (ANSI)/Association of Home Appliance Manufacturers (AHAM) HRF-1-2004, “Energy, Performance and Capacity of Household Refrigerators, Refrigerator-Freezers and Freezers.” V is the volume of the case, as measured in ARI Standard 1200-2006, Appendix C.

*** Kilowatt hours per day.
 † Trial Standard Level (TSL) 6.
 †† TSL 3.

B. Benefits to Customers of Beverage Vending Machines

Table I.2 indicates the impacts on commercial customers of today’s standards.

TABLE I.2—IMPLICATIONS OF NEW STANDARDS FOR COMMERCIAL CUSTOMERS

Equipment class	Energy conservation standard	Total installed cost \$	Total installed cost increase \$	Life-cycle cost savings \$	Payback period years
Class A	TSL 6	2,935	233	277	4.1
Class B	TSL 3	2,070	86	37	6.8

The economic impacts on commercial customers (i.e., the average life-cycle cost [LCC] savings) are positive for most equipment classes. For example, fully cooled (Class A) medium-capacity vending machines—the most common type currently being sold—have installed prices of \$2,625 and annual energy costs of \$188, respectively at national average values. To meet the new standards, DOE estimates that the installed prices of such equipment will be \$2,864, an increase of \$239, which will be offset by annual energy savings of approximately \$69 and an increase in maintenance and repair cost of \$13.

C. Impact on Manufacturers

Using a real corporate discount rate of 7 percent, DOE estimates the industry net present value (INPV) of the beverage vending machine industry to be \$44.1 million for Class A units, and \$33.7 million for Class B units (both figures in 2008\$). For Class A machines, DOE expects the impact of today’s standards on the INPV of manufacturers of beverage vending machines to be a loss of 18.0 to 25.1 percent (\$7.9 million to \$11.1 million) for Class A machines and a loss of 1.9 to 3.5 percent (\$0.6 million to \$1.2 million) for Class B machines. Based on DOE’s interviews with manufacturers of beverage vending machines, DOE expects minimal plant closings or loss of employment as a result of the standards.

D. National Benefits

DOE estimates that the standards will save approximately 0.159 quads (quadrillion, or 10¹⁵) British thermal

units (Btu) of energy over 30 years (2012–2042). This is equivalent to all the energy consumed by more than 830 thousand American households in a single year.

By 2042, DOE expects energy savings from the standards to eliminate the need for approximately 0.118 new 1,000-megawatt (MW) power plants. These energy savings will result in cumulative greenhouse gas emission reductions of approximately 9.6 million metric tons (Mt) of carbon dioxide (CO₂), an amount equal to that produced by approximately 2.0 million cars every year. Additionally, the standards will help alleviate air pollution by resulting in 3.28 kilotons (kt) of cumulative nitrogen oxide (NO_x) emission reductions and between 0 and 0.188 tons of cumulative mercury (Hg) emission reductions from 2012–2042. The estimated net present monetary values of these emissions reductions (expressed in 2007\$) are between \$5.5 and \$266.3 million for CO₂, (expressed in 2007\$), \$354,000 and \$3.6 million for NO_x (expressed in 2007\$), and \$0 and \$1.5 million for Hg (expressed in 2007\$) at a 7-percent discount rate (discounted to 2009). At a 3 percent discount rate, the estimated net present values of these emissions reductions are between \$11.3 and \$543.5 million (2007\$) for CO₂, \$749,000 and \$7.7 million (2007\$) for NO_x, and \$0 and \$3.2 million (2007\$) for Hg.

The national NPV of the standards is \$0.182 billion using a 7 percent discount rate and \$0.476 billion using a 3 percent discount rate, cumulative from 2012–2057 in 2008\$. This is the

estimated total value of future savings minus the estimated increased equipment costs, discounted to 2009.

The benefits and costs of today’s final rule can also be expressed in terms of annualized (2008\$) values from 2012–2042. Separate estimates of values for Class A and Class B equipment are shown in Table I.3 and Table I.4, respectively. In each table, the annualized monetary values are the sum of the annualized national economic value of operating savings benefits (energy, maintenance and repair), expressed in 2008\$, plus the monetary values of the benefits of carbon dioxide emission reductions, otherwise known as the Social Cost of Carbon (SCC) expressed as \$19 per metric ton of carbon dioxide, in 2007\$. The \$19 value is a central interim value from a recent interagency process. The derivation of this value is discussed in section VI.C.6. Although summing the value of operating savings to the values of CO₂ reductions provides a valuable perspective, please note the following: (1) The national operating savings are domestic U.S. consumer monetary savings found in market transactions while the CO₂ value is based on a range of estimates of imputed marginal social cost of carbon from \$1.14 to \$55 per metric ton (2007\$), which are meant to reflect, for the most part, the global benefits of carbon dioxide reductions; (2) the national operating savings are measured in 2008\$ while the CO₂ saving are measured in 2007\$; and (3) the assessments of operating savings and CO₂ savings are performed with different computer models, leading to

different time frames for analysis. The present value of national operating savings is measured for the period 2012–2057 (31 years from 2012 to 2042 inclusive, plus the lifetime of the longest-lived equipment shipped in the 31st year), then converted the annualized equivalent for the 31 years. The value of CO₂, on the other hand is meant to reflect the present value of all future climate related impacts, even those beyond 2057.

Using a 7 percent discount rate for the annualized cost analysis, the combined cost of the standards established in today’s final rule for Class A and Class B beverage vending machines is \$24.0 million per year in increased equipment and installation costs, while the annualized benefits are \$41.8 million per year in reduced equipment operating costs and \$9.0 million in CO₂ reductions, for a net benefit of \$26.8 million per year. Using a 3 percent

discount rate, the cost of the standards established in today’s final rule is \$23.1 million per year in increased equipment and installation costs, while the benefits of today’s standards are \$49.1 million per year in reduced operating costs and \$10.3 million in CO₂ reductions, for a net benefit of \$36.3 million per year. The separate estimates of values for Class A and Class B equipment are shown in Table I.3 and Table I.4 respectively.

TABLE I.3—ANNUALIZED BENEFITS AND COSTS FOR CLASS A EQUIPMENT

Category	Primary estimate (AEO reference case)	Low estimate (low growth case)	High estimate (high growth case)	Units		
				Year dollars	Disc (percent)	Period covered
Benefits						
Annualized Monetized (millions\$/year)	37.7	34.2	40.0	2008	7	31
	44.2	39.9	46.8	2008	3	31
Annualized Quantified	0.25 CO ₂ (Mt) ...	0.25 CO ₂ (Mt) ...	0.25 CO ₂ (Mt) ...	NA	7	31
	0.07 NO _x (kt) ...	0.07 NO _x (kt) ...	0.07 NO _x (kt) ...	NA	7	31
	0.004 Hg (t)	0.004 Hg (t)	0.004 Hg (t)	NA	7	31
	0.26 CO ₂ (Mt) ...	0.26 CO ₂ (Mt) ...	0.26 CO ₂ (Mt) ...	NA	3	31
	0.039 NO _x (kt) ...	0.039 NO _x (kt) ...	0.039 NO _x (kt) ...	NA	3	31
	0.005 Hg (t)	0.005 Hg (t)	0.005 Hg (t)	NA	3	31
	CO ₂ Monetized Value (at \$19/Metric Ton, millions\$/year).	7.9	7.9	7.9	2007	7	31
9.0		9.0	9.0	2007	3	31
Total Monetary Benefits (millions\$/year)*.	45.5	42.1	47.9	2008 & 2007	7	31
	53.2	48.9	55.8	2008 & 2007	3	31
Qualitative						
Costs						
Annualized Monetized (millions\$/year)	19.6	19.6	19.6	2008	7	31
	18.8	18.8	18.8	2008	3	31
Qualitative						
Net Benefits/Costs						
Annualized Monetized, including Carbon Benefits* (million\$/year).	26.0	22.6	28.4	2008 & 2007	7	31
	34.4	30.1	36.9	2008 & 2007	3	31
Qualitative						

* Per the above discussion, this represents a simplified estimate that includes both 2007\$ and 2008\$.

TABLE I.4—ANNUALIZED BENEFITS AND COSTS FOR CLASS B EQUIPMENT

Category	Primary estimate (AEO reference case)	Low estimate (low growth case)	High estimate (high growth case)	Units		
				Year dollars	Disc (percent)	Period covered
Benefits						
Annualized Monetized (millions\$/year)	4.1	3.6	4.4	2008	7	31
	4.9	4.3	5.2	2008	3	31
Annualized Quantified	0.03 CO ₂ (Mt) ...	0.03 CO ₂ (Mt) ...	0.03 CO ₂ (Mt) ...	NA	7	31
	0.01 NO _x (kt) ...	0.01 NO _x (kt) ...	0.01 NO _x (kt) ...	NA	7	31
	0.001 Hg (t)	0.001 Hg (t)	0.001 Hg (t)	NA	7	31
	0.04 CO ₂ (Mt) ...	0.04 CO ₂ (Mt) ...	0.04 CO ₂ (Mt) ...	NA	3	31
	0.012 NO _x (kt) ...	0.012 NO _x (kt) ...	0.012 NO _x (kt) ...	NA	3	31

TABLE I.4—ANNUALIZED BENEFITS AND COSTS FOR CLASS B EQUIPMENT—Continued

Category	Primary estimate (AEO reference case)	Low estimate (low growth case)	High estimate (high growth case)	Units		
				Year dollars	Disc (percent)	Period covered
	0.001 Hg (t)	0.001 Hg (t)	0.001 Hg (t)	NA	3	31
CO ₂ Monetized Value (at \$19/Metric Ton, millions\$/year).	1.1	1.1	1.1	2007	7	31
	1.3	1.3	1.3	2007	3	31
Total Monetary Benefits (millions\$/ year)*.	5.2	4.7	5.6	2008 & 2007	7	31
	6.1	5.5	6.5	2008 & 2007	3	31
Qualitative						
Costs						
Annualized Monetized (millions\$/year)	4.4	4.4	4.4	2008	7	31
	4.3	4.3	4.3	2008	3	31
Qualitative						
Net Benefits/Costs						
Annualized Monetized, including Car- bon Benefits (million\$/year)*.	0.8	0.3	1.1	2008 & 2007	7	31
	1.9	1.3	2.2	2008 & 2007	3	31
Qualitative						

* Per the above discussion, this represents a simplified estimate that includes both 2007\$ and 2008\$.

II. Introduction

A. Authority

Title III of EPCA sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III (42 U.S.C. 6291–6309) provides for the Energy Conservation Program for Consumer Products Other Than Automobiles. The amendments to EPCA contained in the Energy Policy Act of 2005 (EPACT 2005), Public Law 109–58, include new or amended energy conservation standards and test procedures for some of these products, and direct DOE to undertake rulemakings to promulgate such requirements. In particular, section 135(c)(4) of EPACT 2005 amends EPCA to direct DOE to prescribe energy conservation standards for beverage vending machines. (42 U.S.C. 6295(v))

Because of its placement in Part A of Title III of EPCA, the rulemaking for beverage vending machine energy conservation standards is bound by the requirements of 42 U.S.C. 6295. However, since beverage vending machines are commercial equipment, DOE intends to place the new requirements for beverage vending machines in Title 10 of the Code of Federal Regulations (CFR), Part 431 (“Energy Efficiency Program for Certain Commercial and Industrial Equipment”), which is consistent with

DOE’s previous action to address the EPACT 2005 requirements for commercial equipment. The location of the provisions within the CFR does not affect either their substance or applicable procedure, so DOE is placing them in the appropriate CFR part based on their nature or type. DOE will refer to beverage vending machines as “equipment” throughout the notice because of their placement in 10 CFR part 431. DOE publishes today’s final rule pursuant to Title III, Part A of EPCA, which provides for test procedures, labeling, and energy conservation standards for beverage vending machines and certain other equipment. The test procedures for beverage vending machines appear at sections 431.293 and 431.294.

EPCA provides criteria for prescribing new or amended standards for beverage vending machines. As indicated above, any new or amended standard for this equipment must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)) Additionally, EPCA provides specific prohibitions on prescribing such standards. DOE may not prescribe an amended or new standard for any equipment for which DOE has not established a test procedure. (42 U.S.C. 6295(o)(3)) Further, DOE may not prescribe an

amended or new standard if DOE determines by rule that such standard would not result in “significant conservation of energy” or “is not technologically feasible or economically justified.” (42 U.S.C. 6295(o)(3)(A) and (B))

EPCA also provides that in deciding whether such a standard is economically justified for equipment such as beverage vending machines, DOE must, after receiving comments on the proposed standard, determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the following seven factors:

1. The economic impact of the standard on manufacturers and consumers of the products subject to the standard;
2. The savings in operating costs throughout the estimated average life of the covered equipment in the type (or class) compared to any increase in the price, or in the initial charges for, or maintenance expenses of, the equipment likely to result from the imposition of the standard;
3. The total projected amount of energy savings likely to result directly from the imposition of the standard;
4. Any lessening of the utility or the performance of the products likely to result from the imposition of the standard;

5. The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

6. The need for national energy conservation; and

7. Other factors the Secretary of Energy (Secretary) considers relevant. (42 U.S.C. 6295(o)(2)(B)(i))

In addition, EPCA, as amended (42 U.S.C. 6295(o)(2)(B)(iii) and 6316(a)), establishes a rebuttable presumption that any standard for covered products is economically justified if the Secretary finds that “the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy (and as applicable, water) savings during the first year that the consumer will receive as a result of the standard, as calculated under the test procedure * * *” in place for that standard.

EPCA further provides that the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is “likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary’s finding.” (42 U.S.C. 6295(o)(4) and 6316(e)(1))

Section 325(q)(1) of EPCA is applicable to promulgating standards for most types or classes of equipment, including beverage vending machines that have two or more subcategories. (42 U.S.C. 6295(q)(1) and 42 U.S.C. 6316(e)(1)) Under this provision, DOE must specify a different standard level than that which applies generally to such type or class of equipment for any group of products “which have the same function or intended use, if * * * products within such group—(A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard” than applies or will apply to the other products. (42 U.S.C. 6295(q)(1)(A) and (B)) In determining whether a performance-related feature justifies such a different standard for a group of products, DOE must consider “such factors as the utility to the consumer of such a feature” and other factors DOE deems appropriate. (42 U.S.C. 6295(q)(1)) Any

rule prescribing such a standard must include an explanation of the basis on which DOE established such a higher or lower level. (See 42 U.S.C. 6295(q)(2))

Federal energy conservation standards for commercial equipment generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c); 42 U.S.C. 6316(e)(2)–(3)) DOE can, however, grant waivers of preemption for particular State laws or regulations, in accordance with the procedures and other provisions of section 327(d) of the Act. (42 U.S.C. 6297(d); 42 U.S.C. 6316(e)(2)–(3))

B. Background

1. History of Standards Rulemaking for Beverage Vending Machine Equipment

As discussed in the notice of proposed rulemaking (NPR), 74 FR 26022 (May 29, 2009) (the May 2009 NPR), the EPACT 2005 amendments to EPCA require that DOE issue energy conservation standards for the equipment covered by this rulemaking, which would apply to equipment manufactured 3 years after publication of the final rule establishing the energy conservation standards. (42 U.S.C. 6295(v)(1), (2) and (3)) The energy use of this equipment has not previously been regulated by Federal law.

Section 135(a)(3) of EPACT 2005 also amended section 321 of EPCA, in part, by adding definitions for terms relevant to this equipment. (42 U.S.C. 6291 (40)) EPCA defines “refrigerated bottled or canned beverage vending machine” as “a commercial refrigerator that cools bottled or canned beverages and dispenses the bottled or canned beverages on payment.” (42 U.S.C. 6291 (40)) Section 136(a)(3) of EPACT 2005 amended section 340 of EPCA, in part, by adding a definition for “commercial refrigerator, freezer, and refrigerator-freezer.”

During the course of this rulemaking, Congress passed the Energy Independence Security Act of 2007 (EISA 2007), which the President signed on December 19, 2007 (Pub. L. 110–140). Section 310(3) of EISA 2007 amended section 325 of EPCA in part by adding subsection 325(gg) (42 U.S.C. 6295(gg)). This subsection requires any new or amended energy conservation standards adopted after July 1, 2010, to incorporate “standby mode and off mode energy use.” (42 U.S.C. 6295(gg)(3)(A)) In the NPR, DOE stated that because any standards associated with this rulemaking are required by August 2009, the energy use calculations will not include “standby mode and off mode energy use.” To

include standby mode and off mode energy use requirements for this rulemaking would take considerable analytical effort and would likely require changes to the test procedure. Given the statutory deadline, DOE has decided to address these additional requirements when the energy conservation standards for beverage vending machines are reviewed in August 2015. At that time, DOE will consider the need for possible amendment in accordance with 42 U.S.C. 6295(m). (74 FR 26023)

DOE commenced this rulemaking on June 28, 2006, by publishing a notice of a public meeting and of the availability of its framework document for the rulemaking. 71 FR 36715. The framework document described the approaches DOE anticipated using and issues to be resolved in the rulemaking. DOE held a public meeting in Washington, DC on July 11, 2006, to present the contents of the framework document, describe the analyses DOE planned to conduct during the rulemaking, obtain public comment on these subjects, and facilitate the public’s involvement in the rulemaking. After the public meeting, DOE also allowed the submission of written statements in response to the framework document.

On June 16, 2008, DOE published an advance notice of proposed rulemaking (ANOPR) in this proceeding. 73 FR 34094 (the June 2008 ANOPR). In the June 2008 ANOPR, DOE sought comment on its proposed equipment classes for the rulemaking, and on the analytical framework, models, and tools that DOE used to analyze the impacts of energy conservation standards for beverage vending machines. In conjunction with the June 2008 ANOPR, DOE published on its Web site the complete ANOPR technical support document (TSD), which included the results of DOE’s various preliminary analyses in this rulemaking. In the June 2008 ANOPR, DOE requested oral and written comments on these results and on a range of other issues. DOE held a public meeting in Washington, DC, on June 26, 2008, to present the methodology and results of the ANOPR analyses and to receive oral comments from those who attended. The oral and written comments DOE received focused on DOE’s assumptions, approach, and equipment class breakdown, and were addressed in detail in the May 2009 NPR.

In the May 2009 NPR, DOE proposed new energy conservation standards for beverage vending machines. 74 FR 26020. In conjunction with the May 2009 NPR, DOE also published on its Web site the complete

TSD for the proposed rule, which incorporated the final analyses that DOE conducted, and contained technical documentation for each step of the analysis. The TSD included the engineering analysis spreadsheets, the LCC spreadsheet, and the national impact analysis spreadsheet. The standards DOE proposed for beverage vending machines are shown in Table II.1.

TABLE II.1—MAY 2009 PROPOSED STANDARD LEVELS FOR BEVERAGE VENDING MACHINES

Equipment class*	Proposed standard level** maximum daily energy consumption (MDEC) kWh/day***
A	$MDEC = 0.055 \times V + 2.56.^\dagger$
B	$MDEC = 0.073 \times V + 3.16.^\ddagger$

* See section IV.A.2 of the NOPR (74 FR 26027) for a discussion of equipment classes.

** "V" is the refrigerated volume (ft³) of the refrigerated bottled or canned beverage vending machine, as measured by ANSI/AHAM HRF-1-2004, "Energy, Performance and Capacity of Household Refrigerators, Refrigerator-Freezers and Freezers."

*** Kilowatt hours per day.

† TSL 6.

‡ TSL 3.

In the May 2009 NOPR, DOE identified issues on which it was particularly interested in receiving comments and views of interested parties. These included the magnitude of the estimated decline in INPV and what impact this level could have on industry parties including small businesses; whether the proposed linear equation used to describe the maximum daily energy consumption standards should be based on a two-point, three-point, or some other weighting strategy; whether the proposed standard risks industry consolidation; how small business manufacturers will be affected due to new energy conservation standards; the potential compliance costs and other impacts to small manufacturers that do not supply the high-volume customers of beverage vending machines; the impacts on small manufacturers for possible alternatives to the proposed rule; and whether the energy savings and related benefits outweigh the costs, including potential manufacturer impacts. After the publication of the May 2009 NOPR, DOE received written comments on these and other issues. DOE also held a public meeting in Washington, DC, on June 17, 2009, to hear oral comments on and solicit information relevant to the proposed rule. The May 2009 NOPR included additional background

information on the history of this rulemaking. 74 FR 26023.

2. Miscellaneous Rulemaking Issues

a. Type of Standard

For the ANOPR, DOE received comments from interested parties regarding the type of standards it would be developing as part of this rulemaking. Some interested parties recommended that DOE set prescriptive standards, while others suggested that the choice of technologies used to achieve standards should be left to the discretion of the manufacturer. (73 FR 34100)

In response, DOE noted in the ANOPR that EPCA provides that an "energy conservation standard" must be either (A) "a * * * level of energy efficiency" or "a * * * quantity of energy use," or (B), for certain specified equipment, "a design requirement." (42 U.S.C. 6291(6)) Thus, an "energy conservation standard" cannot consist of both a design requirement and a level of efficiency or energy use. In addition, beverage vending machines are not one of the specified types of equipment for which EPCA allows a standard be set with a design requirement. (42 U.S.C. 6291(6)(B), 6292(a)) Item (A) above also indicates that, under EPCA, a single energy conservation standard cannot have measures of both energy efficiency and energy use. Furthermore, EPCA specifically requires DOE to base its test procedure for this equipment on ANSI/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 32.1-2004, Methods of Testing for Rating Vending Machines for Bottled, Canned or Other Sealed Beverages. (42 U.S.C. 6293(b)(15)) The test methods in ANSI/ASHRAE Standard 32.1-2004 consist of means to measure energy consumption, not energy efficiency. (73 FR 34100)

During the NOPR public meeting, the Appliance Standards Awareness Project (ASAP), stated that DOE's previous decisions to not allow multi-part standards needs to be revisited, but not as part of this rulemaking. Multi-part standards would allow performance standards and design requirements to be established. (ASAP, Public Meeting Transcript, No. 56 at p. 35) A notation in the form "ASAP, No. 56 at p. 35" identifies an oral comment that DOE received during the June 17, 2008, NOPR Public Meeting. This comment was recorded in the public meeting transcript in the docket for this rulemaking (Docket No. EERE-2006-BT-STD-0125). This particular notation refers to a comment (1) made during the public meeting by the Appliance

Standards Awareness Project; (2) recorded in document number 35, which is the public meeting transcript filed in the docket of this rulemaking; and (3) appearing on page 35 of document number 56. In a written comment co-signed by Pacific Gas and Electric Company (PG&E), Southern California Edison, Southern California Gas Company (SCGC), San Diego Gas and Electric (SDGE), ASAP, and the National Resource Defense Council (NRDC), hereafter the Joint Comment, signatories urged DOE to include a design requirement for factory set controls in today's final rule. (Joint Comment, No. 67 at p. 2) For the reasons given above, DOE maintains that it does not have authority to develop standards that consist of both a design requirement and a level of efficiency or energy use. Instead, DOE has developed standards that would require that each beverage vending machine be subject to a maximum level of energy consumption, and manufacturers could meet these standards with their own choice of design methods.

In response to the NOPR, the University of Southern Maine (USM) recommended that DOE establish energy consumption standards that are based on beverage vending machines that have no lights, with the exception of lighting the coin slots. Or as an alternative, USM suggested that the standards be based on a machine that has lights controlled by proximity sensors that turn lights on only when prospective purchasers are nearby. (USM, No. 52 at p. 1) USM also supported setting a design standard that encourages the use of refrigerant gases that offer the lowest total life-cycle impacts. (USM, No. 52 at p. 1) As stated above, beverage vending machines are not one of the specified equipment for which EPCA allows a standard to consist of a design requirement. (42 U.S.C. 6291(6)(B), 6292(a))

b. Combination Vending Machines

Combination vending machines have a refrigerated volume for the purpose of cooling and vending "beverages in a sealed container," and are therefore covered by this rule. However, beverage vending is not their sole function. Combination vending machines also have non-refrigerated volumes for the purpose of vending other, non-"sealed beverage" merchandise. In the ANOPR, DOE addressed several comments from interested parties regarding combination vending machines. Specifically, these parties were concerned that regulating vending machines that contain both refrigerated and non-refrigerated products could result in confusion

about what this rulemaking covers, or could result in manufacturers taking advantage of loopholes to produce equipment that does not meet the standards. In response, DOE stated that the language used in EPCA to define beverage vending machines is broad enough to include any vending machine, including a combination vending machine, as long as some portion of that machine cools bottled or canned beverages and dispenses them upon payment. (42 U.S.C. 6291 (40)) DOE interprets this language to cover any vending machine that can dispense at least one type of refrigerated bottled or canned beverage, regardless of the other types of vended products (some of which may not be refrigerated). 73 FR 34105–06.

At the NOPR public meeting, Dixie-Narco stated that combination vending machines were not specifically included in the analysis, which focused on glass front and stack-style beverage vending machines, and should be studied further. (Dixie-Narco, Public Meeting Transcript, No. 56 at p. 204) Dixie-Narco asserted that the existing formulas for Class A and Class B machines create an energy threshold that cannot be met by combination machines. Dixie-Narco explained that with combination machines, the entire cabinet is illuminated, but they typically have smaller refrigerated volumes compared to other vending machines with similar exterior dimensions. Dixie-Narco suggested creating a Class C equipment class for zone-cooled glass front vending machines. It proposed the following equation: $MDEC = 0.073 \times V + 3.5$. Dixie-Narco also stated that it is open to other possible solutions suggested by DOE or other concerned parties. (Dixie-Narco, No. 64 at p. 3) Coca-Cola stated that combination vending machines may not scale down in efficiency because refrigeration components may not be available in small sizes. (Coca-Cola, Public Meeting Transcript, No. 56 at p. 210) Dixie-Narco noted that combination vending machines are not typically purchased by Coca-Cola and PepsiCo, and are manufactured by a group of manufacturers different from the beverage vending machine manufacturers. Dixie-Narco also stated that shipments for combination vending machines are very small. (Dixie-Narco, Public Meeting Transcript, No. 56 at pp. 204, 212)

In the analysis for the proposed rule, DOE did not consider combination vending machines as a separate equipment class. Rather, they were considered with all other Class A and Class B beverage vending machines. However, based on comments received,

DOE recognizes that the design and manufacture of combination vending machines may be challenged by less component availability compared to other beverage vending machines. DOE concludes that combination vending machines have a distinct utility that limits the energy efficiency improvement potential possible for such beverage vending machines. While more efficient combination vending machines are technologically feasible, DOE does not have the data needed to estimate either the energy efficiency improvement potential or the cost of more efficient designs of combination vending machines. Furthermore, none of the interested parties' comments provided an economic analysis demonstrating that efficiency standards for such beverage vending machines would be cost-justified. Without engineering cost and efficiency data, DOE was not able to perform an analysis of the impacts of standards on combination vending machines. Thus, DOE is not able to determine whether energy conservation standards for combination vending machines are economically justified and would result in significant energy savings. Based on the above, DOE concludes that combination vending machines are a class of beverage vending machines, and, since DOE cannot determine whether standards would meet EPCA's statutory criteria, DOE is not setting standards for combination vending machines at this time. Instead, DOE is reserving standards for combination vending machines. EPCA does require that, not later than 6 years after issuance of any final rule establishing or amending a standard, the Secretary shall publish either a notice of determination that standards for the product do not need to be amended or a notice of proposed rulemaking including new proposed standards. 42 U.S.C. 6295(m).

So that interested parties understand what constitutes a combination vending machine, DOE is incorporating into today's final rule a definition for combination vending machine, and is modifying the definitions of Class A and Class B beverage vending machines (see section IV.A.2). DOE adopts the following definition for combination vending machine: "Combination vending machine means a refrigerated bottled or canned beverage vending machine that also has non-refrigerated volumes for the purpose of vending other, non-"sealed beverage" merchandise."

DOE notes that this definition for combination vending machine could be refined if DOE initiates a rulemaking proceeding that evaluates energy

conservation standards for combination vending machines.

c. Installed Base

USA Technologies stated that it does not believe that significant energy savings will be achieved by the standard unless the installed base is included. (USA Technologies, Public Meeting Transcript, No. 56 at p. 16)

DOE acknowledges that additional energy savings can be obtained by regulating the installed base of beverage vending machines. This would require existing, used machines to be rebuilt or refurbished to comply with the standards. However, in the ANOPR, DOE carefully considered its authority to establish energy conservation standards for rebuilt and refurbished beverage vending machines and concluded that its authority does not extend to rebuilt and refurbished equipment. (73 FR 34106–07)

As stated in the ANOPR, throughout the history of the energy conservation standards program, DOE has not regulated used consumer products or commercial equipment that has been refurbished, rebuilt, or undergone major repairs, since EPCA only covers new covered equipment distributed in commerce. Therefore, for this final rule, DOE maintains that rebuilt or refurbished beverage vending machines are not new covered equipment under EPCA and, therefore, are not subject to DOE's energy conservation standards or test procedures.

d. Rating Conditions

In the ANOPR, DOE stated that it planned to use a 75 °F/45 RH rating condition for all beverage vending machines covered by this rulemaking. (73 FR 34102) In a written comment on the NOPR, the National Automatic Merchandising Association (NAMA) stated that these rating conditions were appropriate. (NAMA, No. 65 at p. 3) Dixie-Narco also commented that it supports the 75 °F/45 percent relative humidity (RH) rating condition because it is a more realistic temperature for measuring energy efficiency compared to the 90 °F/65 percent RH condition. Therefore, for this final rule, DOE continues to use the 75 °F/45 RH rating condition for all beverage vending machines covered by this rulemaking.

e. Certification and Enforcement

Regal Beloit asked how certification and enforcement will be conducted for the energy conservation standards that DOE establishes for beverage vending machines. (Regal Beloit, No. 59 at p. 1)

To enforce energy conservation standards, DOE establishes both

generally applicable regulations that apply to various types of products or equipment covered by standards, as well as a limited number of product-specific requirements. DOE has not adopted requirements that apply to beverage vending machines (an EPACT 2005 addition to the program). DOE is developing enforcement regulations for the EPACT 2005 equipment, which it expects will be based on the existing enforcement regulations that require manufacturers to certify compliance with the standards by filing two separate documents: (1) A compliance statement in which the manufacturer certifies its equipment meets the requirements; and (2) a certification report in which the manufacturer provides equipment-specific information, such as the model number, energy consumption and other model specific information that would enable DOE to determine which equipment class and standard the equipment is subject to and whether the equipment meets the standard.

In instances where there are questions whether equipment meets the standards, existing regulations require DOE to consult with the manufacturer. If DOE remains unsatisfied with the manufacturer's explanation for the alleged noncompliance, DOE may test units of the allegedly non-complying product or equipment, to determine

whether it meets the applicable standard. After DOE has completed testing, the manufacturer has the option to conduct additional tests for DOE to consider. DOE has never had to conduct enforcement testing, as it has been able to resolve all issues with manufacturers prior to taking that step.

The beverage vending machine standards will go into effect 3 years after the publication of the final rule. DOE anticipates that it will have enforcement regulations in place, applicable to beverage vending machines, by that time. But if such regulations are not in place when the standards go into effect, manufacturers will not be required to report to DOE. Moreover, if there is a question regarding compliance with the standards, DOE will confer with the manufacturer before pursuing enforcement action. A violation of these standards could subject a manufacturer to injunctive action or other relief. See 42 U.S.C. 6302–6305.

III. General Discussion

A. Test Procedures

On December 8, 2006, DOE published a final rule (the December 2006 final rule) in the **Federal Register** that incorporated by reference ANSI/ASHRAE Standard 32.1–2004, with two modifications, as the DOE test procedure for this equipment. 71 FR 71340, 71375; 10 CFR 431.294. In

section 6.2 of ANSI/ASHRAE Standard 32.1–2004, Voltage and Frequency, the first modification specifies that equipment with dual nameplate voltages must be tested at the lower of the two voltages only. 71 FR 71340, 71355 The second modification specifies that (1) any measurement of “vendible capacity” of refrigerated bottled or canned beverage vending machines must be in accordance with the second paragraph of section 5 of ANSI/ASHRAE Standard 32.1–2004, Vending Machine Capacity; and (2) any measurement of “refrigerated volume” of refrigerated bottled or canned beverage vending machines must be in accordance with the methodology specified in section 5.2, Total Refrigerated Volume (excluding subsections 5.2.2.2 through 5.2.2.4) of ANSI/AHAM HRF–1–2004, “Energy, Performance and Capacity of Household Refrigerators, Refrigerator-Freezers and Freezers.”

The current version of ANSI/ASHRAE Standard 32.1–2004 defines standard bottled, canned, or other sealed beverage storage capacity; establishes uniform methods of testing for determining laboratory performance of vending machines for bottled, canned, or other sealed beverages; and defines three tests/test conditions, as seen in Table III.1.

TABLE III.1—ANSI/ASHRAE STANDARD 32.1–2004—STANDARD TEST CONDITIONS

Test and pretest conditions	Energy consumption tests	Vend test	Recovery test
Ambient Temperature	Perform twice: At 90 ± 2 °F (32.2 ± 1 °C) and at 75 °F ± 2 °F (23.9 ± 1 °C).	90 ± 2 °F (32.2 ± 1 °C)	90 ± 2 °F (32.2 ± 1 °C).
Relative Humidity	65 ± 5% for 90 ± 2 °F test and 45 ± 5% for 75 ± 2 °F test.	65 ± 5%	65 ± 5%.
Reloaded Product Temperature ....	.....	90 ± 1 °F (32.2 ± 0.5 °C)	90 ± 1 °F (32.2 ± 0.5 °C).
Average Beverage Temperature (for test).	36 ± 1 °F (2.2 ± 0.5 °C) Through-out Test.	40 °F or less (4.4 °C or less) Final Temperature.	33–40 °F (0.6–4.4 °C) Final Temperature.
Average Beverage Temperature (for pretest conditions).	Not Applicable	36 ± 1 °F (2.2 ± 0.6 °C) Pretest Conditions.	36 ± 1 °F (2.2 ± 0.6 °C) Pretest Conditions.

During the NOPR public meeting, ASAP stated that DOE's test procedures for beverage vending machines should be revised to capture technologies such as variable speed technologies and advanced controls. ASAP stated that there are energy savings that are not being achieved because the test procedure does not account for these types of technologies. (ASAP, Public Meeting Transcript, No. 56 at p. 36) In addition, Coca-Cola stated that the DOE test procedure does not accurately reflect actual operating conditions, because it does not regulate or dictate the control of the operating methods for

all the powered elements in the equipment. (Coca-Cola, Public Meeting Transcript, No. 56 at p. 147) Coca-Cola also stated that lighting controls would not save as much energy in real world applications as the test procedure indicates, resulting in “artificially low” test results. (Coca-Cola, No. 63 at p. 1) Coca-Cola commented that very few of its vending machines go into applications where they are inactive for long periods of time. (Coca-Cola, Public Meeting Transcript, No. 56 at p. 193) For these reasons, Coca-Cola and NAMA conclude that TSL 6 for Class A machines is not “practically feasible.”

(Coca-Cola, No. 63 at p. 1 and NAMA, No. 65 at p. 3) The Joint Comment recommends that the next revision to the current test procedure address; (1) the limitations of steady-state testing conditions, (2) the current test procedure's insufficient representation of real world conditions, and (3) the capture of increased energy use as a result of future, energy intensive beverage vending machine features, such as interactive displays. (Joint Comment, No. 67 at p. 4) Elstat stated that prohibiting the use of standby and off mode power does not support the goal of reduced energy consumption in

beverage vending machines, and recommends that DOE revisit the use of energy management controls in 2010, or within one year of the rule statutory deadline (Elstat, No. 62 at p. 1) DOE notes, however, that it is not prohibiting the use of standby and off mode power consumption, but rather is not including standby mode and off mode power consumption in its calculation of energy use. As stated in the May 2009 NOPR, DOE has decided to address these additional requirements when the energy conservation standards for beverage vending machines are reviewed in August 2015 (see section II.B.1) and, as described below, must review the test procedures by 2013.

As stated above, DOE's test procedure for refrigerated beverage vending machines is based on ANSI/ASHRAE Standard 32.1–2004. Section 302(a) of EISA 2007 amended section 323 of EPCA, in part, by adding new subsection 323(b)(1). (42 U.S.C. 6293(b)(1)) This subsection provides that the Secretary shall review test procedures at least once every 7 years. Therefore, the test procedure for refrigerated beverage vending machines must be reviewed by December 8, 2013, to determine whether an amendment is necessary. In addition, DOE is aware that ASHRAE, via its Standards Project Committee 32.1, is working on an update to ANSI/ASHRAE Standard 32.1–2004. While specific changes to ASHRAE Standard 32.1–2004 are unknown at this time, DOE understands that the beverage vending machine industry is working closely with ASHRAE to develop an update to this test procedure. As part of the 7-year review of the test procedures for refrigerated beverage vending machines, DOE will consider any updates to ASHRAE Standard 32.1 standard, as well as any technologies to reduce energy consumption and/or increase energy efficiency and determine whether the test procedure and/or measure of energy efficiency warrant revisions.

B. Technological Feasibility

1. General

As stated above, any standards that DOE establishes for beverage vending machines must be technologically feasible. (42 U.S.C. 6295(o)(2)(A) and (o)(3)(B); 42 U.S.C. 6316(e)(1)) DOE considers a design option to be technologically feasible if it is in use by the respective industry or if research has progressed to the development of a working prototype. “Technologies incorporated in commercially available equipment or in working prototypes

will be considered technologically feasible.” 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i).

This final rule considers the same design options as those evaluated in the May 2009 NOPR. (See chapter 4 of the TSD.) All the evaluated technologies have been used (or are being used) in commercially available products or working prototypes. Therefore, DOE has determined that all of the efficiency levels evaluated in this notice are technologically feasible.

2. Maximum Technologically Feasible Levels

As required by EPCA, (42 U.S.C. 6295(p)(2) and 42 U.S.C. 6316(e)(1)) in developing the May 2009 NOPR, DOE identified the energy use levels that would achieve the maximum reductions in energy use that are technologically feasible (“max-tech” levels) for beverage vending machines. 74 FR 26025. For today's final rule, the max-tech levels for all classes are the levels provided in Table III.2. DOE identified these maximum technologically feasible levels for the equipment classes analyzed as part of the engineering analysis (chapter 5 of the TSD). For both equipment classes, DOE applied the most efficient design options available for energy-consuming components.

TABLE III.2—MAX-TECH ENERGY USE LEVELS

Equipment class	Max-tech level kWh/day *
A	MDEC = 0.045 × V + 2.42.
B	MDEC = 0.068 × V + 2.63.

“V” is the refrigerated volume of the refrigerated bottled or canned beverage vending machine, as measured by ANSI/AHAM HRF-1–2004.

* Kilowatt hours per day.

C. Energy Savings

DOE forecasted energy savings in its national energy savings (NES) analysis through the use of a spreadsheet tool discussed in the May 2009 NOPR. 74 FR 26020, 26039–43, 26057.

One criterion that governs DOE's adoption of standards for refrigerated beverage vending machines is the standard must result in “significant conservation of energy.” (42 U.S.C. 6295(o)(3)(B) and 42 U.S.C. 6316(e)(1)) While EPCA does not define the term “significant,” the U.S. Court of Appeals in *Natural Resources Defense Council v. Herrington* 768 F.2d 1355, 1373 (DC Cir. 1985) indicated that Congress intended “significant” energy savings in this context to be savings that were not “genuinely trivial.” DOE's estimates of the energy savings for energy

conservation standards at each of the TSLs in today's final rule indicate that the energy savings each would achieve are nontrivial. Therefore, DOE considers these savings “significant” within the meaning of section 325 of EPCA.

D. Economic Justification

1. Specific Criteria

As noted earlier, EPCA provides seven factors to evaluate in determining whether an energy conservation standard for refrigerated beverage vending machines is economically justified. (42 U.S.C. 6295(o)(2)(B)(i) and 42 U.S.C. 6316(e)(1)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Commercial Customers and Manufacturers

DOE considered the economic impact of the new refrigerated beverage vending machines standards on commercial customers and manufacturers. For customers, DOE measured the economic impact as the change in installed cost and life-cycle operating costs, *i.e.*, the LCC. (See sections IV.F and VI.C.1.a and chapter 8 of the TSD.) DOE investigated the impacts on manufacturers through the manufacturer impact analysis (MIA). (See sections IV.J and VI.C.2, and chapter 13 of the TSD.) The economic impact on commercial customers and manufacturers is discussed in detail in the May 2009 NOPR. 74 FR 26033–38, 26039–26044, 26044–47, 26050–53, 26053–56, 26063–67.

b. Life-Cycle Costs

DOE considered life-cycle costs of beverage vending machines, as discussed in the May 2009 NOPR. 74 FR at 26033–38, 26050–53

DOE calculated the sum of the purchase price and the operating expense (discounted over the lifetime of the equipment) to estimate the range in LCC benefits that commercial customers would expect to achieve due to the standards.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for imposing an energy conservation standard, EPCA also requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III) and 42 U.S.C. 6316(e)(1)) As in the May 2009 NOPR (74 FR 26056–57), for today's final rule, DOE used the NES spreadsheet results in its consideration of total projected

savings that are directly attributable to the standard levels DOE considered.

d. Lessening of Utility or Performance of Equipment

In selecting today's standard levels, DOE sought to avoid new standards for beverage vending machines that would lessen the utility or performance of that equipment. (42 U.S.C. 6295(o)(2)(B)(i)(IV) and 42 U.S.C. 6316(e)(1)); 74 FR 26059. Today's standards do not involve changes in design or unusual installation requirements that would reduce the utility or performance of the equipment.

e. Impact of Any Lessening of Competition

DOE considers any lessening of competition likely to result from standards. Accordingly, as discussed in the May 2009 NOPR (74 FR 26059, 26064–65, 26070–71), DOE requested that the Attorney General transmit to the Secretary a written determination of the impact (if any) of lessening of competition likely to result from today's standard, together with an analysis of the nature and extent of such impact. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii) and 42 U.S.C. 6316(e)(1))

To assist the Attorney General in making such a determination, DOE provided the Department of Justice (DOJ) with copies of May 2009 proposed rule and the NOPR TSD for review. (DOJ, No. 61 at pp. 1–2) The Attorney General's response is discussed in section VI.C.5 and is reprinted at the end of this rule. For Class A machines, DOJ concluded that the proposed TSL 6 could potentially lessen competition. DOJ requested that DOE ensure that the standard it adopts for Class A beverage vending machines will not require access to intellectual property owned by an industry participant, which would place other industry participants at a comparative disadvantage. For Class B machines, DOJ does not believe the proposed standard would likely lead to a lessening of competition. Compliance with a lesser standard does not appear to raise similar concerns.

f. Need of the Nation To Conserve Energy

In considering standards for refrigerated beverage vending machines, the Secretary must consider the need of the Nation to conserve energy. (42 U.S.C. 6295(o)(2)(B)(i)(VI) and 42 U.S.C. 6316(e)(1)) The Secretary recognizes that energy conservation benefits the Nation in several important ways. The non-monetary benefits of the standards are likely to be reflected in improvements to the security and

reliability of the Nation's energy system. Today's standards will also result in environmental benefits. DOE has considered these factors in adopting today's standards.

g. Other Factors

In determining whether a standard is economically justified, EPCA directs the Secretary to consider any other factors deemed relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII) and 42 U.S.C. 6316(e)(1)) In adopting today's standard, DOE considered LCC impacts on identifiable groups, such as customers of different business types who may be disproportionately affected by any national energy conservation standard. In particular, DOE examined the LCC on businesses with high financing costs and low energy prices that may not be able to afford a significant increase in the purchase price ("first cost") of beverage vending machines. Some of these customers may retain equipment past its useful life. Large increases in first cost could also preclude the purchase and use of equipment entirely. DOE identified no factors for analysis other than those already considered above.

2. Rebuttable Presumption

Section 325(o)(2)(B)(iii) of EPCA states that there is a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer that meets the standard level is less than three times the value of the first-year energy (and as applicable, water) savings resulting from the standard, as calculated under the applicable DOE test procedure. (42 U.S.C. 6295(o)(2)(B)(iii) and 42 U.S.C. 6316(e)(1)) DOE's LCC and payback period (PBP) analyses generate values that calculate the PBP for customers of potential energy conservation standards, which includes, but is not limited to, the 3-year PBP contemplated under the rebuttable presumption test discussed above. However, DOE routinely conducts a full economic analysis that considers the full range of impacts, including those to the customer, manufacturer, Nation, and environment, as required under 42 U.S.C. 6295(o)(2)(B)(i) and 42 U.S.C. 6316(e)(1). The results of this analysis serve as the basis for DOE to evaluate definitively the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification).

IV. Methodology and Discussion of Comments on Methodology

DOE used several previously developed analytical tools in setting today's standard. Each was adapted for this rule. One of these analytical tools is a spreadsheet that calculates LCC and PBP. Another calculates national energy savings and national NPV. A third tool is the Government Regulatory Impact Model (GRIM), the results of which are the basis for the MIA, among other methods. In addition, DOE developed an approach using the National Energy Modeling System (NEMS) to estimate impacts of energy efficiency standards for beverage vending machines on electric utilities and the environment. The TSD appendices discuss each of these analytical tools in detail. 74 FR 26026–49.

As a basis for this final rule, DOE has continued to use the spreadsheets and approaches explained in the May 2009 NOPR. DOE used the same general methodology but has revised some of the assumptions and inputs for this final rule in response to comments from interested parties. The following paragraphs discuss these revisions.

A. Market and Technology Assessment

When beginning an energy conservation standards rulemaking, DOE develops information that provides an overall picture of the market for the equipment concerned, including the purpose of the equipment, the industry structure, and market characteristics. This activity includes both quantitative and qualitative assessments based primarily on publicly available information. DOE presented its market and technology assessment for this rulemaking in the May 2009 NOPR and chapter 3 of the NOPR TSD. The assessment included equipment definitions, equipment classes, manufacturers, quantities and types of equipment offered for sale, retail market trends, and regulatory and non-regulatory programs.

1. Definitions Related to Refrigerated Beverage Vending Machines

a. Definition of Bottled or Canned Beverage

EPCA defines the term "refrigerated bottled or canned beverage vending machine" as "a commercial refrigerator that cools bottled or canned beverages and dispenses the bottled or canned beverages on payment." (42 U.S.C. 6291(40)) Thus, coverage of equipment under EPCA as a beverage vending machine, in part, depends on whether it cools and dispenses "bottled beverages" and/or "canned beverages." DOE

tentatively decided to consider a broader definition for the terms “bottled” and “canned” as they apply to beverage vending machines based on comments on the framework document. A bottle or can in this broader definition refers to “a sealed container for beverages,” so a bottled or canned beverage is “a beverage in a sealed container.” Such a definition would avoid unnecessary complications regarding the material composition of the container and eliminate the need to determine whether a particular container is a bottle or a can. In the ANOPR, DOE sought comment on this broader definition and on whether it is consistent with the intent of EPCA. (73 FR 34103) DOE did not receive any comments on this and thus proposed in the NOPR that a bottled or canned beverage mean “a beverage in a sealed container.” (74 FR 26027) Because DOE did not receive any comments in response to the proposed definition in the May 2009 NOPR, DOE is adopting the definition of bottled or canned beverage as proposed, without modification.

2. Equipment Classes

When evaluating and establishing energy conservation standards, DOE generally divides covered equipment into equipment classes by the type of energy used, capacity, or other performance-related features that affect efficiency and factors such as the utility of such feature(s). (42 U.S.C. 6295(q)) DOE routinely establishes different energy conservation standards for different equipment classes based on these criteria.

Certain characteristics of beverage vending machines have the potential to affect their energy use and efficiency. Accordingly, these characteristics could be the basis for separate equipment classes for these machines. DOE determined that the most significant criterion affecting beverage vending machine energy use is the method used to cool beverages. In the NOPR, DOE divided covered equipment into two equipment classes according to method of refrigeration: Class A and Class B. (74 FR 26027)

The Class A beverage vending machine equipment class comprises machines that cool product throughout the entire refrigerated volume of the machine. Class A machines generally use “shelf-style” vending mechanisms and a transparent (glass or polymer) front. Because the next-to-be-vended product is visible to the customer and any product can be selected by the customer off the shelf, all bottled or canned beverage containers are

necessarily enclosed within the refrigerated volume.

In Class B beverage vending machines, refrigerated air is directed at a fraction (or zone) of the refrigerated volume of the machine. This cooling method is used to assure that the next-to-be-vended product will be the coolest product in the machine. These machines typically have an opaque front and use a “stack-style” vending mechanism.

Therefore, DOE defines Class A and Class B as follows:

- Class A means a refrigerated bottled or canned beverage vending machine that is fully cooled, and is not a combination vending machine.
- Class B means any refrigerated bottled or canned beverage vending machine not considered to be Class A, and is not a combination vending machine.

Because DOE did not receive any comments in response to the presentation of equipment classes in the May 2009 NOPR, DOE is adopting the equipment classes as proposed, with a modification to address combination vending machines as described in section II.B.2.b.

B. Screening Analysis

The purpose of the screening analysis is to evaluate the technology options identified as having the potential to improve the efficiency of equipment, to determine which technologies to consider further and which to screen out. DOE consulted with industry, technical experts, and other interested parties to develop a list of technologies for consideration. DOE then applied the following four screening criteria to determine which technologies are unsuitable for further consideration in the rulemaking:

1. *Technological Feasibility.* Technologies incorporated in commercial equipment or in working prototypes will be considered technologically feasible.
2. *Practicability to Manufacture, Install, and Service.* If mass production and reliable installation and servicing of a technology in commercial equipment could be achieved on the scale necessary to serve the relevant market at the time of the effective date of the standard, then that technology will be considered practicable to manufacture, install, and service.

3. *Adverse Impacts on Equipment Utility or Equipment Availability.* If a technology is determined to have significant adverse impact on the utility of the equipment to significant subgroups of customers, or result in the unavailability of any covered equipment

type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as equipment generally available in the United States at the time, it will not be considered further.

4. *Adverse Impacts on Health or Safety.* If it is determined that a technology will have significant adverse impacts on health or safety, it will not be considered further.

10 CFR part 430, Subpart C, Appendix A at 4(a)(4) and 5(b).

In the ANOPR market and technology assessment, DOE developed an initial list of technologies expected to have the potential to reduce the energy consumption of beverage vending machines. In the screening analysis, DOE screened out technologies based on the four criteria discussed above. The list of remaining technologies became one of the key inputs to the engineering analysis. (73 FR 34108–09) For the engineering analysis each technology is referred to as a design option.

After the ANOPR screening analysis, DOE did not receive any comments suggesting a change to its list of design options. As a result, no changes were made for the NOPR. During the NOPR public meeting, multiple manufacturers expressed the ability to meet today’s standard with the use of lighting controls. (Dixie-Narco, Public Meeting Transcript, No. 56 at p. 188 and Royal Vendors, Public Meeting Transcript, No. 56 at p. 189) As a result, the signatories of the Joint Comment suggest that DOE consider lighting controls as a design option for the final rule because, if not considered, “cost-effective energy-savings may be forgone.” (Joint Comment, No. 67 at p. 3)

DOE disagrees with the Joint Commenters’ assessment of lighting controls. The Joint Comment infers that a lighting control design option meets the screening analysis criteria. According to the screening criteria, however, a technology cannot be considered as a design option if it has adverse impacts on equipment utility. 10 CFR part 430, Subpart C, Appendix A at 4(a)(4) and 5(b) DOE’s analysis ensures preservation of equipment utility by choosing design options that, when implemented, do not lessen utility relative to the engineering baseline unit. The energy-savings potential of lighting controls is realized when the control system automatically deactivates all or a portion of a machine’s lighting system. While the lighting system is deactivated, the light output of the machine is reduced, leaving the machine’s contents or signage less visible. If lighting

controls were a design option in the engineering analysis, this reduction would represent a loss in utility relative to the baseline unit. Therefore, lighting controls do not meet the screening criteria, and DOE will not consider them as a design option in its analysis for the final rule.

In the ANOPR screening analysis, variable-speed compressors were eliminated from consideration. For the NOPR analysis, DOE did not receive any comments recommending that variable-speed compressors be reconsidered. For the final rule analysis, the Joint Comment recommended that DOE reconsider this technology, stating that it believes variable-speed compressors can provide some energy-use reduction, despite the current steady-state conditions that are prescribed in ANSI/ASHRAE Standard 32.1–2004 test procedure. The Joint Comment asserted that when DOE screened out variable-speed compressors, DOE did not consider that beverage vending machine manufacturers oversize their compressors to meet purchasers' pull down requirements. (Joint Comment, No. 67 at p. 2)

DOE screened out variable-speed compressors in the ANOPR analysis because the resulting energy efficiency ratio of a variable-speed compressor operating at steady state, according to the test procedure, would not be greater than the energy efficiency ratio of a properly sized single-speed compressor. DOE acknowledges that a variable-speed compressor operating at steady state may have energy savings compared to an oversized single-speed compressor operating at the same conditions. However, DOE is unaware of any data that quantifies and compares these energy savings specifically for beverage vending machines under these conditions. DOE was also unable to determine whether variable-speed compressors are a cost-effective design option. Due to a lack of any comparative data on the performance of variable speed compressors for these applications and evidence of the cost effectiveness of variable-speed compressors, DOE did not consider variable-speed compressors in its analysis.

In the framework document, DOE stated that, to the greatest extent possible, it would base its analysis on commercially available technologies that have not been screened out, including proprietary designs. DOE stated that it would consider a proprietary design in the subsequent analyses only if it is not a unique path to a given efficiency level. If the proprietary design is the only approach

available to achieve a given efficiency level, then DOE will exclude that efficiency level from further analysis.

During the NOPR public meeting, PepsiCo stated that the use of LED lighting in glass front vendors is a proprietary design patented by Coca-Cola, which PepsiCo is precluded from using. (PepsiCo, Public Meeting Transcript, No. 56 at p. 52) In a written comment, NAMA stated similar concerns. (NAMA, No. 65 at p. 3) Coca-Cola stated that there are control strategies used in beverage vending machines (*e.g.*, certain lighting controls and certain motor controls) that are patented and are not widely available for use by all manufacturers. (Coca-Cola, No. 56 at p. 149 and Coca-Cola, No. 63 at p. 1) Coca-Cola added that TSL 6 for Class A machines cannot be achieved without these "firmware" control strategies. (Coca-Cola, No. 63 at p. 1) According to USA Technologies, there are patented, after-market lighting control products widely used in the industry. (USA Technologies, Public Meeting Transcript, No. 56 at p. 200) In addition, Dixie-Narco stated that it is not aware of any intellectual property issues that would prevent other manufacturers from adopting lighting strategies similar to those that it has been using in its equipment. (Dixie-Narco, No. 64 at p. 3) ASAP stated that certain patented technologies may provide a cost-effective way to achieve a certain efficiency level, but they do not preclude a manufacturer from achieving the same efficiency level in a different manner. ASAP submits that there are historically multiple paths to achieve any given efficiency level. (ASAP, Public Meeting Transcript, No. 56 at p. 202)

DOE recognizes that there are existing patents that involve specific screened-in beverage vending machine technologies. For example, there is a U.S. patent on a "Dispensing Apparatus with Directional LED Lighting" (Patent No. U.S. 6,550,269 B2, April 22, 2003). DOE is not screening out proprietary technologies such as LED lighting or certain control strategies, solely because they are proprietary. In contrast, DOE is incorporating these technologies into its analysis because DOE believes that there are alternate pathways to achieve the efficiency levels associated with these technologies. Providing LED lighting in a vending machine in a manner other than directionally, employing an alternative lighting type, and/or providing various other control strategies that are not patented, have the potential to result in a vending machine that meets equivalent efficiency levels.

DOE notes that most patents do not convey market power to their owners because close substitutes for these inventions exist. Licensors will pay no more for patented technologies than the cost advantage they provide over the next best alternative pathway to compliance with the efficiency standard. Ultimately, the availability of cost-effective alternate technology pathways is what limits the ability of the owner of a proprietary technology to extract high fees for its use. It is DOE's opinion that a standard level which can only be met with a single proprietary technology which comes without assurances of open and free technology access should be rejected because it carries great risk of resulting in an anti-competitive market. This principle has been consistently applied in past DOE rulemakings. If standard levels were set based on proprietary technologies representing a unique path to compliance and not available to all equipment manufacturers, the standards-setting process itself would convey great market power because there would be no alternative means to satisfy the standard. In consideration of these factors, DOE maintains that it can consider proprietary designs as long as it is not a unique path to a given efficiency level. For the reasons discussed, DOE believes that neither directional LED lighting nor lighting controls represent a unique path to compliance with TSL 6 for Class A equipment.

C. Engineering Analysis

The engineering analysis develops cost-efficiency relationships to show the manufacturing costs of achieving increased energy efficiency. As discussed in the May 2009 NOPR, DOE used the design-option approach, involving consultation with outside experts, review of publicly available cost and performance information, and modeling of equipment cost and energy consumption. 74 FR 26027–26030. Chapter 5 of the NOPR TSD contains a detailed discussion of the engineering analysis methodology.

1. Approach

In this rulemaking, DOE is adopting a design-option approach, which calculates the incremental costs of increased efficiency. Efficiency increases are modeled by implementing specific energy saving technologies, referred to as design options, to a baseline model. Using the design-option approach, cost-efficiency relationship estimates are based on manufacturer or component supplier data or derived from engineering computer simulation

models. Chapter 5 of the TSD contains a detailed description of the equipment classes analyzed and analytical models used to conduct the design-option approach based beverage vending machine engineering analysis.

2. Analytical Models

a. Cost Model

DOE used a cost model to estimate the core case cost of beverage vending machines. The core case cost is the cost of all non-energy-consuming components, such as the structure, walls, doors, shelving, and fascia. This model was adapted from a cost model developed for DOE's rulemaking on commercial refrigeration equipment (refer to http://www1.eere.energy.gov/buildings/appliance_standards/commercial/refrigeration_equipment.html for further detail on and validation of the commercial refrigeration equipment cost model). The approach for commercial refrigeration equipment involved disassembling a self-contained refrigerator, analyzing the materials and manufacturing processes for each component, and developing a parametric spreadsheet to model the cost to fabricate (or purchase) each component and the cost of assembly. Because of the similarities in manufacturing processes between self-contained commercial refrigeration equipment and beverage vending machines, DOE was able to adapt the commercial refrigeration equipment cost model for use in this rule. This adaptation involved maintaining many of the assumptions about materials and manufacturing processes but modifying the dimensions and types of components specific to beverage vending machines. To confirm the accuracy of the cost model, DOE obtained input from interested parties on beverage vending machine production cost estimates and on other assumptions DOE used in the model. Chapter 5 of the TSD provides details of the cost model.

b. Energy Consumption Model

The energy consumption model estimates the daily energy consumption (DEC) of beverage vending machines at various performance levels using the previously discussed design-option approach. The model is specific to the categories of equipment covered under this rulemaking, but is sufficiently generalized to model the energy consumption of both covered equipment classes. For a given equipment class, the model estimates the DEC for the baseline design and the energy

consumption of several levels of performance above the baseline design. DOE uses the model to calculate each performance level separately. For the NOPR, DOE made updates to the energy consumption model by altering Class A can capacities (or vendible capacities) and verifying Class B can capacities. For both classes, DOE modified exterior case dimensions, which resulted in changes in infiltration loads, refrigerated volumes, and exterior wall areas. These alterations and their effects are detailed in chapter 5 of the TSD. DOE did not receive any comments in response to these changes. Therefore, DOE maintained these revised calculation methodologies for the final rule. DOE did, however, receive a comment regarding the energy consumption model DEC results. Royal Vendors and NAMA commented that, without lighting, a Class B machine will always consume less energy than a similarly equipped Class A machine due to differences in their thermodynamic properties. Royal Vendors cites the divergence from this expected outcome at TSL 4 as the origin of their skepticism for DOE's Class A analysis. (Royal Vendors, No. 60 at pp. 1 and 2; NAMA, No. 65 at pp. 3 and 4)

DOE's analysis results and selected TSLs adequately reflect the thermodynamic differences between Class A and Class B machines. DOE agrees that a Class B machine stripped of electricity consuming components that are not essential to the refrigeration system (*i.e.*, lighting) will consume less energy than a similarly equipped Class A machine. As described in chapter 5 of the final rule TSD, the engineering analysis' DEC results are modeled as the sum of the component electricity consumption and compressor electricity consumption. The physical and thermodynamic equipment differences described by Royal affect the total refrigeration load, which is factored into the compressor electricity consumption in DOE's energy consumption model. When comparing compressor electricity consumption results between a Class A and Class B machine with the same volume, the Class B machine compressor consumes less electricity at all engineering efficiency levels. The divergence in DEC described by Royal at higher TSLs occurs because the modeled Class A and Class B machines being compared are no longer "similarly equipped." Different design options are implemented for each machine class at each TSL, and each design option has unique energy savings potential. For instance, at TSL 4 for Class A machines, LED lighting is

implemented which has an incremental component energy savings of 0.89 kWh/day. At TSL 4 for Class B machines, an electronically commutated motor (ECM) condenser fan motor is implemented which has an incremental component energy savings of 0.05 kWh/day. These incremental component energy savings manifest themselves as reductions in the component electricity consumption addend of the DEC. The greater energy savings potential of some Class A design options results in component electricity consumption reductions significant enough to drive the overall DEC of Class A machines below that of Class B machines. See chapter 5 of the TSD for a detailed explanation of the engineering analysis energy consumption model.

Based on public comments, DOE proposed to use refrigerated volume instead of vendible capacity as the normalization metric for setting standards for beverage vending machines in the NOPR. (74 FR 26029) Following the NOPR, NAMA commented that volume was an appropriate normalization metric, rather than the number of cans. (NAMA, No. 65 at p. 3) Therefore, DOE will continue to use refrigerated volume as the normalization metric in the standard.

D. Markups To Determine Equipment Price

In the May 2009 NOPR, DOE explained how it developed the distribution channel markups used. 74 FR 26036. DOE did not receive comments on these markups; however, it updated the distribution channel markups by including 2009 sales tax data as well as the markups for refrigerated beverage vending machines wholesalers using 2009 financial data. DOE used these markups, along with sales taxes, installation costs, and manufacturer selling prices (MSPs) developed in the engineering analysis, to arrive at the final installed equipment prices for baseline and higher efficiency refrigerated beverage vending machines. As explained in the May 2009 NOPR (74 FR 26036), DOE defined three distribution channels for refrigerated beverage vending machines to describe how the equipment passes from the manufacturer to the customer. DOE retained the same distribution channel market shares described in the May 2009 NOPR.

The new overall baseline and incremental markups for sales within each distribution channel are shown in Table IV.1 and Table IV.2. Chapter 6 of the TSD provides additional details on markups.

TABLE IV.1—OVERALL AVERAGE BASELINE MARKUPS BY DISTRIBUTION CHANNEL INCLUDING SALES TAX

Markup category	Manufacturer direct	Wholesaler/distributor	Overall weighted average
Markup	1.000	1.460	1.069
Sales tax	1.071	1.071	1.071
Overall markup	1.071	1.564	1.145

TABLE IV.2—OVERALL AVERAGE INCREMENTAL MARKUPS BY DISTRIBUTION CHANNEL INCLUDING SALES TAX

Markup category	Manufacturer direct	Wholesaler/distributor	Overall weighted average
Markup	1.000	1.200	1.030
Sales tax	1.071	1.071	1.071
Overall markup	1.071	1.285	1.103

E. Energy Use Characterization

The energy use characterization estimates the annual energy consumption of beverage vending machines. This estimate is used in the subsequent LCC and PBP analyses (chapter 8 of the TSD) and NIA (chapter 11 of the TSD). DOE estimated the energy use for machines in the two equipment classes examined (74 FR 26027) in the engineering analysis (chapter 5 of the TSD) based on the DOE test procedure. DOE incorporated ANSI/ASHRAE Standard 32.1–2004 by reference with two modifications as the DOE test procedure for the beverage vending machines. 71 FR 71340, 71375 (Dec. 8, 2006); 10 CFR 431.294. DOE assumed all Class A machines to be installed indoors and subject to a constant air temperature of 75 °F and relative humidity of 45 percent, matching test conditions in the DOE test procedure. 73 FR 34114–15. Based on market data and discussions with several beverage vending machine distributors, DOE assumed that 25 percent of Class B machines are placed outdoors, with the remaining 75 percent placed indoors. DOE sought but did not receive comments on this distribution; thus, DOE maintained the same distribution of Class B machines for this final rule.

F. Life-Cycle Cost and Payback Period Analyses

In response to the requirements of section 325(o)(2)(B)(i) of EPCA, DOE conducted LCC and PBP analyses to

evaluate the economic impacts of possible new beverage vending machine standards on individual customers. DOE used the same spreadsheet models to evaluate the LCC and PBP as it used for the NOPR analysis; however, DOE updated certain specific inputs to the models. Details of the spreadsheet model and of all the inputs to the LCC and PBP analyses are in TSD chapter 8. DOE conducted the LCC and PBP analyses using a spreadsheet model developed in Microsoft Excel for Windows 2003.

The LCC is the total cost for a unit of beverage vending machine equipment over the life of the equipment, including purchase and installation expense and operating costs (energy expenditures and maintenance). To compute the LCC, DOE summed the installed price of the equipment and its lifetime operating costs discounted to the time of purchase. The PBP is the change in purchase expense due to a given energy conservation standard divided by the change in first-year operating cost that results from the standard. DOE expresses PBP in years. DOE measures the changes in LCC and in PBP associated with a given energy use standard level relative to a base case equipment energy use. The base case forecast reflects the market in the absence of mandatory energy conservation standards.

The data inputs to the PBP calculation are the purchase expense (otherwise known as the total installed customer cost or first cost) and the annual operating costs for each selected design.

The inputs to the equipment purchase expense were the equipment price and the installation cost, with appropriate markups. The inputs to the operating costs were the annual energy consumption, electricity price, and repair and maintenance costs. The PBP calculation uses the same inputs as the LCC analysis, but because it is a simple payback, the operating cost is for the year the standard takes effect, assumed to be 2012. DOE believes LCC is a better indicator of economic impacts on customers. For each efficiency level analyzed, the LCC analysis required input data for the total installed cost of the equipment, operating cost, and discount rate.

Table IV.3 summarizes the inputs and key assumptions DOE used to calculate the economic impacts of various energy consumption levels on customers. Equipment price, installation cost, and baseline and standard design selection affect the installed cost of the equipment. Annual energy use, electricity costs, electricity price trends, and repair and maintenance costs affect the operating cost. The effective date of the standard, the discount rate, and the lifetime of equipment affect the calculation of the present value of annual operating cost savings from today's standard. Table IV.3 also shows how DOE modified these inputs and key assumptions for the final rule relative to the May 2009 NOPR. Chapter 8 of the TSD provides the changes to the input data and discusses the overall approach to the LCC analysis.

TABLE IV.3—SUMMARY OF INPUTS AND KEY ASSUMPTIONS USED IN THE LCC AND PBP ANALYSES

Input	NOPR description	Changes for final rule
Baseline Manufacturer Selling Price	Price charged by manufacturer to either a wholesaler or large customer for baseline equipment. Developed by using industry-supplied efficiency level data and a design option analysis.	Data reflect updated engineering analysis.

TABLE IV.3—SUMMARY OF INPUTS AND KEY ASSUMPTIONS USED IN THE LCC AND PBP ANALYSES—Continued

Input	NOPR description	Changes for final rule
Standard-Level Manufacturer Selling Price Increases.	Incremental change in manufacturer selling price for equipment at each of the higher efficiency standard levels. Developed by using a combination of energy consumption level and design option analyses.	Data reflect updated engineering analysis.
Markups and Sales Tax	Associated with converting the manufacturer selling price to a customer price (chapter 6 of TSD). Developed based on product distribution channels and sales taxes.	Markups updated based on revised data on sales tax and wholesaler financial data.
Installation Price	Cost to the customer of installing the equipment. This includes labor, overhead, and any miscellaneous materials and parts. The total installed cost equals the customer equipment price plus the installation price. Installation cost data provided by industry comment.	Data reflect updated installation costs.
Equipment Energy Consumption	Site energy use associated with the use of beverage vending machines, which includes only the use of electricity by the equipment itself. Taken from engineering analysis and validated in energy use characterization. (chapter 7 of the TSD).	Data reflect updated engineering analysis for each efficiency level.
Electricity Prices	Established average commercial electricity price (\$/kWh) from EIA data for 2008 in 2007\$. DOE then established scaling factors for beverage vending machine customers based on the 2003 <i>Commercial Building Energy Consumption Survey</i> .	No change.
Electricity Price Trends	Used the <i>AEO2009</i> Reference Case to forecast future electricity prices and extrapolated prices to 2042.	All price cases revised to reflect April 2009 update to AEO2009 values.
Maintenance Costs	Labor and material costs associated with maintaining the beverage vending machines (e.g., cleaning heat exchanger coils, checking refrigerant charge levels, lamp replacement). Based on industry comment on the NOPR, included an updated annualized cost of one refurbishment/remanufacturing cycle.	No change in methodology; however, reinterpreted year's values.
Repair Costs	Labor and material costs associated with repairing or replacing components that have failed. Estimated based on replacement frequencies and costs for key components.	No change.
Equipment Lifetime	Age at which the beverage vending machine is retired from service. Based on industry comment on the ANOPR, reduced average service life to 10 years, with 15 years as a maximum.	No change.
Discount Rate	Computed by estimating the cost of capital for companies that purchase refrigeration equipment using business financial data from the Damodaran Online database from 2008.	Updated based on data available in the 2009 version of the Damodaran Web site.
Rebound Effect	A rebound effect was not taken into account in the LCC analysis	No change.
Analysis Period	The time span over which DOE calculated the LCC (i.e., 2012–2042)	No change.

The changes in the input data and the discussion of the overall approach to the LCC analysis are provided in chapter 8 of the TSD.

G. Shipments Analysis

The shipments analysis develops future shipments for each class of beverage vending machines based on current shipments and equipment life assumptions, and takes into account the existing stock and expected trends in markets that use beverage vending machines. DOE received several comments on the shipments analysis and the resulting shipments during the NOPR. Although DOE used the same shipments model for the final rule analysis as the NOPR, many of the underlying assumptions concerning future market behavior were changed as a result of the interested party comments.

1. Split Incentives

Coca-Cola (Coca-Cola, Public Meeting Transcript, No. 56 at p. 196 and Coca-Cola, No. 63 at p. 2) and PepsiCo

(PepsiCo, Public Meeting Transcript, No. 56 at p. 94) stated that if costlier components and expensive control schemes are necessary to produce higher efficiency equipment, it would purchase less equipment. While DOE recognizes the principle that higher costs of equipment might possibly affect sales, neither major purchaser provided any data that would allow a quantitative assessment of the effect of higher prices on overall purchases (price elasticity) to be calculated. However, DOE notes that for Class A equipment, the increase in installed cost at TSL 6 is in the range of 5 to 10 percent; for Class B machines, the increase in installed cost is in the range of 2 to 4 percent. Even if shipments fell by the same percentage that installed cost increased by (i.e., price elasticity equaled 1.0, a relatively large number), neither the net present value of TSL 6 for Class A equipment nor the net present value of TSL 3 for Class B equipment would be noticeably affected, nor would the choice of standard levels.

2. Sustainability of Sales Less Than 100 Thousand Units

USA Technologies (USA Tech, Public Meeting Transcript, No. 56 at pp. 78, 79, and 85) expressed a concern that the industry's current number of manufacturers could not stay in business if total production were under 100,000 machines per year. DOE acknowledges the concern about industry sustainability. However, for the final rule, DOE assumes a level of shipments of 190,000 units per year, as explained in section IV.G.4. This assumption mitigates the concern about sales declining below 100,000 units. One major manufacturer (Dixie-Narco, Public Meeting Transcript, No. 56 at p. 86) stated that it can survive even at today's low sales levels (less than 100,000 units) by operating on one shift; additionally, neither manufacturer with a large market share believed that a costly investment was necessary to meet the proposed standard. (Dixie-Narco, Public Meeting Transcript, No. 56 at p.

186; Royal Vendors, Public Meeting Transcript, No. 56 at p. 188)

3. Distribution of Equipment Classes and Sizes

In the analysis conducted for the NOPR, DOE assumed based on interested party comments that Class A equipment would constitute 55 percent of new sales and Class B equipment would constitute 45 percent of new sales. PepsiCo (PepsiCo, Public Meeting Transcript, No. 56 at p. 89) commented that Class A sales would be between 50 and 60 percent and Coca-Cola (Coca-Cola, Public Meeting Transcript, No. 56 at p. 90) commented that, although they expected Class A equipment would be the majority of sales, currently Class B machines are more than 50 percent of sales. DOE has decided to shift to a ratio of 60 percent Class A machines to 40 percent Class B sales for the final rule. DOE also assumed in the analysis for the NOPR that small-size units would constitute approximately zero percent of future sales, medium-size units at 75 percent, and large-size units at 25 percent of sales. Coca-Cola (Coca-Cola, Public Meeting Transcript, No. 56 at p. 107) confirmed the distribution used for the NOPR. Dixie-Narco (Dixie-Narco, Public Meeting Transcript, No. 56 at p. 107) commented that the small-size unit sales were zero, but that the large equipment share might be higher—by as much as 40 percent. Dixie-Narco also recommended that the NAMA could act as an intermediary to compile the data on sales and provide it to DOE. DOE asked NAMA, and NAMA was able to provide an estimate of the distribution between Class A and Class B units for a subset of the manufacturers, approximately 60 percent Class B machines and 40 percent Class A machines (NAMA, No. 65 at p. 2). To take account of all of the comments received, DOE has decided to shift to a ratio of 50 percent Class A machines to 50 percent Class B sales for the final rule. NAMA was not able to provide data on the size distribution within classes. In the absence of that data and to account for all comments received, DOE has modified its distribution of sales to account for as follows for both Class A and Class B units: Small-size units, zero percent; medium-size units, 67 percent; and large-size units, 33 percent.

4. Future Sales Decline

For the analysis at the NOPR stage, DOE assumed based on comments from interested parties on the ANOPR that future sales would all be replacement sales and would be flat at the then-current level of sales of about 90,000 units per year for the entire period of analysis. This level of replacements would result in a reduction in stock from today's level of about 2.3 million units to about 1 million units by 2020. The commenters agreed that the current economic situation would result in additional decline in the number of deployed units (Royal Vendors, Public Meeting Transcript, No. 56 at p. 74; Dixie-Narco, Public Meeting Transcript, No. 56 at p. 76); Coca-Cola, Public Meeting Transcript, No. 56 at pp. 77 and 91), but with a possibility of a near-term recovery based on the need to replace older equipment as it reaches the end of its lifetime and to continue to serve the current customer base. (Dixie-Narco, Public Meeting Transcript, No. 56 p. 79–80; Pepsi, Public Meeting Transcript, No. 56 at p. 88; Coca-Cola, Public Meeting Transcript, No. 56 at p. 91) Several commenters (Dixie-Narco, Public Meeting Transcript, No. 56 at p. 76; Coca-Cola, Public Meeting Transcript, No. 56 at pp. 77 and 83; ASAP, Public Meeting Transcript, No. 56 at p. 87) stated that 1 million units was too small to sustain the current customer base and that the shipments would therefore have to be higher than the current level. During the public meeting, participants estimated the ultimate stock ranged from about 1.6 million (Dixie-Narco, Public Meeting Transcript, No. 56 at p. 84) to above 2 million units. (Coca-Cola, Public Meeting Transcript, No. 56 at p. 83) In view of these comments that there would be some additional shrinkage of stock but that the eventual level of stock in 2020 will need to be approximately 2 million units, DOE assumed that future shipments would quickly recover to 190,000 units per year by 2011 and continue at that level for the foreseeable future. This allows for some continued stock shrinkage to about 1.6 million units in the short run as the 1998–2000 vintage equipment retires faster than it is replaced, but with stock recovering to 1.9 million units by 2020 and to approximately 2 million units by 2022. As ASAP observed (ASAP, Public Meeting Transcript, No. 56 at p. 87), this

change in assumptions for the final rule significantly increases the overall economic benefit of the rule, but its effect is proportional to sales and does not significantly affect the choice between potential levels of the standards.

H. National Impact Analysis

The national impact analysis (NIA) assesses future NES and the national economic impacts of different efficiency levels. The analysis measures economic impacts using the NPV (future amounts discounted to the present) of total commercial customer costs and savings expected to result from new standards at specific efficiency levels. For the final rule analysis, DOE used the same spreadsheet model used in the NOPR to calculate the energy savings and the national economic costs and savings from new standards, but did so with updates to specific input data. Unlike the LCC analysis, the NES spreadsheet does not use distributions for inputs or outputs. DOE examined sensitivities by applying different scenarios. DOE used the NIA spreadsheet to perform calculations of NES and NPV using: (1) the annual energy consumption and total installed cost data from the LCC analysis, and (2) estimates of national shipments and stock for each beverage vending machine class from the shipments analysis. DOE forecasted the energy savings from each TSL from 2012 to 2042. DOE forecasted the energy cost savings, equipment costs, and NPV of benefits for all refrigerated beverage vending machines classes from 2012 to 2057. The forecasts provided annual and cumulative values for all four output parameters.

DOE calculated the NES by subtracting energy use under a standards scenario from energy use in a base case (no new standards) scenario. Energy use is reduced when a unit of refrigerated beverage vending machines in the base case efficiency distribution is replaced by a more efficient piece of equipment as a result of the standard. Energy savings for each equipment class are the same national average values as calculated in the LCC and PBP spreadsheet. Table IV.4 summarizes key inputs to the NIA analysis and the changes DOE made in the analysis for the final rule. Chapter 11 of the TSD provides additional information about the NIA spreadsheet.

TABLE IV.4—SUMMARY OF NATIONAL ENERGY SAVINGS AND NET PRESENT VALUE INPUTS

Input data	Description of NOPR analysis	Changes for final rule
Shipments	No growth in shipments; based on industry comments on the NOPR, all shipments are replacements.	Shipments grow to 190,000 per year.
Effective Date of Standard	2012	No change.
Base Case Efficiencies	Distribution of base case shipments by efficiency level	No change.
Standards Case Efficiencies	Distribution of shipments by efficiency level for each standards case. Standards case annual market shares by efficiency level remain constant over time for the base case and each standards case.	No change.
Annual Energy Consumption per Unit.	Annual weighted-average values are a function of energy consumption level per unit, which are established in chapter 7 of the TSD.	No change.
Total Installed Cost per Unit	Annual weighted-average values are a function of energy consumption level (chapter 8 of the TSD).	No change in methodology. Installed costs reflect the updated final rule LCC.
Repair Cost per Unit	Annual weighted-average values are constant in real dollar terms for each energy consumption level (chapter 8 of the TSD).	No change in methodology. Repair costs reflect the updated final rule LCC values.
Maintenance Cost per Unit	Annual weighted-average value (chapter 8 of the TSD), plus lighting maintenance cost.	No change in methodology.
Escalation of Electricity Prices	Energy Information Administration (EIA) <i>Annual Energy Outlook 2009 (AEO2009)</i> forecasts (to 2030) and extrapolates beyond 2030 (chapter 8 of the TSD).	All cases updated to April 2009 update to <i>AEO2009</i> forecasts (chapter 8 of the TSD).
Electricity Site-to-Source Conversion.	Conversion factor varies yearly and is generated by EIA's NEMS model. Includes the impact of electric generation, transmission, and distribution losses based on <i>AEO2008</i> .	Site-to-source ratio follows April 2009 update to <i>AEO2009</i> .
Discount Rate	3 and 7 percent real	No change.
Present Year	Future costs are discounted to 2009	No change.
Rebound Effect	A rebound effect (due to changes in shipments resulting from standards) was not considered in the NIA.	No change.

The modifications DOE made to the NES and NIA analyses for the final rule primarily reflect the latest available updates to the same data sources used in the NOPR, but not changes in methodology. In addition, the underlying input data on equipment costs and energy savings by TSL are based on the LCC analysis results as revised in the final rule.

Maintenance Costs Savings for LED Lighting in Machines

At the NOPR stage, the Joint Comment (No. 67 at p. 3) indicated that there are maintenance costs savings and therefore potential life-cycle cost savings when LED lighting is used in place of the baseline T8 fluorescent lighting for beverage vending machines. The Joint Comment referenced an article in the September 3, 2008, edition of "Automatic Merchandiser," *Energize Displays with LED Lighting*, accessed on Vendingmarketwatch.com for information on LED lighting maintenance costs versus maintenance costs for a beverage vending machine with a fluorescent lighting system (last accessed July 25, 2009). DOE also reviewed a more recent industry publication on maintenance cost savings for LED display lights in beverage vending machines in the April 15, 2009, edition of "Automatic Merchandiser," *Tools to Enhance Energy Savings*, which was accessed on

Vendingmarketwatch.com (last accessed July 25, 2009).

In response to this comment, DOE conducted a sensitivity analysis for today's final rule to estimate the net economic effect of reduced maintenance costs for using LED lighting in place of baseline T8 fluorescent lighting in beverage vending machine equipment. The sensitivity analysis estimated the annualized life cycle cost savings for LED lighting. For machines with T8 lighting, the analysis assumes two maintenance visits to a machine to change out three T8 lamps and a change out of the T8 lamps and the ballast at refurbishment (at 5 years) DOE assumed there was no additional labor for this change out, since this is undertaken at refurbishment. DOE estimated the total cost for maintenance (labor and materials) for machines with T8 lighting over the machine lifetime (10 years) to be \$194.

For machines with LED lighting, no lighting maintenance visits would be required over the lifetime of the machine. The cost of replacing three LED strips at \$50 each would take place during refurbishment and would be \$150. DOE assumed there would be no additional labor charge for this change out since this was being undertaken at refurbishment.

The analysis estimated that the annualized net maintenance cost savings is \$4.68 for a LED lighting system used to light a machine

compared to the baseline T8 lighting system for a machine. This net annualized maintenance cost savings is very small and does not significantly affect the life cycle cost analysis and thus does not impact the standards levels for today's final rule. Chapter 8 of the TSD provides additional details of this sensitivity analysis.

1. Choice of Discount Rate

ASAP commented that the balance of DOE's discussion of the choice of proposed standard overemphasized the 7 percent discount rate when both 7 percent and 3 percent are mandated by the Office of Management and Budget (OMB). (ASAP, Public Meeting Transcript, No. 56 at p. 144) ASAP argued that the actual cost of capital the Department chose for the purchase of the machine was lower than 7 percent so that the 3 percent rate should be considered in the Department's analysis, and is required to be considered by OMB. In response, DOE notes that it follows the guidelines on discount factors set forth in guidance that OMB provides to Federal agencies on the development of regulatory analysis (OMB Circular A-4 (September 17, 2003), particularly section E, "Identifying and Measuring Benefits and Costs"). Accordingly, DOE is continuing to use 3 percent and 7 percent real discount rates for the relevant calculations for this final rule.

2. Discounting of Physical Values

ASAP commented that DOE should not be applying financial discount rates to physical values such as energy savings. (ASAP, Public Meeting Transcript, No. 56 at p. 37) It said that doing so is an inappropriate application of financial evaluation tools and should be discontinued.

DOE continues to report both undiscounted and discounted values of energy savings and carbon emission reductions. DOE believes this allows for consideration of a range of policy perspectives, one of which is the view that a reduction in emissions today is more valuable than one in 30 years.

I. Life-Cycle Cost Subgroup Analysis

In analyzing the potential impact of new or amended standards on commercial customers, DOE evaluates the impact on identifiable groups (*i.e.*, subgroups) of customers, such as different types of businesses that may be disproportionately affected by a National standard level. For this rulemaking, DOE identified manufacturing and industrial facilities that purchase their own beverage vending machines as a relevant subgroup. This customer subgroup is likely to include owners of high-cost beverage vending machines because it has the highest capital costs. This group also faces the lowest electricity prices of any customer subgroup. These two conditions make it likely that this subgroup will have the lowest life-cycle cost savings of any major customer subgroup.

DOE determined the impact on this refrigerated beverage vending machines customer subgroup using the LCC spreadsheet model. DOE conducted the LCC and PBP analyses for customers represented by the subgroup. DOE did not receive comments on its identification of this class of customers as the key sub-group or on the assumptions applied to those subgroups. DOE relied on the same methodology outlined in the NOPR for the final rule analysis. The results of DOE's LCC subgroup analysis are summarized in section VI.C.1.b and described in detail in chapter 12 of the TSD.

J. Manufacturer Impact Analysis

DOE performed an MIA to estimate the financial impact of energy conservation standards on manufacturers of beverage vending machine equipment, and to assess the impact of such standards on employment and manufacturing capacity. DOE conducted the MIA for

beverage vending machine equipment in three phases. Phase 1, Industry Profile, consisted of preparing an industry characterization, including data on market share, sales volumes and trends, pricing, employment, and financial structure. Phase 2, Industry Cash Flow Analysis, focused on the industry as a whole. In this phase, DOE used the GRIM to prepare an industry cash-flow analysis. Using publicly available information developed in Phase 1, DOE adapted the GRIM's generic structure to perform an analysis of beverage vending machine equipment energy conservation standards. In Phase 3, Subgroup Impact Analysis, DOE conducted interviews with manufacturers representing the majority of domestic beverage vending machine equipment sales. This group included large and small manufacturers, providing a representative cross-section of the industry. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics specific to each company, and obtained each manufacturer's view of the industry. The interviews provided valuable information DOE used to evaluate the impacts of an energy conservation standard on manufacturer cash flows, manufacturing capacities, and employment levels.

The GRIM inputs consist of the beverage vending machine industry's cost structure, shipments, and revenues. This includes information from many of the analyses described above, such as manufacturing costs and selling prices from the engineering analysis and shipments forecasts from the NES.

The GRIM uses the manufacturer selling prices in the engineering analysis to calculate the manufacturer production costs for each equipment class at each TSL. By multiplying the production costs by different sets of markups, DOE derives the MSPs used to calculate industry revenues.

The GRIM estimates manufacturer revenues based on total-unit-shipment forecasts and the distribution of these shipments by efficiency. Changes in the efficiency mix at each standard level are a key driver of manufacturer finances. For the final rule analysis, DOE used the total shipments and efficiency distribution found in the final rule NES.

DOE estimates the equipment conversion costs and capital conversion costs that the industry would incur at each TSL. Equipment conversion costs include engineering, prototyping, testing, and marketing expenses incurred by a manufacturer as it prepares to comply with a standard. Capital conversion costs are the one-time outlays for tooling and plant

changes required for the industry to comply.

During the NOPR public meeting, DOE asked manufacturers to discuss their ability to meet the proposed TSLs and describe the impacts of those standards. Both Royal Vendors and Dixie-Narco discussed their ability to meet the proposed standards in terms of the conversion costs each would incur to develop higher efficiency equipment. Royal Vendors stated that, in the past, considerable costs were incurred to get from pre-ENERGY STAR efficiency levels to ENERGY STAR Tier I efficiency levels. These costs included implementation of ECM fan motors, magnetic ballasts, and higher efficiency compressors. (Royal Vendors, Public Meeting Transcript, No. 56 at p. 185) Dixie-Narco agreed with Royal Vendors and stated that it faced a costly transition from ENERGY STAR Tier I to ENERGY STAR Tier II efficiency levels. (Dixie-Narco, Public Meeting Transcript, No. 56 at p. 186) In a written comment, NAMA also noted the considerable funds already spent by its members to comply with ENERGY STAR standards. (NAMA, No. 65 at p. 2) For Class B machines, Royal Vendors expects meeting TSL 3 will not require a tremendous effort. (Royal Vendors, Public Meeting Transcript, No. 56 at p. 220) Dixie-Narco also stated that it will be able to achieve the proposed standard for Class B machines without investing significant costs that would need to be passed on to its customers. (Dixie-Narco, No. 64 at p. 4) Dixie-Narco noted that it achieved the TSL 6 energy consumption level with one of its Class A vending machines this year, using a lighting management system. (Dixie-Narco, Public Meeting Transcript, No. 56 at p. 188) Royal Vendors stated that it could meet TSL 6 for Class A machines at relatively minor cost if it were not precluded by proprietary design restrictions from adopting a lighting management system similar to Dixie-Narco's. (Royal Vendors, Public Meeting Transcript, No. 56 at p. 189) Royal Vendors stated that implementing an energy management system is not an expensive addition to the machine and that it can be passed on at essentially no additional cost. (Royal Vendors, Public Meeting Transcript, No. 56 at p. 188)

Based on public comments, DOE believes that it accurately estimated the conversion costs for Class B vending machines and did not make any changes for the final rule. However, for Class A vending machines, DOE believes that the use of energy management systems (*e.g.*, lighting) could provide a method of achieving energy savings at minimal cost to manufacturers. To account for

this possibility, DOE modified the assumed conversion costs required for manufacturers to meet the Class A energy consumption levels. In the NOPR, DOE assumed that since almost all of the market was already reaching TSL 1 (*i.e.*, ENERGY STAR Tier II) for Class A machines, the conversion costs at TSL 1 were zero. The conversion costs progressively increased from TSL 2 through TSL 7 (*i.e.*, max-tech). For the final rule, DOE accounted for the potential use of an energy management system by assuming there would be negligible conversion costs through TSL 2 for all Class A machines, shifting the conversion costs for TSLs 2 through 5 from the NOPR to TSLs 3 through 6 for the final rule. For TSL 7, DOE maintained the conversion costs from the NOPR since they represent the maximum possible conversion costs for the max-tech level. For more information about DOE's manufacturer impact assumptions, *see* chapter 13 of the TSD.

In a comment submitted on the NOPR, NAMA stated that one of its manufacturers would have difficulty achieving the reduction in energy consumption required by the proposed standard levels. The manufacturer could only meet the standards by changing the cabinet insulation thickness, which would require retooling its production lines at an estimated cost of over \$1 million. (NAMA, No. 65 at p. 3)

DOE estimated the conversion costs to manufacturers of the standard levels for both equipment classes and reports the values in chapter 13 of the TSD. DOE's total estimated costs exceed the 1 million dollars reported by the manufacturer. Because DOE has accounted for conversion costs of this magnitude for the industry, DOE maintained the conversion costs reported in chapter 13 of the TSD.

For the final rule, DOE analyzed manufacturer impacts under two distinct markup scenarios: (1) The preservation-of-gross-margin-percentage markup scenario, and (2) the preservation-of-operating-profit markup scenario.

Under the first scenario, DOE applied a single uniform "gross margin percentage" markup that represents the current markup for manufacturers in the beverage vending machine industry. This markup scenario implies that as production costs increase with efficiency, the absolute dollar markup will also increase. DOE calculated that the non-production cost markup—which consists of selling, general, and administrative (SG&A) expenses; research and development (R&D) expenses; interest; and profit—is 1.26.

Under the second scenario, the implicit assumption behind the "preservation-of-operating-profit" scenario is that the industry can only maintain its operating profit (earnings before interest and taxes) from the baseline after implementation of the standard in 2012. The industry impacts occur in this scenario when manufacturers expand their capital base and production costs to make more expensive equipment, but the operating profit does not change from current conditions. DOE implemented this markup scenario in the GRIM by setting the manufacturer markups at each TSL to yield approximately the same operating profit in both the base case and the standard case in the standards effective year of 2012. Together, these two markup scenarios characterize the range of possible conditions that the beverage vending machine market will experience as a result of new energy conservation standards.

In the NOPR, DOE sought comments on whether and to what extent parties estimate they will be able to transfer costs of implementing TSL 6 to consumers. 74 FR 26022. During the NOPR public meeting, Coca-Cola stated that, 10 years ago, it only had to sell 20 cases for a vending machine to make a profit. Now, it has to sell 100 cases for a vending machine to make a profit. It continued that there are many factors driving the profitability model of a vending machine, and to assume that model will not change is erroneous. (Coca-Cola, Public Meeting transcript, No. 56 at p. 91) Coca-Cola stated that, historically, cost increases in equipment could not be passed through to the customer. It does not believe the increased cost of manufacturing higher efficiency equipment can be passed on to the consumer. As a result, the profit margin for each machine diminishes, resulting in an overall reduction in purchases. (Coca-Cola, Public Meeting Transcript, No. 56 at p. 183, Coca-Cola, No. 63 at p. 2, and NAMA, No. 65 at p. 5) As a result, Coca-Cola concluded that any increase in cost resulting from installing more energy-efficient technologies into a vending machine cannot be transferred over to consumers. (Coca-Cola, Public Meeting Transcript, No. 56 at p. 182 and NAMA, No. 65 at p. 2) Coca-Cola estimates that today's standard will result in an overall weighted average price markup of 14½%. (Coca-Cola, No. 63 at p. 2)

The inability to pass on costs starts at the consumer level and ultimately travels throughout the entire distribution chain. As stated in comments from the NOPR public meeting, consumers are typically

unwilling to incur additional costs for more energy-efficient equipment. In addition, end-users (*e.g.*, bottlers) are typically unwilling to incur additional costs for energy-efficient equipment, primarily due to the split-incentive issue. The split incentive issue is described in detail in the ANOPR. 73 FR 34101. Therefore, it is very difficult for manufacturers to transfer any cost increases for more energy-efficient equipment to their customers. The preservation-of-operating-profit scenario models the more negative potential impacts on the refrigerated beverage vending machine industry, and accounts for manufacturers' inability to transfer additional costs to end-users. For additional detail on the manufacturer impact analysis, refer to chapter 13 of the TSD. In addition, as stated earlier in section IV.J, multiple major manufacturers stated that their equipment could meet today's standard at little or no added cost. (Dixie-Narco, No. 64 at p. 2 and Royal Vendors, Public Meeting Transcript, No. 56 at p. 189)

K. Utility Impact Analysis

The utility impact analysis estimates the effects of reduced energy consumption due to improved equipment efficiency on the utility industry. This analysis compares forecast results for a case comparable to the April 2009 updated *AEO2009* Reference Case and forecast results for policy cases incorporating each of the beverage vending machines proposed TSLs.

DOE analyzed the effects of proposed standards on electric utility industry generation capacity and fuel consumption using a variant of EIA's NEMS model. EIA uses NEMS to produce its *AEO*, a widely recognized baseline energy forecast for the United States. DOE used a variant known as NEMS-BT, run similar to the April 2009 update to the NEMS, except that refrigerated beverage vending machines energy usage is reduced by the amount of energy (by fuel type) saved due to the TSLs. DOE obtained the inputs of national energy savings from the NES spreadsheet model. In response to the May 2009 NOPR, DOE did not receive comments directly on the methodology used for the utility impact analysis. DOE revised the final rule inputs to use the NEMS-BT consistent with the April 2009 update to *AEO2009* and to use the NES impacts developed in the beverage vending machines final rule analysis.

In the utility impact analysis, DOE reported the changes in installed capacity and generation by fuel type that result for each TSL as well as changes in end-use electricity sales.

Chapter 14 of the TSD provides details of the utility analysis methods and results.

L. Employment Impact Analysis

DOE considers direct and indirect employment impacts when developing a standard. In this case, direct employment impacts are any changes in the number of employees for beverage vending machines manufacturers, their suppliers, and related service firms. Indirect impacts are those changes in employment in the larger economy that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more efficient beverage vending machines. In this rulemaking, the MIA addresses direct impacts (chapter 13 of the TSD), and the employment impact analysis addresses indirect impacts (chapter 15 of the TSD).

Indirect employment impacts from beverage vending machines standards consist of the net jobs created or eliminated in the national economy (other than in the manufacturing sector being regulated) as a consequence of (1) reduced spending by end users on electricity (offset to some degree by the increased spending on maintenance and repair); (2) reduced spending on new energy supply by the utility industry; (3) increased spending on the purchase price of new refrigerated beverage vending machines; and (4) the effects of those three factors throughout the economy. DOE expects the net monetary savings from standards to be redirected to other forms of economic activity. DOE also expects these shifts in spending and economic activity to affect the demand for labor.

DOE used a different methodology to estimate indirect national employment impacts using an input-output model of the U.S. economy called ImSET (Impact of Sector Energy Technologies) developed by DOE's Building Technologies Program. 74 FR 26047, 26058. The new method uses the most recent version of the U.S. input-output table and updated sector employment intensities. The ImSET model estimates changes in employment, industry output, and wage income in the overall U.S. economy resulting from changes in expenditures in various economic sectors. DOE estimated changes in expenditures using the NES spreadsheet. ImSET then estimated the net national indirect employment impacts of potential refrigerated beverage vending machines efficiency standards on employment by sector. In response to the May 2009 NOPR, DOE did not receive comments directly on the methodology used for the utility

impact analysis. DOE updated its indirect employment impact analysis using Version 3 of the ImSET model in the final rule.

M. Environmental Assessment

Pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and 42 U.S.C. 6295(o)(2)(B)(i)(VI), DOE prepared an environmental assessment (EA) of the potential impacts of the proposed standards it considered for today's final rule, which it has included as chapter 16 of the TSD for the final rule. DOE found that the environmental effects associated with the standards for beverage vending machines were not significant. Therefore, DOE is issuing a Finding of No Significant Impact (FONSI), pursuant to NEPA, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and DOE's regulations for compliance with NEPA (10 CFR part 1021). The FONSI is available in the docket for this rulemaking.

In the EA, DOE estimated the reduction in total emissions of CO₂ and NO_x using the NEMS–BT computer model. DOE calculated a range of estimates for reduction in Hg emissions using current power sector emission rates. The EA does not include the estimated reduction in power sector impacts of sulfur dioxide (SO₂), because DOE is uncertain that an energy conservation standard would not affect the overall level of SO₂ emissions in the United States due to the presence of national caps on SO₂ emissions. These topics are addressed further below; see chapter 16 of the TSD for additional detail.

The NEMS–BT is run similarly to the April 2009 update of NEMS, except that the refrigeration energy use is reduced by the amount of energy saved due to the trial standard levels. The inputs of national energy savings come from the NIA analysis. For the EA, the output is the forecasted physical emissions. The net benefit of the standard is the difference between emissions estimated by NEMS–BT and the April 2009 updated AEO2009 Reference Case. The NEMS–BT tracks CO₂ emissions using a detailed module that provides results with a broad coverage of all sectors and inclusion of interactive effects.

Title IV of the Clean Air Act sets an annual emissions cap on SO₂ for all affected Electric Generating Units. The attainment of the emissions cap is flexible among generators and is enforced through the use of emissions allowances and tradable permits. Thus, DOE is not certain that there will be reduced overall SO₂ emissions from the

standards. However, there may be an economic benefit from reduced demand for SO₂ emission allowances. Electricity savings decrease the generation of SO₂ emissions from power production, which can lessen the need to purchase SO₂ emissions allowance credits, and thereby decrease the costs of complying with regulatory caps on emissions.

NO_x emissions from 28 eastern States and the District of Columbia (DC) are limited under the Clean Air Interstate Rule (CAIR), published in the **Federal Register** on May 12, 2005. 70 FR 25162 (May 12, 2005). Although CAIR has been remanded to EPA by the DC Circuit, it will remain in effect until it is replaced by a rule consistent with the Court's July 11, 2008 opinion in *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008); see also *North Carolina v. EPA*, 550 F.3d 1176 (DC Cir. 2008). These court positions were taken into account in the May 2009 NOPR. Thus, the same methodology was followed in estimating future NO_x in the May 2009 NOPR as in the final rule. Because all States covered by CAIR opted to reduce NO_x emissions through participation in cap-and-trade programs for electric generating units, emissions from these sources are capped across the CAIR region.

For the 28 eastern States and DC where CAIR is in effect, no NO_x emissions reductions will occur due to the permanent cap. Under caps, physical emissions reductions in those States would not result from the energy conservation standards under consideration by DOE, but standards might have produced an environmentally related economic impact in the form of lower prices for emissions allowance credits, if they were large enough. However, DOE determined that in the present case, such standards would not produce an environmentally related economic impact in the form of lower prices for emissions allowance credits, because the estimated reduction in NO_x emissions or the corresponding allowance credits in States covered by the CAIR cap would be too small to affect allowance prices for NO_x under the CAIR. In contrast, new or amended energy conservation standards would reduce NO_x emissions in those 22 States not affected by the CAIR. As a result, DOE used the NEMS–BT to forecast emission reductions from the beverage vending machine standards that are considered in today's final rule.

Similar to SO₂ and NO_x, future emissions of Hg would have been subject to emissions caps under the Clean Air Mercury Rule (CAMR) [70 FR 28606 (May 18, 2005)], which would

have permanently capped emissions of mercury for new and existing coal-fired power plants in all States beginning in 2010, but the CAMR was vacated by the DC Circuit in its decision in *New Jersey v. Environmental Protection Agency* prior to publication of the May 2009 NOPR. 517 F 3d 574 (DC Cir. 2008).

After CAMR was vacated, DOE was unable to use the NEMS–BT model to estimate any changes in the quantity of mercury emissions (anywhere in the country) that would result from standard levels it considered for the proposed rule. Instead, DOE used a range of Hg emissions rates (in tons of Hg per unit energy produced) based on the *AEO2008* for the May 2009 NOPR. Because virtually all mercury emitted from electricity generation is from coal-fired power plants, DOE based the high-end emissions rate on the tons of mercury emitted per terawatt hour (TWh) of coal-generated electricity. To estimate the reduction in mercury emissions, DOE multiplied the emissions rate by the reduction in coal-generated electricity associated with the standards considered. DOE's low estimate assumed that future standards would displace electrical generation only from natural gas-fired power plants, thereby resulting in an effective emission rate of zero. The low end of the range of Hg emissions rates is zero because natural gas-fired powered power plants have virtually no Hg emissions associated with their operations. Because the CAMR remains vacated, DOE continued to use the approach it used for the May 2009 NOPR to estimate the Hg emission reductions due to standards for today's final rule. To estimate the reduction in Hg emissions, DOE multiplied the emissions rates by the reduction in electricity generation associated with the standards proposed in today's final rule.

Earthjustice commented that DOE's approach to estimating mercury emissions arbitrarily ignores the results of the Department's own utility impact analysis, which models cumulative avoided electricity from all sources and a breakout disclosing cumulative generation from several sources (coal, petroleum, natural gas, and renewables). (Earthjustice, No. 66 at pp. 1–2) Given that DOE's own utility impact analysis models the energy savings from each source of electricity generation, DOE may not refuse to apply that information to estimate the cumulative mercury emissions reductions without a rational explanation. EarthJustice added that DOE need only refer to the AEO Reference Case average emissions rates

to obtain updated projections for future Hg emissions factors.

DOE estimates its emission factors based on marginal emissions rates for energy savings for the primary energy saved by the standard. Diagnosis of NEMS–BT model runs leaves significant uncertainty concerning which generating fuels would be affected at the margin at the scale of energy savings expected as a result of the standard. The differences in emission rates are particularly important for Hg because some fuels generate almost no Hg. Therefore, DOE has elected to keep a range of emissions values in this rule. DOE also notes that the average Hg emissions values suggested by Earthjustice fell between the two values used by DOE.

DOE notes that neither EPCA nor NEPA requires that the economic value of emissions reductions be incorporated in the LCC or NPV analysis of energy savings. DOE has chosen to report these benefits separately from the net benefits of energy savings. A summary of the monetary results is shown in section VI.C.6 of this final rule. DOE considered both values when weighing the benefits and burdens of standards.

N. Monetizing Carbon Dioxide and Other Emissions Impacts

DOE also calculated the possible monetary benefit of CO₂, NO_x, and Hg reductions. Cumulative monetary benefits discounted from the year of the emission reduction to the present using discount rates of 3 and 7 percent. DOE monetized reductions in CO₂ emissions due to the standards proposed in this final rule based on a range of monetary values drawn from studies that attempt to estimate the present value of the marginal economic benefits (based on the avoided marginal social costs of carbon) likely to result from lowering future atmospheric concentrations of greenhouse gases. The marginal social cost of carbon is an estimate of the monetary value to society of the environmental damages of CO₂ emissions. One comment was provided on the economic valuation of CO₂ at the NOPR public meeting.

ASAP stated that it is important for DOE to reevaluate its approach to carbon valuation. (ASAP, Public Meeting Transcript, No. 56 at p. 37) ASAP believes that DOE's estimate for the value of carbon is low, but did not provide data for analysis. As discussed in section VI.C.6, DOE has updated the approach described in the May 2009 NOPR for its monetization of environmental emissions reductions for today's final rule. DOE continues to work with other Federal agencies on a

common approach and values to be used in monetizing carbon and other emissions.

Although this rulemaking may not affect SO₂ emissions nationwide and does not affect NO_x emissions in the 28 eastern States and D.C. where CAIR is in effect, there are markets for SO₂ and NO_x emissions allowances. The market clearing price of SO₂ and NO_x emissions allowances is roughly the marginal cost of meeting the regulatory cap, not the marginal value of the cap itself. Further, because national SO₂ and NO_x emissions are regulated by a cap-and-trade system, the cost of meeting these caps is included in the price of energy. Thus, the value of energy savings already includes the value of SO₂ and NO_x control for those customers experiencing energy savings. The economic cost savings associated with SO₂ and NO_x emissions caps is approximately equal to the change in the price of traded allowances resulting from energy savings multiplied by the number of allowances that would be issued each year. That calculation is uncertain because the energy savings from new standards for beverage vending machines would be so small relative to the entire electricity generation market that the resulting emissions savings would have almost no impact on price formation in the allowances market. These savings would most likely be outweighed by uncertainties in the marginal costs of compliance with SO₂ and NO_x emissions caps.

The current NEMS–BT model used in projecting the environmental impacts includes the CAIR rule, as described above, which is projected to reduce SO₂ and NO_x emissions. NEMS–BT also takes into account the current set of State level renewable portfolio standards, the effect of the Northeastern states Regional Greenhouse Gas Initiative (RGGI), and utility investor reactions to the possibility of future CO₂ cap and trade programs, all of which affect electricity prices and reduce the projected carbon intensity of generation. The most recent Reference Case, *AEO2009*, is available at <http://www.eia.doe.gov/oiaf/servicert/stimulus/index.html>, and documentation of the *AEO2009* assumptions is available at <http://www.eia.doe.gov/oiaf/aeo/assumption/index.html>.

V. Discussion of Other Comments

Since DOE opened the docket for this rulemaking, it has received more than 100 written comments from a diverse set of parties, including manufacturers and their representatives, wholesalers and

distributors, energy conservation advocates, State officials and agencies, and electric utilities. Section IV of this preamble discusses comments DOE received on the analytic methodologies it used. Additional comments DOE received in response to the May 2009 NOPR addressed the information DOE used in its analyses, results of and inferences drawn from the analyses, impacts of standards, the merits of the different TSLs and standards options DOE considered, and other issues affecting adoption of standards for beverage vending machines. DOE addresses these comments in this section.

A. Information and Assumptions Used in Analyses

1. Engineering Analysis

During the NOPR public meeting, Royal Vendors commented that the data used for Class A fluorescent lighting systems in the engineering analysis is not consistent with the specifications of the fluorescent lighting systems it uses in its glass-front machines. Specifically, it stated that DOEs estimated energy consumption of 32 watts (W) per fixture is too high. Royal Vendors claims its fluorescent fixtures only consume 22 W (Royal Vendors, Public Meeting Transcript, No. 56 at p. 68).

DOE uses aggregate values for its engineering analysis inputs. These values are derived using publicly available data or information provided by multiple manufacturers and/or component suppliers. Analysis inputs are generalized so as to better represent the industry as a whole. DOE's estimate of 32 W of energy consumed for T8 fluorescent fixtures in Class A machines is adequate for the beverage vending machine industry and it has not made any adjustments for the final rule.

B. Benefits and Burdens

Royal Vendors stated that the proposed standards appeared to be reversed for Class A machines and Class B machines. It stated that Class A machines typically use more energy than Class B machines. (Royal Vendors, Public Meeting Transcript, No. 56 at p. 27) Dixie-Narco disagreed with Royal Vendors, stating that the proposed standards are correct and appropriate. (Dixie-Narco, Public Meeting Transcript, No. 56 at p. 29) ASAP stated that it generally supports DOE's proposed standard levels. It stated that for Class A machines, DOE's proposal, TSL 6, is the maximum level that is cost effective. However, for Class B machines, ASAP suggested that DOE consider selecting TSL 4 rather than TSL 3 because the

economic results for these two levels are very similar. (ASAP, Public Meeting Transcript, No. 56 at p. 31) Dixie-Narco stated that when you consider that the standards equations are based on refrigerated volume and not can capacity (or vendible capacity), the equations for the standards are appropriate for both equipment classes. (Dixie-Narco, Public Meeting Transcript, No. 56 at p. 152) Dixie-Narco further stated that it is currently achieving the proposed efficiency level for Class A machines but not for Class B machines, and therefore would have to make modifications to meet the proposed level for Class B machines. (Dixie-Narco, Public Meeting Transcript, No. 56 at p. 163, 219) Royal Vendors stated that for Class A machines, they do not currently meet those levels, but given no proprietary design problems, they could meet them fairly easily. For Class B machines, Royal Vendors stated that they do not meet the proposed standards currently, but could without tremendous effort. (Royal Vendors, Public Meeting Transcript, No. 56 at p. 220) Coca-Cola commented that an appropriate standard for Class A equipment would be one that is "on par" with the ENERGY STAR Tier II level. (Coca-Cola, No. 63 at p. 2)

In a written comment, NAMA stated that it received a mixed response from its members regarding the technological feasibility and economic benefits of the standard levels proposed by DOE. One manufacturer stated that it would have difficulty achieving additional reductions for Class A and Class B machines, while another stated that it could achieve the standard for both Class A and Class B machines without significant costs to them or their customers. However, most responses to NAMA's request for information indicated that the proposed standard for Class B machines was appropriate and achievable. One manufacturer specifically stated that TSL 3 for Class B could be reached without significant costs. The proposed standard for Class A, on the other hand, raised questions among many manufacturers, although one manufacturer stated that it already exceeds the Class A standard without adding significant costs. (NAMA, No. 65 at pp. 3, 4) DOE considers these comments on its selection of the final energy conservation standard level for beverage vending machines. See section VI.D.

VI. Analytical Results and Conclusions

A. Trial Standard Levels

DOE analyzed seven energy consumption levels for Class A

equipment and six energy consumption levels for Class B equipment in the LCC and NIA analyses. For the May 2009 NOPR, DOE determined that each of these levels should be presented as a possible TSL and correspondingly identified seven TSLs for Class A and six TSLs for Class B equipment. For each equipment class, the range of TSLs selected includes the energy consumption level providing the maximum NES level for the class, the level providing the maximum NES while providing a positive NPV, the level providing the maximum NPV, and the level approximately equivalent to ENERGY STAR Tier II. Many of the higher levels selected correspond to equipment designs that incorporate specific noteworthy technologies that can provide energy savings benefits. For Class A machines, DOE also included two intermediate efficiency levels to fill in significant energy consumption gaps between the levels identified above the ENERGY STAR Tier II equivalent level. For Class A equipment, the ENERGY STAR Tier II level is equivalent to TSL 1, which allows for the highest energy consumption. For Class B equipment, DOE included one TSL with energy consumption higher than that provided by ENERGY STAR Tier II level.

For the May 2009 NOPR, four of the TSLs for each equipment class were based on the levels that provided maximum energy savings, maximum efficiency level with positive LCC savings, maximum LCC savings, and the highest efficiency level with a payback of less than 3 years.

DOE preserved energy consumption levels from the NOPR that met the same economic criteria in the final rule but also included the ENERGY STAR Tier II equivalency level and several additional TSLs. These additional levels either provide additional intermediate efficiency levels or include specific noteworthy technologies examined in the engineering analysis. Table VI.1 and Table VI.2 show the TSL levels DOE selected for the equipment classes and sizes analyzed. For Class A equipment, TSL 7 is the max-tech level for each equipment class. TSL 6 is the maximum efficiency level with a positive NPV at the 7 percent discount rate, achieved by incorporating an ECM condenser fan. TSL 5 is the efficiency level with the maximum NPV and maximum LCC savings, achieved by using an advanced refrigerant condenser design. TSL 4 is the level that first incorporated light-emitting diode (LED) lighting as a design feature in the engineering analysis. TSL 3 and TSL 2 were intermediate efficiency levels chosen to bridge the gap between TSL 4, and the

ENERGY STAR Tier II equivalent level, which is TSL 1.

TABLE VI.1—TRIAL STANDARD LEVELS FOR CLASS A EQUIPMENT EXPRESSED IN TERMS OF DAILY ENERGY CONSUMPTION (KWH/DAY)

Size	TSL	Trial standard level in order of efficiency							
		Baseline	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6	TSL 7
Small	LCC Efficiency level.	1	2	3	4	5	6	7	8
	Engineering Level.	1	5	*NA	*NA	6	7	9	11
Medium	kWh/day	6.10	5.27	4.75	4.25	3.95	3.73	3.58	3.25
	Engineering Level.	1	5	*NA	*NA	6	7	9	11
Large	kWh/day	6.53	5.51	5.25	4.75	4.19	3.95	3.79	3.43
	Engineering Level.	1	4	*NA	*NA	5	6	8	10
	kWh/day	6.75	6.21	5.75	5.25	4.89	4.60	4.41	3.94

* Not applicable. These levels established as intermediate points along the engineering cost curves.

TABLE VI.2—TRIAL STANDARD LEVELS FOR CLASS B EQUIPMENT EXPRESSED IN TERMS OF DAILY ENERGY CONSUMPTION (KWH/DAY)

Size	TSL	Trial standard level in order of efficiency						
		Baseline	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Small	LCC Efficiency Level ...	1	2	3	4	5	6	7
	Engineering Level	1	2	4	4	5	6	7
Medium	kWh/day	4.96	4.62	4.31	4.31	4.28	3.78	3.69
	Engineering Level	1	2	4	5	6	7	8
Large	kWh/day	5.56	5.20	4.99	4.76	4.72	4.22	4.12
	Engineering Level	1	2	3	4	5	6	7
	kWh/day	5.85	5.48	5.33	5.07	5.03	4.52	4.41

* Not applicable. These levels established as intermediate points along the engineering cost curves.

For Class B equipment, TSL 6 is the max-tech level for each equipment size. TSL 5 is the level that first incorporated LED lighting as a design option in the engineering analysis. TSL 4 is the next highest efficiency level incorporating an ECM condenser fan motor. TSL 3 was achieved by using an advanced refrigerant condenser design. This TSL provided an NPV value of essentially 0, with total capital expenditures for new equipment balanced by total operating cost savings over the NIA analysis period, based on a 7 percent discount rate. TSL 2 is the ENERGY STAR Tier II level for Class B machines. This TSL provided the maximum LCC savings and maximum NPV savings at a 7 percent discount rate. TSL 1, which provided an energy consumption level approximately 4 percent higher than

TSL 2, was also included in the analysis. TSL 1 represented the first level incorporating an evaporator fan driven by an ECM in the engineering analysis.

As stated in the May 2009 NOPR, DOE chose to characterize the proposed TSL levels in terms of equations that establish a maximum daily energy consumption (MDEC) limit through a linear equation of the following form:

$$MDEC = A \times V + B$$

Where:

A is expressed in terms of kWh/day/ft³ of measured volume,

V is the measured refrigerated volume (ft³) calculated for the equipment, and

B is an offset factor expressed in kWh/day.

Coefficients A and B are uniquely derived for each equipment class based

on a linear equation passing between the daily energy consumption values for equipment of different refrigerated volumes. For the A and B coefficients, DOE used the energy consumption values shown in Table VI.1 and Table VI.2 for the medium and large equipment sizes within each class of beverage vending machine. DOE did not use the small sizes in either equipment class because information from the May 2009 NOPR indicated that there are no significant shipments of this equipment size. Results are described in more detail in chapter 9 of the TSD.

Chapter 9 of the TSD also explains the methodology DOE used for selecting TSLs and developing the equations shown in Table VI.3.

TABLE VI.3—TRIAL STANDARD LEVELS EXPRESSED IN TERMS OF EQUATIONS AND COEFFICIENTS FOR CLASS A AND CLASS B EQUIPMENT

Trial standard level	Test metric	Class A	Class B
Baseline	kWh/day	MDEC = 0.019 × V + 6.09	MDEC = 0.068 × V + 4.07.
1	kWh/day	MDEC = 0.062 × V + 4.12	MDEC = 0.066 × V + 3.76.
2	kWh/day	MDEC = 0.044 × V + 4.26	MDEC = 0.080 × V + 3.24.
3	kWh/day	MDEC = 0.044 × V + 3.76	MDEC = 0.073 × V + 3.16.

TABLE VI.3—TRIAL STANDARD LEVELS EXPRESSED IN TERMS OF EQUATIONS AND COEFFICIENTS FOR CLASS A AND CLASS B EQUIPMENT—Continued

Trial standard level	Test metric	Class A	Class B
4	kWh/day	$MDEC = 0.062 \times V + 2.80$	$MDEC = 0.073 \times V + 3.12$
5	kWh/day	$MDEC = 0.058 \times V + 2.66$	$MDEC = 0.070 \times V + 2.68$
6	kWh/day	$MDEC = 0.055 \times V + 2.56$	$MDEC = 0.068 \times V + 2.63$
7	kWh/day	$MDEC = 0.045 \times V + 2.42$	NA.*

* Not applicable. There is no TSL 7 for Class B equipment.

B. Significance of Energy Savings

To estimate the energy savings through 2042 due to new standards, DOE compared the energy consumption of beverage vending machines under the base case (no standards) to energy consumption of this equipment under each TSL that DOE considered. Table VI.4 and Table VI.5 show DOE's NES estimates, which it based on the April 2009 update of the AEO2009 Reference

Case, for each TSL. Chapter 11 of the TSD describes these estimates in more detail. DOE reports both undiscounted and discounted values of energy savings. Discounted energy savings represent a policy perspective where energy savings farther in the future are less significant than energy savings closer to the present. Table VI.4 shows the forecasted aggregate national energy savings, both discounted and undiscounted, of Class A equipment at

each TSL. The table also shows the magnitude of the estimated energy savings if the savings are discounted at the 7 percent and 3 percent real discount rates. Each TSL considered in this rulemaking would result in significant energy savings, and the amount of savings increases with higher energy conservation standards (ranging from an estimated 0.007 quads to 0.170 quads, undiscounted, for TSLs 1 through 7) (see chapter 11 of the TSD).

TABLE VI.4—SUMMARY OF CUMULATIVE NATIONAL ENERGY SAVINGS FOR CLASS A EQUIPMENT [Energy savings for units sold from 2012 to 2042]

Trial standard level	Primary national energy savings (quads)		
	Undiscounted	3% Discounted	7% Discounted
1	0.007	0.004	0.002
2	0.031	0.018	0.010
3	0.069	0.040	0.021
4	0.107	0.061	0.032
5	0.127	0.073	0.038
6	0.139	0.080	0.042
7	0.170	0.097	0.051

In Table VI.5, DOE reports both undiscounted and discounted values of energy savings for Class B equipment. As with Class A equipment, each TSL

considered would result in significant energy savings, and the amount of energy savings increases with higher energy conservation standards (ranging

from an estimated 0.003 quads to 0.068 quads, undiscounted, for TSLs 1 through 6.

TABLE VI.5—SUMMARY OF CUMULATIVE NATIONAL ENERGY SAVINGS FOR CLASS B EQUIPMENT] [Energy savings for units sold from 2012 to 2042]

Trial standard level	Primary national energy savings (quads)		
	Undiscounted	3% Discounted	7% Discounted
1	0.003	0.002	0.001
2	0.004	0.002	0.001
3	0.020	0.012	0.006
4	0.023	0.013	0.007
5	0.061	0.035	0.018
6	0.068	0.039	0.020

C. Economic Justification

1. Economic Impact on Commercial Customers

a. Life-Cycle Costs and Payback Period

To evaluate the economic impact of the TSLs on customers, DOE conducted an LCC analysis for each TSL. More efficient beverage vending machines are

expected to affect customers in two ways: Annual operating expense is expected to decrease and purchase price is expected to increase. DOE analyzed the net effect by calculating the LCC. Inputs used for calculating the LCC include total installed costs (i.e., equipment price plus installation costs), annual energy savings, average

electricity costs by customer, energy price trends, repair costs, maintenance costs, equipment lifetime, and discount rates.

DOE's LCC and PBP analyses provided five outputs for each TSL that are reported in Table VI.6 through Table VI.8 for Class A equipment. The first three outputs are the percentages of

standard-compliant machine purchases that would result in (1) a net LCC increase, (2) no impact, or (3) a net LCC savings for the customer. DOE used the estimated distribution of shipments by efficiency level for each equipment class

to determine the affected customers. The fourth output is the average net LCC savings from standard-compliant equipment. The fifth output is the average PBP for the customer investment in standard-compliant

equipment. The PBP is the number of years it would take for the customer through energy savings to recover the increased costs of higher efficiency equipment compared to baseline efficiency equipment.

TABLE VI.6—SUMMARY LCC AND PBP RESULTS FOR CLASS A EQUIPMENT—LARGE

Results	Trial standard level						
	1	2	3	4	5	6	7
Equipment with Net LCC Increase (%) ...	0	1	3	3	3	5	100
Equipment with No Change in LCC (%) ..	90	0	0	0	0	0	0
Equipment with Net LCC Savings (%)	10	99	97	97	97	95	0
Mean LCC Savings (\$)	84	132	184	222	244	240	(1,481)
Mean Payback Period (years)	2.3	3.1	3.4	3.6	3.8	4.3	83.8

Note: Numbers in parentheses indicate negative values.

TABLE VI.7—SUMMARY LCC AND PBP RESULTS FOR CLASS A EQUIPMENT—MEDIUM

Results	Trial standard level						
	1	2	3	4	5	6	7
Equipment with Net LCC Increase (%) ...	0	0	1	1	3	5	100
Equipment with No Change in LCC (%) ..	90	0	0	0	0	0	0
Equipment with Net LCC Savings (%)	10	100	99	99	97	95	0
Mean LCC Savings (\$)	162	207	235	296	305	295	(1,183)
Mean Payback Period (years)	2.1	2.0	3.1	3.3	3.6	4.0	71.0

Note: Numbers in parentheses indicate negative values.

TABLE VI.8—SUMMARY LCC AND PBP RESULTS FOR CLASS A EQUIPMENT—SMALL

Results	Trial standard level						
	1	2	3	4	5	6	7
Equipment with Net LCC Increase (%) ...	0	1	3	3	3	5	100
Equipment with No Change in LCC (%) ..	90	0	0	0	0	0	0
Equipment with Net LCC Savings (%)	10	99	97	97	97	95	0
Mean LCC Savings (\$)	130	179	227	255	265	255	(1,153)
Mean Payback Period (years)	2.1	2.9	3.3	3.5	3.8	4.2	80.9

Note: Numbers in parentheses indicate negative values.

For the Class A equipment, there are positive net LCC savings on average for TSL 1 through 6. Only 10 percent of all equipment purchased is expected to achieve a net LCC savings at TSL 1, since about 90 percent of the equipment on the market in 2012 is expected to

meet that standard. LCC savings consistently peak at TSL 5, but about 95 percent of purchasers of Class A equipment are projected to achieve LCC savings even at TSL 6. Simple average PBPs are projected to be less than 3 years for all Class A equipment for TSL

1, and PBPs are less than 4 years from TSL 1 through 5.

DOE's LCC and PBP analyses provided the same five outputs for each TSL for Class B equipment. These outputs are reported in Table VI.9 through Table VI.11.

TABLE VI.9—SUMMARY LCC AND PBP RESULTS FOR CLASS B EQUIPMENT—LARGE

Results	Trial standard level					
	1	2	3	4	5	6
Equipment with Net LCC Increase (%)	0	9	27	35	100	100
Equipment with No Change in LCC (%)	90	0	0	0	0	0
Equipment with Net LCC Savings (%)	10	91	73	65	0	0
Mean LCC Savings (\$)	43	46	40	30	(545)	(2,414)
Mean Payback Period (years)	3.3	4.5	6.5	7.5	83.8	100.0

Note: Numbers in parentheses indicate negative values.

TABLE VI.10—SUMMARY LCC AND PBP RESULTS FOR CLASS B EQUIPMENT—MEDIUM

Results	Trial standard level					
	1	2	3	4	5	6
Equipment with Net LCC Increase (%)	0	9	29	39	100	100
Equipment with No Change in LCC (%)	90	0	0	0	0	0
Equipment with Net LCC Savings (%)	10	91	71	61	0	0
Mean LCC Savings (\$)	41	49	36	26	(558)	(2,230)
Mean Payback Period (years)	3.4	4.6	6.9	7.9	85.4	99.9

Note: Numbers in parentheses indicate negative values.

TABLE VI.11—SUMMARY LCC AND PBP RESULTS FOR CLASS B EQUIPMENT—SMALL

Results	Trial standard level					
	1	2	3	4	5	6
Equipment with Net LCC Increase (%)	1	41	41	55	100	100
Equipment with No Change in LCC (%)	90	0	0	0	0	0
Equipment with Net LCC Savings (%)	10	59	59	45	0	0
Mean LCC Savings (\$)	35	16	16	2	(612)	(2,129)
Mean Payback Period (years)	3.9	8.7	8.7	10.9	94.7	100.0

Note: Numbers in parentheses indicate negative values.

For Class B equipment, there are positive net LCC savings on average for TSLs 1 through 4. Only 10 percent of all equipment purchased is expected to achieve a net LCC savings at TSL 1, since about 90 percent of the equipment on the market in 2012 is expected to meet that standard. LCC savings consistently peak at TSL 2, but for 26 to 65 percent of purchasers, Class B equipment is projected to achieve LCC savings at TSL 4. Simple average PBPs are projected to be 3.3 to 3.4 years for large and medium size Class B equipment at TSL 1. PBPs are about 4.5 to 4.6 years for large and medium size Class B equipment for TSLs 1 and 2 and under 7 years for TSLs 1 through 3.

b. Life-Cycle Cost Subgroup Analysis

Using the LCC spreadsheet model, DOE estimated the impact of the TSLs on the following customer subgroup: Manufacturing facilities that have purchased their own beverage vending machines. This is the largest component of the 5 percent of site owners, who also own their own beverage vending machines, and comprises about 2 percent of all beverage vending machines. About 95 percent of beverage vending machines are owned by bottlers and vendors. The manufacturing facilities subgroup was analyzed because, in addition to being the largest independent block of owners, it had

among the highest financing costs (based on weighted average cost of capital) and faced the lowest energy costs of any customer subgroup. The group was therefore expected to have the least LCC savings and longest PBP of any identifiable customer subgroup.

DOE estimated the LCC and PBP for the manufacturing facilities subgroup. Table VI.12 shows the mean LCC savings for equipment that meets the energy conservation standards in today's final rule for the manufacturing facilities subgroup, and Table VI.13 shows the mean PBP (in years) for this subgroup. Chapter 12 of the TSD provides more detailed discussion on the LCC subgroup analysis and results.

TABLE VI.12—MEAN LIFE-CYCLE COST SAVINGS FOR REFRIGERATED BEVERAGE VENDING MACHINE EQUIPMENT PURCHASED BY THE MANUFACTURING FACILITIES LCC SUBGROUP (2008\$)

Equipment class	Size	Trial standard level						
		1	2	3	4	5	6	7
A	S	92	118	143	158	159	142	(1,258)
	M	115	148	154	190	188	171	(1,302)
	L	62	86	116	137	146	134	(1,585)
B	S	28	24	8	(3)	(590)	(2,433)	NA
	M	26	26	4	(8)	(603)	(2,251)	NA
	L	28	24	8	(3)	(590)	(2,433)	NA

Note: Numbers in parentheses indicate negative values. NA = not applicable.

TABLE VI.13—MEAN PAYBACK PERIOD FOR REFRIGERATED BEVERAGE VENDING MACHINE EQUIPMENT PURCHASED BY THE MANUFACTURING FACILITIES LCC SUBGROUP (YEARS)

Equipment class	Size	Trial standard level						
		1	2	3	4	5	6	7
A	S	2.6	3.6	4.1	4.3	4.7	5.2	90.6
	M	2.6	2.4	3.7	4.0	4.4	5.0	82.7
	L	2.7	3.8	4.2	4.4	4.7	5.3	92.2

TABLE VI.13—MEAN PAYBACK PERIOD FOR REFRIGERATED BEVERAGE VENDING MACHINE EQUIPMENT PURCHASED BY THE MANUFACTURING FACILITIES LCC SUBGROUP (YEARS)—Continued

Equipment class	Size	Trial standard level						
		1	2	3	4	5	6	7
B	S	4.9	11.9	11.9	15.5	99.5	100.0	NA
	M	4.2	5.8	9.0	10.5	94.1	100.0	NA
	L	4.1	5.7	8.4	9.9	93.0	100.0	NA

Note: NA = not applicable.

For beverage vending machines, the positive LCC and PBP impacts for manufacturing facilities that own their own beverage vending machines are less than those of all customers. Because they face lower energy costs, the lower value of energy savings lengthens the period over which the original investment is paid back and also reduces operating cost savings over the lifetime of more efficient beverage vending machines. In addition, because they face higher financing costs, these customers sites have a relatively high opportunity cost for investment, so the value of future electricity savings from higher efficiency equipment is further reduced. Even so, for this subgroup of customers, LCC savings are still positive for all but TSL 7 for Class A and is positive at TSL 3 and below for Class B. PBP is lengthened by about a year for Class A and 2 years for Class B but is still less about 5 years at TSL 6 for Class A and less than 9 years for medium-size Class B equipment (which is less than the equipment lifetime) at TSL 3.

2. Economic Impact on Manufacturers

DOE determined the economic impacts of today’s standard on manufacturers, as described in the proposed rule. 74 FR 26053–56. As updated for today’s final rule, DOE analyzed manufacturer impacts under two distinct markup scenarios: (1) The preservation-of-gross-margin-percentage markup scenario, and (2) the preservation-of-operating-profit (absolute dollars) markup scenario.

Together, these two markup scenarios characterize the range of possible conditions the beverage vending machine market will experience as a result of new energy conservation standards. See chapter 13 of the TSD for additional details of the markup scenarios and analysis.

a. Industry Cash-Flow Analysis Results

Using two different markup scenarios, DOE estimated the impact of new standards for beverage vending machines on the INPV of the beverage vending machine industry. The impact consists of the difference between INPV

in the base case and INPV in the standards case. INPV is the primary metric used in the MIA, and represents one measure of the fair value of the industry in today’s dollars. DOE calculated the INPV by summing all of the net cash flows, discounted at the beverage vending machine industry’s cost of capital or discount rate.

Table VI.14 through Table VI.17 show the changes in INPV that DOE estimates would result from the TSLs DOE considered for this final rule using the preservation-of-gross-margin-percentage and preservation-of-operating-profit scenarios described above. The tables also present the equipment conversion costs and capital conversion costs that the industry would incur at each TSL. Equipment conversion costs include engineering, prototyping, testing, and marketing expenses incurred by a manufacturer as it prepares to comply with a standard. Capital conversion costs are the one-time outlays for tooling and plant changes required for the industry to comply.

TABLE VI.14—MANUFACTURER IMPACT ANALYSIS FOR CLASS A REFRIGERATED BEVERAGE VENDING MACHINE EQUIPMENT UNDER THE PRESERVATION-OF-GROSS-MARGIN-PERCENTAGE MARKUP SCENARIO

Preservation of gross margin percentage markup scenario									
Metric	Units	Base case	Trial standard level						
			1	2	3	4	5	6	7
INPV	2008\$ millions	44.1	44.2	44.3	44.5	42.9	42.8	36.2	41.0
Change in INPV	2008\$ millions .....	.....	0.0	0.2	0.3	(1.3)	(1.3)	(7.9)	(3.2)
	% .....	.....	0.1	0.5	0.7	(2.9)	(3.0)	(18.0)	(7.2)
Equipment Conversion Costs	2008\$ millions .....	.....	0.0	0.0	0.6	0.6	1.2	2.9	3.5
Capital Conversion Costs	2008\$ millions .....	.....	0.0	0.0	0.0	2.2	2.2	9.1	14.1
Total Investment Required	2008\$ millions .....	.....	0.0	0.0	0.6	2.8	3.4	11.9	17.6

Numbers in parentheses indicate negative values.

TABLE VI.15—MANUFACTURER IMPACT ANALYSIS FOR CLASS A REFRIGERATED BEVERAGE VENDING MACHINE EQUIPMENT UNDER THE PRESERVATION-OF-OPERATING-PROFIT MARKUP SCENARIO

Preservation of operating profit markup scenario									
Metric	Units	Base case	Trial standard level						
			1	2	3	4	5	6	7
INPV	2008\$ millions	44.1	44.1	43.9	43.0	40.6	40.1	33.1	15.8
Change in INPV	2008\$ millions .....	.....	(0.0)	(0.3)	(1.1)	(3.5)	(4.1)	(11.1)	(28.3)
	% .....	.....	(0.1)	(0.6)	(2.5)	(7.9)	(9.3)	(25.1)	(64.2)

TABLE VI.15—MANUFACTURER IMPACT ANALYSIS FOR CLASS A REFRIGERATED BEVERAGE VENDING MACHINE EQUIPMENT UNDER THE PRESERVATION-OF-OPERATING-PROFIT MARKUP SCENARIO—Continued

Preservation of operating profit markup scenario									
Metric	Units	Base case	Trial standard level						
			1	2	3	4	5	6	7
Equipment Conversion Costs.	2008\$ millions .....	.....	0.0	0.0	0.6	0.6	1.2	2.9	3.5
Capital Conversion Costs ..	2008\$ millions .....	.....	0.0	0.0	0.0	2.2	2.2	9.1	14.1
Total Investment Required	2008\$ millions .....	.....	0.0	0.0	0.6	2.8	3.4	11.9	17.6

Numbers in parentheses indicate negative values.

TABLE VI.16—MANUFACTURER IMPACT ANALYSIS FOR CLASS B REFRIGERATED BEVERAGE VENDING MACHINE EQUIPMENT UNDER THE PRESERVATION-OF-GROSS-MARGIN-PERCENTAGE MARKUP SCENARIO

Preservation of gross margin percentage markup scenario									
	Units	Base case	Trial standard level						
			1	2	3	4	5	6	
INPV	2008\$ millions	33.7	33.7	33.7	33.1	32.7	26.3	30.5	
Change in INPV	2008\$ millions .....	.....	0.0	0.0	(0.6)	(1.0)	(7.4)	(3.2)
	% .....	.....	0.1	0.1	(1.9)	(3.0)	(21.9)	(9.5)
Equipment Conversion Costs	2008\$ millions .....	.....	0.0	0.0	1.7	2.6	3.5	6.9
Capital Conversion Costs	2008\$ millions .....	.....	0.0	0.0	0.0	0.0	11.0	14.7
Total Investment Required	2008\$ millions .....	.....	0.0	0.0	1.7	2.6	14.5	21.6

Numbers in parentheses indicate negative values.

TABLE VI.17—MANUFACTURER IMPACT ANALYSIS FOR CLASS B REFRIGERATED BEVERAGE VENDING MACHINE EQUIPMENT UNDER THE PRESERVATION-OF-OPERATING-PROFIT MARKUP SCENARIO

Preservation of operating profit markup scenario									
	Units	Base case	Trial standard level						
			1	2	3	4	5	6	
INPV	2008\$ millions	33.7	33.7	33.7	32.5	32.0	17.2	0.2	
Change in INPV	2008\$ millions .....	.....	(0.0)	(0.0)	(1.2)	(1.7)	(16.5)	(33.5)
	% .....	.....	(0.1)	(0.2)	(3.5)	(5.0)	(48.9)	(99.4)
Equipment Conversion Costs.	2008\$ millions .....	.....	0.0	0.0	1.7	2.6	3.5	6.9
Capital Conversion Costs	2008\$ millions .....	.....	0.0	0.0	0.0	0.0	11.0	14.7
Total Investment Required ..	2008\$ millions .....	.....	0.0	0.0	1.7	2.6	14.5	21.6

Numbers in parentheses indicate negative values.

The May 2009 NOPR discusses the estimated impact of new beverage vending machine standards on INPV for each equipment class. 74 FR 26053–55. See chapter 13 of the TSD for details.

b. Cumulative Regulatory Burden

While any one regulation may not impose a significant burden on manufacturers, the combined effects of several regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden.

DOE recognizes that each regulation can significantly affect manufacturers' financial operations. Multiple regulations affecting the same

manufacturer can reduce manufacturers' profits and possibly cause manufacturers to exit from the market. During the public meeting, PepsiCo stated that pending regulation would mandate that the beverage vending machine industry add nutrition labels to the exterior of all machines that specify the nutritional information for its contents. (PepsiCo, Public Meeting Transcript, No. 56 at p. 178)

On May 14, 2009, the Menu Education and Labeling (MEAL) Act, a bill to amend the Federal Food, Drug, and Cosmetic Act to extend the food labeling requirements of the Nutrition Labeling and Education Act of 1990, was introduced into Congress. The bill includes a provision to require the vending machine industry to post labels

on their machines containing certain nutrition information about their contents. While this legislation may potentially result in an additional labeling requirement for beverage vending machine manufacturers, DOE cannot consider in its cumulative regulatory burden analysis any legislation that has not yet been enacted. Furthermore, DOE has not found or received any quantitative or qualitative information regarding the magnitude of the financial burden that may accompany the pending nutritional information regulation.

DOE did not identify any other DOE regulations that would affect the manufacturers of beverage vending machines or their parent companies. DOE requested information about the

cumulative regulatory burden during manufacturer interviews. In general, manufacturers were not greatly concerned about other Federal, State, or international regulations. The requirements of their major customers have a greater impact on their business than any of these other regulations. For further information about the cumulative regulatory burden, see chapter 13 of the TSD.

c. Impacts on Employment

DOE used the GRIM to assess the impacts of energy conservation standards on beverage vending machine industry employment. DOE used statistical data from the U.S. Census Bureau's 2006 Annual Survey of Manufacturers, the results of the engineering analysis, and interviews with manufacturers to estimate the inputs necessary to calculate industry-wide labor expenditures and employment levels. Results of the U.S. Census Bureau's 2007 Annual Survey of Manufacturers are not yet available.

The vast majority of beverage vending machines are manufactured in the United States. Based on results of the GRIM, DOE expects that there would be slightly positive direct employment impacts among domestic beverage vending machine manufacturers for TSLs 1 through 6 for Class A equipment and TSLs 1 through 5 for Class B equipment. The GRIM estimates that employment would increase by fewer than 36 employees for Class A equipment at TSLs 1 through 6 and fewer than 97 employees for Class B equipment at TSLs 1 through 5. The employment impacts are more positive at the max-tech levels (TSL 7 for Class A equipment and TSL 6 for Class B equipment) because more labor is required and the production costs of the most efficient equipment greatly increase. The employment impacts calculated in the GRIM are shown in Table VI.35 and Table VI.36 in section VI.D.

The results calculated in the GRIM do not account for the possible relocation of domestic jobs to lower-labor-cost countries, which may occur independently of new standards or may be influenced by the level of investments new standards require. Manufacturers stated that although there are no current plans to relocate production facilities, higher TSLs would

increase pressure to cut costs, which could result in relocation. The labor impacts would be different if manufacturers chose to relocate to lower cost countries or if manufacturers consolidated. In addition, standards could increase pressure to consolidate within the industry due to the low profitability and existing excess production capacity. Chapter 13 of the TSD further discusses how the employment impacts are calculated and shows the projected changes in employment levels by TSL.

The conclusions in this section are independent of any conclusions regarding employment impacts from the broader U.S. economy estimated in the employment impact analysis. Those impacts are documented in chapter 15 of the TSD.

d. Impacts on Manufacturing Capacity

According to the majority of beverage vending machine manufacturers, new energy conservation standards will not affect manufacturers' production capacity. Within the last decade, annual shipments of beverage vending machines have decreased almost three-fold. Due to the decline in shipments, it is likely that any of the major manufacturers has the capacity to meet most of the recent market demand. Consequently, the industry has the capacity to make many times more units than are currently sold each year. Thus, DOE believes manufacturers will be able to maintain manufacturing capacity levels and continue to meet market demand under new energy conservation standards.

e. Impacts on Subgroups of Manufacturers

As discussed in the May 2009 NOPR, 74 FR 26044–45, 26056, 26069–72, DOE evaluated the impacts of new energy conservation standards on small manufacturers as defined by the U.S. Small Business Administration (SBA). DOE identified six small manufacturers and requested information that would determine if there are differential impacts that may result from new energy conservation standards. In the NOPR, DOE specifically requested comments on how small business manufacturers will be affected by new energy conservation standards. 74 FR 26071. However, DOE did not receive any comments in response to this

request. For a discussion of the impacts on small business manufacturers, see chapter 13 of the TSD and section VII.B of this preamble ("Review Under the Regulatory Flexibility Act").

3. National Impact Analysis

a. Amount and Significance of Energy Savings

Because the pattern and strategies for improving the energy performance of beverage vending machines is somewhat different between Class A and B equipment, energy savings are reported separately for each class of equipment by TSL. The national energy savings are between 0.003 and 0.170 quads, beyond that achieved in ENERGY STAR Tier 1 equipment, depending on the TSL and equipment class, an amount of energy savings that DOE considers significant. As stated previously, energy savings increase as TSLs grow progressively more stringent than the baseline efficiency level.

To estimate the energy savings through 2042 due to new energy conservation standards, DOE compared the energy consumption of beverage vending machines under the base case to energy consumption under a new standard. The energy consumption calculated in the NIA is source energy, taking into account energy losses in the generation and transmission of electricity as discussed in section VI.B.

DOE tentatively determined the amount of energy savings at each of the seven TSLs being considered for Class A equipment and six TSLs for Class B equipment, then analyzed and aggregated the results across the three sizes for each equipment class.

Table VI.18 shows the forecasted aggregate national energy savings, both discounted and undiscounted, of Class A equipment at each TSL. The table also shows the magnitude of the estimated energy savings if the savings are discounted at the 7 percent and 3 percent real discount rates. Each TSL considered in this rulemaking would result in significant energy savings, and the amount of savings increases with higher energy conservation standards (ranging from an estimated 0.007 to 0.170 quads, undiscounted, for Class A equipment for TSLs 1 through 7). See chapter 11 of the TSD for details of the NIA.

TABLE VI.18—SUMMARY OF CUMULATIVE NATIONAL ENERGY SAVINGS FOR CLASS A EQUIPMENT (ENERGY SAVINGS FOR UNITS SOLD FROM 2012 TO 2042)

Trial standard level	Primary national energy savings <i>quads</i>		
	Undiscounted	3% Discounted	7% Discounted
1	0.007	0.004	0.002
2	0.031	0.018	0.010
3	0.069	0.040	0.021
4	0.107	0.061	0.032
5	0.127	0.073	0.038
6	0.139	0.080	0.042
7	0.170	0.097	0.051

In Table VI.19, DOE reports both undiscounted and discounted values of energy savings for Class B equipment. Each TSL considered would result in significant energy savings, and the amount of savings increases with higher energy conservation standards (ranging from an estimated 0.003 to 0.068 quads, undiscounted, for Class B equipment for TSLs 1 through 6).

TABLE VI.19—SUMMARY OF CUMULATIVE NATIONAL ENERGY SAVINGS FOR CLASS B EQUIPMENT (ENERGY SAVINGS FOR UNITS SOLD FROM 2012 TO 2042)

Trial standard level	Primary national energy savings <i>quads</i>		
	Undiscounted	3% Discounted	7% Discounted
1	0.003	0.002	0.001
2	0.004	0.002	0.001
3	0.020	0.012	0.006
4	0.023	0.013	0.007
5	0.061	0.035	0.018
6	0.068	0.039	0.020

b. Net Present Value

The NPV analysis is a measure of the cumulative benefit or cost of standards to the Nation. In accordance with OMB guidelines on regulatory analysis (OMB Circular A-4, section E, September 17, 2003), DOE calculated an estimated NPV using both a 7 percent and 3 percent real discount rate. The 7 percent rate is an estimate of the average before-tax rate of return to private capital in the U.S. economy. This rate reflects the returns to real estate and small business capital as well as corporate capital. DOE used this discount rate to approximate

the opportunity cost of capital in the private sector, since recent OMB analysis has found the average rate of return to capital to be near this rate. DOE also used the 3 percent discount rate to capture the potential effects of standards on private consumption (e.g., through higher prices for equipment and purchase of reduced amounts of energy). This rate represents the rate at which society discounts future consumption flows to their present value. This rate can be approximated by the real rate of return on long-term Government debt (e.g., the yield on Treasury notes minus the annual rate of change in the

Consumer Price Index), which has averaged about 3 percent on a pre-tax basis for the last 30 years.

Table VI.20 shows the estimated cumulative NPV calculated for all Class A equipment. Table VI.20 assumes the AEO2009 Reference Case forecast for electricity prices. At a 7 percent discount rate, TSLs 1 through 6 show positive cumulative NPVs. The highest NPV is provided by TSL 5 at \$0.192 billion. TSL 6 showed an NPV at \$0.185 billion. TSL 7 showed an NPV at -\$1.449 billion, the result of negative NPV observed in all sizes of this equipment class.

TABLE VI.20—SUMMARY OF CUMULATIVE NET PRESENT VALUE FOR CLASS A EQUIPMENT (AEO2009 REFERENCE CASE)

Trial standard level	NPV* billion 2008\$	
	7% Discount rate	3% Discount rate
1	0.015	0.034
2	0.068	0.153
3	0.112	0.268
4	0.175	0.415
5	0.192	0.464
6	0.185	0.465
7	(1.449)	(2.466)

Note: Numbers in parentheses indicate negative NPV (i.e., net cost).

At a 3 percent discount rate, all but TSL 7 showed a positive NPV, with the highest NPV provided at TSL 6 (\$0.465 billion). TSL 5 showed a near equivalent NPV at \$0.464 billion. TSL 7 showed an NPV of -\$2.466 billion. DOE observed that all Class A equipment at TSL 7 has

a negative NPV at a 3 percent discount rate. Table VI.21 shows the estimated cumulative NPV for beverage vending machines resulting from the sum of the NPV calculated for Class B equipment. This table assumes the AEO2009 Reference Case forecast for electricity prices. At a 7 percent discount rate,

TSLs 1 and 2 show positive cumulative NPVs. The highest NPV is provided by TSL 2 at \$0.006 billion. TSL 3 showed -\$0.003 billion NPV. TSLs 4 through 6 also show a negative NPV. TSL 6 has a -\$2.452 billion NPV, the result of negative NPV observed in all sizes of Class B equipment.

TABLE VI.21—SUMMARY OF CUMULATIVE NET PRESENT VALUE FOR CLASS B EQUIPMENT (AEO2009 REFERENCE CASE)

Trial standard level	NPV billion 2008\$	
	7% Discount rate	3% Discount rate
1	0.005	0.011
2	0.006	0.014
3	(0.003)	0.011
4	(0.014)	(0.006)
5	(0.621)	(1.083)
6	(2.452)	(4.427)

Note: Numbers in parentheses indicate negative NPV (i.e., net cost).

At a 3 percent discount rate, TSLs 1 through 3 showed a positive NPV, with the highest NPV of \$0.014 billion provided at TSL 2. TSL 1 and 3 provided a near equivalent NPV at \$0.009 billion. TSL 4 showed an NPV of -\$0.006 billion. DOE observed that all Class B equipment sizes at TSL 5 have a negative NPV at a 3 percent discount rate.

In addition to the Reference Case, DOE examined the NPV under the AEO2009 high-growth and low-growth electricity price forecasts. Chapter 11 of the TSD presents the results of this examination.

c. Impacts on Employment

Besides the direct impacts on manufacturing employment discussed in section VI.C.2.c, DOE develops general estimates of the indirect employment impacts of proposed standards on the economy. As discussed

above, DOE expects energy conservation standards for beverage vending machines to reduce energy bills for commercial customers, and the resulting net savings to be redirected to other forms of economic activity. DOE also realizes that these shifts in spending and economic activity by beverage vending machine operators and site owners could affect the demand for labor. The impact comes in a variety of businesses not directly involved in the decision to make, operate, or pay the utility bills for beverage vending machines. Thus, the economic impact is "indirect." To estimate these indirect economic effects, DOE used an input/output model of the U.S. economy using U.S. Department of Commerce, Bureau of Economic Analysis (BEA) and Bureau of Labor Statistics (BLS) data (as described in section IV.L. See chapter 15 of the TSD for details of the net national employment impact.

In this input/output model, the spending of the money saved on utility bills when more efficient vending machines are deployed is centered in economic sectors that create more jobs than are lost in electric utilities when spending is shifted from electricity to other products and services. Thus, today's refrigerated beverage vending machine energy conservation standards are likely to slightly increase the net demand for labor in the economy. However, the net increase in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Neither the BLS data nor the input/output model used by DOE includes the quality of jobs. As shown in Table VI.22 and Table VI.23, DOE estimates that net indirect employment impacts from a proposed beverage vending machine standard are likely to be very small.

TABLE VI.22—NET NATIONAL CHANGE IN INDIRECT EMPLOYMENT FROM CLASS A EQUIPMENT: NUMBER OF JOBS FROM 2012 TO 2042

Trial standard level	Net national change in employment			
	2012	2022	2032	2042
1	0	13	13	13
2	4	67	69	82
3	17	142	159	172
4	30	221	238	265
5	42	256	285	313
6	44	286	316	344
7	157	402	444	475

Note: Numbers in parentheses indicate negative values.

TABLE VI.23—NET NATIONAL CHANGE IN INDIRECT EMPLOYMENT FROM CLASS B EQUIPMENT: NUMBER OF JOBS FROM 2012 TO 2042

Trial standard level	Net national change in employment			
	2012	2022	2032	2042
1	1	6	6	6
2	1	9	9	10
3	8	41	45	49
4	9	47	52	55
5	58	138	150	162
6	166	193	204	216

Note: Numbers in parentheses indicate negative values.

4. Impact on Utility or Performance of Equipment

As indicated in section V.B.4 of the May 2009 NOPR, the new standards DOE is adopting today will not lessen the utility or performance of any beverage vending machine. 74 FR 26059.

5. Impact of Any Lessening of Competition

As discussed in the May 2009 NOPR, 74 FR 26059, and in section III.D.1.e of this preamble, DOE considers any lessening of competition likely to result from standards. The Attorney General determines the impact, if any, of any lessening of competition.

The DOJ believes that the Class B standards contained in the proposed rule would not likely lead to a lessening of competition. (DOJ, No. 61 at p. 1)

For Class A machines, DOJ concluded that the proposed TSL 6 could potentially lessen competition. DOJ commented that beverage vending machine manufacture is a highly concentrated industry in the United States, and compliance with the proposed Class A standard could require a disproportionate investment by some manufacturers, potentially placing them at a disadvantage with respect to others and leading to greater concentration. DOJ requested that DOE take this possible competitive impact into account and to ensure that the standard it adopts for Class A beverage vending machines will not require access to intellectual property owned by an industry participant, which would place other industry participants at a comparative disadvantage. (DOJ, No. 61 at pp. 1–2)

DOE agrees with DOJ that the market is highly concentrated, with three major manufacturers supplying the vast majority of the U.S. market. In the May 2009 NOPR, DOE stated that it did not believe there would be differential impacts among manufacturers at TSL 6 for Class A equipment. At this level the manufacturers would have to redesign

all their existing equipment and make capital investments in their production lines to comply with the standard, but the investments would be similar for each manufacturer at this level. (74 FR 26054)

For today's final rule, DOE modified the assumed conversion costs required for manufacturers to meet the Class A energy consumption levels by accounting for the potential use of an energy management system (*see* section IV.J). This change mitigates the overall impacts at TSL 6, but does not impose disproportionate investments on some manufacturers.

In addition, DOE received a written comment on the NOPR from NAMA suggesting that there could be a differential impact among manufacturers for part of the standards proposed in the NOPR. NAMA stated that it received a mixed response from its members regarding the technological feasibility and economic benefits of the standard levels proposed by DOE. One manufacturer stated that it would have difficulty achieving additional reductions for Class A and Class B machines, while another stated that it could achieve the standards for both Class A and Class B machines without significant costs to them or their customers. However, most responses to NAMA's request for information indicated that the proposed standard for Class B machines was appropriate and achievable, but the proposed standard for Class A raised questions among some manufacturers. (NAMA, No. 65 at p. 3) Dixie-Narco indicated for the NOPR that they could achieve the proposed TSL 6 for Class A machines without the use of intellectual property owned by an industry participant. Dixie-Narco stated that it is currently achieving the proposed efficiency level for Class A machines. (Dixie-Narco, Public Meeting Transcript, No. 56 at pp. 163 and 219) Royal Vendors stated that for Class A machines, they do not currently meet those levels, but given no proprietary design issues, they could

meet them fairly easily. (Royal Vendors, Public Meeting Transcript, No. 56 at p. 220; Royal Vendors, No. 60 at p. 1) Dixie-Narco addressed the proprietary design issue by stating that it is not aware of any intellectual property issues that would prevent its competitors from achieving the levels in the proposed standards (Dixie-Narco, No. 64 at p. 2) The Joint Comment also stated that the proposed standards could be met without using LED lighting, which addresses concerns raised by interested parties concerning patent limitations on LED lighting use in vending machines. (Joint Comment, No. 67 at p. 1).

For today's final rule, DOE did not receive comments that indicated that the energy conservation standards would result in the unavailability of standards-compliant products. DOE recognizes that there was a mixed response from manufacturers regarding their ability to meet the standards for Class A machines. However, DOE notes that the technology options that could be used to meet the standard are available to all manufacturers, and DOE does not believe manufacturers will have to obtain proprietary technologies to meet the energy conservation standards set forth by today's rule. As stated in section IV.B, all major manufacturers have access to alternative technology pathways to meet the efficiency levels in the analysis, including TSL 6, without the use of proprietary technology. DOE did not receive any information or comments that would indicate that the identified alternative technologies that could be used to meet energy conservation standards set forth by today's final rule will lead to any lessening of competition. Section IV.B of today's final rule further discusses alternative technology pathways and proprietary technologies.

In the NOPR, DOE requested comment on whether the proposed standard could result in industry consolidation. NAMA submitted a comment stating that the industry has

experienced a trend of industry consolidation that would continue, if not accelerate, if equipment costs escalate due to the proposed standard. (NAMA, No. 65 at p. 6)

DOE believes that an increase in equipment costs due to standards would have a comparable impact on all manufacturers. Therefore, industry participants would not be placed at a comparative disadvantage.

The Attorney General's response is reprinted at the end of today's rulemaking.

6. Need of the Nation To Conserve Energy

Improving the energy efficiency of beverage vending machines, where

economically justified, would likely improve the security of the Nation's energy system by reducing overall demand for energy, thus reducing the Nation's reliance on foreign sources of energy. Reduced demand would also likely improve the reliability of the electricity system, particularly during peak-load periods. As a measure of this reduced demand, DOE expects the energy savings from the adopted standards to eliminate the need for approximately 0.103 Gigawatts (GW) of generating capacity for Class A equipment and 0.015 GW for Class B equipment by 2042.

Enhanced energy savings also produces environmental benefits in the

form of reduced emissions of air pollutants and greenhouse gases associated with energy production. Table VI.24 provides DOE's estimate of cumulative CO₂, NO_x, and Hg emissions reductions that would result from the TSLs considered in this rulemaking for both Class A and Class B equipment. The expected energy savings from these standards for beverage vending machines may also reduce the cost of maintaining nationwide emissions standards and constraints. In the EA (chapter 16 of the TSD), DOE reports estimated annual changes in CO₂, NO_x, and Hg emissions attributable to each TSL.

TABLE VI.24—CUMULATIVE CO₂ NO_x AND Hg EMISSIONS REDUCTIONS FOR CLASSES A AND B EQUIPMENT
[Cumulative reductions for equipment sold from 2012 to 2042]

Results	Trial standard levels for Class A equipment						
	1	2	3	4	5	6	7
Emissions reductions							
CO ₂ (Mt)	0.40	1.89	4.18	6.45	7.63	8.40	10.22
NO _x (kt)	0.13	0.65	1.43	2.20	2.60	2.87	3.49
Hg (tons)							
Low	0	0	0	0	0	0	0
High	0.008	0.037	0.082	0.127	0.150	0.165	0.201

Results	Trial standard levels for Class B equipment					
	1	2	3	4	5	6
Emissions reductions						
CO ₂ (Mt)	0.16	0.24	1.19	1.36	3.66	4.08
NO _x (kt)	0.05	0.08	0.41	0.46	1.25	1.39
Hg (tons)						
Low	0	0	0	0	0	0
High	0.003	0.005	0.023	0.027	0.072	0.080

Mt = million metric tons.
kt = thousand tons.

Note: Detail may not sum to total due to rounding.

As noted in section IV.M of this final rule, DOE does not report SO₂ emissions reductions from power plants because DOE is uncertain that an energy conservation standard would affect the overall level of U.S. SO₂ emissions due to emissions caps.

NO_x emissions from 28 eastern States and the District of Columbia (DC) are limited under the CAIR, published in the **Federal Register** on May 12, 2005. 70 FR 25162 (May 12, 2005). Although CAIR has been remanded to EPA by the DC Circuit, it will remain in effect until it is replaced by a rule consistent with the Court's December 23, 2008, opinion

in *North Carolina v. EPA*. *North Carolina v. EPA*, 550 F.3d 1176 (DC Cir. 2008). These court positions were taken into account in the May 2009 NOPR. Thus, the same methodology was followed in estimating future NO_x emission reductions in the May 2009 NOPR as in the final rule. Because all States covered by CAIR opted to reduce NO_x emissions through participation in cap-and-trade programs for electric generating units, emissions from these sources are capped across the CAIR region.

For the 28 eastern States and DC where CAIR is in effect, no NO_x

emissions reductions will occur due to the permanent cap. Under caps, physical emissions reductions in those States would not result from the energy conservation standards under consideration by DOE, but standards might have produced an environmentally related economic impact in the form of lower prices for emissions allowance credits, if they were large enough. However, DOE determined that in the present case, such standards would not produce an environmentally related economic impact in the form of lower prices for emissions allowance credits, because

the estimated reduction in NO_x emissions or the corresponding allowance credits in States covered by the CAIR cap would be too small to affect allowance prices for NO_x under the CAIR. In contrast, new or amended energy conservation standards would reduce NO_x emissions in those 22 States that are not affected by the CAIR, and these emissions could be estimated from NEMS–BT. As a result, DOE used the NEMS–BT to forecast emission reductions from the beverage machine standards in today's final rule.

As noted in section IV.M, DOE was able to estimate the changes in Hg emissions associated with an energy conservation standard as follows. DOE notes that the NEMS–BT model used for the NOPR, and used as an integral part of today's rulemaking, does not estimate Hg emission reductions due to new energy conservation standards, as it assumed that Hg emissions would be subject to EPA's CAMR. 70 FR 28606 (May 18, 2005). CAMR would have permanently capped emissions of mercury for new and existing coal-fired plants in all States by 2010. DOE assumed that under such a system, energy conservation standards would have resulted in no physical effect on these NO_x emissions, but might have resulted in an environmentally related economic benefit in the form of a lower price for emissions allowance credits if those credits were large enough. DOE estimated that the change in the Hg emissions from energy conservation standards would not be large enough to influence allowance prices under CAMR.

On February 8, 2008, the DC Circuit issued its decision in *New Jersey v. Environmental Protection Agency* to vacate CAMR. 517 F.3d 574 (DC Cir. 2008). In light of this development and because the NEMS–BT model could not be used to directly calculate Hg emission reductions, DOE used the Hg emission rates discussed below to calculate emissions reductions in the NOPR. This same methodology is used for the final rule as well due to the continued fluid environment “* * * with many States planning to enact new laws or make existing laws more stringent.” EIA *AEO2009* (March 2009), p. 18. The NEMS–BT has only rough estimates of mercury emissions, and it was felt that the range of emissions used in the NOPR remain appropriate given these circumstances.

Therefore, rather than using the NEMS–BT model, DOE established a range of Hg emission rates to estimate the Hg emissions that could be reduced through energy conservation standards. The estimate should provide the full

range of possible outcomes and DOE has therefore selected the low and high values to bracket the uncertainties associated with estimating mercury emission reductions. DOE's low estimate assumed that future standards would displace electrical generation only from natural gas-fired power plants, thereby resulting in an effective emission rate of zero. (Under this scenario, coal-fired power plant generation would remain unaffected.) The low-end emission rate is zero because natural gas-fired power plants have virtually zero Hg emissions associated with their operation.

DOE's high estimate, which assumed that standards would displace only coal-fired power plants, was based on a nationwide Hg emission rate from *AEO2008*. (Under this scenario, gas-fired power plant generation would remain unaffected.) Because power plant emission rates are a function of local regulation, scrubbers, and the mercury content of coal, it is extremely difficult to identify a precise high-end emission rate. Therefore, the most reasonable estimate is based on the assumption that all displaced coal generation would have been emitting at the average emission rate for coal generation as specified in the April update to *AEO2009*. As noted previously, because virtually all Hg emitted from electricity generation is from coal-fired power plants, DOE based the emission rate on the tons of Hg emitted per TWh of coal-generated electricity. Based on the emission rate for 2006, DOE derived a high-end emission rate of 0.0255 tons per TWh. To estimate the reduction in Hg emissions, DOE multiplied the emission rate by the reduction in coal-generated electricity due to the standards considered in the utility impact analysis. These changes in Hg emissions are extremely small, ranging from 0 to 0.04 percent of the national base-case emissions forecast by NEMS–BT, depending on the TSL.

In the May 2009 NOPR, DOE indicated that it intended to consider the likely monetary benefits of CO₂ emission reductions associated with standards. 74 FR 102, 26020 (May 29, 2009). To put the potential monetary benefits from reduced CO₂ emissions into a form that would likely be most useful to decision makers and interested parties, DOE used methods that were similar to those it used to calculate the net present value of consumer cost savings. DOE converted the estimated yearly reductions in CO₂ emissions into monetary values that represented the present value, in that year, of future benefits resulting from that reduction in

emissions, which were then discounted from that year to the present using both 3 percent and 7 percent discount rates.

In the May 2009 NOPR, DOE proposed to use the range \$0 to \$20 per ton for 2007 in 2007\$. These estimates were originally derived to represent the lower and upper bounds of the costs and benefits likely to be experienced in the United States. The lower bound was based on an assumption of no benefit and the upper bound was based on an estimate of the mean value of worldwide impacts due to climate change that was reported by the Intergovernmental Panel on Climate Change (IPCC) in its “Fourth Assessment Report.” For today's final rule, DOE is relying on a new set of values recently developed by an interagency process that conducted a more thorough review of existing estimates of the social cost of carbon (SCC).

The SCC is intended to be a monetary measure of the incremental damage resulting from greenhouse gas (GHG) emissions, including, but not limited to, net agricultural productivity loss, human health effects, property damages from sea level rise, and changes in ecosystem services. Any effort to quantify and to monetize the harms associated with climate change will raise serious questions of science, economics, and ethics. But with full regard for the limits of both quantification and monetization, the SCC can be used to provide estimates of the social benefits of reductions in GHG emissions.

For at least three reasons, any single estimate of the SCC will be contestable. First, scientific and economic knowledge about the impacts of climate change continues to grow. With new and better information about relevant questions, including the cost, burdens, and possibility of adaptation, current estimates will inevitably change over time. Second, some of the likely and potential damages from climate change—for example, the value society places on adverse impacts on endangered species—are not included in all of the existing economic analyses. These omissions may turn out to be significant, in the sense that they may mean that the best current estimates are too low. Third, controversial ethical judgments, including those involving the treatment of future generations, play a role in judgments about the SCC (see in particular the discussion of the discount rate, below).

To date, regulations have used a range of values for the SCC. For example, a regulation proposed by the U.S. Department of Transportation (DOT) in

2008 assumed a value of \$7 per ton CO₂ (2006\$) for 2011 emission reductions (with a range of \$0–14 for sensitivity analysis). Regulation finalized by DOE used a range of \$0–\$20 (2007\$). Both of these ranges were designed to reflect the value of damages to the United States resulting from carbon emissions, or the “domestic” SCC. In the final Model Year 2011 Corporate Average Fuel Economy rule, DOT used both a domestic SCC value of \$2/tCO₂ and a global SCC value of \$33/tCO₂ (with sensitivity analysis at \$80/tCO₂), increasing at 2.4 percent per year thereafter.

In recent months, a variety of agencies have worked to develop an objective methodology for selecting a range of interim SCC estimates to use in regulatory analyses until improved SCC estimates are developed. The following summary reflects the initial results of these efforts and proposes ranges and values for interim social costs of carbon used in this rule. It should be emphasized that the analysis described below is preliminary. These complex issues are of course undergoing a process of continuing review. Relevant agencies will be evaluating and seeking comment on all of the scientific, economic, and ethical issues before establishing final estimates for use in future rulemakings.

The interim judgments resulting from the recent interagency review process can be summarized as follows: (a) DOE and other Federal agencies should consider the global benefits associated with the reductions of CO₂ emissions resulting from efficiency standards and other similar rulemakings, rather than continuing the previous focus on domestic benefits; (b) these global benefits should be based on SCC estimates (in 2007\$) of \$55, \$33, \$19, \$10, and \$5 per ton of CO₂ equivalent emitted (or avoided) in 2007; (c) the SCC value of emissions that occur (or are avoided) in future years should be escalated using an annual growth rate of 3 percent from the current values; and (d) domestic benefits are estimated to be approximately 6 percent of the global values. These interim judgments are based on the following:

1. *Global and domestic estimates of SCC.* Because of the distinctive nature of the climate change problem, estimates of both global and domestic SCC values should be considered, but the global measure should be “primary.” This approach represents a departure from past practices, which relied, for the most part, on measures of only domestic impacts. As a matter of law, both global and domestic values are permissible; the relevant statutory provisions are

ambiguous and allow the agency to choose either measure. (It is true that Federal statutes are presumed not to have extraterritorial effect, in part to ensure that the laws of the United States respect the interests of foreign sovereigns. But use of a global measure for the SCC does not give extraterritorial effect to Federal law and hence does not intrude on such interests.)

It is true that under OMB guidance, analysis from the domestic perspective is required, while analysis from the international perspective is optional. The domestic decisions of one nation are not typically based on a judgment about the effects of those decisions on other nations. But the climate change problem is highly unusual in the sense that it involves (a) a global public good in which (b) the emissions of one nation may inflict significant damages on other nations and (c) the United States is actively engaged in promoting an international agreement to reduce worldwide emissions.

In these circumstances, the global measure is preferred. Use of a global measure reflects the reality of the problem and is expected to contribute to the continuing efforts of the United States to ensure that emission reductions occur in many nations.

Domestic SCC values are also presented. The development of a domestic SCC is greatly complicated by the relatively few region- or country-specific estimates of the SCC in the literature. One potential estimate comes from the DICE (Dynamic Integrated Climate Economy, William Nordhaus) model. In an unpublished paper, Nordhaus (2007) produced disaggregated SCC estimates using a regional version of the DICE model. He reported a U.S. estimate of \$1/tCO₂ (2007 value, 2007\$), which is roughly 11 percent of the global value.

An alternative source of estimates comes from a recent EPA modeling effort using the FUND (Climate Framework for Uncertainty, Negotiation and Distribution, Center for Integrated Study of the Human Dimensions of Global Change) model. The resulting estimates suggest that the ratio of domestic to global benefits varies with key parameter assumptions. With a 3 percent discount rate, for example, the U.S. benefit is about 6 percent of the global benefit for the “central” (mean) FUND results, while, for the corresponding “high” estimates associated with a higher climate sensitivity and lower global economic growth, the U.S. benefit is less than 4 percent of the global benefit. With a 2 percent discount rate, the U.S. share is

about 2 to 5 percent of the global estimate.

Based on this available evidence, a domestic SCC value equal to 6 percent of the global damages is used in this rulemaking. This figure is in the middle of the range of available estimates from the literature. It is recognized that the 6 percent figure is approximate and highly speculative and alternative approaches will be explored before establishing final values for future rulemakings.

2. *Filtering existing analyses.* There are numerous SCC estimates in the existing literature, and it is legitimate to make use of those estimates to produce a figure for current use. A reasonable starting point is provided by the meta-analysis in Richard Tol, “The Social Cost of Carbon: Trends, Outliers, and Catastrophes, Economics: The Open-Access, Open-Assessment E-Journal,” Vol. 2, 2008–25. <http://www.economics-ejournal.org/economics/journalarticles/2008-25> (2008). With that starting point, it is proposed to “filter” existing SCC estimates by using those that (1) are derived from peer-reviewed studies; (2) do not weight the monetized damages to one country more than those in other countries; (3) use a “business as usual” climate scenario; and (4) are based on the most recent published version of each of the three major integrated assessment models (IAMs): FUND, DICE and PAGE (Policy Analysis of the Greenhouse Effect) Policy.

Proposal (1) is based on the view that those studies that have been subject to peer review are more likely to be reliable than those that have not been. Proposal (2) is based on a principle of neutrality and simplicity; it does not treat the citizens of one nation differently on the basis of speculative or controversial considerations. Proposal (3) stems from the judgment that as a general rule, the proper way to assess a policy decision is by comparing the implementation of the policy against a counterfactual state where the policy is not implemented. A departure from this approach would be to consider a more dynamic setting in which other countries might implement policies to reduce GHG emissions at an unknown future date, and the United States could choose to implement such a policy now or in the future.

Proposal (4) is based on three complementary judgments. First, the FUND, PAGE, and DICE models now stand as the most comprehensive and reliable efforts to measure the damages from climate change. Second, the latest versions of the three IAMs are likely to reflect the most recent evidence and learning, and hence they are presumed

to be superior to those that preceded them. It is acknowledged that earlier versions may contain information that is missing from the latest versions. Third, any effort to choose among them, or to reject one in favor of the others, would be difficult to defend at this time. In the absence of a clear reason to choose among them, it is reasonable to base the SCC on all of them.

The agency is keenly aware that the current IAMs fail to include all relevant information about the likely impacts from greenhouse gas emissions. For example, ecosystem impacts, including species loss, do not appear to be included in at least two of the models. Some human health impacts, including increases in food-borne illnesses and in the quantity and toxicity of airborne allergens, also appear to be excluded. In addition, there has been considerable recent discussion of the risk of catastrophe and of how best to account for worst-case scenarios. It is not clear whether the three IAMs take adequate account of these potential effects.

3. *Use a model-weighted average of the estimates at each discount rate.* At this time, there appears to be no scientifically valid reason to prefer any of the three major IAMs (FUND, PAGE, and DICE). Consequently, the estimates are based on an equal weighting of estimates from each of the models. Among estimates that remain after applying the filter, the average of all estimates within a model is derived. The estimated SCC is then calculated as the average of the three model-specific averages. This approach ensures that the interim estimate is not biased towards specific models or more prolific authors.

4. *Apply a 3 percent annual growth rate to the chosen SCC values.* SCC is assumed to increase over time, because future emissions are expected to produce larger incremental damages as physical and economic systems become more stressed as the magnitude of climate change increases. Indeed, an implied growth rate in the SCC is produced by most studies that estimate economic damages caused by increased GHG emissions in future years. But neither the rate itself nor the information necessary to derive its implied value is commonly reported. In light of the limited amount of debate thus far about the appropriate growth rate of the SCC, applying a rate of 3 percent per year seems appropriate at this stage. This value is consistent with the range recommended by IPCC (2007) and close to the latest published estimate (Hope, 2008).

For climate change, one of the most complex issues involves the appropriate discount rate. OMB's current guidance

offers a detailed discussion of the relevant issues and calls for discount rates of 3 percent and 7 percent. It also permits a sensitivity analysis with low rates for intergenerational problems. ("If your rule will have important intergenerational benefits or costs you might consider a further sensitivity analysis using a lower but positive discount rate in addition to calculating net benefits using discount rates of 3 and 7 percent.") The SCC is being developed within the general context of the current guidance.

The choice of a discount rate, especially over long periods of time, raises highly contested and exceedingly difficult questions of science, economics, philosophy, and law. See, e.g., William Nordhaus, "The Challenge of Global Warming" (2008); Nicholas Stern, "The Economics of Climate Change" (2007); "Discounting and Intergenerational Equity" (Paul Portney and John Weyant, eds., 1999). Under imaginable assumptions, decisions based on cost-benefit analysis with high discount rates might harm future generations—at least if investments are not made for the benefit of those generations. See Robert Lind, "Analysis for Intergenerational Discounting," *id.* at 173, 176–177. At the same time, use of low discount rates for particular projects might itself harm future generations, by ensuring that resources are not used in a way that would greatly benefit them. In the context of climate change, questions of intergenerational equity are especially important.

Reasonable arguments support the use of a 3 percent discount rate. First, that rate is among the two figures suggested by OMB guidance, and hence it fits with existing National policy. Second, it is standard to base the discount rate on the compensation that people receive for delaying consumption, and the 3 percent rate is close to the risk-free rate of return, proxied by the return on long term inflation-adjusted U.S. Treasury Bonds. (In the context of climate change, it is possible to object to this standard method for deriving the discount rate.) Although these rates are currently closer to 2.5 percent, the use of 3 percent provides an adjustment for the liquidity premium that is reflected in these bonds' returns.

At the same time, other arguments support use of a 5 percent discount rate. First, that rate can also be justified by reference to the level of compensation for delaying consumption, because it fits with market behavior with respect to individuals' willingness to trade off consumption across periods as measured by the estimated post-tax average real returns to private

investment (e.g., the S&P 500). In the climate setting, the 5 percent discount rate may be preferable to the riskless rate because it is based on risky investments and the return to projects to mitigate climate change is also risky. In contrast, the 3 percent riskless rate may be a more appropriate discount rate for projects where the return is known with a high degree of confidence (e.g., highway guardrails).

Second, 5 percent, and not 3 percent, is roughly consistent with estimates implied by reasonable inputs to the theoretically derived Ramsey equation, which specifies the optimal time path for consumption. That equation specifies the optimal discount rate as the sum of two components. The first reflects the fact that consumption in the future is likely to be higher than consumption today (even accounting for climate impacts), so diminishing marginal utility implies that the same monetary damage will cause a smaller reduction of utility in the future. Standard estimates of this term from the economics literature are in the range of 3 to 5 percent. The second component reflects the possibility that a lower weight should be placed on utility in the future, to account for social impatience or extinction risk, which is specified by a pure rate of time preference (PRTP). A conventional estimate of the PRTP is 2 percent. (Some observers believe that a principle of intergenerational equity suggests that the PRTP should be close to zero.) It follows that discount rate of 5 percent is within the range of values which are able to be derived from the Ramsey equation, albeit at the low end of the range of estimates usually associated with Ramsey discounting.

It is recognized that the arguments above—for use of market behavior and the Ramsey equation—face objections in the context of climate change, and of course there are alternative approaches. In light of climate change, it is possible that consumption in the future will not be higher than consumption today, and if so, the Ramsey equation will suggest a lower figure. Some people have suggested that a very low discount rate, below 3 percent, is justified in light of the ethical considerations calling for a principle of intergenerational neutrality. See Nicholas Stern, "The Economics of Climate Change" (2007); for contrary views, see William Nordhaus, *The A Question of Balance* (2008); Martin Weitzman, "Review of the *Stern Review* on the Economics of Climate Change." *Journal of Economic Literature*, 45(3): 703–724 (2007). Additionally, some analyses attempt to deal with uncertainty with respect to interest rates

over time; a possible approach enabling the consideration of such uncertainties is discussed below. Richard Newell and William Pizer, "Discounting the Distant Future: How Much do Uncertain Rates Increase Valuations?" *J. Environ. Econ. Manage.* 46 (2003) 52–71.

The application of the methodology outlined above yields estimates of the SCC that are reported in Table VI.25. These estimates are reported separately using 3 percent and 5 percent discount rates. The cells are empty in rows 10 and 11, because these studies did not

report estimates of the SCC at a 3 percent discount rate. The model-weighted means are reported in the final or summary row; they are \$33 per tCO₂ at a 3% discount rate and \$5 per tCO₂ with a 5% discount rate.

TABLE VI.25—GLOBAL SOCIAL COST OF CARBON (SCC) ESTIMATES (\$/TCO₂ IN 2007 (2006\$)), BASED ON 3% AND 5% DISCOUNT RATES *

	Model	Study	Climate scenario	3%	5%
1	FUND	Anthoff <i>et al.</i> 2009	FUND default	6	-1
2	FUND	Anthoff <i>et al.</i> 2009	SRES A1b	1	-1
3	FUND	Anthoff <i>et al.</i> 2009	SRES A2	9	-1
4	FUND	Link and Tol 2004	No THC	12	3
5	FUND	Link and Tol 2004	THC continues	12	2
6	FUND	Guo <i>et al.</i> 2006	Constant PRTP	5	-1
7	FUND	Guo <i>et al.</i> 2006	Gollier discount 1	14	0
8	FUND	Guo <i>et al.</i> 2006	Gollier discount 2	7	-1
			FUND Mean	8.25	0
9	PAGE	Wahba & Hope 2006	A2-scen	57	7
10	PAGE	Hope 2006 .....	.....	.....	7
11	DICE	Nordhaus 2008 .....	.....	.....	8
Summary			Model-weighted Mean	33	5

* The sample includes all peer reviewed, non-equity-weighted estimates included in Tol (2008), Nordhaus (2008), Hope (2008), and Anthoff *et al.* (2009), that are based on the most recent published version of FUND, PAGE, or DICE and use business-as-usual climate scenarios. All values are based on the best available information from the underlying studies about the base year and year dollars, rather than the Tol (2008) assumption that all estimates included in his review are 1995 values in 1995\$. All values were updated to 2007 using a 3 percent annual growth rate in the SCC, and adjusted for inflation using GDP deflator.

Analyses have been conducted at \$33 and \$5 as these represent the estimates associated with the 3 percent and 5 percent discount rates, respectively. The 3 percent and 5 percent estimates have independent appeal and at this time a clear preference for one over the other is not warranted. Thus, DOE has also included—and centered its current attention on—the average of the estimates associated with these discount rates, which is \$19. (Based on the \$19 global value, the domestic value would be \$1.14 per ton of CO₂ equivalent.)

It is true that there is uncertainty about interest rates over long time horizons. Recognizing that point,

Newell and Pizer have made a careful effort to adjust for that uncertainty. See Newell and Pizer, *supra*. This is a relatively recent contribution to the literature.

There are several concerns with using this approach in this context. First, it would be a departure from current OMB guidance. Second, an approach that would average what emerges from discount rates of 3 percent and 5 percent reflects uncertainty about the discount rate, but based on a different model of uncertainty. The Newell-Pizer approach models discount rate uncertainty as something that evolves over time; in contrast, one alternative

approach would assume that there is a single discount rate with equal probability of 3 percent and 5 percent.

Table VI.26 reports on the application of the Newell-Pizer adjustments. The precise numbers depend on the assumptions about the data generating process that governs interest rates. Columns (1a) and (1b) assume that “random walk” model best describes the data and uses 3 percent and 5 percent discount rates, respectively. Columns (2a) and (2b) repeat this, except that it assumes a “mean-reverting” process. As Newell and Pizer report, there is stronger empirical support for the random walk model.

TABLE VI.26—GLOBAL SOCIAL COST OF CARBON (SCC) ESTIMATES (\$/TCO₂ IN 2007 (2006\$)),* USING NEWELL & PIZER (2003) ADJUSTMENT FOR FUTURE DISCOUNT RATE UNCERTAINTY **

	Model	Study	Climate scenario	Random-walk model		Mean-reverting model	
				3%	5%	3%	5%
				(1a)	(1b)	(2a)	(2b)
1	FUND	Anthoff <i>et al.</i> 2009	FUND default	10	0	7	-1
2	FUND	Anthoff <i>et al.</i> 2009	SRES A1b	2	0	1	-1
3	FUND	Anthoff <i>et al.</i> 2009	SRES A2	15	0	10	-1
4	FUND	Link and Tol 2004	No THC	20	6	13	4
5	FUND	Link and Tol 2004	THC continues	20	4	13	2
6	FUND	Guo <i>et al.</i> 2006	Constant PRTP	9	0	6	-1
7	FUND	Guo <i>et al.</i> 2006	Gollier discount 1	14	0	14	0
8	FUND	Guo <i>et al.</i> 2006	Gollier discount 2	7	-1	7	-1

TABLE VI.26—GLOBAL SOCIAL COST OF CARBON (SCC) ESTIMATES (\$/TCO₂ IN 2007 (2006\$)),* USING NEWELL & PIZER (2003) ADJUSTMENT FOR FUTURE DISCOUNT RATE UNCERTAINTY **—Continued

	Model	Study	Climate scenario	Random-walk model		Mean-reverting model	
				3%	5%	3%	5%
				(1a)	(1b)	(2a)	(2b)
			FUND Mean	12	1	9	0
9	PAGE	Wahba & Hope 2006	A2-scen	97	13	63	8
10	PAGE	Hope 2006 .....	.....	.....	13	.....	8
11	DICE	Nordhaus 2008 .....	.....	.....	15	.....	9
	Summary		Model-weighted Mean ...	55	10	36	6

* The sample includes all peer reviewed, non-equity-weighted estimates included in Tol (2008), Nordhaus (2008), Hope (2008), and Anthoff et al. (2009), that are based on the most recent published version of FUND, PAGE, or DICE and use business-as-usual climate scenarios. All values are based on the best available information from the underlying studies about the base year and year dollars, rather than the Tol (2008) assumption that all estimates included in his review are 1995 values in 1995\$. All values were updated to 2007 using a 3 percent annual growth rate in the SCC, and adjusted for inflation using GDP deflator.

** Assumes a starting discount rate of 3 percent. Newell and Pizer (2003) based adjustment factors are not applied to estimates from Guo et al. (2006) that use a different approach to account for discount rate uncertainty (rows 7–8).

The resulting estimates of the social cost of carbon are necessarily greater. When the adjustments from the random walk model are applied, the estimates of the social cost of carbon are \$10 and \$55, with the 3 percent and 5 percent discount rates, respectively. The application of the mean-reverting adjustment yields estimates of \$6 and \$36.

Since the random walk model has greater support from the data, analyses are also conducted with the value of the SCC set at \$10 and \$55.

Based on this analysis, DOE has concluded that it is appropriate to consider the global benefits of reducing CO₂ emissions, while also presenting the domestic benefits. Consequently, DOE considered in its decision process for this final rule the potential global benefits resulting from reduced CO₂ emissions valued at \$5, \$10, \$19, \$30 and \$55 per metric ton, and has also

presented the domestic benefits derived using a value of \$1.14 per metric ton. All of these values represent emissions that are valued in 2007\$. As indicated in the analysis summarized above, the value of future emissions is determined using a 3 percent escalation rate. The resulting range is based on current peer-reviewed estimates of the value of SCC and, DOE believes, fairly represents the uncertainty surrounding the global benefits resulting from reduced CO₂ emissions and, at the \$1.14 level, also encompasses the likely domestic benefits, DOE also concluded, based on the most recent Tol analysis, that it was appropriate to escalate these values at 3 percent per year to represent the expected increases, over time, of the benefits associated with reducing CO₂ and other greenhouse gas emissions. Estimates of SCC are assumed to increase over time since future emissions are expected to produce

larger incremental damages as physical and economic systems become more stressed as the magnitude of climate change increases. Although most studies that estimate economic damages caused by increased GHG emissions in future years produce an implied growth rate in the SCC, neither the rate itself nor the information necessary to derive its implied value is commonly reported. Given the limited amount of debate thus far about the appropriate growth rate of the SCC, applying a rate of 3 percent per year seems appropriate at this stage. This value is consistent with the range recommended by IPCC (2007).

Table VI.27 and Table VI.28 present the resulting estimates of the potential range of NPV benefits associated with reducing CO₂ emissions for both Class A and Class B equipment based on the range of values used by DOE for this final rule.

TABLE VI.27—ESTIMATES OF SAVINGS FROM CO₂ EMISSIONS REDUCTIONS AT ALL TSLs AND CO₂ PRICES AT A 7 PERCENT DISCOUNT RATE FOR CLASS A EQUIPMENT

TSL	Estimated cumulative CO ₂ (MMt) emission reductions	Value of estimated CO ₂ emission reductions (million 2007\$)**					
		CO ₂ Value of \$1.14/metric ton CO ₂ * \$	CO ₂ Value of \$5/metric ton CO ₂ \$	CO ₂ Value of \$10/metric ton CO ₂ \$	CO ₂ Value of \$19/metric ton CO ₂ \$	CO ₂ Value of \$33/metric ton CO ₂ \$	CO ₂ Value of \$55/metric ton CO ₂ \$
1	0.40	0.23	1.00	1.99	3.79	6.58	10.97
2	1.89	1.09	4.77	9.54	18.13	31.49	52.48
3	4.18	2.41	10.56	21.12	40.12	69.69	116.14
4	6.45	3.71	16.28	32.55	61.85	107.43	179.04
5	7.63	4.39	19.25	38.49	73.13	127.02	211.70
6	8.40	4.84	21.21	42.42	80.61	140.00	233.34
7	10.22	5.88	25.80	51.60	98.04	170.28	283.80

* This value per ton represents the domestic negative externalities of CO₂ only.

TABLE VI.28—ESTIMATES OF SAVINGS FROM CO₂ EMISSIONS REDUCTIONS AT ALL TSLs AND CO₂ PRICES AT A 3 PERCENT DISCOUNT RATE FOR CLASS A EQUIPMENT

TSL	Estimated cumulative CO ₂ (MMt) emission reductions	Value of estimated CO ₂ emission reductions (million 2007\$)**					
		CO ₂ Value of \$1.14/metric ton CO ₂ * \$	CO ₂ Value of \$5/metric ton CO ₂ \$	CO ₂ Value of \$10/metric ton CO ₂ \$	CO ₂ Value of \$19/metric ton CO ₂ \$	CO ₂ Value of \$33/metric ton CO ₂ \$	CO ₂ Value of \$55/metric ton CO ₂ \$
1	0.40	0.46	2.04	4.07	7.73	13.43	22.39
2	1.89	2.22	9.74	19.47	36.99	64.25	107.09
3	4.18	4.91	21.55	43.09	81.87	142.20	237.00
4	6.45	7.57	33.21	66.43	126.21	219.21	365.35
5	7.63	8.95	39.27	78.54	149.23	259.20	432.00
6	8.40	9.87	43.29	86.57	164.48	285.68	476.14
7	10.22	12.00	52.65	105.29	200.06	347.46	579.11

* This value per ton represents the domestic negative externalities of CO₂ only.

TABLE VI.29—ESTIMATES OF SAVINGS FROM CO₂ EMISSIONS REDUCTIONS AT ALL TSLs AND CO₂ PRICES AT A 7 PERCENT DISCOUNT RATE FOR CLASS B EQUIPMENT

TSL	Estimated cumulative CO ₂ (MMt) emission reductions	Value of estimated CO ₂ emission reductions (million 2007\$)**					
		CO ₂ Value of \$1.14/metric ton CO ₂ * \$	CO ₂ Value of \$5/metric ton CO ₂ \$	CO ₂ Value of \$10/metric ton CO ₂ \$	CO ₂ Value of \$19/metric ton CO ₂ \$	CO ₂ Value of \$33/metric ton CO ₂ \$	CO ₂ Value of \$55/metric ton CO ₂ \$
1	0.16	0.09	0.40	0.81	1.53	2.66	4.43
2	0.24	0.14	0.60	1.20	2.27	3.95	6.58
3	1.19	0.68	3.00	6.00	11.40	19.81	33.01
4	1.36	0.78	3.43	6.86	13.04	22.65	37.75
5	3.66	2.11	9.24	18.48	35.11	60.98	101.64
6	4.08	2.35	10.29	20.58	39.10	67.91	113.18

* This value per ton represents the domestic negative externalities of CO₂ only.

TABLE VI.30—ESTIMATES OF SAVINGS FROM CO₂ EMISSIONS REDUCTIONS AT ALL TSLs AND CO₂ PRICES AT A 3 PERCENT DISCOUNT RATE FOR CLASS B EQUIPMENT

TSL	Estimated cumulative CO ₂ (MMt) emission reductions	Value of estimated CO ₂ emission reductions (million 2007\$)**					
		CO ₂ Value of \$1.14/metric ton CO ₂ * \$	CO ₂ Value of \$5/metric ton CO ₂ \$	CO ₂ Value of \$10/metric ton CO ₂ \$	CO ₂ Value of \$19/metric ton CO ₂ \$	CO ₂ Value of \$33/metric ton CO ₂ \$	CO ₂ Value of \$55/metric ton CO ₂ \$
1	0.16	0.19	0.82	1.64	3.12	5.42	9.04
2	0.24	0.28	1.22	2.44	4.64	8.05	13.42
3	1.19	1.40	6.12	12.25	23.27	40.42	67.36
4	1.36	1.60	7.00	14.01	26.61	46.22	77.04
5	3.66	4.30	18.85	37.71	71.65	124.44	207.40
6	4.08	4.79	21.00	41.99	79.78	138.57	230.95

* This value per ton represents the domestic negative externalities of CO₂ only.

DOE recognizes that scientific and economic knowledge about the contribution of CO₂ and other GHG to changes in the future global climate and the potential resulting damages to the world economy continues to evolve rapidly. Thus, any value placed in this rulemaking on reducing CO₂ emissions is subject to change.

DOE, together with other Federal agencies, will continue to review various methodologies for estimating the monetary value of reductions in CO₂ and other greenhouse gas emissions. This ongoing review will consider the comments on this subject that are part

of the public record for this and other rulemakings, as well as other methodological assumptions and issues. However, consistent with DOE's legal obligations, and taking into account the uncertainty involved with this particular issue, DOE has included in this final rule the most recent values and analyses resulting from the ongoing interagency review process.

DOE also investigated the potential monetary benefit of reduced SO₂, NO_x, and Hg emissions from the TSLs it considered. As previously stated, DOE's initial analysis assumed the presence of nationwide emission caps on SO₂ and

Hg, and caps on NO_x emissions in the 28 States covered by the CAIR. In the presence of these caps, DOE concluded that no physical reductions in power sector emissions would occur, but that the standards could put downward pressure on the prices of emissions allowances in cap-and-trade markets. Estimating this effect is very difficult because such factors as credit banking can change the trajectory of prices. DOE has concluded that the effect from energy conservation standards on SO₂ allowance prices is likely to be negligible based on runs of the NEMS-

BT model. See chapter 16 of the TSD for further details.

Because the courts have decided to allow the CAIR rule to remain in effect, projected annual NO_x allowances from NEMS–BT are relevant. The update to the AEO2009-based version of NEMS–BT includes the representation of CAIR. As noted above, standards would not produce an economic impact in the form of lower prices for emissions allowance credits in the 28 eastern States and D.C. covered by the CAIR cap. New or amended energy conservation standards would reduce NO_x emissions in those 22 States that are not affected by the CAIR. For the area of the United States not covered by the CAIR, DOE estimated the monetized value of NO_x emissions reductions resulting from each of the TSLs considered for today’s final rule based on environmental damage estimates from the literature. Available estimates suggest a very wide range of monetary values for NO_x emissions, ranging from \$370 per ton to \$3,800 per ton of NO_x from stationary sources, measured in 2001\$ (equivalent to a range of \$432 to \$4,441 per ton in 2007\$). Refer to the OMB, Office of Information and

Regulatory Affairs, “2006 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities,” Washington, DC, for additional information.

For Hg emissions reductions, DOE estimated the national monetized values resulting from the TSLs considered for today’s rule based on environmental damage estimates from the literature. DOE conducted research for today’s final rule and determined that the impact of mercury emissions from power plants on humans is considered highly uncertain. However, DOE identified two estimates of the environmental damage of mercury based on two estimates of the adverse impact of childhood exposure to methyl mercury on intelligence quotient (IQ) for American children, and subsequent loss of lifetime economic productivity resulting from these IQ losses. The high-end estimate is based on an estimate of the current aggregate cost of the loss of IQ in American children that results from exposure to mercury of U.S. power plant origin (\$1.3 billion per year in year 2000\$), which works out to \$32.6 million per ton emitted per year

(2007\$). Refer to L. Trasande *et al.*, “Applying Cost Analyses to Drive Policy that Protects Children,” 1076 Ann. N.Y. Acad. Sci. 911 (2006) for additional information. The low-end estimate is \$0.66 million per ton emitted (in 2004\$) or \$0.729 million per ton in 2007\$. DOE derived this estimate from a published evaluation of mercury control using different methods and assumptions from the first study but also based on the present value of the lifetime earnings of children exposed. See Ted Gayer and Robert Hahn, “Designing Environmental Policy: Lessons from the Regulation of Mercury Emissions,” Regulatory Analysis 05–01, AEI–Brookings Joint Center for Regulatory Studies, Washington, DC (2004). A version of this paper was published in the *Journal of Regulatory Economics* in 2006. The estimate was derived by back-calculating the annual benefits per ton from the net present value of benefits reported in the study. Table VI.31 through Table VI.34 present the resulting estimates of the potential range of present value benefits associated with reducing national NO_x and Hg emissions for Class A and B equipment.

TABLE VI.31—ESTIMATES OF SAVINGS FROM REDUCING NO_x AND Hg EMISSIONS AT ALL TRIAL STANDARD LEVELS AT A 7 PERCENT DISCOUNT RATE FOR CLASS A EQUIPMENT

TSL	Estimated cumulative NO _x emission reductions <i>kt</i>	Value of estimated NO _x emission reductions <i>thousand 2007\$</i>	Estimated cumulative Hg emission reductions <i>tons</i>	Value of estimated Hg emission reductions <i>thousand 2007\$</i>
1	0.13	15–150	0.008	0–61
2	0.65	70–716	0.037	0–293
3	1.43	154–1,584	0.082	0–649
4	2.20	238–2,442	0.127	0–1,001
5	2.60	281–2,888	0.150	0–1,183
6	2.87	310–3,183	0.165	0–1,304
7	3.49	377–3,871	0.201	0–1,586

TABLE VI.32—ESTIMATES OF SAVINGS FROM REDUCING NO_x AND Hg EMISSIONS AT ALL TRIAL STANDARD LEVELS AT A 7 PERCENT DISCOUNT RATE FOR CLASS B EQUIPMENT

TSL	Estimated cumulative NO _x emission reductions <i>kt</i>	Value of estimated NO _x emission reductions <i>thousand 2007\$</i>	Estimated cumulative Hg emission reductions <i>tons</i>	Value of estimated Hg emission reductions <i>thousand 2007\$</i>
1	0.05	6–60	0.003	0–25
2	0.08	9–90	0.005	0–37
3	0.41	44–450	0.023	0–185
4	0.46	50–515	0.027	0–211
5	1.25	135–1,386	0.072	0–568
6	1.39	150–1,544	0.080	0–633

TABLE VI.33—ESTIMATES OF SAVINGS FROM REDUCING NO_x AND Hg EMISSIONS AT ALL TRIAL STANDARD LEVELS AT A 3 PERCENT DISCOUNT RATE FOR CLASS A EQUIPMENT

TSL	Estimated cumulative NO _x emission reductions <i>kt</i>	Value of estimated NO _x emission reductions <i>thousand 2007\$</i>	Estimated cumulative Hg emission reductions <i>tons</i>	Value of estimated Hg emission reductions <i>thousand 2007\$</i>
1	0.13	31–317	0.008	0–132
2	0.65	148–1,516	0.037	0–633
3	1.43	326–3,356	0.082	0–1,401
4	2.20	503–5,174	0.127	0–2,160
5	2.60	595–6,117	0.150	0–2,554
6	2.87	656–6,742	0.165	0–2,815
7	3.49	798–8,200	0.201	0–3,424

TABLE VI.34—ESTIMATES OF SAVINGS FROM REDUCING NO_x AND Hg EMISSIONS AT ALL TRIAL STANDARD LEVELS AT A 3 PERCENT DISCOUNT RATE FOR CLASS B EQUIPMENT

TSL	Estimated cumulative NO _x emission reductions <i>kt</i>	Value of estimated NO _x emission reductions <i>thousand 2007\$</i>	Estimated cumulative Hg emission reductions <i>tons</i>	Value of estimated Hg emission reductions <i>thousand 2007\$</i>
1	0.05	12–128	0.003	0–53
2	0.08	18–190	0.005	0–79
3	0.41	93–954	0.023	0–398
4	0.46	106–1,091	0.027	0–455
5	1.25	286–2,937	0.072	0–1,226
6	1.39	318–3,270	0.080	0–1,365

7. Other Factors

EPCA allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i) and (v)) Under this provision, DOE considered LCC impacts on identifiable groups of customers, such as customers of different business types who may be disproportionately affected by any national energy conservation standard level. DOE also considered the reduction in generated capacity that could result from the imposition of any national energy conservation standard level. DOE identified no factors other than those already considered above for analysis.

D. Conclusion

EPCA specifies that any new or amended energy conservation standard for any type (or class) of covered equipment shall be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 6316(e)(1)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i) and 6316(e)(1)) The new or amended standard must “result in significant conservation of energy.” (42 U.S.C. 6295(o)(3)(B) and 6316(e)(1))

DOE established a separate set of TSLs for Class A and B beverage vending machines. DOE considered seven TSLs for Class A and six TSLs for Class B beverage vending machines. The following discussion briefly explains the development of the TSLs, consideration of the TSLs (starting with the most stringent) under the statutory factors, and DOE’s conclusions.

Table VI.35 and Table VI.36 present summaries of quantitative analysis results for each TSL for Class A and B equipment, respectively, based on the assumptions and methodology discussed above. These tables present the results or, in some cases, ranges of results, for each TSL. The ranges reported for industry impacts represent the results of the different markup scenarios DOE used to estimate impacts.

TABLE VI.35—SUMMARY OF RESULTS FOR CLASS A EQUIPMENT BASED UPON THE AEO2009 REFERENCE CASE ENERGY PRICE FORECAST *

Results	Trial standard level						
	1	2	3	4	5	6	7
Primary Energy Saved (<i>quads</i>).	0.007	0.031	0.069	0.107	0.127	0.139	0.170.
7% Discount Rate	0.002	0.010	0.021	0.032	0.038	0.042	0.051.
3% Discount Rate	0.004	0.018	0.040	0.061	0.073	0.080	0.097.

TABLE VI.35—SUMMARY OF RESULTS FOR CLASS A EQUIPMENT BASED UPON THE AEO2009 REFERENCE CASE ENERGY PRICE FORECAST *—Continued

Results	Trial standard level						
	1	2	3	4	5	6	7
Generation Capacity Reduction (GW)**	0.005	0.023	0.051	0.079	0.094	0.103	0.126
NPV 2008\$ billion:							
7% Discount Rate	0.015	0.068	0.112	0.175	0.192	0.185	(1.449)
3% Discount Rate	0.034	0.153	0.268	0.415	0.464	0.465	(2.466)
Industry Impacts:							
Industry NPV (2008\$ million)	0.0–(0.0)	0.2–(0.3)	0.3–(1.1)	(1.3)–(3.5)	(1.3)–(4.1)	(7.9)–(11.1)	(3.2)–(28.3)
Industry NPV (% change)	0.1–(0.1)	0.5–(0.6)	0.7–(2.5)	(2.9)–(7.9)	(3.0)–(9.3)	(18.0)–(25.1)	(7.2)–(64.2)
Cumulative Emissions Impacts†:							
CO ₂ Reductions (Mt)	0.4	1.9	4.2	6.4	7.6	8.4	10.2
Value of CO ₂ Reductions at 7% Discount Rate (million 2007\$)	0.2 to 11	1.1 to 52.5	2.4 to 116.1	3.7 to 179	4.4 to 211.7	4.8 to 233.3	5.9 to 283.8
Value of CO ₂ Reductions at 3% Discount Rate (million 2007\$)	0.5 to 22.4	2.2 to 107.1	4.9 to 237	7.6 to 365.4	9 to 432	9.9 to 476.1	12 to 579.1
NO _x Reductions (kt)	0.1	0.6	1.4	2.2	2.6	2.9	3.5
Value of NO _x Reductions at 7% Discount Rate (thousand 2007\$)	15–150	70–716	154–1,584	238–2,442	281–2,888	310–3,183	377–3,871
Value of NO _x Reductions at 3% Discount Rate (thousand 2007\$)	31–317	148–1,516	326–3,356	503–5,174	595–6,117	656–6,742	798–8,200
Hg Reductions (tons)	0.008	0.037	0.082	0.127	0.150	0.165	0.201
Value of Hg Reductions at 7% Discount Rate (thousand 2007\$)	0–61	0–293	0–649	0–1,001	0–1,183	0–1,304	0–1,586
Value of Hg reductions at 3% Discount Rate (thousand 2007\$)	0–132	0–633	0–1,401	0–2,160	0–2,554	0–2,815	0–3,424
Life-Cycle Cost:							
Net Savings (%)	10	100	98	98	97	95	0
Net Increase (%)	0	0	2	2	3	5	100
No Change (%)	90	0	0	0	0	0	0
Mean LCC Savings (2008\$)	136	182	218	272	285	277	(1,281)
Mean PBP (years)	2.2	2.4	3.2	3.4	3.7	4.1	75.2
Direct Domestic Employment Impacts (2012) (jobs)	1	5	15	23	30	36	259
Indirect Domestic Employment Impacts (2042) (jobs)	13	82	172	265	313	344	475

* Parentheses indicate negative values. For LCCs, a negative value means an increase in LCC.

** Change in installed generation capacity by 2042 based on April 2009 update to the AEO2009 Reference Case.

† CO₂ emissions impacts include physical reductions at power plants. NO_x emissions impacts include physical reductions at power plants as well as production of emissions allowance credits where NO_x emissions are subject to emissions caps.

TABLE VI.36—SUMMARY OF RESULTS FOR CLASS B EQUIPMENT BASED ON THE AEO2009 REFERENCE CASE ENERGY PRICE FORECAST *

Results	Trial standard level					
	1	2	3	4	5	6
Primary Energy Saved (quads)	0.003	0.004	0.020	0.023	0.061	0.068
7% Discount Rate	0.001	0.001	0.006	0.007	0.018	0.020
3% Discount Rate	0.002	0.002	0.012	0.013	0.035	0.039
Generation Capacity Reduction (GW)**	0.002	0.003	0.015	0.017	0.045	0.050
NPV (2008\$ billion):						
7% Discount Rate	0.005	0.006	(0.003)	(0.014)	(0.621)	(2.452)
3% Discount Rate	0.011	0.014	0.011	(0.006)	(1.083)	(4.427)
Industry Impacts:						
Industry NPV (2008\$ million)	0	0	(0.6)–(1.2)	(1.0)–(1.7)	(7.4)–(16.5)	(3.2)–(33.5)
Industry NPV (% Change)	0.1–(0.1)	0.1–(0.2)	(1.8)–(3.5)	(3.0)–(5.0)	(21.9)–(48.9)	(9.5)–(99.4)
Cumulative Emissions Impacts†:						
CO ₂ Reductions (Mt)	0.2	0.2	1.2	1.4	3.7	4.1

TABLE VI.36—SUMMARY OF RESULTS FOR CLASS B EQUIPMENT BASED ON THE AEO2009 REFERENCE CASE ENERGY PRICE FORECAST *—Continued

Results	Trial standard level					
	1	2	3	4	5	6
Value of CO ₂ reductions at 7% discount rate (million 2007\$).	0.1 to 4.4	0.1 to 6.6	0.7 to 33	0.8 to 37.8	2.1 to 101.6 ..	2.3 to 113.2.
Value of CO ₂ reductions at 3% discount rate (million 2007\$).	0.2 to 9	0.3 to 13.4	1.4 to 67.4	1.6 to 77	4.3 to 207.4 ..	4.8 to 230.9.
NO _x Reductions (kt)	0.1	0.1	0.4	0.5	1.3	1.4.
Value of NO _x reductions at 7% discount rate (thousand 2007\$).	6–60	9–90	44–450	50–515	135–1,386	150–1,544.
Value of NO _x reductions at 3% discount rate (thousand 2007\$).	12–128	18–190	93–954	106–1,091	286–2,937	318–3,270.
Hg Reductions (t)	0.003	0.005	0.023	0.027	0.072	0.080.
Value of Hg reductions at 7% discount rate (thousand 2007\$).	0–25	0–37	0–185	0–211	0–568	0–633.
Value of Hg reductions at 3% discount rate (thousand 2007\$).	0–53	0–79	0–398	0–455	0–1,226	0–1,365.
Life-Cycle Cost:						
Net Savings (%)	10	91	72	62	0	0.
Net Increase (%)	0	9	28	38	100	100.
No Change (%)	90	0	0	0	0	0.
Mean LCC Savings (2008\$)	42	48	37	27	(554)	(2,291).
Mean PBP (years)	3.4	4.5	6.8	7.8	84.9	99.9.
Direct Domestic Employment Impacts (2012) (jobs).	0	1	8	11	97	316.
Indirect Employment Impacts (2042) (jobs)	6	10	49	55	162	216.

* Parentheses indicate negative values. For LCCs, a negative value means an increase in LCC.

** Change in installed generation capacity by 2042 based on the April 2009 update to the AEO2009 reference case.

† CO₂ emissions impacts include physical reductions at power plants. NO_x emissions impacts include physical reductions at power plants as well as production of emissions allowance credits where NO_x emissions are subject to emissions caps.

1. Class A Equipment

First, DOE considered TSL 7, the most efficient level for Class A beverage vending machines that was determined to be technologically feasible. TSL 7 would save a cumulative 0.170 quads of energy through 2042, an amount DOE considers significant. For the Nation as a whole, DOE projects that TSL 7 would result in a net decrease of \$1.449 billion in NPV using a discount rate of 7 percent and \$2.47 billion discounted at 3 percent. The emissions reductions at TSL 7 are 10.22 Mt of CO₂, up to 3.49 kt of NO_x, and up to 0.201 ton of Hg. These reductions have a value in 2007\$ of up to \$283.8 million for CO₂, up to \$3.9 million for NO_x, and up to \$1.6 million for Hg at a discount rate of 7 percent. These reductions have a value in 2007\$ of up to \$579.1 million for CO₂, up to \$8.2 million for NO_x, and up to \$3.4 million for Hg at a discount rate of 3 percent. DOE also estimates that at TSL 7, total electric generating capacity in 2042 will decrease compared to the base case by 0.126 GW.

At TSL 7, DOE projects that the average Class A beverage vending machine customer will experience an increase in LCC of \$1,281 compared to the baseline. At TSL 7, DOE estimates the fraction of customers experiencing LCC increases will be 100 percent. The mean PBP for the average Class A

beverage vending machine customer at TSL 7 compared to the baseline level is projected to be 75.2 years.

At higher TSLs, manufacturers have a more difficult time maintaining current operating profit levels, as higher standards increase recurring operating costs such as capital expenditures, purchased materials, and carrying inventory. Therefore, TSL 7 is more likely to cause impacts in the higher end of the ranges (*i.e.*, a drop of 64.2 percent in INPV). Manufacturers expressed great concern about high capital and equipment conversion costs necessary to convert production to standards-compliant equipment. At TSL 7, all manufacturers would have to completely redesign their production lines, and the risk of very large negative impacts on the industry from reduction in manufacturers' operating profits levels is high.

After carefully considering the analysis and weighing the benefits and burdens of TSL 7, DOE finds that the benefits to the Nation of TSL 7 (*i.e.*, energy savings and emissions reductions, including environmental and monetary benefits) do not outweigh the burdens (*i.e.*, a decrease of \$1,738 million in NPV and a decrease of 64.2 percent in INPV). Because the burdens of TSL 7 outweigh the benefits, TSL 7 is not economically justified. Therefore,

DOE rejects TSL 7 for Class A equipment.

DOE then considered TSL 6, which provides for Class A equipment the maximum efficiency level that the analysis showed to have positive NPV to the Nation. TSL 6 would likely save a cumulative 0.139 quads of energy through 2042, an amount DOE considers significant. For the Nation as a whole, DOE projects that TSL 6 would result in a net increase of \$185 million in NPV using a discount rate of 7 percent and \$465 million using a discount rate of 3 percent. The estimated emissions reductions at TSL 6 are up to 8.4 Mt of CO₂, up to 2.87 kt of NO_x, and up to 0.165 tons of Hg. These reductions have a value in 2007\$ of up to \$233.3 million for CO₂, up to \$3.2 million for NO_x, and up to \$1.3 million for Hg, at a discount rate of 7 percent, and a value in 2007\$ of up to \$476.1 million for CO₂, up to \$6.7 million for NO_x, and up to \$2.8 million for Hg, at a discount rate of 3 percent. Total electric generating capacity in 2042 is estimated to decrease compared to the base case by 0.103 GW under TSL 6.

At TSL 6, DOE projects that the average beverage vending machine customer will experience a reduction in LCC of \$277 compared to the baseline. The mean PBP for the average beverage vending machine customer at TSL 6 is

projected to be 4.1 years compared to the purchase of baseline equipment.

At TSL 6, DOE believes the majority of manufacturers would need to completely redesign all Class A equipment offered for sale. Therefore, DOE expects beverage vending machine manufacturers would have some difficulty maintaining current operating profit levels with higher production costs. Similar to TSL 7, it is more likely that the higher end of the range of impacts would be reached at TSL 6 (*i.e.*, a decrease of 25.1 percent in INPV). However, the higher end of the range of impacts at TSL 6 is lower than the higher end of the range of impacts for TSL 7. In addition, Class A equipment showed significant positive LCC savings on a national average basis and customers did not experience an increase in LCC with a standard at TSL 6 compared to the baseline. The PBP calculated for Class A equipment was less than the life of the equipment.

After carefully considering the analysis and weighing the benefits and burdens of TSL 6, DOE finds that for Class A equipment, TSL 6 represents the maximum improvement in energy efficiency that is technologically feasible and economically justified. TSL 6 is technologically feasible because the technologies required to achieve these levels are already in existence. TSL 6 is economically justified because the benefits to the Nation [*i.e.*, increased energy savings of 0.139 quads, emissions reductions including environmental and monetary benefits of, for example, up to 8.4 Mt of carbon dioxide emissions reduction with an associated value in 2007\$ of up to \$233.3 million at a discount rate of 7 percent (\$476.1 million at 3 percent), and an increase in NPV of \$185 million at 7 percent discount rate to \$465 million at 3 percent discount rate] outweigh the costs (*i.e.*, a decrease of 25.1 percent in INPV). In addition, the carbon dioxide reductions at the central value of \$19 would further increase NPV by \$80.6 million (2007\$) at 7% discount rate and by \$164 million at a 3 percent discount rate. The combined NPV, including the value of CO₂ emissions reductions, would be \$265.6 million at 7 percent discount rate and \$629.0 million at a 3 percent discount rate. There is also the added benefit of a reduction in total electrical generating capacity in 2042 compared to the base case of 0.103 GW under the TSL 6 scenario. Therefore, DOE establishes TSL 6 as the energy conservation standard for Class A beverage vending machines in this final rule.

2. Class B Equipment

First, DOE considered TSL 6, the most efficient level for Class B beverage vending machines. TSL 6 would likely save a cumulative 0.068 quads of energy through 2042, an amount DOE considers significant. For the Nation as a whole, DOE projects that TSL 6 would result in a net decrease of \$2.452 billion in NPV using a discount rate of 7 percent, and \$4.427 billion in NPV using a discount rate of 3 percent. The emissions reductions at TSL 6 are up to 4.08 Mt of CO₂, up to 1.39 kt of NO_x, and up to 0.080 ton of Hg. These reductions have a value in 2007\$ of up to \$113.2 million for CO₂, up to \$1.5 million for NO_x, and up to \$633,000 for Hg at a discount rate of 7 percent and a value of up to \$230.9 million for CO₂, up to \$3.3 million for NO_x, and up to \$1.4 million for Hg at a discount rate of 3 percent. DOE also estimates that at TSL 6, total electric generating capacity in 2042 will decrease compared to the base case by 0.050 GW.

At TSL 6, DOE projects that for the average customer, the LCC of Class B beverage vending machines will increase by \$2,291 compared to the baseline. At TSL 6, DOE estimates the fraction of customers experiencing LCC increases will be 100 percent. The mean PBP for the average Class B beverage vending machine customer at TSL 6 compared to the baseline is projected to be almost 100 years.

At higher TSLs, manufacturers have large increases in production costs, resulting in difficulty maintaining operating profit. Therefore, it is more likely that the higher end of the range of impacts would be reached at TSL 6 (*i.e.*, a decrease of 99.4 percent in INPV). At TSL 6, all manufacturers would have to completely redesign their production lines, and there is the risk of very large negative impacts on the industry if manufacturers' operating profit levels are reduced.

After carefully considering the analysis and weighing the benefits and burdens of TSL 6, DOE finds that the benefits to the Nation of TSL 6 (*i.e.*, energy savings and emissions reductions including environmental and monetary benefits) do not outweigh the burdens (*i.e.*, a decrease of \$2.45 to \$4.43 billion in NPV, a decrease of 99.4 percent in INPV, and an economic burden on customers). DOE finds that the burdens of TSL 6 outweigh the benefits and TSL 6 is not economically justified. Therefore, DOE rejects TSL 6 for Class B equipment.

TSL 5, the next most efficient level, would likely save a cumulative 0.061 quads of energy through 2042, an

amount DOE considers significant. For the Nation as a whole, DOE projects that TSL 5 would result in a net decrease of \$621 million in NPV, using a discount rate of 7 percent and \$1.083 billion in NPV, using a discount rate of 3 percent. The estimated emissions reductions at TSL 5 are up to 3.66 Mt of CO₂, up to 1.25 kt of NO_x, and up to 0.072 ton of Hg. These reductions have a value in 2007\$ of up to \$101.6 million for CO₂, up to \$1.4 million for NO_x, and up to \$568,000 for Hg at a discount rate of 7 percent, and a value in 2007\$ of up to \$207.4 million for CO₂, up to \$2.9 million for NO_x, and up to \$1.2 million for Hg at a discount rate of 3 percent. Total electric generating capacity in 2042 is estimated to decrease compared to the base case by 0.045 GW at TSL 5.

At TSL 5, DOE projects that the average Class B beverage vending machine customer will experience an increase in LCC of \$554 compared to the baseline. The mean PBP for the average Class B beverage vending machine customer at TSL 5 is projected to be 84.9 years compared to the purchase of baseline equipment.

At TSL 5, DOE believes the majority of manufacturers would need to completely redesign all Class B equipment offered for sale at TSL 5. Therefore, DOE expects that manufacturers will have difficulty maintaining operating profit with larger cost increases. Though the higher end of the range of expected impacts is lower for TSL 5 than for TSL 6, TSL 5 would likely cause impacts at the higher end of the range (*i.e.*, a decrease of 48.9 percent in INPV).

After carefully considering the analysis and evaluating the benefits and burdens of TSL 5, DOE finds that the benefits to the Nation of TSL 5 (*i.e.*, energy savings and emissions reductions, including environmental and monetary benefits) do not outweigh the burdens (*i.e.*, a decrease of \$621 to 1.08 billion in NPV and a decrease of 48.9 percent in INPV as well as the economic burden on customers). DOE finds that the burdens of TSL 5 outweigh the benefits and TSL 5 is not economically justified. Therefore, DOE rejects TSL 5 for Class B equipment.

TSL 4 would save a cumulative 0.023 quads of energy through 2042, an amount DOE considers significant. For the Nation as a whole, DOE projects that TSL 4 would result in a net decrease of \$14 million in NPV using a discount rate of 7 percent and a net decrease of \$6 million in NPV using a discount rate of 3 percent. The estimated emissions reductions at TSL 4 are up to 1.36 Mt of CO₂, up to 0.46 kt of NO_x, and up to 0.027 ton of Hg. Based on previously

developed estimates, these reductions could have a value in 2007\$ of up to \$37.8 million for CO₂, up to \$515,000 for NO_x, and up to \$211,000 for Hg at a discount rate of 7 percent and a value in 2007\$ of up to \$77.0 million for CO₂, up to \$1.1 million for NO_x, and up to \$455,000 for Hg at a discount rate of 3 percent. Total electric generating capacity in 2042 is estimated to decrease compared to the base case by 0.017 GW at TSL 4.

At TSL 4, DOE projects that the average Class B beverage vending machine customer will experience a reduction in LCC of \$27 compared to the baseline. The mean PBP for the average Class B beverage vending machine customer at TSL 4 is projected to be 7.8 years compared to the purchase of baseline equipment.

At TSL 4, DOE believes that while a complete redesign would not be required, manufacturers would need to redesign most existing Class B equipment offered for sale. Therefore, while perhaps to a somewhat lesser extent than for TSL 5 and TSL 6, DOE expects that manufacturers will have difficulty maintaining operating profit with high increases in production costs. In addition, while the higher end of the range of impacts expected from TSL 4 is less than those for TSL 5 and TSL 6, it is still likely that the higher end of the range of impacts would be reached at TSL 4 (*i.e.*, a decrease of 5.0 percent in INPV). However, compared to the baseline, Class B equipment showed positive LCC savings on a national average and most customers did not experience an increase in LCC at TSL 4. The PBP calculated for Class B equipment was less than the lifetime of the equipment.

After carefully considering the analysis and evaluating the benefits and burdens of TSL 4, DOE finds that the benefits to the Nation of TSL 4 (*i.e.*, energy savings and emissions reductions, including estimates of the monetary value of the environmental benefits) do not outweigh the burdens (*i.e.*, a decrease of \$6 million to \$14 million in NPV and a decrease of up to 5.0 percent in INPV, primarily from equipment redesigns). DOE finds that the burdens, especially the likelihood of net economic losses indicated by

negative NPV values at both discount rates, of TSL 4 outweigh the benefits and TSL 4 is not economically justified. Therefore, DOE rejects TSL 4 for Class B equipment.

TSL 3 would save a cumulative 0.020 quads of energy through 2042, an amount DOE considers significant. For the Nation as a whole, DOE projects that TSL 3 would result in a decrease in NPV of \$3 million, using a discount rate of 7 percent. However, using a 3 percent discount rate, DOE projects that TSL 3 would result in a net increase of \$11 million in NPV. The estimated emissions reductions at TSL 3 are up to 1.2 Mt of CO₂, up to 0.41 kt of NO_x, and up to 0.023 ton of Hg. Based on previously developed estimates, these reductions could have a value in 2007\$ of up to \$33.0 million for CO₂, up to \$450,000 for NO_x, and up to \$185,000 for Hg at a discount rate of 7 percent. At a 3 percent discount rate, these reductions could have a value in 2007\$ of up to \$67.4 million for CO₂, up to \$954,000 for NO_x, and up to \$398,000 for Hg. Total electric generating capacity in 2042 is estimated to decrease compared to the base case by 0.015 GW at TSL 3.

At TSL 3, DOE projects that the average Class B beverage vending machine customer will experience a reduction in LCC of \$37 compared to the baseline. The mean PBP for the average Class B beverage vending machine customer at TSL 3 is projected to be 6.8 years compared to the purchase of baseline equipment.

At TSL 3, DOE believes manufacturers would have to make some component switches to comply with the standard, but most manufacturers will not have to significantly alter their production process. These minor design changes would not raise the production costs beyond the cost of most equipment sold today, resulting in minimal impacts on industry value. Compared to the baseline, Class B equipment showed significant positive LCC savings on a national average and customers did not experience an increase in LCC at TSL 3. The PBP calculated for Class B equipment was less than the lifetime of the equipment.

After carefully considering the analysis and weighing the benefits and

burdens of TSL 3, DOE finds that for Class B equipment, TSL 3 represents the maximum improvement in energy efficiency that is technologically feasible and economically justified. TSL 3 is technologically feasible because the technologies required to achieve these levels are already in existence. TSL 3 is economically justified because DOE finds that the benefits to the Nation [*i.e.*, an increase of \$11 million in NPV using a 3 percent discount rate, energy savings, and emissions reductions, including environmental and monetary benefits of, for example, up to 1.2 Mt of carbon dioxide emissions reduction with an associated value in 2007\$ of up to \$33 million at a discount rate of 7 percent and \$67.4 million at a discount rate of 3 percent, and an increase in NPV of \$11 million at 3 percent discount rate] outweigh the costs (*i.e.*, a \$3 million loss in NPV at a 7 percent discount rate and a decrease of 3.5 percent in INPV, primarily from upgraded components). In addition, the carbon dioxide reductions at the central value of \$19 would further increase NPV by \$11.4 million (2007\$) at 7% discount rate and by \$23.3 million at a 3 percent discount rate. The combined NPV, including the value of CO₂ emissions reductions, would be \$8.4 million at a 7 percent discount rate and \$34.3 million at a 3 percent discount rate. DOE finds that, while there is a greater likelihood of net economic losses at TSL 4 (indicated by negative NPV values at 3 percent and 7 percent discount rates), TSL 3 is more favorable since it shows a greater possibility of a net economic benefit (indicated by a positive NPV value at a 3 percent discount rate). There is also the added benefit of a reduction in total electrical generating capacity in 2042 compared to the base case of 0.015 GW under the TSL 3 scenario. Therefore, DOE establishes TSL 3 as the energy conservation standard for Class B beverage vending machines in this final rule.

DOE also calculated the annualized values for certain benefits and costs at the various TSLs. Table VI.37 shows the annualized values for Class A equipment and Table VI.38 shows the annualized values for Class B equipment.

TABLE VI.37—ANNUALIZED BENEFITS AND COSTS FOR CLASS A MACHINES

TSL	Category	Unit	Primary estimate (AEO reference case)		Low estimate (low growth case)		High estimate (high growth case)	
			7%	3%	7%	3%	7%	3%
1	Benefits							
	Annualized Consumer Benefits (\$millions/year).	2008\$	1.96	2.29	1.79	2.09	2.07	2.41
	Annualized Emission Reductions.	CO ₂ (Mt)	0.01	0.01	0.01	0.01	0.01	0.01
		NO _x (kT)	0.003	0.004	0.003	0.004	0.003	0.004
		Hg (T)	0.000	0.000	0.000	0.000	0.000	0.000
	Costs							
	Annualized Consumer Costs (\$millions/year).	2008\$	0.45	0.43	0.45	0.43	0.45	0.43
Net Consumer Benefits/Costs								
Net Consumer Benefits (excluding emission benefits) (\$millions/year).	2008\$	1.50	1.86	1.34	1.65	1.62	1.98	
2	Benefits							
	Annualized Consumer Benefits (\$millions/year).	2008\$	9.23	10.81	8.46	9.83	9.76	11.38
	Annualized Emission Reductions.	CO ₂ (Mt)	0.06	0.06	0.06	0.06	0.06	0.06
		NO _x (kT)	0.016	0.019	0.016	0.019	0.016	0.019
		Hg (T)	0.001	0.001	0.001	0.001	0.001	0.001
	Costs							
	Annualized Consumer Costs (\$millions/year).	2008\$	2.56	2.46	2.56	2.46	2.56	2.46
Net Consumer Benefits/Costs								
Net Consumer Benefits (excluding emission benefits) (\$millions/year).	2008\$	6.67	8.34	5.90	7.37	7.20	8.92	
3	Benefits							
	Annualized Consumer Benefits (\$millions/year).	2008\$	19.32	22.66	17.61	20.51	20.50	23.93
	Annualized Emission Reductions.	CO ₂ (Mt)	0.12	0.13	0.12	0.13	0.12	0.13
		NO _x (kT)	0.035	0.041	0.035	0.041	0.035	0.041
		Hg (T)	0.002	0.002	0.002	0.002	0.002	0.002
	Costs							
	Annualized Consumer Costs (\$millions/year).	2008\$	8.33	8.02	8.33	8.02	8.33	8.02
Net Consumer Benefits/Costs								
Net Consumer Benefits (excluding emission benefits) (\$millions/year).	2008\$	10.99	14.64	9.29	12.50	12.17	15.92	
4	Benefits							
	Annualized Consumer Benefits (\$millions/year).	2008\$	29.80	34.96	27.18	31.65	31.62	36.92
	Annualized Emission Reductions.	CO ₂ (Mt)	0.19	0.20	0.19	0.20	0.19	0.20
		NO _x (kT)	0.054	0.064	0.054	0.064	0.054	0.064
		Hg (T)	0.003	0.004	0.003	0.004	0.003	0.004

TABLE VI.37—ANNUALIZED BENEFITS AND COSTS FOR CLASS A MACHINES—Continued

TSL	Category	Unit	Primary estimate (AEO reference case)		Low estimate (low growth case)		High estimate (high growth case)	
			7%	3%	7%	3%	7%	3%
	Costs							
	Annualized Consumer Costs (\$millions/year).	2008\$	12.74	12.26	12.74	12.26	12.74	12.26
	Net Consumer Benefits/Costs							
	Net Consumer Benefits (excluding emission benefits) (\$millions/year).	2008\$	17.06	22.70	14.44	19.39	18.89	24.66
5	Benefits							
	Annualized Consumer Benefits (\$millions/year).	2008\$	34.83	40.87	31.72	36.95	36.98	43.19
	Annualized Emission Reductions.	CO ₂ (Mt)	0.22	0.24	0.22	0.24	0.22	0.24
		NO _x (kT)	0.064	0.036	0.064	0.036	0.064	0.036
		Hg (T)	0.004	0.004	0.004	0.004	0.004	0.004
	Costs							
	Annualized Consumer Costs (\$millions/year).	2008\$	16.10	15.50	16.10	15.50	16.10	15.50
	Net Consumer Benefits/Costs							
	Net Consumer Benefits (excluding emission benefits) (\$millions/year).	2008\$	18.73	25.37	15.63	21.46	20.88	27.69
6	Benefits							
	Annualized Consumer Benefits (\$millions/year).	2008\$	37.67	44.22	34.24	39.91	40.04	46.78
	Annualized Emission Reductions.	CO ₂ (Mt)	0.25	0.26	0.25	0.26	0.25	0.26
		NO _x (kT)	0.070	0.039	0.070	0.039	0.070	0.039
		Hg (T)	0.004	0.005	0.004	0.005	0.004	0.005
	Costs							
	Annualized Consumer Costs (\$millions/year).	2008\$	19.56	18.83	19.56	18.83	19.56	18.83
	Net Consumer Benefits/Costs							
	Net Consumer Benefits (excluding emission benefits) (\$millions/year).	2008\$	18.11	25.40	14.68	21.08	20.48	27.95
7	Benefits							
	Annualized Consumer Benefits (\$millions/year).	2008\$	(0.59)	1.02	(4.76)	(4.22)	2.30	4.13
	Annualized Emission Reductions.	CO ₂ (Mt)	0.30	0.32	0.30	0.32	0.30	0.32
		NO _x (kT)	0.085	0.048	0.085	0.048	0.085	0.048
		Hg (T)	0.005	0.006	0.005	0.006	0.005	0.006
	Costs							
	Annualized Consumer Costs (\$millions/year).	2008\$	141.02	135.74	141.02	135.74	141.02	135.74
	Net Consumer Benefits/Costs							
	Net Consumer Benefits (excluding emission benefits) (\$millions/year).	2008\$	(141.61)	(134.72)	(145.77)	(139.97)	(138.72)	(131.61)

TABLE VI.38—ANNUALIZED BENEFITS AND COSTS FOR CLASS B MACHINES—Continued

TSL	Category	Unit	Primary estimate (AEO reference case)		Low estimate (low growth case)		High estimate (high growth case)	
			7%	3%	7%	3%	7%	3%
	Costs							
	Annualized Consumer Costs (\$millions/year).	2008\$	5.72	5.51	5.72	5.51	5.72	5.51
	Net Consumer Benefits/Costs							
	Net Consumer Benefits (excluding emission benefits) (\$millions/year).	2008\$	(1.36)	(0.32)	(1.91)	(1.02)	(0.97)	0.09
5	Benefits							
	Annualized Consumer Benefits (\$millions/year).	2008\$	(7.83)	(8.30)	(9.32)	(10.18)	(6.80)	(7.18)
	Annualized Emission Reductions.	CO ₂ (Mt) ..	0.11	0.11	0.11	0.11	0.11	0.11
		NO _x (kT) ..	0.031	0.036	0.031	0.036	0.031	0.036
		Hg (T)	0.002	0.002	0.002	0.002	0.002	0.002
	Costs							
	Annualized Consumer Costs (\$millions/year).	2008\$	52.84	50.86	52.84	50.86	52.84	50.86
	Net Consumer Benefits/Costs							
	Net Consumer Benefits (excluding emission benefits) (\$millions/year).	2008\$	(60.67)	(59.16)	(62.16)	(61.04)	(59.63)	(58.05)
6	Benefits							
	Annualized Consumer Benefits (\$millions/year).	2008\$	(67.78)	(76.40)	(69.44)	(78.49)	(66.63)	(75.16)
	Annualized Emission Reductions.	CO ₂ (Mt) ..	0.12	0.13	0.12	0.13	0.12	0.13
		NO _x (kT) ..	0.034	0.040	0.034	0.040	0.034	0.040
		Hg (T)	0.002	0.002	0.002	0.002	0.002	0.002
	Costs							
	Annualized Consumer Costs (\$millions/year).	2008\$	171.92	165.49	171.92	165.49	171.92	165.49
	Net Consumer Benefits/Costs							
	Net Consumer Benefits (excluding emission benefits) (\$millions/year).	2008\$	(239.70)	(241.89)	(241.36)	(243.98)	(238.55)	(240.65)

VII. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

Executive Order 12866 requires that each agency identify in writing the problem the agency intends to address that warrants new agency action (including, where applicable, the failures of private markets or public institutions), as well as assess the significance of that problem to determine whether any new regulation is necessary. Executive Order 12866, section 1(b)(1).

Because today’s regulatory action is a significant regulatory action under section 3(f)(1) of Executive Order 12866, section 6(a)(3) of the Executive Order requires DOE to prepare and submit for review to the Office of Information and Regulatory Affairs (OIRA) in OMB an assessment of the costs and benefits of today’s rule. Accordingly, DOE presented to OIRA for review the draft final rule and other documents prepared for this rulemaking, including a regulatory impact analysis (RIA). These documents are included in the rulemaking record and are available for

public review in the Resource Room of the Building Technologies Program, 950 L’Enfant Plaza, SW., 6th Floor, Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

The May 2009 NOPR contained a summary of the RIA, which evaluated the extent to which major alternatives to standards for beverage vending machines could achieve significant energy savings at reasonable cost, as compared to the effectiveness of the proposed rule. 74 FR 26067–69. The complete RIA (Regulatory Impact

Analysis for Proposed Energy Conservation Standards for Beverage Vending Machines) is contained in the TSD prepared for today's rule. The RIA consists of: (1) A statement of the problem addressed by this regulation and the mandate for government action, (2) a description and analysis of the feasible policy alternatives to this regulation, (3) a quantitative comparison of the impacts of the alternatives, and (4) the national economic impacts of today's standards.

The major alternatives DOE analyzed were: (1) No new regulatory action; (2) financial incentives, including tax credits and rebates; (3) revisions to voluntary energy efficiency targets; (4) early replacement; (5) bulk government purchases; and (6) prescriptive standards that would mandate design requirements. As explained in detail in Section VI. of the May 2009 NOPR, none of the alternatives DOE examined would save as much energy or have an NPV as high as the proposed standards. The same conclusion applies to the standards in today's rule. Also, several of the alternatives would require new enabling legislation, because DOE does not have authority to implement those alternatives. Additional detail on the regulatory alternatives is found in the RIA chapter in the TSD.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, and a final regulatory flexibility analysis (FRFA) for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts. Also, as required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003 to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of General Counsel's Web site: <http://www.gc.doe.gov>.

For the beverage vending machine manufacturing industry, the SBA defines small businesses as manufacturing enterprises with 500 or

fewer employees. See http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf. DOE used this small business definition to determine whether any small entities would be required to comply with the rule. (65 FR 30836, 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (September 5, 2000) and codified at 13 CFR part 121.) The size standards are listed by North American Industry Classification System (NAICS) code and industry description. Beverage vending machine manufacturing is classified under NAICS 333311, "Automatic Vending Machine Manufacturing."

As explained in the May 2009 NOPR, the beverage vending machine industry is characterized by both large and small manufacturers that service a wide range of customers, including large bottlers and direct end-users. Almost all beverage vending machines sold in the United States are manufactured domestically. Three major companies supply roughly 90 percent of all equipment sold. Most of the sales for these companies are made to a few major bottlers. One of the major manufacturers with significant market share is considered a small business. The remaining 10 percent of industry shipments is believed to be supplied by five manufacturers. All of these companies not supplying the major bottlers are considered small businesses.

Before issuing this notice of proposed rulemaking, DOE contacted all identified small business manufacturers and provided a questionnaire seeking information to better understand the impacts of the proposed standards on small businesses and how these impacts differ between large and small manufacturers. The small business interview questionnaire is a condensed version of the manufacturer interview guide described in the manufacturer impact analysis, chapter 13 of the TSD.

In accordance with the Regulatory Flexibility Act, during the NOPR stage of this rulemaking, DOE prepared an IRFA which describes potential impacts on small businesses associated with beverage vending machine design and manufacture, and incorporates information received in response to the questionnaire. The IRFA addresses the following: (1) The reasons the regulatory action is being considered, (2) the objectives of and legal basis for the proposed rule, (3) a description and estimate of the number of small entities that would be affected by the rule, (4) an estimate of the reporting, recordkeeping, and other compliance costs for the proposed rule, (5) an analysis of significant alternatives to the

proposed rule that could lessen any disproportionate burdens on small entities, and (6) a discussion of any duplicative, overlapping, and conflicting rules. ("A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act, Chapter 2, Office of Advocacy, U.S. Small Business Administration, 2003," available at <http://www.sba.gov/advo/laws/rfaguide.pdf>) DOE divided the estimate of the compliance costs for small businesses into two categories representing potential impacts to small business manufacturers with major market shares, and potential impacts to small business manufacturers with small market shares. DOE also analyzed alternatives that could reduce the disproportionate impact of the proposed standards on small vending machine manufacturers. DOE provided the complete IRFA in the May 2009 NOPR, 74 FR 26069-72, for review by the Chief Counsel for Advocacy of the SBA and the public. Chapter 13 of the TSD contains more information about the impact of this rulemaking on manufacturers.

For today's final rule, DOE has prepared a FRFA, which is presented in the following discussion. DOE developed this FRFA for review by the Chief Counsel for Advocacy of the SBA and the public. The FRFA below is written in accordance with the requirements of the Regulatory Flexibility Act.

1. Need for and Objectives of the Final Rule

Part A of subchapter III (42 U.S.C. 6291-6309) provides for the Energy Conservation Program for Consumer Products Other Than Automobiles (this part was originally titled Part B, but was redesignated Part A after Part B of Title III was repealed by Pub. L. 109-58; similarly, Part C, Certain Industrial Equipment, was redesignated Part A-1). The amendments to EPCA contained in the EPACT 2005, Public Law 109-58, include new or amended energy conservation standards and test procedures for some of these products, and direct DOE to undertake rulemakings to promulgate such requirements. In particular, section 135(c)(4) of EPACT 2005 amends EPCA to direct DOE to prescribe energy conservation standards for beverage vending machines. (42 U.S.C. 6295(v)) Hence, DOE is publishing today's final rule on energy conservation standards for refrigerated bottle or canned beverage vending machines pursuant to Part A of EPCA. Because of its placement in Part A of Title III of EPCA, the rulemaking for beverage vending

machine energy conservation standards is bound by the requirements of 42 U.S.C. 6295. However, since beverage vending machines are commercial equipment, DOE intends to place the new requirements for beverage vending machines in Title 10 of the CFR, Part 431 (Energy Efficiency Program for Certain Commercial and Industrial Equipment), which is consistent with DOE's previous action to incorporate the EPACT 2005 requirements for commercial equipment. The location of the provisions within the CFR does not affect either their substance or applicable procedure, so DOE is placing them in the appropriate CFR part based on their nature or type.

EPCA provides that any new or amended standard for beverage vending machines must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and (v)) EPCA precludes DOE from adopting any standard that would not result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B) and (v)) Moreover, DOE may not prescribe a standard for certain equipment if no test procedure has been established for that equipment, or if DOE determines by rule that the standard is not technologically feasible or economically justified and will not result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(A)(B) and (v)) To determine whether economic justification exists, DOE reviews comments received and conducts analysis to determine whether the economic benefits of the proposed standard exceed the burdens to the greatest extent practicable, taking into consideration seven factors set forth in 42 U.S.C. 6295(o)(2)(B) and (v). (*See* section II.A of this preamble.)

EPCA also states that the Secretary may not prescribe an amended or new standard if interested parties have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States of any equipment type (or class) with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4) and (v))

As set forth above, DOE has determined that the standards adopted in today's rule are designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. DOE has also determined that the standards will result in a significant conservation of energy and will not result in the

unavailability in the United States of any equipment type or class with performance characteristics that are substantially the same as those generally available in the United States. Chapter 1 of the TSD provides further background information on this rulemaking.

2. Significant Issues Raised by Public Comments

DOE summarized comments from interested parties, including beverage vending machine manufacturers, in sections IV and V of this preamble. DOE did not receive any comments regarding impacts specific to small business manufacturers for the adoption of TSL 6 for Class A machines and TSL 3 for Class B machines in today's final rule or the alternatives identified in section 6 of the IRFA, "Significant Alternatives to the Rule." No changes were made to the IRFA as a result of public comment.

3. Description and Estimated Number of Small Entities Regulated

To establish a list of small beverage vending machine manufacturers, DOE examined publicly available data and contacted manufacturers to determine if they meet the SBA's definition of a small manufacturing facility and if their manufacturing facilities are located within the United States. Based on this analysis, DOE confirmed that there are six small manufacturers of beverage vending machines.

One of these six small manufacturers is one of the top three major manufacturers, who supply roughly 90 percent of all equipment sales. The full line of products offered by this small manufacturer and the remaining two major manufacturers, which are considered large businesses, are covered under this rulemaking (*i.e.*, equipment that dispenses refrigerated bottled or canned beverages). The remaining five small manufacturers comprise approximately 10 percent of industry shipments for covered equipment. *See* chapter 3 of the TSD for further details on the beverage vending machine market. In its examination of the beverage vending machine industry, DOE has determined that these small business manufacturers with small market shares differ significantly from the major manufacturers. The primary difference between these small business manufacturers and the major manufacturers is that these five small business manufacturers produce a wide variety of specialty and niche equipment that are not covered under this rulemaking, such as machines that dispense a wide range of items including snacks, heated drinks,

electronic goods, DVDs, bowling supplies, and medical products. Furthermore, unlike the major manufacturers, these small business manufacturers do not sell equipment to the major bottlers because they do not produce covered equipment in the necessary volumes. Instead, these manufacturers rely on providing customized equipment in much smaller volumes.

Before issuing the NOPR, requests for interviews were delivered electronically to the six manufacturers that met the small business criteria. DOE received responses from fewer than half and conducted an on-site interview with the single manufacturer who agreed to be interviewed. In the questionnaire and during the interview, DOE requested information that would determine if there are differential impacts on small manufacturers that may result from new energy conservation standards. *See* chapter 13 of the TSD for further discussion about the methodology DOE used in its analysis of manufacturer impacts, including small manufacturers.

4. Description and Estimate of Reporting, Recordkeeping, and Other Compliance Requirements

Potential impacts on manufacturers include impacts associated with beverage vending machine design and manufacturing. The level of research and development needed to meet energy conservation standards increases with more stringent standards. As mentioned previously, DOE examined the level of impacts that small manufacturers would incur by identifying small business manufacturers and sending them a short questionnaire seeking information to better understand the impacts of the proposed standard that are unique to small manufacturers. Because not all of the small business manufacturers responded to the questionnaire, it is difficult to specifically quantify how the impacts of the proposed standards differ between large and small manufacturers. However, as explained below, DOE found that the impacts of the proposed standard on the small business manufacturer with a major market share would not differ greatly from those of its larger competitors; the impacts would not be significant for the remaining small business manufacturers.

a. Small Business Manufacturer With a Major Market Share

The small business manufacturer that has a major market share in covered equipment will not be disproportionately disadvantaged by the proposed standard. It has a large shipment volume as a major supplier to

the large bottlers and its access to capital is nearly identical to its larger competitors. Its large shipment volume allows it to distribute the added cost of compliance across its products, similar to the large manufacturers. Correspondingly, it echoed the large manufacturers' concerns about new energy conservation standards, including conversion costs needed to meet standards, meeting customer needs, and current market conditions. DOE found no significant differences in the R&D emphasis or marketing strategies between this small business manufacturer with a major market share and large manufacturers. As a result, DOE does not believe the impacts of the proposed standard will be significantly different for the small business manufacturer with a large market share when compared to those expected for the large business manufacturers.

b. Small Business Manufacturers With Small Market Shares

DOE does not expect the small businesses with small market shares to be compromised by the energy conservation standard finalized in today's rule. DOE estimates that only approximately 40 percent of their offered vending equipment is covered by the standard. The majority of equipment offered is specialty or niche equipment. As a result, the primary source of revenue for these small manufacturers comes from supplying a market underserved by the major manufacturers of covered equipment. These small manufacturers may balance the cost disadvantage experienced in making their covered equipment compliant with today's standard by charging premium prices for their non-covered niche equipment. As a result, DOE believes the standard will not affect the competitive position of the small business manufacturers with small market shares in covered equipment.

DOE was able to estimate a portion of the differential impacts of the standard on the small manufacturers with small market shares by evaluating costs associated with equipment testing and certification. Manufacturers must test the energy performance of each basic model it manufactures to determine compliance with energy conservation standards and testing requirements. Therefore, DOE examined the number of basic models available from each manufacturer to determine an estimate for the differential in overall compliance costs. The number of basic models attributed to each manufacturer is based on an examination of the different models advertised by each. DOE

estimates the cost of testing a piece of covered equipment to be approximately \$2,000. A typical major manufacturer has approximately 23 basic models, approximately 85 percent of which are covered and would require separate standards compliance certifications. Therefore, DOE estimates that a typical major manufacturer will incur approximately \$44,013 in annual costs for standards compliance certifications. DOE estimates that a typical small manufacturer with small market share has approximately 27 basic models, 44 percent of which are covered and would require separate standards compliance certifications. DOE estimates that a typical small manufacturer will incur approximately \$14,380 in annual costs for standards compliance certifications. According to this comparison, the cost of certification for a small manufacturer with small market share is significantly lower than that of a major manufacturer.

As stated above, DOE estimated that there would be some differential impacts associated with beverage vending machine design and manufacturing on small manufacturers. DOE requested comments on how small business manufacturers would be affected due to new energy conservation standards. Specifically, DOE requested comments on the compliance costs and other impacts to small manufacturers that do not supply the high-volume customers of beverage vending machines. However, DOE did not receive any comments regarding impacts specific to small business manufacturers.

5. Steps DOE Has Taken To Minimize the Economic Impact on Small Manufacturers

In consideration of the benefits and burdens of standards, including the burdens posed on small manufacturers, DOE concluded that TSL 6 for Class A machines and TSL 3 for Class B machines are the highest levels that can be justified for beverage vending machines. Therefore, while the lower TSLs analyzed may lessen the impacts on small entities, DOE is precluded from adopting them based on the requirements of EPCA.

Section VI.C.2 discusses how business impacts, including small business impacts, entered into DOE's selection of today's standards for beverage vending machines. DOE made its decision regarding standards by beginning with the highest level considered (TSL 7 for Class A machines and TSL 6 for Class B machines) and successively eliminating TSLs until it found a TSL that is both technically feasible and economically justified, taking into

account other EPCA criteria. DOE expects today's standard to have little or no differential impact on small manufacturers of beverage vending machines.

As explained in part 6 of the IRFA, Significant Alternatives to the Rule, DOE expects that the differential impact on small beverage vending machine manufacturers would be less severe in moving from TSL 5 to TSL 6 for Class A than it would be in moving from TSL 6 to TSL 7. For Class B machines, DOE expects that the differential impact on small beverage vending machine manufacturers would be less significant in moving from TSL 2 to TSL 3 than it would be in moving from TSL 4 to TSL 5. Higher TSLs would place excessive burdens on manufacturers, including small manufacturers of beverage vending machines. Such burdens would include research and development costs and also a potential reduction of profit margins by limiting the flexibility of customers to choose design options. However, the differential impact on small businesses is expected to be lower at TSL 6 for Class A machines and TSL 3 for Class B machines because research and development efforts are less at lower TSLs. Chapter 13 of the TSD contains additional information about the impact of this rulemaking on manufacturers.

The TSD includes a regulatory impact analysis (RIA) (chapter 17), which discusses the following policy alternatives to the standards announced today that may lessen impacts on small entities: (1) No new regulatory action, (2) financial incentives including rebates or tax credits, (3) revisions to voluntary energy efficiency targets such as ENERGY STAR program criteria, (4) bulk government purchases, (5) early replacement incentive programs, and (6) prescriptive standards that would mandate design requirements (e.g., lighting and refrigeration controls). DOE did not consider these alternatives further because they are either not feasible to implement, or not expected to result in energy savings as large as those that would be achieved by the standard levels under consideration.

DOE considered the following alternatives in its IRFA in accordance with Section 603(c) of the RFA: (1) Establishment of different compliance or reporting requirements for small entities or timetables that take into account the resources available to small entities, (2) clarification, consolidation, or simplification of compliance and reporting requirements for small entities, (3) use of performance rather than design standards, and (4) exemption for certain small entities

from coverage of the rule, in whole or in part. For reasons described in the May 2009 NOPR, DOE did not choose any of these alternatives to the proposed rule. 73 FR 26071–26072.

C. Review Under the Paperwork Reduction Act

DOE stated in the May 2009 NOPR that this rulemaking would impose no new information and recordkeeping requirements, and that OMB clearance is not required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). 74 FR 26072. DOE received no comments on this in response to the May 2009 NOPR, and, as with the proposed rule, today's final rule imposes no information and recordkeeping requirements. Therefore, DOE has taken no further action in this rulemaking with respect to the Paperwork Reduction Act.

D. Review Under the National Environmental Policy Act

DOE prepared an environmental assessment of the impacts of today's standards which it published as chapter 16 within the TSD for the final rule. DOE found the environmental effects associated with today's various standard levels for beverage vending machines to be insignificant. Therefore, DOE is issuing a FONSI pursuant to NEPA (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and DOE's regulations for compliance with NEPA (10 CFR part 1021). The FONSI is available in the docket for this rulemaking.

E. Review Under Executive Order 13132

DOE reviewed this rule pursuant to Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999), which imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. In accordance with DOE's statement of policy describing the intergovernmental consultation process it will follow in the development of regulations that have federalism implications, 65 FR 13735 (March 14, 2000), DOE examined the May 2009 proposed rule and determined that the rule would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. 74 FR 26072. DOE received no comments on this issue in response to the May 2009 NOPR, and its conclusions on this issue are the same for the final rule as they

were for the proposed rule. Therefore, DOE has taken no further action in today's final rule with respect to Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the final regulations meet the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

As indicated in the May 2009 NOPR, DOE reviewed the proposed rule under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), which imposes requirements on Federal agencies when their regulatory actions will have certain types of impacts on State, local, and Tribal governments and the private sector. 74 FR 26073. DOE concluded that this rule would not contain an intergovernmental mandate, nor result in expenditures of \$100 million or more in one year by the private sector. *Id.* In the May 2009 NOPR, DOE addressed the UMRA requirements to prepare a statement as to the basis, costs, benefits, and economic impacts of the proposed rule, and that it identify and consider regulatory alternatives to the proposed

rule. *Id.* DOE received no comments concerning the UMRA in response to the May 2009 NOPR, and its conclusions on this issue are the same for the final rule as they were for the proposed rule. Therefore, DOE has taken no further action in today's final rule with respect to the UMRA.

H. Review Under the Treasury and General Government Appropriations Act, 1999

DOE determined that, for this rulemaking, it need not prepare a Family Policymaking Assessment under Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277). *Id.* DOE received no comments concerning Section 654 in response to the May 2009 NOPR, and, therefore, has taken no further action in today's final rule with respect to this provision.

I. Review Under Executive Order 12630

DOE determined under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that today's rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution. 74 FR 26073. DOE received no comments concerning Executive Order 12630 in response to the May 2009 NOPR, and, therefore, has taken no further action in today's final rule with respect to this Executive Order.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to OIRA a Statement of Energy Effects for any significant

energy action. DOE determined that today's rule, which sets energy conservation standards for beverage vending machines, is not a "significant energy action" within the meaning of Executive Order 13211. 74 FR 26073. Accordingly, DOE did not prepare a Statement of Energy Effects on the proposed rule. DOE received no comments on this issue in response to the May 2009 NOPR. As with the proposed rule, DOE has concluded that today's final rule is not a significant energy action within the meaning of Executive Order 13211, and has not prepared a Statement of Energy Effects on the final rule.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology, issued its "Final Information Quality Bulletin for Peer Review" (the Bulletin). 70 FR 2664 (January 14, 2005). The purpose of the Bulletin is to enhance the quality and credibility of the Government's scientific information. The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government. As indicated in the May 2009 NOPR, this includes influential scientific information related to agency regulatory actions, such as the analyses in this rulemaking. 74 FR 26073-74.

As set forth in the May 2009 NOPR, DOE held formal in-progress peer reviews of the types of analyses and processes that DOE has used to develop the energy efficiency standards in today's rule, and issued a report on these peer reviews. The report is available at http://www.eere.energy.gov/buildings/appliance_standards/peer_review.html. *Id.*

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is a "major rule" as defined by 5 U.S.C. 804(2). DOE also will submit the supporting analyses to the Comptroller General in the U.S. Government Accountability Office (GAO) and make them available to each House of Congress.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's final rule.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Incorporation by reference.

Issued in Washington, DC, on August 5, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

■ For the reasons set forth in the preamble, chapter II of title 10, Code of Federal Regulations, part 431 is amended to read as set forth below.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291-6317.

■ 2. In § 431.292 add, in alphabetical order, new definitions for "bottled or canned beverage," "Class A," "Class B," "combination vending machine," and "V" to read as follows:

§ 431.292 Definitions concerning refrigerated bottled or canned beverage vending machines.

* * * * *

Bottled or canned beverage means a beverage in a sealed container.

Class A means a refrigerated bottled or canned beverage vending machine that is fully cooled, and is not a combination vending machine.

Class B means any refrigerated bottled or canned beverage vending machine not considered to be Class A, and is not a combination vending machine.

Combination vending machine means a refrigerated bottled or canned beverage vending machine that also has non-refrigerated volumes for the purpose of vending other, non-"sealed beverage" merchandise.

* * * * *

V means the refrigerated volume (ft³) of the refrigerated bottled or canned beverage vending machine, as measured by ANSI/AHAM HRF-1-2004 (incorporated by reference, see § 431.293).

■ 3. Section 431.293 is revised to read as follows:

§ 431.293 Materials incorporated by reference.

(a) *General.* DOE incorporates by reference the following standards into Subpart Q of Part 431. The material listed has been approved for incorporation by reference by the Director of the Federal Register in

accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any subsequent amendment to a standard by the standard-setting organization will not affect the DOE regulations unless and until amended by DOE. Material is incorporated as it exists on the date of the approval and a notice of any change in the material will be published in the **Federal Register**. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030 or visit http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. This material is also available for inspection at U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, 202-586-2945, or visit http://www1.eere.energy.gov/buildings/appliance_standards. Standards can be obtained from the sources listed below.

(b) *ANSI.* American National Standards Institute, 25 W. 43rd Street, 4th Floor, New York, NY 10036, 212-642-4900, or visit <http://www.ansi.org>.

(1) ANSI/AHAM HRF-1-2004, Energy, Performance and Capacity of Household Refrigerators, Refrigerator-Freezers and Freezers, approved July 7, 2004, IBR approved for §§ 431.292 and 431.294.

(2) ANSI/ASHRAE Standard 32.1-2004, Methods of Testing for Rating Vending Machines for Bottled, Canned, and Other Sealed Beverages, approved December 2, 2004, IBR approved for § 431.294.

■ 4. In Subpart Q, add an undesignated center heading and § 431.296 to read as follows:

Energy Conservation Standards

§ 431.296 Energy conservation standards and their effective dates.

Each refrigerated bottled or canned beverage vending machine manufactured on or after [Insert date 3 years from the date of publication of this final rule] shall have a maximum daily energy consumption (in kilowatt hours per day), when measured at the 75 °F ± 2 °F and 45 ± 5% RH condition, that does not exceed the following:

Equipment class	Maximum daily energy consumption (kilowatt hours per day)
Class A	MDEC = 0.055 × V + 2.56.
Class B	MDEC = 0.073 × V + 3.16.
Combination Vending Machines	[RESERVED].

[The following letter from the Department of Justice will not appear in the Code of Federal Regulations.]

Appendix

Department of Justice

Antitrust Division.

Christine A. Varney

Assistant Attorney General.

Main Justice Building, 950 Pennsylvania Avenue, NW., Washington, DC 20530-0001, (202) 514-2401/(202) 616-2645 (f), E-mail: antitrust@justice.usdoj.gov, Web site: <http://www.usdoj.gov>.

July 23, 2009.

Eric J. Fygi, Deputy General Counsel, Department of Energy, Washington, DC 20585.

Dear Deputy General Counsel Fygi: I am responding to your May 22, 2009 letter seeking the views of the Attorney General about the potential impact on competition of proposed energy conservation standards for Class A and Class B refrigerated beverage vending machines ("BVMs"). Your request was submitted pursuant to Section 325(o)(2)(B)(i)(V), which requires the

Attorney General to make a determination of the impact of any lessening of competition that is likely to result from the imposition of proposed energy conservation standards. The Attorney General's responsibility for responding to requests from other departments about the effect of a program on competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 CFR 0.40(g).

In conducting its analysis the Antitrust Division examines whether a proposed standard may lessen competition, for example, by substantially limiting consumer choice, leaving consumers with fewer competitive alternatives, placing certain manufacturers of a product at an unjustified competitive disadvantage compared to other manufacturers, or by inducing avoidable inefficiencies in production or distribution of particular products.

We have reviewed the proposed standard contained in the Notice of Proposed Rulemaking ("NOPR") (74 FR 26020) and attended the June 17, 2009 public hearing on the proposed standard. In addition, we have conducted interviews with members of the industry.

Based on our review of the record and information we have gathered, we do not

believe the proposed standard for Class B BVMs would likely lead to a lessening of competition. We are concerned, however, that the proposed Trial Standard Level 6 for Class A BVMs could potentially lessen competition. BVM manufacture is a highly concentrated industry in the United States, and compliance with the proposed Class A standard could require a disproportionate investment by some manufacturers, potentially placing them at a disadvantage vis-à-vis others and leading to greater concentration. Compliance with a lesser standard does not appear to raise similar concerns.

We ask the Department of Energy to take this possible competitive impact into account. We further ask the Department of Energy to ensure that the standard it adopts for Class A BVMs will not require access to intellectual property owned by an industry participant, which would place other industry participants at a comparative disadvantage.

Sincerely,
Christine A. Varney,
Assistant Attorney General.

[FR Doc. E9-19392 Filed 8-28-09; 8:45 am]

BILLING CODE 6450-01-P



Federal Register

**Monday,
August 31, 2009**

Part III

Department of Homeland Security

Coast Guard

**33 CFR Parts 151, 155, and 160
Nontank Vessel Response Plans and
Other Vessel Response Plan
Requirements; Proposed Rule**

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Parts 151, 155, and 160**

[Docket No. USCG–2008–1070]

(RIN 1625–AB27)

Nontank Vessel Response Plans and Other Vessel Response Plan Requirements**AGENCY:** Coast Guard, DHS.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security, United States Coast Guard, proposes this nontank vessel response plan rulemaking to further protect the Nation from the threat of oil spills in the maritime domain. The rule proposes regulations requiring owners or operators of nontank vessels to prepare and submit oil spill response plans. The Federal Water Pollution Control Act defines nontank vessels as self-propelled vessels of 400 gross tons or greater that operate on the navigable waters of the United States, carry oil of any kind as fuel for main propulsion, and are not tank vessels. The proposed rule would specify the content of a response plan, and among other issues, address the requirement to plan for responding to a worst case discharge and a substantial threat of such a discharge. Additionally, this proposed rule would update the international Shipboard Oil Pollution Emergency Plan (SOPEP) requirements that apply to certain nontank vessels and tank vessels. Finally, this proposed rule would require vessel owners and operators to submit their vessel response plan control number as part of already required notice of arrival information. This rulemaking supports the Coast Guard's strategic goals of protection of natural resources and maritime mobility.

DATES: Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before November 30, 2009 or reach the Docket Management Facility by that date. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before November 30, 2009.

ADDRESSES: You may submit comments identified by docket number USCG–2008–1070 using any one of the following methods:

- (1) *Federal eRulemaking Portal:*
<http://www.regulations.gov>.
(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these methods. For instructions on submitting comments, see the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below.

Collection of Information Comments: If you have comments on the collection of information, you must also send comments to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget. To ensure that your comments to OIRA are received on time, the preferred methods are by e-mail to oira_submission@omb.eop.gov (include the docket number and “Attention: Desk Officer for Coast Guard, DHS” in the subject line of the e-mail) or fax at 202–395–6566. An alternate, though slower, method is by U.S. mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Lieutenant Jarrod DeWitz, U.S. Coast Guard, Office of Vessel Activities, Vessel Response Plan Review Team, telephone (202) 372–1219. You may also e-mail questions to Jarrod.M.DeWitz@uscg.mil.

Note: The technical expertise for the development of this proposed rule is credited to Commander Rob Smith. If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

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I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–1070), indicate the specific section of this document to which each comment applies, and give your reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means.

To submit your comment online, go to <http://www.regulations.gov> and click on the “submit a comment” box, which will then become highlighted in blue. Insert “USCG–2008–1070” in the Keyword box, click “Search”, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider

all comments and material received during the comment period and may change this proposed rule based on your comments.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> at any time. Enter the docket number for this rulemaking (USCG–2008–1070) in the Keyword box, and click “Search”. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

D. Public Meeting

We plan to hold one or more public meetings. The time and place of each public meeting will be announced by a later notice in the **Federal Register**.

II. Abbreviations

2004 Act Coast Guard and Maritime Transportation Act of 2004 (Pub. L. 108–293, 118 Stat. 102)
 2006 Act Coast Guard and Maritime Transportation Act of 2006 (Pub. L. 109–241, 120 Stat. 516)
 AMPD Average most probable discharge
 BLS Bureau of Labor Statistics
 CAP Capability
 CFR Code of Federal Regulations
 COTP Captain of the Port
 DHS Department of Homeland Security
 DOT Department of Transportation
 EDAC Effective daily application capability
 EEZ Exclusive economic zone
 eNOAD Electronic Notice of Arrival/Departure
 FOSC Federal On-Scene Coordinator
 FWPCA Federal Water Pollution Control Act (33 U.S.C. 1251 through 1387)
 GSA Geographic-specific appendix
 IAP Incident Action Plan
 IMO International Maritime Organization
 IOPP International Oil Pollution Prevention
 ISM International Ship Management
 ITB Integrated tug barge

MARPOL International Convention for the Prevention of Pollution from Ships
 MEPC Marine Environment Protection Committee
 MISLE Marine Information for Safety and Law Enforcement
 MMPD Maximum most probable discharge
 MOA Memorandum of Agreement
 MOU Memorandum of Understanding
 MTR Marine transportation-related
 NCP National Oil and Hazardous Substances Pollution Contingency Plan (also known as National Contingency Plan)
 NLS Noxious Liquid Substance
 NM Nautical mile
 NOA Notice of arrival
 NTVRP Nontank vessel response plan
 NVIC Navigation and Vessel Inspection Circular
 NVMC National Vessel Movement Center
 OCIMF Oil Companies International Marine Forum
 OMB Office of Management and Budget
 OPA 90 Oil Pollution Act of 1990 (Pub. L. 101–380, 104 Stat 484)
 OSRO Oil spill removal organization
 PV Present value
 P&I Protection and Indemnity
 PREP National Preparedness for Response Exercise Program
 PWSA Ports and Waterways Safety Act (Pub. L. 92–340, 86 Stat. 424)
 QI Qualified individual
 SBA Small Business Administration
 SLS Saint Lawrence Seaway
 SLSDC Saint Lawrence Seaway Development Corporation
 SOPEP Shipboard oil pollution emergency plans
 SMT Spill management team
 TVRP Tank vessel response plan
 VRP Vessel response plan
 UNCLOS United Nations Convention on the Law of the Sea, 1982
 U.S.C. United States Code
 WCD Worst case discharge

III. Background and Purpose

This proposed rule is intended to improve our nation’s pollution response planning and preparedness posture and help limit the environmental damage resulting from nontank vessel marine casualties.

In recent years, several catastrophic nontank vessel oil spills have threatened the marine environment along the coastal areas of the United States. Among these spills were—

- The grounding of the M/V NEW CARISSA on the Oregon coast on February 4, 1999, during a storm, which resulted in the loss of the vessel and a spill of approximately 70,000 gallons of the 400,000 gallons of “Bunker C” fuel oil on board;
- The grounding of the M/V SELENDANG AYU in the Aleutian Islands of Alaska on December 8, 2004, during a storm, which resulted in the loss of the vessel and a spill of approximately 336,000 gallons of fuel oil and diesel fuel; and

- The allision of the M/V COSCO BUSAN with the San Francisco-Oakland Bay Bridge in San Francisco Bay on November 7, 2007, in foggy conditions, which resulted in severe damage to the vessel and a spill of approximately 53,000 gallons of fuel oil.

Each of these spills resulted in damage to the marine environment, including the loss of fish and wildlife. The spills have also affected key maritime industry stakeholders by disrupting maritime commerce and normal operations in the affected ports and waterways.

Groundings, allisions, and collisions are among the many types of casualties that may befall any vessel while at sea or in port. Congress enacted the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380, 104 Stat 484) following a series of tank vessel casualties, including most notably the grounding of the M/V EXXON VALDEZ on March 24, 1989, on Bligh Reef in Prince William Sound near Valdez, Alaska. OPA 90, which applies primarily to tank vessels, focuses on preventing and mitigating oil spills via actions in several broad areas, including Liability and Compensation, Prevention, Preparedness, Response, and Research and Development. Simultaneously at the international level, the International Maritime Organization (IMO) enhanced worldwide pollution prevention and response standards with a series of amendments to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78). Finally, in 2004 and 2006, Congress amended the Federal Water Pollution Control Act (FWPCA), section 311(j)(5), to require tank and nontank vessel owners and operators to prepare and submit oil and hazardous substance discharge response plans to the Coast Guard. The following sections will summarize these domestic and international pollution preparedness and planning actions.

A. Tank and Nontank Vessels—Oil and Hazardous Substance Discharge Response Plan Legislation

Section 311(j)(5) of the Federal Water Pollution Control Act, 33 U.S.C. 1321(j)(5), as established by section 4202 of the Oil Pollution Act of 1990; and as amended by the Coast Guard and Maritime Transportation Act of 2004 (the 2004 Act), Pub. L. 108–293, 118 Stat. 102, and the Coast Guard and Maritime Transportation Act of 2006 (the 2006 Act), Pub. L. 109–241, 120 Stat. 516, sets out a statutory mandate requiring tank and nontank vessel owners or operators to prepare and submit oil or hazardous substance discharge response plans for certain

vessels operating on the navigable waters of the United States. A response plan under this legislation must:

- Be consistent with the requirements of the National Contingency Plan and Area Contingency Plans¹;
- Identify the qualified individual having full authority to implement removal actions, and require immediate communications between that individual and the appropriate Federal official and the persons providing personnel and equipment;
- Identify, and ensure by contract or other approved means the availability of, private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge;
- Describe the training, equipment testing, periodic unannounced drills, and response actions of persons on the vessel or at the facility, to be carried out under the plan to ensure the safety of the vessel or facility and to mitigate or prevent the discharge, or the substantial threat of a discharge;
- Be updated periodically; and
- Be resubmitted for approval of each significant change.

B. Tank Vessels

The response plan regulations for tank vessels were established during a previous rulemaking (61 FR 1052, January 12, 1996) and are located at 33 CFR part 155, subpart D. It is important to briefly discuss those regulations, because the proposed rule for nontank vessels is similar to the tank vessel regulations.

Congress enacted OPA 90 in response to several marine pollution incidents. Section 4202 of OPA 90 amended section 311(j) of the FWPCA (33 U.S.C. 1321(j)) by, among other requirements, requiring tank vessel owners or operators to prepare and submit a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge of oil or a hazardous substance. With the exceptions listed in paragraph (c) of 33 CFR 155.1015, these tank vessel response plan requirements apply to each vessel that carries oil in bulk as cargo or oil cargo residue, and that:

- Is a vessel of the United States;
- Operates on the navigable waters of the United States; or

- Transfers oil in a port or place subject to the jurisdiction of the United States.

These requirements also apply to each vessel that engages in oil lightering operations in the marine environment beyond the baseline from which the territorial sea is measured, when the cargo lightered is destined for a port or place subject to the jurisdiction of the United States.

C. Nontank Vessels

On August 9, 2004, the President signed the Coast Guard and Maritime Transportation Act of 2004. Section 701 of the 2004 Act amended subsections 311(a) and (j) of the FWPCA by requiring nontank vessel owners or operators to prepare and submit oil discharge response plans no later than August 8, 2005. The 2004 Act defines a “nontank vessel” as a self-propelled vessel of 400 gross tons or greater, other than a tank vessel, that carries oil of any kind as fuel for main propulsion, and that is a vessel of the United States or operates on the navigable waters of the United States.

In addition to the preparation and submission of response plans by nontank vessel owners or operators, the 2004 Act also requires the issuance of response plan regulations detailing the requisite components of a response plan. In consideration of the time required to publish the regulations, and in an effort to assist industry in meeting the August 2005 statutory deadline, the Coast Guard announced the availability of the Navigation and Vessel Inspection Circular 01–05 (NVIC 01–05) in the **Federal Register** on February 16, 2005 (70 FR 7955). NVIC 01–05 provides the public with guidance on the preparation and submission of oil spill response plans until regulations are in effect.

Later, on June 24, 2005, the Coast Guard published further response plan guidance in a Notice and Request for Comments (70 FR 36649). That notice addressed concerns on the size of the vessel population to be affected by the 2004 Act; Coast Guard’s enforcement of the 2004 Act; and the Coast Guard’s actions to assist the public in conforming to the mandates of the 2004 Act.

In February 2006, as a result of questions received from the marine industry, the Coast Guard announced the availability of Change 1 to NVIC 01–05 (71 FR 9367, February 23, 2006). Change 1 to NVIC 01–05 provided guidance to the public on how to draft a nontank vessel response plan, suggested plan content, and addressed issues of concern regarding the development of these plans.

Additionally, NVIC 01–05 Change 1 discusses the Coast Guard process for issuing Interim Operating Authorization letters to nontank vessel owners or operators to document interim compliance with 33 U.S.C. 1321(j)(5).

Finally, in July 2006, Congress amended the definition of nontank vessel in the Coast Guard and Maritime Transportation Act of 2006 (2006 Act). Section 608 of the 2006 Act clarified the tonnage applicability of this statutory requirement, and therefore this proposed rule, by setting the tonnage threshold as 400 gross tons or greater, as measured under the convention measurement system in 46 U.S.C. 14302 or the regulatory measurement system of 46 U.S.C. 14502 for vessels not measured under 46 U.S.C. 14302. The 2006 Act further established that it applies to vessels that operate on the navigable waters of the United States, and it referenced a 12 nm territorial seas for those navigable waters, as defined in 46 U.S.C. 2101.

D. Access to the NVICs

A copy of the nontank vessel response plan NVICs can be found in the docket at <http://www.regulations.gov> and at <http://www.uscg.mil/hq/g-m/nvic/>. For those individuals without internet access, a copy of the NVIC may be obtained by contacting the Vessel Response Plan (VRP) Program staff at 202–372–1209 or your local U.S. Coast Guard Sector Office.

E. Shipboard Oil Pollution Emergency Plan (SOPEP)

In addition to establishing a regulation for the preparation and submission of oil spill response plans for nontank vessels, this proposed rule would align our domestic shipboard oil pollution emergency plan (SOPEP) requirements in 33 CFR 151.26 with the current international SOPEP requirements reflected in Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, as amended (MARPOL Annex I).

MARPOL Annex I contains international regulations for the prevention of pollution by oil. The Act to Prevent Pollution from Ships (33 U.S.C. 1901 *et seq.*) authorizes the Coast Guard to administer and enforce MARPOL Annex I and certain other MARPOL Annexes.

In 1991, in response to Article 3(1)(a) of the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990, the Marine Environment Protection Committee (MEPC) of the International Maritime Organization (IMO) adopted MARPOL

¹ FWPCA elements require consistency with 40 CFR 300.210 (Federal contingency plans section of the National Contingency Plan (NCP)).

Annex I, Regulation 26. This regulation established an international requirement for SOPEPs and set out:

- Procedures to be followed to report an oil spill;
- Requirements to provide a list of authorities or persons to be contacted in the event of an oil pollution incident;
- Requirements to provide a detailed description of the immediate actions to mitigate the impact of a spill; and
- Procedures and point of contact information for coordinating shipboard action with national and local authorities in combating a pollution incident.

In 1994, the Coast Guard issued regulations requiring all U.S. flag oil tankers of 150 gross tons and above and all other U.S. flag ships of 400 gross tons and above to carry approved SOPEPs (59 FR 51332, October 7, 1994). These regulations in 33 CFR part 151 implemented the requirements of Regulation 26 of MARPOL Annex I and required foreign oil tankers of 150 gross tons and above and other foreign ships of 400 gross tons and above to carry on board a SOPEP approved by its flag State as evidence of compliance with Regulation 26 when in the navigable waters of the United States.

Since 1994, the Coast Guard has updated our SOPEP regulations twice. Once, in 1997, to implement the provisions of Article 15 of the Protocol on Environmental Protection to the Antarctic Treaty and address response to pollution from vessels (62 FR 18045, April 14, 1997) and once in 2001, when we inserted a reference to IMO Resolution A.851(20) that had superseded an earlier IMO resolution (66 FR 55571, November 2, 2001).

In 2004, the IMO MEPC adopted Resolution MEPC.117(52) that revised MARPOL Annex I and redesignated Regulation 26 as Regulation 37. This revision incorporated new SOPEP guidelines from IMO Resolution MEPC.86(44), which are intended to assist parties to MARPOL Annex I in developing regulations for domestic implementation of Regulation 37. These changes to Regulation 37 pertain to required SOPEP text, additional categories addressing steps to control discharges, crew personnel assignments, and required notifications. Also, Regulation 37 requires all oil tankers of 5,000 tons deadweight or more to have prompt access to computerized, shore-based damage stability and residual structural strength calculation programs. While the oil tanker amendment is already reflected elsewhere in our domestic regulation, 33 CFR 155.240, this proposed rule would align our domestic SOPEP requirements in 33

CFR 151.26 with the current international SOPEP requirements reflected in MARPOL Annex I, Regulation 37.

F. Notice of Arrival Requirements and Vessel Response Plans

Under authority of the Ports and Waterways Safety Act (PWSA) (Pub. L. 92-340, 86 Stat. 424), as amended, the Coast Guard has established notice of arrival (NOA) requirements in 33 CFR part 160. These NOA regulations require certain vessels bound for a U.S. port or place to submit information to the Coast Guard, including information about the vessel and its voyage.

These NOA regulations do not currently require submission of the vessel response plan control number assigned by the Coast Guard to VRPs. For purposes of protecting navigation and the marine environment, this VRP-related addition to NOA reporting requirements is being proposed under authority of section 4 of the PWSA, 33 U.S.C. 1223. This additional information would better enable the Coast Guard to determine if a vessel has an approved VRP geographic-specific appendix (GSA) for the Captain of the Port (COTP) zone in which the vessel intends to call.

G. Customary International Law: Innocent Passage and Transit Passage

Innocent Passage

The Supreme Court has long held that, unless no other construction is possible, statutes of Congress must be construed consistent with those principles of international law recognized by the United States. *Lauritzen v. Larsen*, 345 U.S. 571, 578 (1953); *Murray v. The Charming Betsey*, 6 U.S. (2 Cranch.) 64, 118 (1804). The Coast Guard interprets “innocent passage” in territorial seas consistent with customary international law as reflected in the 1982 United Nations Convention on the Law of the Sea (UNCLOS), principally articles 17 through 21. In 1983, President Reagan issued policy guidance for the Federal government, requiring compliance with the navigational provisions of the UNCLOS. All subsequent Administrations have confirmed that approach to the law of the sea, and have sought to promote the inclusive rights of innocent passage and transit passage in coastal waters worldwide.

Existing vessel response plan regulations for tank vessels in 33 CFR part 155, subpart D, apply to vessels that operate on the navigable waters of the United States or transfer oil in a port or place subject to the jurisdiction of the

United States, but specifically exclude foreign flag vessels merely engaged in innocent passage. See 33 CFR 155.1015(c)(7). In this proposed rule, we are expanding the jurisdictional scope of the regulations. However, we have included an exception for foreign nontank vessels engaged in innocent passage. See proposed 33 CFR 155.1015(c)(7) and 155.5015(c)(2).

The requirement that a vessel response plan include geographic-specific appendices for each COTP zone a vessel transits has caused some confusion with respect to innocent passage through our territorial seas, perhaps because some COTP zones extend beyond the territorial seas and to the outer boundary of the exclusive economic zone (EEZ). See definition of COTP zone found in 33 CFR 155.1020. For purposes of nontank vessel response plan (NTVRP) regulations, our territorial seas extend out 12 nautical miles (nm) from the baseline from which the territorial sea is measured, 33 CFR 2.22(a)(1), while the EEZ normally extends out 200 nm seaward of the baseline. 33 CFR 2.30.

If a foreign flag vessel is subject to Coast Guard regulations requiring it to have a USCG-approved vessel response plan, it would also be required to have a Coast Guard approved geographic-specific appendix for each COTP Zone where it intends to operate or transit through. See existing 33 CFR 155.1035(i), 155.1040(j) and 155.1045(i), and proposed 33 CFR 155.5035(i). However, a vessel merely engaged in innocent passage (see proposed 33 CFR 155.1015(c)(7) and 155.5015(c)(2)) transiting through a COTP zone is not required to submit a vessel response plan.

If a vessel is departing a foreign port and is bound for a U.S. port and must cross through one or several COTP zones in order to get there, the vessel would have to have a USCG-approved vessel response plan and an approved geographic-specific appendix for each of the COTP zones that it crosses, regardless if it intends to call upon the respective ports within these COTP zones to transfer cargo, take on bunkers, or engage in other activities. Geographic-specific appendices would need to be submitted and approved for each COTP zone that a vessel intends to transit through while calling upon the United States.

Transit Passage

Transit passage through straits used for international navigation is a more inclusive right than innocent passage, extending to aircraft overflights, submerged transits, and transits of other

vessels in their normal mode of operations. UNCLOS, Arts. 37–39. International law provides that vessels passing through U.S. waters in transit passage may not pollute, conduct any other activity not having a direct bearing on transit, or engage in activities otherwise proscribed by international law. UNCLOS, Arts. 37–39. In most respects, however, coastal States may not suspend or even hamper the right of vessels to engage in transit passage. UNCLOS, Art. 44.

The term ‘coastal State’ in this proposed rule refers to a nation off whose coast a ship is transiting without calling at its internal waters, ports, or roadsteads. The explanation of this term is provided to assist the reader in understanding the provisions of this proposed rule, and is not intended as a comprehensive definition of this term. Nor is it to be understood to express a view as to the jurisdictional competence or authority of the nation in its capacity as a coastal State.

One area of the United States where transit passage is of special concern is Unimak Pass in the Aleutian Islands. Unimak Pass is a strait used for international navigation located on the Great Circle Route from Asia to the West Coast of North America. Several thousand vessels a year use the Pass. Because the Pass narrows to as little as 10 nm, the 12-nm territorial sea of the United States overlaps the waters of Unimak Pass. Although the United States is not yet Party to UNCLOS, the United States has long accepted the navigational provisions of the Convention, including Art. 34 through 44 relevant to transit passage, as reflecting the applicable rules of customary international law. Vessels transiting Unimak Pass, other straits used for international navigation, and their approaches enjoy the right of transit passage.

The United States may only exercise jurisdiction over foreign-flagged vessels engaged in transit passage through Unimak Pass if the vessel is either bound to or from a port or place in the United States, or has engaged in activities that international law proscribes, such as intentional acts of serious pollution. Acknowledging the applicable rules of customary international law, we propose to exclude foreign vessels in transit passage from VRP requirements when not bound for, or departing from, the United States. See proposed 33 CFR 155.1015(c)(7) and 155.5015(c)(2).

Although transit passage applies with respect to passage through straits, long-standing agreements between nations bordering a strait used for international

navigation may limit transit rights. For example, the Saint Lawrence Seaway (SLS) is part of the Saint Lawrence River and is an international river governed by long-standing agreements between the United States and Great Britain/Canada. Although, based solely on its geographic location and its extensive use for international navigation, it could potentially be considered an international strait under which the right of transit or non-suspendable innocent passage applies, Part III of UNCLOS (Straits Used for International Navigation) simply does not apply to the Saint Lawrence. The Danube River and the Turkish Straits offer examples of international waterways “in which passage is regulated in whole or in part by long-standing international conventions in force specifically relating to such straits.” UNCLOS, Art. 35(c). Nothing in Part III of UNCLOS affects the long-standing legal regime in the Saint Lawrence River.

The international negotiations dealing with the Saint Lawrence River go back as far as 1854, with serious additional discussions or agreements in 1871, 1896, 1902, 1909, 1940, 1952, 1959, and 1963. The Boundary Water Treaty concluded between the United States and the United Kingdom (for Canada) of January 11, 1909, was a particularly important watershed in the development of the Saint Lawrence River regime. The focus of these various bilateral agreements was on three key subjects: (1) The use of the river for navigation; (2) development of its potential to produce hydro-electric power; and (3) combating pollution.

The U.S. Congress has enacted several statutes to carry out its international responsibilities with respect to the Saint Lawrence River. Particularly relevant is the establishment of the Saint Lawrence Seaway Development Corporation, 33 U.S.C. 981–984, and the International Joint Commission, 22 U.S.C. 267b–268. These responsible agencies have issued implementing regulations. See, e.g., 33 CFR part 401 and 22 CFR part 401.

The U.S. Secretary of Transportation has delegated authority under Section 1223, 1224, 1225, 1227, 1231, and 1232 of Title 33 U.S.C. to the Administrator of the Saint Lawrence Seaway Development Corporation (SLSDC) with respect to the Saint Lawrence Seaway (SLS). The United States Coast Guard has jurisdiction over all remaining navigable waters of the United States.

The U.S. Coast Guard and the SLSDC have established a Memorandum of Understanding (MOU) and a Memorandum of Agreement (MOA) to address areas of mutual interest and joint agency coordination. The current

MOA was signed in May of 1992 and was last updated in March of 1997. The MOA addresses topics of concern such as policy, communications, ports and waterways safety, vessel traffic control, pilotage, pollution, vessel casualties, aids to navigation, search and rescue, vessel boardings, and ice breaking. The recent MOA was signed in February of 2008 and addresses the collection of pre-arrival information from vessels entering the SLS system.

Although the SLSDC has exclusive jurisdiction upon the SLS, the U.S. Coast Guard will, upon request and within its resources, assist the SLSDC in the execution of those responsibilities. The U.S. Coast Guard is the pre-designated Federal On-Scene Coordinator (FOSC) for oil or hazardous materials spilled into the U.S. waters of the SLS. The USCG and the SLSDC have agreed that, among other goals, the basic goals of their joint oversight of vessels navigating upon the SLS is to ensure that 100 percent of vessels are cleared in advance of Montreal and to ensure that the international shipping on the Great Lakes and the SLS continues to meet high standards of safety and environmental protection.

One of the points agreed upon by both the USCG and the SLSDC are protocols for both screenings and inspections of vessels. The SLSDC is authorized to ask the USCG to receive pre-arrival information for the SLSDC electronically using the USCG’s electronic Notice of Arrival/Departure (eNOAD) system. In July of 2007, the SLSDC requested that the USCG National Vessel Movement Center (NVMC) be the direct clearinghouse for arrival information for vessels bound for the SLS.

Passage through the Saint Lawrence River and into the Great Lakes is completely regulated by the existing bilateral agreements and the implementing regulations. Although there is a general presumption both in international law and in the agreements that the Saint Lawrence River is freely open to international navigation, any vessel operator who wishes to take advantage of this presumption must comply with both the applicable U.S. and Canadian statutory and regulatory provisions. Therefore, this proposed rule would apply to vessels transiting through the Saint Lawrence River.

Jurisdiction of vessels on the navigable waters of the United States is clearly conveyed by the FWPCA (33 U.S.C. 1321(j)(5)). Since enforcement of the PWSA has been delegated to the SLSDC for the SLS, the Coast Guard works closely with the SLSDC regarding how vessels would be prohibited from

entering the SLS due to noncompliance with U.S. law.

H. Definition of "United States" for Purposes of Vessel Response Plan Requirements

While the FWPCA contains a definition of "United States", that definition does not control in this context. For purposes of vessel oil spill response plans, for tank and nontank vessels, the "United States" as defined in Presidential Proclamation 5928 and 46 U.S.C. 114 establishes the geographic parameters for determining applicability of vessel oil spill response plan requirements as set forth in 33 U.S.C. 1321(j)(5) (as amended). Because both OPA 90 and the 2006 Act incorporate by reference definitions of tank vessel and nontank vessel, respectively, from title 46 of the United States Code, neither the definition of "United States" as set forth in OPA 90 (which created § 1321(j)(5)), nor as set forth in the FWPCA, applies to vessel oil spill response plan requirements.

The pertinent portion of the controlling definition of "United States", unlike the FWPCA definition, does not include reference to the "Trust Territories of the Pacific Islands", but instead refers to "the Northern Mariana Islands, and any other territory or possession of the United States." 46 U.S.C. 114. Of the former Trust Territories of the Pacific Islands, only the Northern Mariana Islands is considered part of the geographic definition of the United States for purposes of this proposed rule.

IV. Discussion of Proposed Rule

This discussion provides a broad overview of our proposed changes to our SOPEP regulations, tank vessel oil spill response plan regulations, nontank vessel oil spill response plan regulations, and notice of arrival regulations. Immediately following the overview, we discuss specific sections of the regulatory text.

Proposed Changes to SOPEP Regulations

We propose alignment of our existing SOPEP regulations with current IMO MARPOL 73/78 Shipboard Oil Pollution Emergency Plan regulations. Compliance with our domestic SOPEP regulations serve as, among other things, evidence of compliance with IMO MARPOL 73/78 Annex I Regulations.

The Coast Guard implemented MARPOL Annex I SOPEP standards in 33 CFR part 151. However, since our implementation, IMO has made substantive changes to the international SOPEP standards. These changes

resulted in the promulgation of new IMO SOPEP requirements found at MARPOL Annex I, Regulation 37 (previously these requirements were located at Annex I, Regulation 26). Some of the changes found in Regulation 37 include: changes to required SOPEP text; changes to the categories for addressing steps to control discharges; changes for crew personnel assignment requirements; and updates to the required notifications in the event of an oil spill. (See generally, IMO Resolution MEPC.86(44).) Further, the IMO implemented a new section to Annex I requiring that all oil tankers of 5,000 tons deadweight or more have prompt access to computerized, shore-based damage stability and residual structural strength calculation programs. (See generally, MEPC.117(52).)

Amending our SOPEP regulations to reflect changes to the international standard will, among other things, negate the need for more than one oil spill response plan aboard a vessel.

Proposed Changes to Existing Tank Vessel Response Plan Regulations

We propose amendment to existing tank vessel response plan regulations found in 33 CFR part 155, subpart D, and the associated appendices (B and C) to ensure the relevant portions of that part are made applicable to nontank vessels and those nontank vessels carrying oil as a cargo.

Proposed Nontank Vessel Response Plan Regulations

The Coast Guard proposes new oil spill response plan regulations for nontank vessels within 33 CFR part 155, subpart J. This rulemaking will deliver field-tested and proven regulations to the nontank vessel community, facilitating one national planning standard for applicable vessels. Most of the criteria that would apply to nontank vessels (e.g., general plan provisions, qualified individual (QI) & alternate QI provisions, training, and exercise requirements) would remain relatively consistent with subpart D. However, there are areas where tank vessel planning standards would not be applicable due to the differences in potential risk posed by nontank vessels. The proposed resource requirements for a nontank vessel will be tiered, based on the vessel's fuel and cargo oil capacity.

This proposed rule would establish regulations under 33 U.S.C. 1321(j)(5) requiring response plans from owners or operators of nontank vessels, which are defined by statute as self-propelled vessels of 400 gross tons or greater that operate on the navigable waters of the United States as defined in 46 U.S.C.

2101(17a), carry oil of any kind as fuel for main propulsion, and are not tank vessels. The proposed rule would specify the content of a response plan, including the requirement to plan for responding to a worst case discharge and a substantial threat of such a discharge.

Proposed Changes to Notice of Arrival Regulations in 33 CFR Part 160

We propose to amend 33 CFR part 160 by requiring vessel owners and operators to submit their vessel response plan control number as part of the notice of arrival information.

Section-specific Discussion of Proposed Rule Part 151 Discussion of Proposed Changes

Section 151.09 Applicability (SOPEP)

We propose to amend this section to relieve vessel owners and operators who satisfy nontank vessel oil spill response plan requirements under subpart J from the burden of preparing and maintaining a separate oil spill response plan for the purposes of meeting IMO MARPOL 73/78 Annex I, Regulation 37 Shipboard Oil Pollution Emergency Plan requirements.

Section 151.26 Shipboard Oil Pollution Emergency Plans (SOPEP)

We propose to amend this section to align our SOPEP regulations with IMO Resolution MEPC.86(44) in the areas of oil spill reporting, contact information, mitigation procedures, and response coordination. Certain language, including use of the term "lightening," is taken directly from the SOPEP development guidelines. Lightening is the process of making a vessel less heavy by removing certain items, such as oil, cargo (liquid or dry), and any other items that are not permanently affixed to the vessel. Further, we propose amending this section so as to harmonize the data set reporting requirements for SOPEP and VRP standards and to clarify the requirements for identifying the party responsible for reporting the data. Also, for the purpose of assisting with the interpretation of worst case discharge and the harmonization of our regulation with MEPC.86(44), we propose amending this section to clearly articulate requirements for the submission of plans, requirements for drawings and ship-specific details, and requirements for tank capacity descriptions. Next, we propose to amend mitigation activity requirements so as to align our regulation with Resolution MEPC.86(44) and harmonize existing tank vessel response plan

regulations with the proposed nontank vessel response plan mitigation activities. Lastly, we propose to amend § 151.26 to align our regulation with Resolution MEPC.117(52), which requires oil tankers of 5,000 tons deadweight or more to have prompt access to computerized, shore-based damage stability and residual structural strength calculation programs.

Sections 151.27 and 151.28 Plan Submission, Approval, Review, and Revision

In § 151.27, we propose the removal of the Coast Guard's practice of returning a copy of the approved plan, however we will continue to issue approval letters.

In §§ 151.27 and 151.28, we propose the use of a Coast Guard form entitled "Application for Approval/Revision of Vessel Pollution Response Plans" (CG-6083) as an optional alternative to a cover letter for a plan submission and approval application. When submitted properly, this application form would satisfy the two certification statement requirements for submission. Submissions would be sent to the Coast Guard's Office of Vessel Activities (CG-543) and directed to the attention of that Office's Vessel Response Plan Review Team.

Part 155 Subpart D Discussion of Proposed Changes

Section 155.1020 Tank Vessel Response Plan (TVRP) Definitions

The *vessels carrying oil as a secondary cargo* definition was revised to direct vessels over the 400 gross tons limit to subpart J. In revising that definition, we introduced the term *nontank vessel* and have provided a definition for that term in this section.

Sections 155.1065 and 155.1070 TVRP Plan Submission and Review Procedures

In these sections we proposed amendments that would reference subpart J, where applicable, so as to provide vessel owners and operators with flexibility in adding nontank vessels to their existing tank vessel response plans in an effort to comply with both subparts D and J.

We propose the use of Coast Guard form CG-6083. When submitted properly, this application form would satisfy the two certification statement requirements for submission.

Part 155 Subpart J Discussion of Proposed Regulations

Section 155.5010 Nontank Vessel Response Plan (NTVRP) Purpose

In this section, we propose a description of the purpose of subpart J. We specifically note that the requirements set forth in the proposed rule are for improving oil spill response preparedness. The specific criteria for response resources and their arrival times are not performance standards. These proposed criteria are to be used by a vessel owner or operator in developing a plan to respond to a vessel's worst case discharge or threat of such a discharge. The text in this section varies slightly from 33 CFR part 155, subpart D, to specifically address nontank vessel response plans.

Section 155.5012 Deviation From Response Plan

This section of the proposed rule describes when an owner or operator of a nontank vessel may be permitted to deviate from an approved nontank vessel oil spill response plan. The "Chaffee Amendment," section 1144 of the Coast Guard Authorization Act of 1996 [see Pub. L. 104-324, October 19, 1996, 110 Stat 3901], amended the FWPCA regarding the use of spill response plans by stating that an "owner or operator may deviate from the applicable response plan if the President or the Federal On-Scene Coordinator determines that deviation from the response plan would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects." See 33 U.S.C. 1321(c)(3)(B). The Coast Guard interprets section 1144 as applicable to the use of contracted resources, qualified individuals, and other significant deviations from the plan. In the event of a marine casualty, the Coast Guard intends to give precedence to the Incident Action Plan (IAP) as developed by a Unified Command. The IAP may also include, as a sub plan, a salvage response plan, an emergency lightering plan, a shoreline clean up plan, etc.

Section 155.5015 Applicability

Paragraph (a). In this paragraph, we propose the applicability of subpart J to be those vessels that are not tank vessels carrying oil of any kind as fuel for main propulsion, that operate on the navigable waters of the United States, and are 400 gross tons or greater, as measured under the convention measurement system in 46 U.S.C. 14302 or the regulatory measurement system of 46 U.S.C. 14502 for vessels not measured under 46 U.S.C. 14302.

Paragraph (b). In this paragraph, we propose the applicability requirements for integrated tug barge (ITB) units that do not carry oil in bulk on the barge.

Paragraph (c). In this paragraph, we provide a list of vessels the Coast Guard proposes to exempt from complying with subpart J. The proposed exemptions include public vessels, foreign flag vessels engaged in innocent passage, certain foreign flag vessels engaged in transit passage, vessels carrying oil as a primary cargo, vessels that are not constructed to carry oil as fuel or cargo, permanently moored craft, and inactive vessels.

Public vessels. We exempted public vessels from subpart J requirements, because 33 U.S.C. 1321(a) defined "vessel" to exclude public vessels.

Foreign flag vessels engaged in innocent passage. We proposed exemption of these vessels because of our recognition of the customary international law of the sea, as reflected in the UNCLOS. Our exemption of these vessels in this subpart is consistent with subpart D. For further information regarding foreign flag vessels engaged in innocent passage, please see Background and Purpose, section III.G.

However, the public should take note that the Coast Guard intends to apply this proposed rule to foreign flag nontank vessels engaging in voyages to or from a port or place subject to the jurisdiction of the United States. Further, if a foreign flag vessel is subject to nontank vessel response plan requirements of this subpart, that foreign flag nontank vessel will also be required to have a Coast Guard-approved geographic-specific appendix for each COTP zone where it intends to operate or transit through bound for or departing from a port or place subject to the jurisdiction of the United States; this will be the standard regardless of whether the foreign flag vessel intends to call upon the respective ports within these COTP zones to transfer cargo, take on bunkers, etc. In contrast, when a nontank vessel is in innocent passage (see 33 CFR 155.5015(c)(2)) to a foreign port and must cross through a COTP zone (see definition in proposed 33 CFR 155.1020) to get there, the submission and approval of a USCG vessel response plan is not required.

Foreign flag vessels engaged in transit passage. We propose exemption of foreign flag vessels engaged in transit passage through a straight used for international navigation, unless bound for or departing from a port or place of the United States. For an in depth discussion on the Coast Guard's interpretation of our proposed rule in

this area, please see Background and Purpose, section III.G.

Vessels carrying oil as a primary cargo. All vessels carrying oil as a primary cargo that are required to submit a response plan under subpart D are exempt from subpart J. If you own or operate a vessel carrying oil as a secondary cargo, and that vessel is less than 400 gross tons, then your vessel would not be a nontank vessel by definition, and would be covered by subpart D (see proposed 33 CFR 155.1020 “Vessels carrying oil as a secondary cargo”).

Vessels not constructed or operated in such a manner allowing it to carry oil of any kind. These vessels are proposed to be exempted, because they pose no oil spill risk.

Permanently moored craft. We propose exemptions for those watercraft that are permanently moored or rendered incapable of movement because they do not fit the definition of “vessel” under 1 U.S.C. 3 as interpreted by *Stewart v. Dutra Construction Co.*, 543 U.S. 481 (2005). Further, these watercraft represent minimal risk due to their immobile status.

Inactive vessels. We propose exemptions for inactive vessels, as defined in § 155.5020, which is described immediately below.

Section 155.5020 Definitions

The definitions in 33 CFR 155.110 and 155.1020 are applicable to nontank vessel response plans, unless otherwise defined in § 155.5020.

In § 155.5020, we propose the following definitions: *cargo*, *contract or other approved means*, *fuel*, *inactive vessel*, *integrated tug barge or ITB*, *maximum most probable discharge or MMPD*, *navigable waters of the United States*, *nontank vessel*, *oil spill removal organization or OSRO*, *permanently moored craft*, *qualified individual or QI* and *alternative qualified individual*, *substantial threat of such a discharge*, *tier*, and *worst case discharge or WCD*.

A proposed definition of *cargo* is introduced in subpart J to clarify that oil carried in addition to fuel used for propulsion of the vessel is considered to be cargo and is subject to the provisions of subpart J where applicable.

A proposed definition of *contract or other approved means* describes the options for fulfilling the requirement for contracting or providing response resources. Paragraph (1) describes a written contract between a vessel owner or operator and the particular response resource provider. Paragraph (2) proposes requirements for self certification by the vessel owner or operator that it can provide the response

resources required. Paragraph (3) describes requirements when a vessel owner or operator chooses an active membership with a local or regional response resource provider. Paragraph (4) is an agreement between the vessel owner or operator and a resource provider that the resource provider intends to commit the agreed upon resources in the event of a response. Finally, paragraph (5) specifically describes when the use of “other approved means” may be permissible as a method of ensuring the availability of response resources in lieu of a contract. It also describes six proposed categories of vessels that may be eligible to use “other approved means” as a method of compliance.

The Coast Guard interprets 33 U.S.C. 1321(j)(5)(D)(iii) as imposing an obligation for nontank vessel owners and operators to ensure the availability of response resources by contract or other approved means. Thus, agreements including contracts between nontank vessel owners or operators and entities that do not physically control response equipment or entities that merely serve as conduits to the owners of the response equipment will not satisfy the statutory mandate of 33 U.S.C. 1321(j)(5) nor will such contracts meet the requirements of proposed subpart J.

A proposed definition of *fuel* is introduced to include oils of any kind, which may be used to supply power or lubrication for primary or auxiliary purposes aboard the vessel in which it is carried. This definition was drafted to convey that, when planning for a worst case discharge, the vessel owner or operator must include in their analysis all oils carried aboard as fuel or cargo. While only vessels that use oil for primary fuel and not auxiliary fuel are required to submit nontank vessel response plans, those nontank vessels that do carry auxiliary fuel must include auxiliary fuel in the total fuel capacity for nontank vessel response planning volume calculations.

A proposed definition of *inactive vessel* is introduced to include those vessels taken out of service or placed in a laid up status, maintaining only the minimum amount of fuel necessary for the maintenance of the material condition of the vessel. Such vessels are not considered to be in operation on the navigable waters of the United States by virtue of the minimal threat they pose to the marine environment in that status. This section further proposes that the local Coast Guard Captain of the Port will determine whether an inactive vessel poses a threat to the marine

environment, thereby requiring the submission of a vessel response plan.

A proposed definition of an *integrated tug barge or ITB* is introduced to describe when these vessels, operating as a single unit (for example, nontank barge with machinery and tug) pose the same level of oil spill threat as a large freight vessel of the same aggregate tonnage. Beyond the definition introduced in § 155.5020, and consistent with Coast Guard Inspection Guidance Regarding Integrated Tug Barge Combinations (NVIC 2–81, Change 1), an integrated tug barge combination will be considered an ITB, when the tug:

- Cannot operate with barges other than those barges specifically designed for joint operation with the tug; or
- Cannot engage in hawser towing (does not meet the towline pull stability criteria or does not have necessary towing equipment installed); or
- Requires significant reinforcement of internal structure to accommodate shelves, wedges or other interlocking mechanisms; or
- Is restrained in the notch of a barge to the extent that the speed and weather operating capabilities of the combined unit approach those of a single vessel.

A proposed definition of *maximum most probable discharge or MMPD* is introduced to provide that 2,500 barrels of discharged oil will be considered the maximum most probable discharge for those vessels with a fuel and cargo capacity equal or greater than 25,000 barrels; for those vessels with fuel and cargo capacity of less than 25,000 barrels, the maximum most probable discharge will be 10 percent of the vessel’s fuel and cargo capacity. Maximum most probable discharge is a required level of oil spill removal organization coverage necessary to address spill scenarios less than a vessel’s worst case discharge where the substantial threat of such a discharge may occur. Maximum most probable discharge planning standards are commonly applied to spills resulting from collisions, allisions, groundings, or other scenarios where a portion of a vessel’s oil capacity is discharged or could be discharged and an appropriate response is mounted to mitigate the impact of the resulting spill or to prevent a discharge from occurring.

A proposed definition of *navigable waters of the United States* is introduced to clarify that for nontank vessels regulations the territorial seas is considered to be 12 nm seaward of the baseline. The authority to require nontank vessel response plans comes from sec. 311 of the FWPCA, 33 U.S.C. 1321. Generally, for 33 U.S.C. chapter 26, “navigable waters” means “the

waters of the United States, including the territorial seas.” 33 U.S.C. 1362(7). In 1972, when this “navigable waters” definition first appeared, our territorial seas were limited to 3 nm in breadth. (See sec. 502 (8) of FWPCA, Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 886, specifically limiting territorial seas to 3 nm.) The Presidential Proclamation No. 5928 of December 27, 1988, which extended the territorial seas of the United States to 12 nm, is not construed to have changed that 3 nm limit. However, in 2006, Congress revised the FWPCA and defined nontank vessels to include self-propelled vessels “on the navigable waters of the United States, as defined in section 2101(17a) of [46 U.S.C.]” 33 U.S.C. 1321(a)(26). That Title 46 navigable waters definition “includes all waters of the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988,” which states 12 nm. 33 CFR 2.22(a)(1). Therefore, while we generally construe seaward extent of FWPCA provisions to be limited to 3 nm out from our territorial sea baseline—see 33 CFR 2.22(a)(2) (limiting territorial seas to 3 nm) and 2.28(a) (pointing to 3 nm limit of territorial seas when defining FWPCA contiguous zone)—our NTVRP regulations would extend out to 12 nm.

A proposed definition of *nontank vessel* is introduced that is consistent with, and derived from, the 2004 and 2006 Acts. Section 701 of the 2004 Act specified that an owner or operator of a self-propelled vessel of 400 gross tons or greater, which is a vessel of the United States or operates on the navigable waters of the United States and carries oil as fuel and is not a tank vessel, must prepare and submit an oil spill response plan. Section 608 of the 2006 Act clarified the tonnage applicability of this statutory requirement by setting the tonnage threshold as 400 gross tons or greater, as measured under the convention measurement system in 46 U.S.C. 14302 or the regulatory measurement system of 46 U.S.C. 14502 for vessels not measured under 46 U.S.C. 14302. The 2006 Act further established that it applies to vessels that operate on the navigable waters of the United States, as described in Presidential Proclamation No. 5928, December 27, 1988.

A proposed definition of *oil spill removal organization* or *OSRO* is introduced to describe who or what may be identified as an OSRO and the function(s) of an OSRO. This proposed definition is consistent with the Coast Guard’s OSRO Classification guidelines. For more information on the OSRO classification system, see <http://www.uscg.mil/hq/nswfweb/nsfcc/ops/ResponseSupport/RRAB/informationonclassifiedosros.html>.

www.uscg.mil/hq/nswfweb/nsfcc/ops/ResponseSupport/RRAB/informationonclassifiedosros.html.

A proposed definition of *permanently moored craft* is introduced to provide that permanently moored, or otherwise rendered practically incapable of transportation or movement, watercraft would not be considered to be vessels under subpart J, because they do not meet the statutory definition in 1 U.S.C. 3, as interpreted by the Supreme Court in *Stewart v. Dutra Construction Co.*, 543 U.S. 481 (2005). *Stewart v. Dutra* addressed the concept of permanently moored vessels, and the language used by the court regarding a description of such vessels was used to develop the definition of “permanently moored craft” and exempt such craft from the proposed rule. For tank and nontank vessels, the controlling definition of vessel is in 46 U.S.C. 115, which cites 1 U.S.C. 3. We propose that permanently moored craft be excluded from the nontank vessel response plan regulations under § 155.5015.

A proposed definition of *qualified individual* or *QI* and *alternative qualified individual* is introduced, and provides that these individuals are shore-based representatives of a vessel owner or operator meeting specific requirements. This proposed definition is similar to subpart D.

A proposed definition of *substantial threat of such a discharge* is introduced to include a threat of a discharge from fuel as well as cargo oil, as applicable to nontank vessels.

A proposed definition of *tier* is introduced to describe the combination of required response resources and response times within which the response must arrive on scene.

A proposed definition of *worst case discharge* or (*WCD*) is introduced to describe the discharge of a vessel’s entire fuel and cargo oil during adverse weather conditions.

Section 155.5021 Operating Restrictions

In this proposed section, we identify scenarios when a nontank vessel may not be permitted to operate on the navigable waters of the United States. These proposed operating restrictions are similar to those found in § 155.1025(a).

Section 155.5023 Interim Operating Authorization

In this section, we propose interim operating authorization for nontank vessels up to 2 years after the date of submission of the oil spill response plan if the owner or operator has received written authorization from the Coast

Guard to continue such operations. We also describe the proposed steps the vessel owner or operator should complete to obtain the interim authorization. These proposed requirements are aligned with § 155.1025(c) and (d).

Section 155.5025 One-Time Port Waiver

In this section, we propose that an owner or an operator may seek one-time authorization to enter a geographic-specific area not covered by the nontank vessel response plan upon approval by a cognizant Captain of the Port. This provision could also be used in an emergency situation, such as an impending hurricane, where a vessel owner or operator may need to enter a geographic-specific area not covered by the nontank vessel response plan for a specified temporary period of time. The proposed requirements are aligned with § 155.1025(e) to ensure consistency of this proposed procedure with the tank vessel response plan regulations.

Section 155.5026 Qualified Individual and Alternate Qualified Individual

In this proposed section, we introduce the requirement to identify a qualified individual and an alternate qualified individual that must be available to the vessel owner or operator 24 hours a day. Identification of a qualified individual and alternate qualified individual is a statutory requirement from 33 U.S.C. 1321(j)(5) and is consistent with the existing qualified individual and alternate qualified individual requirements of 33 CFR 155.1026.

Section 155.5030 Nontank Vessel Response Plan Requirements: General Content

In this proposed section, we describe the general content of a nontank vessel response plan. The requirements were taken directly from the existing tank vessel requirements of 33 CFR 155.1030, and modified to fit the requirements of a nontank vessel. Section 155.5030(h) proposes that compliance with subpart J will constitute compliance with 33 CFR 151.26 and Regulation 37 of Annex I of MARPOL 73/78, eliminating the need to prepare two separate oil spill response plans. Lastly, in order to meet statutory mandates, the general content of nontank vessel response plan requirements are proposed to be consistent with the national contingency plan (40 CFR part 300.210).

Section 155.5035 Nontank Vessel Response Plan Requirements: Specific Content

In this section, we propose additional specific content requirements for nontank vessel response plans. Except where noted below, the requirements were taken directly from the existing tank vessel requirements of § 155.1035 and were modified to fit nontank vessel requirements and ensure consistency with § 151.26 requirements for SOPEPs. Section 155.5035(a)(2) proposes the submission of the nontank vessel owner or operator's mailing address, current e-mail addresses, and telephone number to facilitate communications that are a central part of this plan. Section 155.5035(b)(5)(i)(O) adds to the list of initial notification requirements, details of the vessel owner or operator's pollution insurer, and/or Protection and Indemnity (P&I) Club and Local Correspondent, as applicable. Section 155.5035(c) proposes regulations that align § 151.26 and Regulation 37 of Annex I of MARPOL 73/78 shipboard spill mitigation procedures with the existing requirements for shipboard mitigation procedures as listed in § 155.1035(c). Section 155.5035(e) proposes an enhanced list of contact requirements to reflect the full spectrum of required response resources per proposed § 155.5050. This proposed section contains fewer requirements for nontank vessels with fuel and cargo capacities less than 2,500 barrels. Section 155.5035(k) proposes the additional requirements that U.S. nontank vessels, certified for coastwise or oceans operating routes must meet for compliance with Regulation 37 of Annex I of MARPOL 73/78.

Section 155.5050 Response Plan Development and Evaluation Criteria for Nontank Vessels Carrying Groups I Through IV Petroleum Oil

The proposed requirements for the response plan development and evaluation criteria for nontank vessels carrying groups I through IV petroleum oil as fuel or cargo are contained in this section. Except where noted below, the requirements were taken directly from the existing tank vessel requirements of § 155.1050, however modified to address specific nontank vessel requirements. To the maximum extent practicable, a tiered approach is proposed to classify three separate categories of NTVRP response resource requirements based upon a vessel's fuel and cargo oil capacity. See the proposed Table 155.5050(p), Nontank Vessel Response Plan Required Response

Resources Matrix, to better understand the intended tiered strategy.

Paragraph (a) of Section 155.5050 Criteria for Evaluating Operability of Response Resources

This paragraph of the proposed rule, which adopts tank vessel criteria from § 155.1050(a), identifies criteria that would need to be used to evaluate the operability of response resources identified in a nontank vessel response plan for specified operating environments. It directs that the criteria in 33 CFR part 155's Appendix B, Table 1 are to be used solely for identification of appropriate equipment in a response plan, and it notes these criteria do not reflect conditions that would limit response actions or affect normal vessel operations. Conditions identified in the Area Contingency Plans for the COTP zones in which the vessel operates, such as ice conditions, debris, temperature ranges, and weather-related visibility, would also need to be factored in.

Paragraph (b) of Section 155.5050 Operating Environment Reclassification of Specific Bodies of Water

This paragraph of the proposed rule, which adopts tank vessel requirements from § 155.1050(b), notes that a COTP may reclassify a specific body of water or location within the COTP zone to a more stringent operating environment or a less stringent operating environment based on the prevailing wave conditions. Any reclassifications would be identified in the applicable Area Contingency Plan.

Paragraph (c) of Section 155.5050 Criteria for Response Equipment

This paragraph, which adopts tank vessel requirements from § 155.1050(c), would require that response equipment meet or exceed the response resource operating criteria listed in 33 CFR part 155's Appendix B, Table 1, be capable of functioning in the applicable operating environment, and be appropriate for the petroleum oil carried.

Paragraph (d) of Section 155.5050 Average Most Probable Discharge

This paragraph of the proposed rule, like its tank vessel counterpart in subpart D, § 155.1050(d), would require nontank vessels that carry groups I through IV petroleum oil as cargo to ensure the availability of average most probable discharge (AMPD) resources by contract or other approved means. Nontank vessels that only carry groups I through IV oil as fuel would not have to ensure the availability of AMPD resources by contract or other approved

means because the facility providing the bunker to the nontank vessel is already required to have planned for the AMPD resources covering the transfer. However, the owner or operator of a nontank vessel carrying groups I through IV oil as fuel would be required to plan for and identify the response resources required in § 155.1050(d)(1) for bunkering or fueling operations.

Identification of a marine transportation-related (MTR) facility required to maintain a response plan under 33 CFR part 154 or a tank vessel's oil spill response resources does not relieve a nontank vessel owner or operator from the responsibility to independently identify appropriate response resources within a COTP zone to respond to an AMPD. Permission from the AMPD response provider is not required for the purpose of listing this resource in a nontank vessel response plan for this planning and identification purpose.

Paragraph (e) of Section 155.5050 Maximum Most Probable Discharge

This paragraph of the proposed rule adopts tank vessel standards from § 155.1050(e), but would impose one less requirement for nontank vessels with lower oil capacity. The owner or operator of a nontank vessel with a capacity of 250 barrels or greater carrying groups I through IV petroleum oil as fuel or cargo would need to comply with requirements in § 155.1050(e) and identify in the response plan and ensure the availability of, through contract or other approved means, the response resources necessary to respond to a discharge up to the vessel's maximum most probable discharge volume.

Under this paragraph of the proposed rule, nontank vessels with an oil capacity of less than 250 barrels would only be required to identify response resources planned for in the nontank vessel response plan to be within the stipulated response times in the specified geographic areas, but these nontank vessels would not be required to ensure by contract that these resources be made available.

Submission of a written consent from the response resource provider to be listed in the response plan would need to accompany the plan for approval. Compliance with these requirements would be considered to be consistent with the "other approved means," paragraph (5) portion of the definition of "Contract or other approved means" in 33 CFR 155.5020.

*Paragraph (f) of Section 155.5050
Worst Case Discharge*

This paragraph would adopt requirements from § 155.1050(f), but contains some provisions specific to nontank vessels carrying oil as fuel or cargo. The owner or operator of a nontank vessel with a capacity of 2,500 barrels or greater carrying groups I through IV petroleum oil as fuel or cargo would need to comply with the requirements in § 155.1050(f) and identify in the response plan and ensure the availability of, through contract or other approved means, the response resources necessary to respond to discharges up to the worst case discharge volume of oil to the maximum extent practicable.

Nontank vessels need only plan for Tier 1 response resources. In proposed § 155.5020, *tier* is defined as the combination of required response resources and the times within which the resources must arrive on the scene, with the times being prescribed in § 155.5050(g) and Tables 5 and 6 of Appendix B offering guidance on calculating the response resources required by a tier for given categories of area: higher volume port areas, the Great Lakes, and all other operating environments.

Nontank vessels with a capacity of less than 2,500 barrels would not be required to contract with an OSRO that has a USCG classification to respond to a WCD level of response resources in order to comply with the statute's requirement to plan for the vessels' worst case discharge, because their total oil capacity can be completely covered by an OSRO with a USCG maximum most probable discharge (MMPD) classification rating. For additional information on USCG Classified OSROs, use the following link to download USCG OSRO Classification matrices: <http://www.uscg.mil/hq/nswfweb/nsfcc/ops/ResponseSupport/RRAB/informationonclassifiedosros.html>.

Paragraph (g) of Section 155.5050 Tier 1 Response Times

This paragraph of the proposed rule is similar to tank vessel requirements in § 155.1050(g), but would require nontank vessels to only plan for Tier 1 response resources and response times: 12 hours for higher volume port areas, 18 hours for the Great Lakes, and 24 hours for all other operating environments.

*Paragraph (h) of Section 155.5050
Planning Standards for the Mobilization
and Response Times for Required
MMPD and WCD Response Resources*

This paragraph of the proposed rule contains requirements similar to those in § 155.1050(h) for tank vessels. Section 155.5050(h) proposes the planning standards for the mobilization and response times for maximum most probable discharge (MMPD) and worst case discharge (WCD) response resources.

Consistent with what are currently required for tank vessel response coverage, nontank vessels will be required to ensure that Tier 1 response resources are capable of being mobilized and enroute to the scene of a discharge within 2 hours of notification. The notification and mobilization of all required Tier 1 resources must be accomplished within 30 minutes or through notification of the qualified individual.

To use an example, on November 7, 2007, an oil spill response was initiated in San Francisco Bay in response to oil spilled from the M/V COSCO BUSAN. In that incident, the notification of the required MMPD resources was accomplished well within 30 minutes, and initial response resources were on scene well within the required timelines.

Initial MMPD response resources began to arrive on scene within 45 minutes of notification. San Francisco Bay is considered to be a higher volume port area (see proposed § 155.5020's reference to definitions in § 155.1020), and 33 CFR part 155's Appendix B, paragraph 4.3 stipulates that oil recovery devices necessary to meet the applicable maximum most probable discharge volume planning criteria must be located such that they can arrive on scene within 12 hours of the discovery of a discharge in higher volume port areas. Therefore, the initial response of resources to the M/V COSCO BUSAN incident was well within the planning standards for such oil spills.

*Paragraph (i) of Section 155.5050
Salvage, Emergency Lightering, and
Marine Firefighting Requirements*

This proposed paragraph is designed to be consistent with § 155.1050(j), and vessels with a capacity of 2,500 barrels or greater would have to meet salvage, emergency lightering, and marine firefighting requirements in subpart I of 33 CFR part 155. Nontank vessels with a capacity less than 2,500 barrels, but greater than or equal to 250 barrels, need only plan for and identify these response resources in the response plan

but do not have to ensure these resources by contract or a previous funding agreement. Nontank vessels with a capacity less than 250 barrels need only plan for and identify salvage response resources in the response plan, but do not have to ensure by contract or a previous funding agreement. See 33 CFR 155.5020, "Contract or other approved means," paragraph (5).

*Paragraph (j) of Section 155.5050
Dispersants*

This proposed paragraph is designed to be consistent with § 155.1050(k) and it is proposed that vessels with a capacity of 2,500 barrels or greater would be required to ensure the availability of these response resources by contract or other approved means. Only Tier 1 for dispersant effective daily application capability (EDAC) would need to be met for nontank vessels. Nontank vessels with a capacity of less than 2,500 barrels, but greater than or equal to 250 barrels, would need to plan for and identify dispersant response resources per the other approved means standard described previously.

*Paragraph (k) of Section 155.5050
Aerial Oil Spill Tracking and
Observation Response Resources*

This proposed paragraph adopts tank vessel requirements from § 155.1050(m). It is proposed that nontank vessels with a capacity of 2,500 barrels or greater would be required to ensure the availability of these response resources by contract or other approved means.

Nontank vessels with a capacity of less than 2,500 barrels, but greater than or equal to 250 barrels, would need to plan for and identify aerial oil spill tracking and observation response resources under the other approved means standard described previously. The nontank vessel owner or operator would also be required to submit a written consent to be listed in the plan from the recognized response resource provider when submitting a plan for approval or revision. Compliance with these requirements would be considered to be consistent with the "other approved means," paragraph (5) portion of the definition of "Contract or other approved means" in 33 CFR 155.5020.

*Paragraph (l) of Section 155.5050
Response Resources Necessary To
Perform Shoreline Protection
Operations*

This proposed paragraph adopts requirements from § 155.1050(n). It would require the owners and operators of nontank vessels carrying groups I through IV petroleum oil as fuel or cargo with a capacity of 250 barrels or greater

to identify in the response plan, and ensure the availability of, through contract or other approved means, response resources necessary to perform shoreline protection operations. The response resources must include the quantities of boom listed in 33 CFR part 155's Appendix B, Table 2, based upon the specific COTP zones in which the vessel operates.

*Paragraph (m) of Section 155.5050
Shoreline Cleanup Operations*

This paragraph of the proposed rule adopts tank vessel requirements from § 155.1050(o). It would require the owner or operator of a nontank vessel carrying groups I through IV petroleum oil as fuel or cargo with a capacity of 250 barrels or greater to identify in the response plan, and ensure the availability of, through contract or other approved means, an oil spill removal organization capable of effecting a shoreline cleanup operation commensurate with the quantity of emulsified petroleum oil to be planned for in shoreline cleanup operations. These shoreline cleanup resources required would need to be determined as described in 33 CFR part 155's Appendix B.

*Paragraph (n) of Section 155.5050
Practical and Technical Limits of
Response Capabilities*

This paragraph of the proposed rule, which adopts tank vessel criteria from § 155.1050(p), notes that Appendix B of 33 CFR part 155 sets out response capability capacities (caps) that recognize the practical and technical limits of response capabilities for which an individual vessel owner or operator can contract in advance. Table 6 in Appendix B lists the contracting caps that are applicable.

The owner or operator of a nontank vessel carrying groups I through IV petroleum oil as fuel or cargo, with a capacity of 2,500 barrels or greater, whose required daily recovery capacity exceeds the applicable contracting caps in Table 6, would need to identify commercial sources of additional equipment equal to twice the cap listed for Tier 1 or the amount necessary to reach the calculated planning volume, whichever is lower, to the extent that this equipment is available. The equipment so identified would need to be capable of arriving on scene no later than the applicable tier response times contained in proposed § 155.5050(g) or as quickly as the nearest available resource permits. A response plan would need to identify the specific sources, locations, and quantities of this

additional equipment. No contract, however, would be required.

*Paragraph (o) of Section 155.5050
Review of Response Capability Limits*

This paragraph of the proposed rule, which adopts tank vessel criteria from § 155.1050(q), notes that the Coast Guard will continue to evaluate the environmental benefits, cost efficiency, and practicality of increasing mechanical recovery capability requirements. This continuing evaluation is part of the Coast Guard's long-term commitment to achieving and maintaining an optimum mix of oil spill response capability across the full spectrum of response modes. As best available technology demonstrates a need to evaluate or change mechanical recovery capacities, a review of cap increases and other requirements contained within this subpart may be performed.

*Paragraph (p) of Section 155.5050
Nontank Vessel Response Plan Required
Response Resources Matrix*

The table in this paragraph of the proposed rule summarizes nontank vessel response resources that would be required under the proposed rule. It shows the tiered regulatory approach toward how the requirements of § 155.5050 apply to various nontank vessels with a fuel and cargo capacity of less than 250 barrels, between 250 barrels and 2,500 barrels, and 2,500 barrels or greater.

*Section 155.5052 Response Plan
Development and Evaluation Criteria for
Nontank Vessels Carrying Group V
Petroleum Oil*

This section of the proposed rule, which adopts the tank vessel requirements of § 155.1052, would require owners and operators of nontank vessels that carry group V petroleum oil as fuel or cargo to provide information in their plan that identifies procedures and strategies for responding to discharges up to a worst case discharge of group V petroleum oils to the maximum extent practicable, and that identifies sources of the equipment and supplies necessary to locate, recover, and mitigate such discharges.

The owner or operator would need to ensure that:

- Any equipment identified in a response plan is capable of operating in the conditions expected in the geographic area(s) in which the nontank vessel operates, and consider the limitations identified in the Area Contingency Plans for the COTP zones in which the vessel operates;

- Through contract or other approved means, equipment identified in this section, including sonar, sampling equipment for locating the oil on the bottom or suspended in the water column, sorbent boom, silt curtains, dredges, pumps, or other equipment necessary to recover oil from the bottom and shoreline is made available and capable of being deployed within 24 hours of discovery of a discharge to the port nearest the area where the vessel is operating.

The owner or operator of a nontank vessel carrying group V petroleum oil as fuel or cargo would also need to identify in the response plan and ensure the availability, through contract or other approved means, a salvage company with appropriate expertise and equipment, a company with vessel firefighting capability that will respond to casualties in the area(s) in which the vessel is operating, and that the intended sources of these resources are capable of being deployed to the areas in which the vessel will operate.

In addition, the owner or operator would be required to identify in the response plan and ensure the availability of certain equipment facilitating ship-to-ship transfers of fuel or cargo in an emergency, including fendering equipment, transfer hoses, portable pumps and ancillary equipment, and lightering vessels. And these identified resources would need to be capable of reaching the locations in which the vessel operates within 12-to-36 hours depending on the type of water (e.g., inland, offshore, or open ocean).

Section 155.5055 Training

This section of the proposed rule, which adopts the requirements of § 155.1055 for tank vessels, describes the training requirements that an owner or operator of a nontank vessel must identify in his or her plan. The proposed rule does not require training in specific subjects or minimum training periods, but instead it requires a vessel owner or operator to identify the training programs they will establish or adopt to train any person with responsibilities in the response plan.

The training may vary widely based on those responsibilities. For example, a vessel's master would need different training than the engineer responsible for internal cargo transfers, just as the qualified individual would need different training than the cleanup manager in the vessel owner or operator's shore-based spill management team. This proposed section would require that the training program identified in the plan differentiate between training provided

to vessel personnel and shore-based personnel. This section points to 33 CFR 155's Appendix C, described below, as providing additional training guidance.

Under this proposed section, the owner or operator of a nontank vessel would need to maintain records sufficient to document training and make them available for inspection upon request by the Coast Guard, and ensure that any oil spill removal organization identified in its response plan also maintains records sufficient to document training for the organization's personnel. The owner or operator of the nontank vessel would need to maintain its training records for 3 years.

Section 155.5060 Exercises

This section of the proposed rule would require a nontank vessel owner or operator to conduct, as necessary, announced and unannounced exercises to ensure that the plan will function in an emergency. This proposed section adopts the minimum exercise requirements from § 155.1060 for tank vessels, as well as its requirements to:

- Participate in unannounced exercises, as directed by the COTP,
- Participate in Area exercises as directed by the applicable on-scene coordinator, and
- Maintain adequate records for 3 years following completion of the exercises.

This proposed section also adopts § 155.1060's provision that compliance with the National Preparedness for Response Exercise Program (PREP) Guidelines will satisfy nontank vessel response plan exercise requirements, as will an alternative program that meets the minimum exercise requirements and has been approved under alternative planning criteria in proposed § 155.5067.

Section 155.5062 Inspection and Maintenance of Response Resources

This proposed section, which adopts the corresponding tank vessel requirements in § 155.1062, would require nontank vessel owners or operators to ensure that containment boom, skimmers, vessels, and other major equipment listed or referenced in a vessel response plan are periodically inspected and maintained in good operating condition, in accordance with manufacturer's recommendations and best commercial practices. This proposed section notes that the Coast Guard may visit equipment locations listed in response plans to:

- Verify that the equipment inventories exist as represented;

- Verify that the records of inspection and maintenance reflect the actual condition of the equipment; and
- Inspect and require operational tests of equipment to verify readiness.

Section 155.5065 Procedures for Plan Submission and Approval

This section of the proposed rule identifies the procedures for submission and approval of response plans. The owner or operator of a nontank vessel would need to submit a complete vessel response plan, written in English, along with a statement certifying that the plan meets the requirements of subpart J as well as any applicable requirements in subparts D, E, F, or G.

In addition, the submission would need to include a statement specifically certifying that the "owner or operator has ensured the availability of, through contract or other approved means, the necessary private resources to respond, to the maximum extent practicable, to a worst case discharge or substantial threat of such a discharge from their vessel."

We propose the use of a Coast Guard form entitled "Application for Approval/Revision of Vessel Pollution Response Plans" (CG-6083) as an optional alternative to a cover letter for a plan submission and approval application. When submitted properly, this application form would satisfy the two certification statement requirements for submission. Submissions would be sent in paper format to the Coast Guard's Office of Vessel Activities (CG-543), and directed to the attention of that Office's Vessel Response Plan Review Team.

The proposed requirements of § 155.5065 are derived from tank vessel requirements in § 155.1065 to ensure consistency with the procedures for vessel response plan submission and approval, but have been modified to be consistent with subpart J applicability. Additionally, appeal and alternative planning criteria procedures have been removed and put in their own respective sections.

Section 155.5067 Alternative Planning Criteria

This section of the proposed rule would allow the submission of a request for acceptance of alternative planning criteria from the owner or operator of a vessel who believes that national planning criteria contained elsewhere in 33 CFR part 155 are inappropriate, and explains who in the Coast Guard will grant or deny the request. The proposed requirements for alternative planning criteria have been derived from § 155.1065(f) and expanded to identify

essential elements of the request, and to require the endorsement (either favorable or unfavorable) of the COTP with jurisdiction over the geographic areas at issue before the request may be considered by the Coast Guard's Office of Vessel Activities (CG-543).

There are numerous remote areas in Alaska, as well as Guam and American Samoa, where it is noted that the level of required response resources do not meet the national planning requirements even for tank vessels under subpart D. It is anticipated that nontank vessels that transit or plan to transit these remote areas may have initial difficulty in meeting the proposed requirements of subpart J. Once the final regulations are implemented for subpart J, it is expected that any vessel owner or operator required, but unable, to meet the requirements due to this reason will meet with the cognizant Coast Guard Captain of the Port to discuss what resources are available and what alternative planning and mitigation strategies can be put in place to receive authorization for operations in these areas. We encourage Area [Planning] Committees, established under the National Contingency Plan (40 CFR 300), to address this issue and facilitate solutions to include recommending acceptable alternative planning criteria for nontank vessel response plan approval and building up required response resources in applicable areas.

Section 155.5070 Procedures for Plan Review, Revision, and Amendment

This section of the proposed rule would require nontank vessel owners or operators to review their response plans annually to ensure that the plan information is current. This review must occur within one month of the anniversary date of Coast Guard approval of the plan. Also, a vessel owner or operator would be required to submit a letter to Coast Guard certifying that they have conducted this review.

These proposed requirements in § 155.5070 are derived from § 155.1070 to ensure consistency with the procedures for tank vessel response plan review, revision, and amendment procedures, except for the following. To be consistent with plan review and revision requirements in 33 CFR 151.28(a), the owner or operator of a nontank vessel must submit a letter to the Coast Guard certifying that the annual review has been completed. This certification is necessary even if no changes have occurred.

We propose the use of a Coast Guard form entitled "Application for Approval/Revision of Vessel Pollution

Response Plans” (CG-6083) as an optional alternative to a cover letter for a plan annual review. When submitted properly, this application form would satisfy the annual review requirements found in proposed § 155.5070.

Submissions would be sent to the Coast Guard’s Office of Vessel Activities, and directed to the attention of that Office’s Vessel Response Plan Review Team.

Section 155.5075 Appeal Procedures

Consistent with tank vessel procedures in §§ 155.1065(h) and 155.1070(f), we propose allowing a nontank vessel owner or operator who disagrees with a deficiency determination to submit a petition for reconsideration to the Coast Guard and to appeal a Coast Guard decision not to approve the owner or operator’s NTVRP.

A petition for reconsideration of a deficiency determination would need to be filed within the period required for compliance or within 5 days from receipt of the notice of deficiency determination to the owner or operator, whichever date occurs first. For 21 days following notification that a NTVRP is not approved, the vessel owner or operator would be allowed to appeal that determination to the Assistant Commandant for Marine Safety, Security, and Stewardship.

Appendix B of 33 CFR 155

Appendix B of 33 CFR part 155 describes the procedures for identifying response resources to meet VRP requirements of subparts D, E, F, and G. We propose revising Appendix B so that it also addresses our proposed addition of NTVRP regulations in subpart J.

In Appendix B paragraphs 1.1, 2.6, and 2.7, which describe the purpose of the Appendix and describe equipment operability and readiness, we simply propose adding a reference to subpart J. In paragraph 4.2.2 of Appendix B, we propose changing the 10 percent measure from “total cargo oil capacity” to “total oil capacity” in reference to maximum most probable discharge.

Section 3 of Appendix B deals with determining response resources required for the AMPD. In paragraph 3.1, after the words “vessel owner or operator,” we propose adding the words “as applicable under the regulations prescribed in this part.” Also, after the reference to a vessel carrying oil as a primary cargo, we propose adding “or a nontank vessel carrying oil as cargo as required by subpart J.”

Section 5 of Appendix B deals with determining response resources required for the WCD to the maximum extent practicable. In paragraphs 5.1, and 5.3 through 5.7, after the words

“vessel owner or operator,” we propose adding the words “as applicable under the regulations prescribed in this part.” In paragraph 5.2, we propose to insert a reference to § 155.5050(g) when identifying the applicable tier for response time.

Section 7 of Appendix B describes determining the WCD planning volumes. In paragraphs 7.1, 7.2, and 7.2.4, after the words “vessel owner or operator,” we propose inserting the words “as applicable under the regulations prescribed in this part.” In paragraph 7.2.3, we propose inserting a clarifying statement that for nontank vessels, only Tier 1 is to be used with the oil recovery resource mobilization factor in determining the total on-water oil recovery capacity that must be identified or contracted for to arrive on scene within the applicable time for each response tier. In paragraph 7.2.4, we propose deleting a sentence on exceeding the 1993 planning volume cap that is no longer needed. In paragraph 7.3.1, we propose changing “total volume of oil cargo carried” to “total volume of oil carried.”

Section 8 of Appendix B provides guidance on determining the availability of high-rate response methods. In paragraph 8.1.1, after the words “vessel owner or operator,” we propose adding the words “as applicable under the regulations prescribed in this part.”

Appendix C of 33 CFR 155

Appendix C of 33 CFR part 155 provides guidance to owners and operators of vessels on the development of the training portions of their response plans. We propose revising Appendix C so that it also addresses our proposed addition of NTVRP regulations in subpart J.

In Appendix C, section 2, the elements-to-be-addressed section, we propose:

- Expanding organizational activities in paragraph 2.2.3.1 from “cargo transfers” to “fuel and cargo transfers” in reference to procedures to mitigate or prevent any discharge or a substantial threat of a discharge of oil;
- Adding a suspected fuel tank leak in paragraph 2.2.14 to the list of items for which action must be taken; and
- Changing information on “cargoes handled” to information on “oil handled” in paragraph 2.2.15.

For paragraphs within 2.2.15, we propose adding “(including oil carried as fuel)” to paragraph 2.2.15.1 in reference to cargo material safety data sheets; and in reference to chemical properties, special handling procedures, health and safety hazards, and spill and firefighting procedures, we propose

revising “cargo” in paragraphs 2.2.15.2 through 2.2.15.5 to “all oils carried as fuel or cargo.”

33 CFR 160.206 Information Required in an NOA

The proposed rule would amend 33 CFR part 160 by adding a requirement for vessel owners or operators to include the USCG vessel response plan control number in the notice of arrival submission. As noted in Section III.F, the VRP control number would better enable the Coast Guard to determine if the vessel has an authorized GSA for each of the USCG Captain of the Port Zones through which the vessel intends to transit. VRP GSA requirements are contained in proposed 33 CFR 155.5035(i) for nontank vessels, and in 33 CFR 155.1035(i), 155.1040(j), and 155.1045(i) for vessels subject to subpart D. For those vessels that are covered by more than one response plan, submission of the VRP control number will notify the Coast Guard as to which plan they are operating under.

V. Incorporation by Reference

Material proposed for incorporation by reference appears in § 155.5035. You may inspect this material at U.S. Coast Guard Headquarters where indicated under **ADDRESSES**. Copies of the material are available from the sources listed in § 155.140.

Before publishing a binding rule, we will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

VI. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

A. Executive Order 12866

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. OMB has not reviewed it under that Order.

A combined Regulatory Analysis and an Initial Regulatory Flexibility Analysis is available in the docket where indicated under the “Public Participation and Request for Comments” section of this preamble. A summary of the analysis follows:

The proposed rule would implement the statutory requirements in 33 U.S.C. 1321(j)(5) for a U.S. and foreign flag vessel owner or operator to prepare and

submit an oil spill response plan to the Coast Guard. The type of vessels affected would be self-propelled, nontank vessels of 400 tons or greater as measured under the convention measurement system or regulatory measurement system, which operate on the navigable waters of the U.S., and carries oil of any kind as fuel for main propulsion.

The proposed rule would specify the content of a response plan, including the requirement to plan for a response to a worst-case discharge and a substantial threat of such a discharge. The proposed rule would also specify the procedures for submitting a plan to the Coast Guard.

There are four cost elements associated with this proposed rule: (1) The cost for nontank vessel plan development, maintenance, and submission (2) the cost for a nontank vessel owner or planholder to obtain the service of an Oil Spill Response Organization (OSRO), (3) the cost for a nontank vessel owner or planholder to contract with a Qualified Individual (QI) along with a Spill Management Team

(SMT), and (4) the cost for training and exercises.

We base the cost estimates for plan development on information contained in an OMB-approved collection of information (OMB 1625-0066). We base the cost estimates associated with exercises on a combination of information from the Bureau of Labor Statistics (BLS), the General Services Administration, the OMB-approved collection of information, publicly available information from OSRO contractors, and other industry information. The OSRO and QI/SMT costs are based upon information that we received from contacting plan preparers.

We estimate this proposed rule would affect about 2,951 U.S. flag vessels and 1,228 associated planholders. We estimate the proposed rule would also affect about 9,264 foreign flag vessels and about 1,544 associated planholders.

We present the costs of this proposed rule in 2008 dollars and discount these costs to their present value (PV) over a 10-year period of analysis, 2009-2018, using 7 and 3 percent discount rates. We

also estimate annualized costs of this proposed rule over the same 10-year period of analysis. We estimate the total 10-year PV cost of this proposed rule to U.S. flag nontank vessel owners and operators to be about \$111.4 million at a 7 percent discount rate and \$134.8 million at a 3 percent discount rate. We found the training and exercise requirements to be the most costly element, or over 90 percent of the total discounted cost of the proposed rule for vessel owners. We estimate the total U.S. annualized cost of this proposed rule over the 10-year period of analysis to be about \$15.8 million at both discount rates.

We estimate the total 10-year PV cost of this proposed rule to foreign flag nontank vessels owners and operators to be about \$151.6 million at a 7 percent discount rate and \$183.6 million at a 3 percent discount rate. We estimate annualized costs of this proposed rule to foreign flag nontank vessel owners and operators over the 10-year period of analysis to be about \$21.6 million at both discount rates. See Table 1 below.

TABLE 1—SUMMARY OF TOTAL 10-YEAR DISCOUNTED COSTS OF THE PROPOSED RULE
[2009-2018, 7 and 3 Percent discount rates, \$Millions]

Cost item	Discount rates	
	7 Percent	3 Percent
U.S. vessel costs:		
Plan Development	\$5.3	\$6.0
Contracted OSRO Service	0.46	0.56
QI/SMT	5.7	6.9
Training, Drilling, and Exercises	99.9	121.4
Total U.S. Vessel Cost	111.4	134.8
Total U.S. Annualized Cost	15.8	15.8
Foreign vessel costs:		
Plan Development	6.7	7.5
Contracted OSRO Service	1.5	1.8
QI/SMT	17.8	21.7
Training, Drilling, and Exercises	125.7	152.6
Total Foreign Vessel Cost	151.6	183.6
Total Foreign Annualized Cost	21.6	21.6
Total Cost of Proposed Rule	263.0	318.4

Note: Totals may not sum due to rounding.

We estimate the total cost of the proposed rule to both the U.S. and foreign fleets over the 10-year period of analysis to be \$263.0 or \$318.4 million at 7 and 3 percent discount rates, respectively, with an annualized cost of about \$37.4 million at both discount rates. We expect this proposed rule to provide quantifiable benefits in the form of barrels of oil not spilled into the water in addition to qualitative benefits, which include improved preparedness and reaction to an incident, including a worst-case discharge, and improved

effectiveness of onboard and shore-side response activities.

We based quantifiable benefits on a review of marine casualty cases from our Marine Information for Safety and Law Enforcement (MISLE) database for the period 2002-2006 in order to obtain casualty reports involving self-propelled, nontank vessels of 400 gross tons or greater that operated on the navigable waters of the U.S. and that carried oil of any kind as fuel for main propulsion.

We estimate the proposed rule would prevent between 2,014 and 2,446 barrels

of oil from being spilled into the water during the 10-year period of analysis, 2009-2018. See the regulatory analysis in the docket for further detail.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not

dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

We estimate that this proposed rule would affect about 1,228 U.S. companies that own approximately 2,951 nontank vessels identified for this proposed rule. We researched all 1,228 companies and found company-specific information on 640 of them (about 52 percent). From our analysis, we determined that 376 (about 59 percent) entities are small entities based on the Small Business Administration (SBA) size criteria of annual revenues and employment data. These 376 small entities own 769 vessels or about two vessels per owner.

Additionally, we found the remaining 588 of the 1,228 companies that we researched lacked company data such as revenues and employee size, which precluded us from using those companies in our analysis. We assume that a majority of these 588 companies may be small entities.

Using publicly available and proprietary data on owner revenue, we estimated the initial and annual impact to small entities as a percentage of annual revenue. We then determined the initial and annual cost impact of this proposed rule on small entities.

We found that the first year cost of the proposed rule would have a one percent or less impact on 50 percent of the small entities that we analyzed. We found that the first year cost of the proposed rule would have a 3 percent or less impact on 68 percent of the small entities that we analyzed.

We found that the annual cost of the proposed rule would have a 1 percent or less impact on 55 percent of the small entities that we analyzed. We found that the annual cost of the proposed rule would have a 3 percent or less impact on 73 percent of the small entities that we analyzed.

We are interested in the potential direct impacts of this proposed rule on small entities and we request public comment on these potential direct impacts. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121),

we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Lieutenant Jarrod DeWitz at (202) 372-1219 or Jarrod.M.DeWitz@uscg.mil. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

D. Collection of Information

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

This rulemaking modifies two existing OMB-approved collections of information, 1625-0066 and 1625-0100. Details are provided below.

OMB Control Number: 1625-0066.

Title: Vessel and Facility Response Plans (Domestic and Int'l), and Additional Response Requirements for Prince William Sound, Alaska.

Summary of the Collection of Information: A nontank vessel owner or operator would need to prepare and submit to the Coast Guard a nontank vessel response plan in accordance with proposed 33 CFR part 155, subpart J. The content of the response plan would include the requirement to plan for responding to a worst case discharge and a substantial threat of such a discharge. Additionally, submissions of

international SOPEPs for certain U.S. flag nontank and tank vessels will require alignment with updated SOPEP rules.

Need for Information: The information is necessary to show evidence that planholders have properly planned to prevent or mitigate oil outflow and to provide information to the Coast Guard for its use in emergency response.

Proposed Use of Information: The Coast Guard will use the information to determine whether a nontank vessel response plan meets the requirements.

Description of the Respondents: The respondents are nontank vessel response planholders and SOPEP planholders.

Number of Respondents: The existing OMB-approved number of respondents is 9,834. This proposed rule would increase that number by 772 respondents. The total number of respondents would be 10,606.

Frequency of Response: The existing OMB-approved number of responses is 32,675. This proposed rule would increase that number by 1,453 responses.

Burden of Response: The existing OMB-approved burden of response is a range of 3 to 40 hours per NTVRP activity (*i.e.*, initial plan development, plan revision, annual recordkeeping, 5-year resubmission).

Estimate of Total Annual Burden: The existing OMB-approved total annual burden is 220,559 hours. This proposed rule would increase that number by 14,415 hours.

OMB Control Number: 1625-0100.

Title: Advance Notice of Vessel Arrival.

Summary of the Collection of Information: The Coast Guard requires pre-arrival notices from certain vessels entering a port or place of the United States. This proposed rule would add one new data element (the VRP control number) to the 40 data elements that are currently required by 33 CFR part 160.

Need for Information: In general, the Coast Guard uses notice of arrival information to ensure port safety and security, and to ensure the uninterrupted flow of commerce. In particular, the addition of the VRP control number would enable the Coast Guard to determine if the vessel has an authorized GSA for each COTP zone through which the vessel intends to transit.

Proposed Use of Information: This information is required to control vessel traffic, develop contingency plans, and enforce regulations.

Description of the Respondents: Respondents are the owner, agent,

master, operator, or person in charge of a vessel that arrives at a port or place of the United States.

Number of Respondents: The existing OMB-approved number of respondents is 9,206. This proposed rule would not change that number. The total number of respondents would remain 9,206.

Frequency of Response: The existing OMB-approved number of responses is 78,538. This proposed rule would not change that number. The total number of responses would remain 78,538.

Burden of Response: The existing OMB-approved burden of response is approximately 2.5 hours (150 minutes) per response. The additional burden imposed by this proposed rule is estimated to be so minimal that it does not merit changing the approved collection. For this collection, we propose to add one data element, the VRP control number, to the currently required 40 data elements for the notice of arrival. The VRP control number is a "static" data element issued once every 5 years or longer, while some of the 40 other data elements change with each voyage (such as last port of call, cargo, or crew list). Therefore, we believe the 150-minute burden currently approved for this collection more than adequately covers the post rulemaking 41 data elements and the burden of response should remain unchanged.

Estimate of Total Annual Burden: The existing OMB-approved total annual burden is 200,039 hours. Because the additional burden imposed by this proposed rule is estimated to be so minimal, it does not merit changing the approved annual burden. The estimated total annual burden would remain 200,039 hours.

In addition to this rulemaking, COI 1625-0066 is being revised by two other Coast Guard rulemakings. These rulemakings are: (1) Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil [Docket No. USCG-1998-3417; RIN 1625-AA19]; and (2) Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions [Docket No. USCG-2001-8661; RIN 1625-AA26]. Once these rulemakings are finalized, the hour burden for 1625-0066 will differ from the figures noted above. See the COI preamble section of each rulemaking for details on how the hour burden will differ.

In addition to this rulemaking, COI 1625-0100 is being revised by two other Coast Guard rulemakings. These rulemakings are: (1) Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System [Docket No. USCG-2005-21869;

RIN 1625-AA99]; and (2) Notification of Arrival in U.S. Ports; Certain Dangerous Cargoes; Electronic Submission [Docket No. USCG-2004-19963; RIN 1625-AA93]. Once these rulemakings are finalized, the hour burden for 1625-0100 will differ from the figures noted above. See the COI preamble section of each rulemaking for details on how the hour burden will differ.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the Coast Guard could enforce the collection of information requirements in this proposed rule, OMB would need to approve the Coast Guard's request to collect this information.

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, or 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as casualty reporting and any other category in which Congress intended the Coast Guard to be the sole source of government-imposed vessel obligations, are within the field foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of *United*

States v. Locke and *Intertanko v. Locke*, 529 U.S. 89, 120 S.Ct. 1135 (2000)).

This NPRM describes the proposed standards to which nontank vessel owners and operators would adhere when preparing and submitting plans for responding to a discharge of oil from their vessels. We have drafted this proposed rule to ensure that, to the extent practicable, it is consistent with any applicable State-mandated response plan in effect on August 9, 2004. To that end, we have conducted a search of State laws addressing NTVRPs and conclude that no State law would be preempted when this rule is made final. That said, we have found that a few State laws authorize nontank vessel owners and operators to, among other options, contract with intermediaries as a method of complying with State laws that require nontank vessel owners or operators to ensure the availability of oil spill removal organization by contract or other approved means. Those intermediaries, generally, do not own the oil spill removal resources and usually contract with third-party companies to fulfill the State requirement. Our proposed rule does not allow for the third-party intermediary option, because we interpret the OPA 90 to require a direct contractual relationship between vessel owners or operators and the organization owning the oil spill removal organization. Because the vessel owner or operator may comply with both State law and Federal law on this topic so long as, among other things, there is a direct contractual relationship between the vessel owner or operator and the oil spill removal organization, we believe this proposed rule will not preempt the various State laws on this topic. However, to ensure that those States that may have an interest in this rulemaking are provided with adequate opportunity to comment upon potential federalism issues, we will provide separate notice of this NPRM to the States.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

We do not expect this proposed rule to have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because we do not expect it to have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on this assessment and if tribal implications are identified during the comment period we will undertake appropriate consultations with the affected Indian tribal officials.

K. Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule uses the following voluntary consensus standards:

- IMO Resolution A.741(18), International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code), November 4, 1993.
- IMO Resolution A.851(20), General Principles for Ship Reporting Systems and Ship Reporting Requirements, Including Guidelines for Reporting Incidents Involving Dangerous Goods, Harmful Substances and/or Marine Pollutants, November 27, 1997.
- IMO Resolution MSC.104(73), Adoption of Amendments to the International Safety Management (ISM) Code, December 5, 2000.
- Oil Companies International Marine Forum's Ship to Ship Transfer Guide (Petroleum), Fourth Edition 2005. The proposed sections that reference these standards and the locations where these standards are available are listed in § 155.140.

M. Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID and Department of Homeland Security Management Directive 023-01, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that, under the Commandant Instruction, this action is not likely to have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. We seek any comments or information that may lead to the discovery of a

significant environmental impact from this proposed rule.

List of Subjects

33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 155

Administrative practice and procedure, Alaska, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 151, 155, and 160 as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

1. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1321, 1903, 1908; 46 U.S.C. 6101; Pub. L. 104-227 (110 Stat. 3034); E.O. 12777, 3 CFR, 1991 Comp. p. 351; Department of Homeland Security Delegation No. 0170.1.

2. In § 151.09, add a note to paragraph (c), remove the note following paragraph (e), and revise paragraph (d) to read as follows:

§ 151.09 Applicability.

* * * * *

(c) * * *

Note to § 151.09(c): The term "internal waters" is defined in § 2.24 of this chapter.

(d) Sections 151.26 through 151.28—

(1) Do not apply to—

(i) The ships specified in paragraph (b) of this section;

(ii) Any barge or other ship which is constructed or operated in such a manner that no oil in any form can be carried aboard.

(2) Are considered to be met if a U.S. flag nontank vessel holds a USCG-approved nontank vessel response plan and provides evidence of compliance with 33 CFR part 155, subpart J requirements.

* * * * *

3. In § 151.26—

a. In paragraph (b)(1)(i), remove "Regulation 26" and add "Regulation 37" in its place; and add the words "as amended by Resolution MEPC.86(44)" immediately after "MEPC.54(32)";

b. Revise paragraph (b)(2) to read as set out below;

c. Revise paragraphs (b)(3)(i)(A) and (b)(3)(ii) introductory text to read as set out below;

d. Redesignate the introductory text of paragraph (b)(3)(iii)(A) as

(b)(3)(iii)(A)(1), and add paragraphs (b)(3)(iii)(A)(2) and (b)(3)(iii)(D) to read as set out below;

e. Revise the introductory text of paragraph (b)(4)(i) and all of paragraph (b)(4)(ii) to read as set out below;

f. Revise paragraph (b)(4)(iii)(B), and add new paragraph (b)(4)(iii)(D) and (b)(4)(iii)(E) to read as set out below;

g. Revise paragraph (b)(5)(i) to read as set out below;

h. Remove paragraph (b)(7)(i); and

i. Redesignate paragraphs (b)(7)(ii) through (b)(7)(vi) as (b)(7)(i) through (b)(7)(v).

§ 151.26 Shipboard oil pollution emergency plans.

* * * * *

(b) * * *

(2) *Preamble.* The plan must be realistic, practical, and easy to use, and the Preamble section of the plan must reflect these three features of the plan. The use of flowcharts, checklists, and appendices within the plan will aid in addressing this requirement. This section must contain an explanation of the purpose and use of the plan and indicate how the shipboard plan relates to other shore-based plans. Additionally, the Preamble section of the plan must clearly recognize coastal States' rights to approve oil pollution response in their waters by stating the following: "Without interfering with shipowner's liability, some coastal States consider that it is their responsibility to define techniques and means to be taken against an oil pollution incident and approve such operations that might cause further pollution, i.e., lightening. States are entitled to do so under the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 (Intervention Convention)."

* * * * *

(3) * * *

(i) * * *

(A) A discharge of oil above the permitted level for any reason, including those for the purpose of securing the safety of the ship or saving life at sea;

* * * * *

(ii) *Information required.* This section of the plan must include a notification form, such as the one depicted in Table 151.26(b)(3)(ii), that includes all the data elements required in Resolution A.851(20) and contains information to be provided in the initial and follow-up notifications. The official number of the vessel and current conditions of the vessel are to be included. In addition, the initial notification should include as much of the information on the form as possible, and supplemental information, as appropriate. However, the initial notification must not be delayed pending collection of all information. Copies of the form must be placed at the location(s) on the ship from which notification may be made.

* * * * *

(iii) * * *

(A) * * *

(2) In order to expedite response and minimize damage from a pollution incident, it is essential that appropriate coastal States should be notified without delay. This process begins with the initial report required by article 8 and Protocol I of MARPOL 73/78.

* * * * *

(D) The plan must clearly specify who will be responsible for informing the necessary parties from the coastal State contacts, the port contacts, and the ship interest contacts.

(4) * * *

(i) *Operational spills:* The plan must outline procedures for safe removal of oil spilled and contained on deck. The plan must also provide guidance to ensure proper disposal of recovered oil and cleanup materials;

* * * * *

(ii) *Spills resulting from casualties:* Casualties should be treated in the plan as a separate section. The plan should include various checklists or other means that will ensure the master considers all appropriate factors when addressing the specific casualty (Reference is made here to the International Safety Management (ISM) Code, Section 8.). These checklists must be tailored to the specific ship and to the specific product or product types. In addition to the checklists, specific personnel assignments for anticipated tasks must be identified. Reference to existing fire control plans and muster lists is sufficient to identify personnel responsibilities. The following are examples of casualties that must be considered:

- (A) Grounding;
- (B) Fire or explosion;
- (C) Collision;
- (D) Hull failure;
- (E) Excessive list;

- (F) Containment system failure;
- (G) Submerged/Foundered;
- (H) Wrecked/Stranded; and
- (I) Hazardous vapor release.

(iii) * * *

(B) *Stability and strength considerations:* The plan should provide the master with detailed guidance to ensure that great care in casualty response must be taken to consider stability and strength when taking actions to mitigate the spillage of oil or the free the vessel if aground. Information for making damage stability and longitudinal strength assessments, or contacting classification societies to acquire such information, should be included. Where appropriate, the plan should provide a list of information for making damage stability and damage longitudinal strength assessments. The damage stability information for oil tankers and offshore oil barges in 33 CFR 155.240 is required to be provided in the SOPEP; and

* * * * *

(D) *Mitigating activities:* The spill mitigation requirements of 33 CFR 155.1035(c) must be met for tankships, the requirements of 33 CFR 155.1040(c) must be met for unmanned vessels, and the requirements of 33 CFR 155.5035(c) must be met for nontank vessels. Additionally, the following personnel safety mitigation strategies must be addressed for all personnel involved:

- (1) Assessment and monitoring activities;
- (2) Personnel protection issues;
- (3) Protective equipment;
- (4) Threats to health and safety;
- (5) Containment and other response techniques;
- (6) Isolation procedures;
- (7) Decontamination of personnel; and
- (8) Disposal of removed oil and clean-up materials; and

(E) *Drawings and ship-specific details:* Supporting plans, drawings, and ship-specific details such as a layout of a general arrangement plan, midship section, lines or tables of offsets, and tank tables must be included with the plan. The plan shall show where current cargo, bunker or ballast information, including quantities and specifications, are available.

(5) *National and Local Coordination.* (i) This section of the plan must contain information to assist the master in initiating action by the coastal State, local government, or other involved parties. This information must include guidance to assist the master with organizing a response to the incident, should a response not be organized by the shore authorities. Detailed information for specific areas may be

included as appendices to the plan. See 33 CFR 151.26(b)(2) (Preamble) regarding a ship owner's responsibility to comply with individual state requirements for oil spill response.

* * * * *

4. In § 151.27,

a. Revise paragraphs (e) and (f);

b. Add paragraph (g) to read as set out below.

§ 151.27 Plan submission and approval.

* * * * *

(e) If the Coast Guard determines that the plan meets the requirements of this section, the Coast Guard will issue an approval letter. The approval period for a plan expires 5 years after the approval date.

(f) If the Coast Guard determines that the plan does not meet the requirements, the Coast Guard will notify the owner or operator of the plan's deficiency. The owner or operator must then resubmit the corrected portions of the plan, within the time period specified in the written notice provided by the Coast Guard.

(g) CG Form "Application for Approval/Revision of Vessel Pollution Response Plans" (CG-6083) located at: <https://homeport.uscg.mil/vrpapplication> can be used in lieu of a cover letter to make initial application for plan submission and approval.

5. In § 151.28, add paragraph (g) to read as set out below:

§ 151.28 Plan review and revision.

* * * * *

(g) CG Form "Application for Approval/Revision of Vessel Pollution Response Plans" (CG-6083) located at: <https://homeport.uscg.mil/vrpapplication> can be used in lieu of a cover letter to request the required resubmission, plan amendment, or revision and to document the annual review required by paragraph (a) of this section.

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

6. The authority citation for part 155 is revised to read as follows:

Authority: 3 U.S.C. 301 through 303, 33 U.S.C. 1231, 1321(j); E.O. 11735, 3 CFR, 1971-1975 Comp., p. 793. Sections 155.100 through 155.130, 150.350 through 155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) are also issued under 33 U.S.C. 1903(b). Sections 155.480, 155.490, 155.750(e), and 155.775 are also issued under 46 U.S.C. 3703. Section 155.490 also issued under section 4110(b) of Pub. L. 101-380.

Note: Additional requirements for vessels carrying oil or hazardous materials are

contained in 46 CFR parts 30 through 40, 150, 151, and 153.

7. In § 155.140—

a. Redesignate paragraph (d)(2) as (d)(4);

b. Add paragraphs (d)(2), (d)(3), and (d)(5) to read as set out below; and

c. Add paragraph (f)(2) to read as set out below:

§ 155.140 Incorporation by reference.

* * * * *

(d) * * *

(2) Resolution A.741(18), International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code), November 4, 1993, incorporation by reference approved for § 155.5035.

(3) Resolution A.851(20), General Principles for Ship Reporting Systems and Ship Reporting Requirements, Including Guidelines for Reporting Incidents Involving Dangerous Goods, Harmful Substances and/or Marine Pollutants, November 27, 1997, incorporation by reference approved for § 155.5035.

* * * * *

(5) Resolution MSC.104(73), Adoption of Amendments to the International Safety Management (ISM) Code, December 5, 2000, incorporation by reference approved for § 155.5035.

* * * * *

(f) * * *

(2) Ship to Ship Transfer Guide (Petroleum), Fourth Edition, 2005, incorporation by reference approved for § 155.5035.

8. In § 155.1015—

a. Revise (c)(7); and

b. Add a note to the end of the section as set out below.

§ 155.1015 Applicability.

* * * * *

(c) * * *

(7) Foreign flag vessels engaged in innocent passage through the territorial sea or transit passage through a strait used for international navigation, unless bound for or departing from a port or place of the United States;

* * * * *

Note to § 155.1015: Response plan requirements for nontank vessels are found in subpart J of this part.

9. In § 155.1020—

a. Revise the definition for "vessels carrying oil as a secondary cargo" to read as set out below; and

b. Add a definition for "nontank vessel" as set out below.

§ 155.1020 Definitions.

* * * * *

Nontank vessel means a self-propelled vessel of 400 gross tons or greater, as measured under the convention measurement system in 46 U.S.C. 14302 or the regulatory measurement system of 46 U.S.C. 14502 for vessels not measured under 46 U.S.C. 14302, that operates on the navigable waters of the United States, as defined in 46 U.S.C. 2101(17a), carries oil of any kind as fuel for main propulsion, and is not a tank vessel.

* * * * *

Vessels carrying oil as a secondary cargo means vessels, other than vessels that carry oil as a primary cargo, and nontank vessels, carrying oil in bulk as cargo or cargo residue pursuant to a permit issued under 46 CFR 30.01-5, 70.05-30, or 90.05-35; an International Oil Pollution Prevention (IOPP) certificate (33 CFR 151.19) or Noxious Liquid Substance (NLS) certificate required by 33 CFR 151.33 or 151.35; or any uninspected vessel that carries oil in bulk as cargo or cargo residue.

* * * * *

§ 155.1055 [Amended]

10. In § 155.1055, amend paragraph (a) by removing the phrase "§ 155.1035" and adding, in its place, the phrase "§§ 155.1035 or 155.5035".

§ 155.1060 [Amended]

11. In § 155.1060, amend paragraph (a) by removing the phrase "§§ 155.1035 and 155.1040" and adding, in its place, the phrase "§§ 155.1035, 155.1040 or 155.5035".

12. In § 155.1065—

a. In paragraph (b), remove the phrase "subparts D, E, F, and G of this part" and add, in its place, the phrase "subparts D, E, F, G, and J of this part, as applicable,".

b. In paragraph (b), add two new sentences at the end of the paragraph to read as set out below.

§ 155.1065 Procedures for plan submission, approval, requests for acceptance of alternative planning criteria, and appeal.

* * * * *

(b) * * * CG Form "Application for Approval/Revision of Vessel Pollution Response Plans" (CG-6083) located at: <https://homeport.uscg.mil/vrpapplication> can be used in lieu of a cover letter to make initial application for plan submission and approval. When submitted properly, this application form meets the requirement for a vessel response plan certification statement as required by this paragraph.

* * * * *

13. In § 155.1070—

a. In paragraph (a)(2), add a new sentence at the end of the paragraph to read as set out below.

b. Revise paragraph (b) to read as set out below;

c. Revise paragraphs (c)(1), (c)(2), (c)(4), (c)(5), and (c)(8) to read as set out below; and

d. Revise paragraph (d) to read as set out below:

§ 155.1070 Procedures for plan review, revision, amendment, and appeal.

(a) * * *

(2) * * * CG Form "Application for Approval/Revision of Vessel Pollution Response Plans" (CG-6083) located at: <https://homeport.uscg.mil/vrapplication> can be used in lieu of a cover letter to request the required resubmission, plan amendment, or revision and to document the annual review required by this paragraph (a).

(b) The owner or operator of a vessel subject to subparts D, E, F, G, or J of this part must resubmit the entire plan to the Coast Guard for approval:

(1) Six months before the end of the Coast Guard approval period identified in §§ 155.1065(c) or 155.5065(c); and

(2) Whenever there is a change in the owner or operator of the vessel, if the previous owner or operator provided the certifying statement required by § 155.1065(b), then the new owner or operator must submit a new statement certifying that the plan continues to meet the applicable requirements of subparts D, E, F, G, or J of this part.

(c) * * *

(1) A change in the owner or operator of the vessel, if that owner or operator is not the one who provided the certifying statement required by §§ 155.1065(b) or 155.5065(b);

(2) A change in the vessel's operating area that includes ports or geographic area(s) not covered by the previously approved plan. A vessel may operate in an area not covered in a previously approved plan upon receipt of written acknowledgment by the Coast Guard that a new geographic-specific appendix has been submitted for approval by the vessel's owner or operator and the certification required in §§ 155.1025(c)(2) or 155.5023(b) has been provided;

* * * * *

(4) A change in the type of oil carried aboard (oil group) that affects the required response resources, except as authorized by the COTP for purposes of assisting in an oil spill response activity;

(5) A change in the identification of the oil spill removal organization(s) or other response-related resource required

by §§ 155.1050, 155.1052, 155.1230, 155.2230, 155.5050, or 155.5052 as appropriate, except an oil spill removal organization required by §§ 155.1050(d) or 155.5050(d) that may be changed on a case-by-case basis for an oil spill removal organization previously classified by the Coast Guard, which has been ensured to be available by contract or other approved means;

* * * * *

(8) The addition of a vessel to the plan. This change must include the vessel-specific appendix required by this subpart and the owner or operator's certification required in §§ 155.1025(c) or 155.5023(b); or

* * * * *

(d) Thirty days in advance of operation, the owner or operator must submit any revision or amendments identified in paragraph (c) of this section. The certification required in §§ 155.1065(b) or 155.5065(b) must be submitted along with the revisions or amendments.

* * * * *

14. Add subpart J, consisting of §§ 155.5010 through 155.5075, to read as follows:

Subpart J—Nontank Vessel Response Plans

Sec.	
155.5010	Purpose.
155.5012	Deviation from response plan.
155.5015	Applicability.
155.5020	Definitions.
155.5021	Operating restrictions.
155.5023	Interim operating authorization.
155.5025	One-time port waiver.
155.5026	Qualified individual and alternate qualified individual.
155.5030	Nontank vessel response plan requirements: general content.
155.5035	Nontank vessel response plan requirements: specific content.
155.5050	Response plan development and evaluation criteria for nontank vessels carrying groups I through IV petroleum oil.
155.5052	Response plan development and evaluation criteria for nontank vessels carrying group V petroleum oil.
155.5055	Training.
155.5060	Exercises.
155.5062	Inspection and maintenance of response resources.
155.5065	Procedures for plan submission and approval.
155.5067	Alternative planning criteria.
155.5070	Procedures for plan review, revision, and amendment.
155.5075	Appeal procedures.

Subpart J—Nontank Vessel Response Plans

§ 155.5010 Purpose.

The purpose of this subpart is to establish requirements for oil spill response plans for nontank vessels. The

planning criteria in this subpart are intended for use in nontank vessel oil spill response plan development and the identification of resources necessary to respond to a nontank vessel's worst case discharge or substantial threat of such a discharge. The development of a nontank vessel response plan prepares the vessel's crew and ship management to respond to an oil spill. The specific criteria for response resources and their arrival times are not performance standards. They are planning criteria based upon a set of assumptions that may not exist during an actual oil spill incident.

§ 155.5012 Deviation from response plan.

The owner or operator of a nontank vessel required to have a response plan under this subpart may not deviate from the approved plan unless the Federal On-Scene Coordinator determines that the deviation from the response plan would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects.

§ 155.5015 Applicability.

(a) Except as provided in paragraph (c) of this section, this subpart applies to each self-propelled vessel that:

- (1) Carries oil of any kind as fuel for main propulsion;
- (2) Is not a tank vessel;
- (3) Operates upon the navigable waters of the United States, as defined in 46 U.S.C. 2101(17a); and
- (4) Is 400 gross tons or more as measured under the convention measurement system in 46 U.S.C. 14302 or the regulatory measurement system of 46 U.S.C. 14502 for vessels not measured under 46 U.S.C. 14302.

(b) For Integrated Tug Barge (ITB) units that are not certificated as tank vessels, the tonnage used to determine applicability of these regulations is the aggregate tonnage of the ITB combination, and the oil capacity used to determine the WCD volume is the aggregate fuel oil capacity of the ITB combination.

(c) This subpart does not apply to the following types of vessels:

- (1) Public vessels;
- (2) Foreign flag vessels engaged in innocent passage through the territorial sea or transit passage through a strait used for international navigation, unless bound for or departing from a port or place of the United States;
- (3) Vessels that carry oil as a primary cargo and are required to submit a response plan in accordance with 33 CFR part 155, subpart D;
- (4) Vessels constructed or operated in such a manner that no oil in any form can be carried aboard as fuel for propulsion or cargo;

- (5) Permanently moored craft; and
 (6) Inactive vessels.

Note to § 155.5015: Response plan requirements for tank vessels are found in subpart D of this part.

§ 155.5020 Definitions.

Except as otherwise defined in this section, the definitions in § 155.110 and § 155.1020 apply to this subpart. For the purposes of this subpart only, the term—

Cargo means oil, not carried as fuel, which is carried in bulk, secondary to the class or type of the vessel and is transported to, and off-loaded at, a destination by a vessel. It includes oil or oil residue carried pursuant to a permit issued under 46 CFR 30.01–5, 70.05–30, or 90.05–35; an International Oil Pollution Prevention (IOPP) certificate (33 CFR 151.19) or Noxious Liquid Substance (NLS) certificate required by 33 CFR 151.33 or 151.35; or any uninspected vessel that carries oil in bulk as cargo or cargo residue. It does not include oil that is carried as a primary cargo.

Contract or other approved means includes:

(1) A written contractual agreement between a vessel owner or operator and a required response resource provider. The agreement must identify and ensure the availability of specified personnel and equipment required under this subpart within stipulated response times in the applicable COTP zone or specified geographic areas;

(2) Certification by the vessel owner or operator that specified personnel and equipment required under this subpart are owned, operated, or under the direct control of the vessel owner or operator, and are available within stipulated response times in the applicable COTP zone or specified geographic areas;

(3) Active membership with a local or regional required response resource provider that has identified specific personnel and equipment required under this subpart that are available to respond to a discharge within stipulated response times in the COTP zone or specified geographic areas;

(4) A document that:

(i) Identifies the personnel, equipment, and services capable of being provided by the required response resource provider within stipulated response times in the COTP zone or specified geographic areas;

(ii) Sets out the parties' acknowledgment that the required response resource provider intends to commit the resources in the event of a response;

(iii) Permits the Coast Guard to verify the availability of the identified

response resources through tests, inspections, and exercises; and

(iv) Is referenced in the response plan; or

(5) With the written consent of the required response resource provider, the identification of a required response resource provider with specified equipment and personnel that are available within stipulated response times in the COTP zone, port area, or specified geographic area. This paragraph is "another approved means" for only:

(i) Nontank vessels with a fuel and cargo oil capacity of less than a 250 barrels for maximum most probable discharge oil spill removal response resource requirements per 33 CFR 155.5050(e);

(ii) Nontank vessels that carry group I through group IV petroleum oils as fuel or cargo with a capacity of 250 barrels or greater, but less than 2,500 barrels, for salvage, emergency lightering, and marine firefighting response resources per 33 CFR 155.5050(i)(2);

(iii) Nontank vessels that carry group I through group IV petroleum oils as fuel or cargo with a capacity less than 250 barrels for salvage response resources in 33 CFR 155.5050(i)(3);

(iv) Nontank vessels that carry group II through group IV petroleum oils as fuel or cargo with a capacity of 250 barrels or greater, but less than 2,500 barrels, for dispersant response resources per 33 CFR 155.5035(i)(10) and 33 CFR 155.5050(j); and

(v) Nontank vessels that carry groups I through IV petroleum oils as fuel or cargo with a capacity of 250 barrels or greater, but less than 2,500 barrels, for aerial oil spill tracking to support oil spill assessment and cleanup activities per 33 CFR 155.5050(k).

Fuel means all oils of any kind, which may be used to supply power or lubrication for primary or auxiliary purposes aboard the vessel in which it is carried.

Inactive vessel means a vessel that is out of service or laid up and has emptied its tanks of fuel except for the minimum amount of fuel necessary for the maintenance of the vessel's material condition. Such a vessel is considered not to be operating on the navigable waters of the United States for the purposes of 33 U.S.C. 1321(j)(5), unless the cognizant COTP determines that it poses an unacceptable risk to the marine environment due to the amount of oil carried for maintenance. A vessel would not be considered inactive if it carried oil as a cargo or cargo residue.

Integrated Tug Barge or ITB means any tug barge combination in which a

specially designed propulsion unit (tug) is mated to a cargo unit (barge) of a compatible special design or where a propulsion unit (tug) is mated to a cargo unit (barge) with a specially designed connection system such that the combined unit has operating characteristics and seakeeping capabilities that exceed, under all anticipated weather conditions, those of a tug and barge, where the tug is secured in the barge notch or on fenders by means such as wire rope, chains, lines, or other tackle now commonly used in offshore towing.

Maximum most probable discharge or MMPD means a discharge of—

(1) Two thousand five hundred (2,500) barrels of oil, for vessels with a fuel and cargo capacity equal to or greater than 25,000 barrels; or

(2) Ten percent of the vessel's fuel and cargo capacity, for vessels with a fuel and cargo capacity of less than 25,000 barrels.

Navigable waters of the United States includes all waters of the territorial seas of the United States, extending 12 nautical miles (nm) seaward of the baseline, as described in Presidential Proclamation No. 5928, December 27, 1988.

Nontank vessel means a self-propelled vessel of 400 gross tons or greater, as measured under the convention measurement system in 46 U.S.C. 14302 or the regulatory measurement system of 46 U.S.C. 14502 for vessels not measured under 46 U.S.C. 14302, that operates on the navigable waters of the United States, carries oil of any kind as fuel for main propulsion, and is not a tank vessel.

Oil spill removal organization or OSRO means any person or persons who own(s) or otherwise control(s) oil spill removal resources that are designed for, or are capable of, removing oil from the water or shoreline. Control of such resources through means other than ownership includes leasing or subcontracting of equipment or, in the case of trained personnel, by having contracts, evidence of employment, or consulting agreements. OSROs provide response equipment and services, individually or in combination with subcontractors or associated contractors, under contract or other approved means, directly to an owner or operator of a vessel or a facility required to have a response plan under 33 U.S.C. 1321(j)(5). OSROs are able to mobilize and deploy equipment or trained personnel and remove, store, and transfer recovered oil. Persons such as sales and marketing organizations (e.g., distributorships and manufacturer's

representatives) that warehouse or store equipment for sale are not OSROs.

Permanently moored craft means a watercraft that is not considered to be a vessel under the rule of construction in 1 U.S.C. 3, because it is not practically (as opposed to theoretically) used or capable of being used as a means of transportation on the water.

P&I Club means a protection and indemnity insurance group that provides liability insurance cover for the vessel owner or operator that would respond to an oil discharge or substantial threat of such a discharge by the vessel.

Public vessel means a vessel owned or bareboat—chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

Qualified individual or *QI* and *alternate qualified individual* means a shore-based representative of a vessel owner or operator who meets the requirements of 33 CFR 155.5026.

Substantial threat of such a discharge means any incident involving a vessel that may create a significant risk of discharge of fuel or cargo oil. Such incidents include, but are not limited to, groundings, allisions, strandings, collisions, hull damage, fires, explosions, loss of propulsion, floodings, on-deck spills, or other similar occurrences.

Tier means the combination of required response resources and the times within which the resources must arrive on scene. Appendix B of this part, especially Tables 5 and 6, provide specific guidance on calculating the response resources required by a respective tier. Section 155.5050(g) sets forth the required times within which the response resources must arrive on scene. Tiers are applied to three categories of areas:

- (1) Higher volume port areas;
- (2) The Great Lakes; and
- (3) All other operating environments, including rivers and canals, inland, nearshore, offshore, and open ocean areas.

Worst case discharge or *WCD* means a discharge in adverse weather conditions of a vessel's entire fuel and cargo oil.

§ 155.5021 Operating restrictions.

Nontank vessels subject to this subpart may not—

(a) Operate upon the navigable waters of the United States unless in compliance with a plan approved under § 155.5065.

(b) Continue to operate on the navigable waters of the United States if:

(1) The Coast Guard determines that the response resources identified in the vessel's certification statement do not meet the requirements of this subpart;

(2) The contracts or agreements required in §§ 155.5050 and 155.5052 and the vessel's certification statement are no longer valid;

(3) The vessel is not operating in compliance with the submitted plan; or

(4) The period of the response plan authorization has expired.

§ 155.5023 Interim operating authorization.

(a) Notwithstanding the requirements of § 155.5021, a vessel may continue to operate for up to 2 years after the date of submission of a response plan pending approval of that plan, if the vessel has received written authorization for continued operations from the Coast Guard.

(b) To receive this authorization, the nontank vessel owner or operator must certify in writing with an original or electronic signature to the Coast Guard that the owner or operator has identified and has ensured, by contract or other approved means, the availability of the necessary private resources to respond, to the maximum extent practicable, to a worst case discharge or substantial threat of such a discharge from their vessel.

(c) Those nontank vessels temporarily authorized to operate without an approved plan pending formal Coast Guard approval must comply with the provisions of 33 CFR 155.1070(c), (d), and (e).

§ 155.5025 One-time port waiver.

An owner or operator of a nontank vessel may be authorized by the cognizant U.S. Coast Guard Captain of the Port to have that vessel make one voyage in a geographic-specific area not covered by the vessel's response plan. All requirements of this subpart must be met for any subsequent voyages to a previously requested geographic-specific area. To be considered for a one-time port waiver, the owner or operator must certify in writing, prior to the vessel's entry into the COTP zone, that it has met the requirements of 33 CFR 155.1025(e)(1) through (4).

§ 155.5026 Qualified individual and alternate qualified individual.

The response plan must identify a qualified individual and at least one alternate who meet the requirements of 33 CFR 155.1026. The qualified individual or alternate qualified individual must be available on a 24-hour basis.

§ 155.5030 Nontank vessel response plan requirements: general content.

(a) The entire vessel response plan must be written in English and, if applicable, in a language that is understood by the crew members with responsibilities under the plan.

(b) The plan must cover all geographic areas of the United States in which the vessel intends to handle, store, or transport oil, including port areas and offshore transit areas.

(c) The nontank vessel response plan (NTVRP) must be divided into the following sections:

(1) General information and introduction;

(2) Notification procedures;

(3) Shipboard spill mitigation procedures;

(4) Shore-based response activities;

(5) List of contacts;

(6) Training procedures;

(7) Exercise procedures;

(8) Plan review and update

procedures;

(9) Geographic-specific appendix for each COTP zone in which the vessel or vessels operate; and

(10) An appendix for vessel-specific information for the vessel or vessels covered by the plan.

(d) A vessel owner or operator with multiple vessels may submit one plan for each class of vessel (*i.e.*, subpart D—Manned vessels carrying oil as primary cargo & unmanned vessels carrying oil as primary cargo; subpart E—Tankers loading cargo at a facility permitted under the Trans-Alaska Pipeline Authorization Act; subpart F—Vessels carrying animal fats and vegetable oils as primary cargo; and subpart G—Vessels carrying other non-petroleum oils as a primary cargo) with a separate vessel-specific appendix for each vessel covered by the plan and a separate geographic-specific appendix for each COTP zone in which the vessel(s) will operate.

(e) A vessel response plan must be divided into the sections described in paragraph (c) of this section unless the plan is supplemented with a cross-reference table to identify the location of the information required by this subpart.

(f) The information contained in a vessel response plan must be consistent with the:

(1) National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR part 300) and the Area Contingency Plan(s) (ACP) in effect on the date 6 months prior to the submission date of the response plan; or

(2) More recent NCP and ACP(s).

Note to § 155.5030(f)(1): See diagram of "Relationship of Plans" at 40 CFR 300.210.

(g) Copies of the submitted and approved vessel response plan must be available as follows:

(1) The owner or operator of all vessels must ensure that one English language copy of the plan and the original Coast Guard approval letter or notarized copy of the approval letter are maintained aboard the vessel. If applicable, additional copies of the required plan sections must be in the language understood by crew members with responsibilities under the plan and maintained aboard the vessel.

(2) The vessel owner or operator must also maintain a current copy of the entire plan and ensure that each person identified as a qualified individual and alternate qualified individual in the plan has a current copy of the entire plan.

(h) Compliance with this subpart will also constitute compliance for a U.S. flag nontank vessel required to submit a Shipboard Oil Pollution Emergency Plan (SOPEP) pursuant to 33 CFR 151.09(c) and Regulation 37 of Annex I of MARPOL 73/78 as long as the additional requirements listed in § 155.5035(k) are met. A U.S. flagged nontank vessel holding a valid Certificate of Inspection endorsed for Coastwise or Oceans operating routes with authorization to engage on an international voyage must maintain a U.S. Coast Guard SOPEP approval letter per 33 CFR 151.27(e). A separate SOPEP is not required.

§ 155.5035 Nontank vessel response plan requirements: specific content.

(a) *General information and introduction section.* This section of the plan must include:

(1) The vessel's name, country of registry, call sign, official number, and International Maritime Organization (IMO) international number (if applicable). If the plan covers multiple vessels, this information should be provided for each vessel;

(2) The name, mailing address, e-mail address, telephone number and facsimile number, and procedures for contacting the nontank vessel's owner or operator on a 24-hour basis;

(3) A list of the COTP zones, ports, and offshore transit areas in which the vessel intends to operate;

(4) A table of contents or index of sufficient detail to permit personnel with responsibilities under the response plan to locate the specific sections of the plan; and

(5) A record of change(s) page to record information on plan reviews, updates, or revisions.

(b) *Notification procedures section.* This section of the plan must include the following information:

(1) A checklist with all notifications, including telephone or other contact numbers, in order of priority to be made by shipboard or shore-based personnel and the information needed for those notifications. Notifications should include those required by:

(i) MARPOL 73/78 (33 CFR 151.26) and 33 CFR part 153; and

(ii) Any applicable State.

(2) Identification of the person(s) to be notified of a discharge or substantial threat of a discharge of oil. If the notifications vary due to vessel location, the persons to be notified also should be identified in a geographic-specific appendix. This section should separately identify:

(i) The individual(s) or organization(s) to be notified by shipboard personnel; and

(ii) The individual(s) or organization(s) to be notified by shore-based personnel.

(3) The procedures for notifying the qualified individual(s) designated by the nontank vessel's owner or operator.

(4) Descriptions of the primary and, if available, secondary communications methods by which the notifications would be made. These should be consistent with those in § 155.5035(b)(1).

(5) The information that is to be provided in the initial and any follow-up notifications under paragraph (b)(1) of this section.

(i) The initial notification may be submitted in accordance with IMO Resolution A.851(20), "General Principles for Ship Reporting Systems and Ship Reporting Requirements, Including Guidelines for Reporting Incidents Involving Dangerous Goods, Harmful Substances and/or Marine Pollutants" (Incorporated by reference, see § 155.140). However, the plan must specify that the notification include at least the following information:

(A) Vessel name, country of registry, call sign, and official number (if any);

(B) Date and time of the incident;

(C) Location of the incident;

(D) Course, speed, and intended track of vessel;

(E) Radio station(s) and frequencies guarded;

(F) Date and time of next report;

(G) Type and quantity of oil on board;

(H) Nature and detail of defects, deficiencies, and damage (e.g., overflow of tanks, grounding, collision, hull failure, etc.);

(I) Details of pollution, including estimate of amount of oil discharged or threat of discharge;

(J) Weather and sea conditions on scene;

(K) Ship size and type;

(L) Actions taken or planned by persons on scene;

(M) Current conditions of the vessel;

(N) Number of crew and details of injuries, if any; and

(O) Details of P&I Club and Local Correspondent, as applicable.

(ii) The plan must state that after transmission of the initial notification, as much information as possible that is essential for the protection of the marine environment will be reported to the appropriate on-scene coordinator in follow-up reports. This information must include:

(A) Additional details on the type of oil on board;

(B) Additional details on the condition of the vessel and ability to offload cargo and transfer ballast and fuel;

(C) Additional details on the quantity, extent, and movement of the pollution and whether the discharge is continuing;

(D) Any changes in the on-scene weather or sea conditions; and

(E) Actions being taken with regard to the discharge and the movement of the ship.

(6) Identification of the person(s) to be notified of a vessel casualty potentially affecting the seaworthiness of a vessel and the information to be provided by the vessel's crew to shore-based personnel to facilitate the assessment of damage stability and stress.

(c) *Shipboard spill mitigation procedures section.* This section of the plan must include:

(1) Procedures for the crew to mitigate or prevent any discharge or a substantial threat of a discharge of oil resulting from shipboard operational activities associated with internal or external oil transfers. Responsibilities of vessel personnel should be identified by job title and licensed/unlicensed position, if applicable. These procedures should address personnel actions in reference to:

(i) Internal transfer system leak;

(ii) Fuel tank overflow;

(iii) Suspected tank or hull leak;

(iv) Assessment and monitoring activities;

(v) Personnel protection issues;

(vi) Protective equipment;

(vii) Threats to health and safety;

(viii) Containment and other response techniques;

(ix) Isolation procedures;

(x) Decontamination of personnel; and

(xi) Disposal of removed oil and clean-up materials.

(2) Procedures in the order of priority for the crew to mitigate or prevent any

discharge or a substantial threat of a discharge in the event of a casualty or emergency as listed below in paragraphs (c)(2)(i) through (x) of this section. These procedures should be listed separately and reference specific vessel checklists required by the International Ship Management (ISM) Code, Section 8 (Resolution A.741(18), as amended by Resolution MSC.104(73)) (Incorporated by reference, see § 155.140), or other means that will ensure consideration of all appropriate factors when addressing a specific casualty. In addition to the checklists, specific personnel assignments for anticipated tasks must be identified. Reference to existing fire control plans and muster lists is sufficient to identify personnel responsibilities in the following scenarios:

- (i) Grounding or stranding;
- (ii) Explosion or fire, or both;
- (iii) Collision or allision;
- (iv) Hull failure;
- (v) Excessive list;
- (vi) Containment system failure;
- (vii) Submerged and foundered;
- (viii) Wrecked and stranded;
- (ix) Hazardous vapor release; and
- (x) Equipment failure (e.g., main propulsion, steering gear, etc.).

(3) Procedures for the crew to deploy discharge removal equipment if the vessel is equipped with such equipment.

(4) The procedures for internal transfers of fuel in an emergency.

(5) The procedures for ship-to-ship transfers of fuel in an emergency:

(i) The format and content of the ship-to-ship transfer procedures should be consistent with the "Ship to Ship Transfer Guide (Petroleum)," Fourth Edition 2005, published jointly by the International Chamber of Shipping and the Oil Companies International Marine Forum (OCIMF) (Incorporated by reference, see § 155.140).

(ii) The procedures should identify the specific response resources necessary to carry out the transfers, including:

(A) Fendering equipment (ship-to-ship only);

(B) Transfer hoses and connection equipment;

(C) Portable pumps and ancillary equipment;

(D) Lightering or fuel removal and mooring masters (ship-to-ship only); and

(E) Vessel and barge brokers (ship-to-ship only);

(iii) Reference may be made to a separate fuel oil transfer procedure and lightering plan carried aboard the vessel, if safety considerations are summarized in the plan;

(iv) The location of all equipment and fittings, if any, carried aboard the vessel to perform the transfers should be identified;

(6) The procedures and arrangements for emergency towing, including the rigging and operation of any emergency towing equipment, if any, carried aboard the vessel;

(7) The location, crew responsibilities, and procedures for use of shipboard equipment that might be carried to mitigate an oil discharge;

(8) The crew's responsibility, if any, for recordkeeping and sampling of spilled oil. Any requirements for sampling must address safety procedures to be followed by the crew;

(9) The crew's responsibilities, if any, to initiate a response and supervise shore-based response resources;

(10) Damage stability and hull stress considerations when performing shipboard mitigation measures. This section of the plan should identify and describe:

(i) Activities in which the crew is trained and qualified to execute absent shore-based support or advice; and

(ii) The information to be collected by the vessel's crew to facilitate shore-based assistance.

(11) Location of vessel plans necessary to perform salvage, stability, and hull stress assessments.

(i) The owner or operator should ensure that a copy of these plans are maintained ashore by either the vessel owner or operator or the vessel's recognized classification society, unless the vessel has prearranged for a shore-based damage stability and residual strength calculation program with the vessel's baseline strength and stability characteristics pre-entered. The response plan should indicate the shore location and 24-hour access procedures of the calculation program or the following plans, where available:

(A) General arrangement plan;

(B) Midship section plan;

(C) Lines plan or table of offsets;

(D) Tank tables;

(E) Load line assignment; and

(F) Light ship characteristics.

(ii) The plan should identify the shore location and 24-hour access procedures for the computerized, shore-based damage stability and residual structural strength calculation programs, if available.

(12) Procedures for implementing personnel safety mitigation strategies for all personnel involved. These procedures may contain more, but the following must be addressed:

(i) Assessment and monitoring activities;

(ii) Personnel protection issues;

(iii) Protective equipment;

(iv) Threats to health and safety;

(v) Containment and other response techniques;

(vi) Isolation procedures;

(vii) Decontamination of personnel; and

(viii) Disposal of removed oil and clean-up materials.

(d) *Shore-based response activities section.* This section of the plan should include the following information:

(1) The qualified individual's responsibilities and authority, including immediate communication with the Federal On-Scene Coordinator and notification of the oil spill removal organization(s) identified in the plan.

(2) If applicable, procedures for transferring responsibility for direction of response activities from vessel personnel to the shore-based spill management team.

(3) The procedures for coordinating the actions of the nontank vessel owner or operator or qualified individual with the predesignated Federal On-Scene Coordinator responsible for overseeing or directing those actions.

(4) The organizational structure that would be used to manage the response actions. This structure should include the following functional areas and information for key components within each functional area:

(i) Command and control;

(ii) Public information;

(iii) Safety;

(iv) Liaison with government agencies;

(v) Spill response operations;

(vi) Planning;

(vii) Logistics support; and

(viii) Finance.

(5) The responsibilities of, duties of, and functional job descriptions for each oil spill management team position within the organizational structure identified in paragraph (d)(4) of this section.

(e) *List of contacts.* The name, location, and 24-hour contact information for the following key individuals and organizations must be included in this section of the response plan or, if more appropriate, in a geographic-specific appendix and referenced in this section of the response plan:

(1) Vessel owner or operator.

(2) Qualified individual and alternate qualified individual for the vessel's area of operation.

(3) Applicable insurance representatives or surveyors for the vessel's area of operation.

(4) The vessel's local agent(s) for the vessel's area of operation.

(5) Person(s) within the oil spill removal organization to notify for

activation of that oil spill removal organization for the three spill scenarios identified in paragraph (i)(5) of this section for the vessel's area of operation.

(6) Person(s) within the identified response organization to notify for activating the organizations to provide:

(i) The required emergency lightering and fuel offloading required by §§ 155.5050(i) and 155.5052 as applicable;

(ii) The required salvage and marine firefighting required by §§ 155.5050(i) and 155.5052 as applicable;

(iii) The required dispersant response equipment required by § 155.5050(j), as applicable; and

(iv) The required aerial oil spill tracking and observation resources required by § 155.5050(k), as applicable.

(7) Person(s) to notify for activation of the spill management team for the spill response scenarios identified in paragraph (i)(5) of this section for the vessel's area of operation.

(f) *Training procedures.* This section of the response plan must address the training procedures and programs of the nontank vessel owner or operator to meet the requirements in § 155.5055.

(g) *Exercise procedures.* This section of the response plan must address the exercise program to be carried out by the nontank vessel owner or operator to meet the requirements in § 155.5060.

(h) *Plan review, update, revision, amendment, and appeal procedure.* This section of the response plan must address:

(1) The procedures to be followed by the nontank vessel owner or operator to meet the requirements of §§ 155.5070 and 155.5075; and

(2) The procedures to be followed for any post-discharge review of the plan to evaluate and validate its effectiveness.

(i) *Geographic-specific appendices for each COTP zone in which a vessel operates.* A geographic-specific appendix must be included for each COTP zone identified. The appendices must include the following information or identify the location of such information within the plan:

(1) A list of the geographic areas (port areas, rivers and canals, Great Lakes, inland, nearshore, offshore, and open ocean areas) in which the vessel intends to handle, store, or transport oil as fuel or cargo within the applicable COTP zone.

(2) The volume and group of oil on which the required level of response resources is calculated.

(3) Required Federal or State notifications applicable to the geographic areas in which a vessel operates.

(4) Identification of the qualified individuals.

(5) Identification of the oil spill removal organization(s) that are identified and ensured available, through contract or other approved means, and the spill management team to respond to the following spill scenarios, as applicable:

(i) Average most probable discharge.

(ii) Maximum most probable discharge.

(iii) Worst case discharge.

(iv) Nontank vessels with a capacity less than 250 barrels must plan for and identify maximum most probable discharge response resources in the response plan but do not have to ensure by contract or a previous funding agreement. Submission of a written consent for plan listing from the recognized response resource provider must accompany the plan for approval or revision. This is considered an acceptable "other approved means." See 33 CFR 155.5020, "Contract or other approved means," paragraph (5).

(6) The organization(s) identified to meet the requirements of paragraph (i)(5) of this section must be capable of providing the equipment and supplies necessary to meet the requirements of §§ 155.5050 and 155.5052, as appropriate, and sources of trained personnel to continue operation of the equipment and staff the oil spill removal organization, required response resource providers and spill management team identified for the first seven days of the response.

(7) The geographic-specific appendix must list the response resources and related information required under §§ 155.5050, 155.5052, and Appendix B of this part, as appropriate.

(8) If an oil spill removal organization has been evaluated by the Coast Guard and its capability has been determined to equal or exceed the response capability needed by the vessel, the appendix may identify only the organization and their applicable classification and not the information required in paragraph (i)(7) of this section. This information is subject to USCG verification at any time during the validity of the vessel response plan.

(9) The appendix must also separately list the companies identified to provide the salvage, emergency lightering, and marine firefighting resources required in this subpart. The appendix must list the response resources and related information required in paragraph (7) of this section. This information is subject to USCG verification at any time during the validity of the vessel response plan.

(i) Nontank vessels with a capacity less than 2,500 barrels, but greater than or equal to 250 barrels, need only plan for and identify salvage, emergency

lightering, and marine firefighting response resources in the response plan but do not have to ensure by contract or a previous funding agreement. Submission of a written consent for plan listing from the recognized response resource provider must accompany the plan for approval or revision. This is considered an acceptable "other approved means." See 33 CFR 155.5020, "Contract or other approved means," paragraph (5).

(ii) Nontank vessels with a capacity less than 250 barrels need only plan for and identify salvage response resources in the response plan but do not have to ensure by contract or a previous funding agreement. Submission of a written consent for plan listing from the recognized response resource provider must accompany the plan for approval or revision. This is considered an acceptable "other approved means." See 33 CFR 155.5020, "Contract or other approved means," paragraph (5).

(10) For nontank vessels with a capacity of 2,500 barrels or greater that carry group II through group IV petroleum oils as fuel or cargo and that operate in waters where dispersant use pre-authorization agreements exist, the appendix must also separately list the resource providers and specific resources, including appropriately trained dispersant-application personnel, necessary to provide, if appropriate, the dispersant capabilities required in this subpart. All resource providers and resources must be available by contract or other approved means. The dispersant resources to be listed within this section must include the following:

(i) Identification of each primary dispersant staging site to be used by each dispersant-application platform to meet the requirements of § 155.5050(j) of this chapter;

(ii) Identification of the platform type, resource provider, location, and dispersant payload for each dispersant-application platform identified. Location data must identify the distance between the platform's home base and the identified primary dispersant-staging site(s) for this section.

(iii) For each unit of dispersant stockpile required to support the effective daily application capacity (EDAC) of each dispersant-application platform necessary to sustain each intended response tier of operation, identify the dispersant product resource provider, location, and volume. Location data must include the distance from the stockpile to the primary staging sites where the stockpile would be loaded on to the corresponding platforms. If an oil spill removal

organization has been evaluated by the Coast Guard and its capability has been determined to meet the response capability needed by the owner or operator, the section may identify the oil spill removal organization only, and not the information required in paragraphs (i)(10)(i) through (i)(10)(iii) of this section.

(iv) Nontank vessels with an oil capacity of 250 barrels or greater, but less than 2,500 barrels, that carry group II through group IV petroleum oils as fuel or cargo and that operate in waters where dispersant use pre-authorization agreements exist, need only plan for and identify dispersant response resources but not ensure their availability by contract. Submission of a written consent from the dispersant response resource provider must accompany the plan for approval or revision. This is considered an acceptable "other approved means." See 33 CFR 155.5020, "Contract or other approved means," paragraph (5).

(11) For nontank vessels with a fuel and cargo capacity of 2,500 barrels or greater not operating exclusively on the inland rivers of the United States, the appendix must also separately list the resource providers and specific resources necessary to provide oil spill tracking capabilities required in this subpart. The oil spill tracking resources to be listed within this section must include the following:

(i) The identification of a resource provider; and

(ii) The type and location of aerial surveillance aircraft that have been ensured available, through contract or other approved means, to meet the oil spill tracking requirements of § 155.1050(k) of this chapter.

(iii) Nontank vessels with a capacity of 250 barrels or greater, but less than 2,500 barrels, need only plan for and identify aerial oil spill tracking response resources in the response plan, but do not have to ensure by contract or a previous funding agreement. Submission of a written consent for plan listing from the recognized response resource provider must accompany the plan for approval or revision. This is considered an acceptable "other approved means." See 33 CFR 155.5020, "Contract or other approved means," paragraph (5).

(j) *Appendices for vessel-specific information.* This section of the plan must include for each vessel covered by the plan the following information, as applicable:

(1) List of the vessel's principal characteristics.

(2) Capacities of all cargo, fuel, lube oil, ballast, and fresh water tanks.

(3) The total volume and groups of oil that would be involved in the:

(i) Maximum most probable discharge; and

(ii) Worst case discharge.

(4) Diagrams showing location of all cargo, fuel, lube oil, and slop tanks, as applicable.

(5) General arrangement plan (can be maintained separately aboard the vessel providing the response plan identifies the specific location).

(6) Midships section plan (can be maintained separately aboard the vessel providing the response plan identifies the specific location).

(7) Cargo and fuel piping diagrams and pumping plan, as applicable (can be maintained separately aboard the vessel providing the response plan identifies the specific location).

(8) Damage stability data (can be maintained separately, providing the response plan identifies the specific location).

(9) Location of cargo and fuel stowage plan for vessel.

(10) Location of information on the name, description, physical and chemical characteristics, health and safety hazards, and spill and firefighting procedures for the fuel or cargo oil aboard the vessel. A material safety data sheet meeting the requirements of 29 CFR 1910.1200, cargo information required by 33 CFR 154.310, or equivalent, will meet this requirement. This information can be maintained separately.

(k) *Required appendices for MARPOL 73/78 Annex I, Regulation 37, Shipboard Oil Pollution Emergency Plan (SOPEP) information.* U.S. flag vessels not certificated for coastwise or oceans operating routes and foreign flag vessels that are in compliance with Regulation 37 of Annex I or MARPOL 73/78 are not required to comply with this paragraph. An owner or operator of a U.S. flag vessel constructed or certificated for coastwise or oceans operating routes, but that does not engage in international voyages, may request to be exempted from compliance with this paragraph through submission of a certified statement, attesting same, to Commandant, Office of Vessel Activities (CG-543), which must accompany the new nontank vessel response submission or resubmission. U.S. flag vessels that must comply with this paragraph must label the cover of their nontank vessel response plan as a MARPOL 73/78 Annex I, Regulation 37 Shipboard Oil Pollution Emergency Plan (SOPEP) and USCG Nontank Vessel Response Plan. The following information is required to be submitted

consistent with Regulation 37 of Annex I of MARPOL 73/78 and 33 CFR 151.26:

(1) The introductory text required by 33 CFR 151.26(b)(1).

(2) The preamble statement regarding the purpose of the plans and how the plan relates to other shore-related plans as required by 33 CFR 151.26(b)(2).

(3) The information on authorities or persons to be contacted in the event of an oil pollution incident as required 33 CFR 151.26(b)(3)(iii). This information must also clearly specify who will be responsible for informing the necessary parties from the coastal State contacts, the port contacts, and the ship interest contact. This information must include:

(i) An appendix containing coastal State contacts for those coastal States in which the vessel regularly transits the exclusive economic zone. The appendix should list those agencies or officials of administrations responsible for receiving and processing pollution incident reports;

(ii) An appendix of port contacts for those ports at which the vessel regularly calls; and

(iii) For Antarctica, reports must also be directed to any Antarctic station that may be affected in accordance with 33 CFR 151.26(b)(3)(iii)(C).

(4) Include the procedures and point of contact on the ship for coordinating shipboard activities with national and local authorities in combating an oil spill incident in accordance with 33 CFR 151.26(b)(5). The plan should address the need to contact the coastal State to advise them of action(s) being implemented and determine what authorization(s), if any, are needed.

(5) Required information lists in separate appendices per 33 CFR 151.26(b)(6)(ii).

§ 155.5050 Response plan development and evaluation criteria for nontank vessels carrying groups I through IV petroleum oil.

(a) *Criteria for evaluating operability of response resources.* The criteria used to evaluate the operability of response resources identified in a nontank vessel response plan for specified operating environments must be in accordance with 33 CFR 155.1050(a).

(b) *Operating environment reclassification of specific bodies of water.* COTP reclassification of a specific body of water or location within the COTP zone must be in accordance with 33 CFR 155.1050(b).

(c) *Criteria for response equipment.* Response equipment must:

(1) Meet or exceed the criteria listed in Table 1 of Appendix B of this part;

(2) Be capable of functioning in the applicable operating environment; and

(3) Be appropriate for the petroleum oil carried.

(d) *Average most probable discharge.* The owner or operator of a nontank vessel that carries groups I through IV petroleum as cargo must identify in the response plan and ensure the availability of, through contract or other approved means, the response resources that will respond to a discharge up to the vessel's average most probable discharge (AMPD). Nontank vessels that carry oil as cargo must meet the requirements for average most probable discharge coverage, as applicable, per 33 CFR 155.1050(d). Nontank vessels that only carry groups I through IV oil as fuel do not have to ensure the availability of average most probable discharge resources by contract or other approved means, but must plan for and identify response resources required in § 155.1050(d)(1) and list this information in the applicable geographic-specific appendix for bunkering or fueling operations. Permission or acknowledgment from the listed resource providers is not required. Their contact information is for nontank vessel owner or operator reference purposes only. Listing of a marine transportation-related facility's or a bunker supplier's AMPD resources is not authorized, as these AMPD resources are already required by either 33 CFR 154.545, § 154.1045(c), or § 155.1050(d)(2).

(e) *Maximum most probable discharge.* The owner or operator of a nontank vessel with a capacity of 250 barrels or greater carrying groups I through IV petroleum oil as fuel or cargo must identify in the response plan and ensure the availability of, through contract or other approved means, the response resources necessary to respond to a discharge up to the vessel's maximum most probable discharge volume. For the purposes of meeting the requirements of this paragraph, the standards listed in 33 CFR 155.1050(e) must be met. Nontank vessels with a capacity less than 250 barrels must plan for and identify maximum most probable discharge response resources in the response plan but do not have to ensure by contract or a previous funding agreement. Submission of a written consent for plan listing from the recognized response resource provider must accompany the plan for approval or revision. This is considered an acceptable "other approved means." See 33 CFR 155.5020, "Contract or other approved means," paragraph (5).

(f) *Worst case discharge.* The owner or operator of a nontank vessel with a capacity of 2,500 barrels or greater carrying groups I through IV petroleum oil as fuel or cargo must identify in the response plan and ensure the

availability of, through contract or other approved means, the response resources necessary to respond to discharges up to the worst case discharge volume of the oil to the maximum extent practicable. For the purposes of meeting this paragraph, the standards listed in 33 CFR 155.1050(f) must be met. Nontank vessels need only plan for Tier 1 response resources.

(g) *Tier 1 response times.* Response equipment identified to respond to a worst case discharge should be capable of arriving on scene within the times specified in this paragraph for the applicable response tier in a higher volume port area, Great Lakes, and in other areas. Response times for this tier, from the time of discovery of a discharge, are found in Table 155.5050(g).

TABLE 155.5050(G)—RESPONSE TIMES FOR TIER 1

Tier 1	
Higher volume port area	12 hrs.
Great Lakes	18 hrs.
All other operating environments, including rivers and canals, inland, nearshore, offshore, and open ocean areas.	24 hrs.

(h) *Planning standards for the mobilization and response times for required MMPD and WCD response resources.* For the purposes of arranging for maximum most probable discharge (MMPD) or worst case discharge (WCD) response resources through contract or other approved means, response equipment identified for plan credit should be capable of being mobilized and enroute to the scene of a discharge within 2 hours of notification. The notification procedures identified in the plan should provide for notification and authorization for mobilization of response resources:

- (1) Either directly or through the qualified individual; and
- (2) Within 30 minutes of a discovery of a discharge or substantial threat of discharge.

(i) *Salvage, emergency lightering, and marine firefighting requirements.* The owner or operator of a nontank vessel carrying groups I through IV petroleum oil as fuel or cargo must plan for salvage, emergency lightering, and marine firefighting response resources.

(1) Nontank vessels with a capacity of 2,500 barrels or greater must meet the salvage, emergency lightering, and marine firefighting requirements found in subpart I of this part.

(2) Nontank vessels with a capacity less than 2,500 barrels, but greater than

or equal to 250 barrels, need only plan for and identify salvage, emergency lightering, and marine firefighting response resources in the response plan but do not have to ensure by contract or a previous funding agreement. Submission of a written consent for plan listing from the recognized response resource provider must accompany the plan for approval or revision. This is considered an acceptable "other approved means." See 33 CFR 155.5020, "Contract or other approved means," paragraph (5).

(3) Nontank vessels with a capacity less than 250 barrels need only plan for and identify salvage response resources in the response plan but do not have to ensure by contract or a previous funding agreement. Submission of a written consent for plan listing from the recognized response resource provider must accompany the plan for approval or revision. This is considered an acceptable "other approved means." See 33 CFR 155.5020, "Contract or other approved means," paragraph (5).

(j) *Dispersants.* The owner or operator of a nontank vessel carrying groups II through IV petroleum oil as fuel or cargo with a capacity of 2,500 barrels or greater that operates in any area pre-authorized for dispersant use must identify in their response plan, and ensure the availability of, through contract or other approved means, response resources capable of conducting dispersant operations within those areas. The standards of 33 CFR 155.1050(k) must be met. Only Tier 1 for dispersant effective daily application capability (EDAC) must be met for nontank vessels. Nontank vessels with a capacity less than 2,500 barrels, but greater than or equal to 250 barrels, need only plan for and identify dispersant response resources in the response plan but do not have to ensure by contract or a previous funding agreement. Submission of a written consent for plan listing from the recognized response resource provider must accompany the plan for approval or revision. This is considered an acceptable "other approved means." See 33 CFR 155.5020, "Contract or other approved means," paragraph (5).

(k) *Aerial oil spill tracking and observation response resources.* The owner or operator of a nontank vessel carrying groups I through IV petroleum oil as fuel or cargo with a capacity of 2,500 barrels or greater must identify in the response plan, and ensure their availability, through contract or other approved means, response resources necessary to provide aerial oil spill tracking to support oil spill assessment and cleanup activities. The standards of

33 CFR 155.1050(l) must be met. Nontank vessels operating exclusively on the inland rivers of the United States are not required to comply with this paragraph. Nontank vessels with a capacity of 250 barrels or greater, but less than 2,500 barrels, need only plan for and identify aerial oil tracking response resources in the response plan but do not have to ensure by contract or a previous funding agreement. Submission of a written consent for plan listing from the recognized response resource provider must accompany the plan for approval or revision. This is considered an acceptable "other approved means." See 33 CFR 155.5020, "Contract or other approved means," paragraph (5).

(l) *Response resources necessary to perform shoreline protection operations.* The owner or operator of a nontank vessel carrying groups I through IV petroleum oil as fuel or cargo with a capacity of 250 barrels or greater must identify in the response plan, and ensure the availability of, through contract or other approved means, response resources necessary to perform shoreline protection operations. The response resources must include the quantities of boom listed in Table 2 of appendix B of this part, based upon the specific COTP zones in which the vessel operates.

(m) *Shoreline cleanup operations.* The owner or operator of a nontank vessel carrying groups I through IV petroleum oil as fuel or cargo with a capacity of 250 barrels or greater must

identify in the response plan, and ensure the availability of, through contract or other approved means, an oil spill removal organization capable of effecting a shoreline cleanup operation commensurate with the quantity of emulsified petroleum oil to be planned for in shoreline cleanup operations. The shoreline cleanup resources required must be determined as described in appendix B of this part.

(n) *Practical and technical limits of response capabilities.* Appendix B of this part sets out response capability capacities (caps) that recognize the practical and technical limits of response capabilities for which an individual vessel owner or operator can contract in advance. Table 6 in appendix B lists the contracting caps that are applicable. The owner or operator of a nontank vessel carrying groups I through IV petroleum oil as fuel or cargo, with a capacity of 2,500 barrels or greater, whose required daily recovery capacity exceeds the applicable contracting caps in Table 6, must identify commercial sources of additional equipment equal to twice the cap listed for each tier or the amount necessary to reach the calculated planning volume, whichever is lower, to the extent that this equipment is available. The equipment so identified must be capable of arriving on scene no later than the applicable tier response times contained in § 155.5050(g) or as quickly as the nearest available resource permits. A response plan must identify the specific sources, locations, and

quantities of this additional equipment. No contract is required.

(o) *Review of response capability limits.* The Coast Guard will continue to evaluate the environmental benefits, cost efficiency, and practicality of increasing mechanical recovery capability requirements. This continuing evaluation is part of the Coast Guard's long term commitment to achieving and maintaining an optimum mix of oil spill response capability across the full spectrum of response modes. As best available technology demonstrates a need to evaluate or change mechanical recovery capacities, a review of cap increases and other requirements contained within this subpart may be performed. Any changes in the requirements of this section will occur through a rulemaking process. During this review, the Coast Guard will determine if established caps remain practicable and if increased caps will provide any benefit to oil spill recovery operations. The review will include, at least, an evaluation of:

- (1) Best available technologies for containment and recovery;
- (2) Oil spill tracking technology;
- (3) High rate response techniques;
- (4) Other applicable response technologies; and
- (5) Increases in the availability of private response resources.

(p) *Nontank vessel response plan required response resources matrix.* Table 155.5050(p) is a summary of the nontank vessel response plan required response resources.

TABLE 155.5050(P)—NONTANK VESSEL RESPONSE PLAN REQUIRED RESPONSE RESOURCES MATRIX

Nontank vessel's fuel and cargo oil capacity	AMPD	MMPD	WCD	Salvage	Emergency lightering	Fire fighting	Dispersant ³	Aerial tracking ⁴	Shoreline protection	Shore line cleanup
2,500 barrels or greater	NO ¹ ...	YES	YES	YES	YES	YES	YES	YES	YES	YES.
Less than 2,500 barrels, but greater than or equal to 250 barrels.	NO ¹ ...	YES	NO	YES ²	YES ²	YES ²	YES ²	YES ²	YES	YES.
Less than 250 barrels	NO ¹ ...	YES ² ..	NO	YES ²	NO	NO	NO	NO	NO	NO.

¹ For nontank vessels carrying oil as fuel only. Nontank vessels carrying oil as cargo must meet AMPD response resources in 33 CFR 155.5050(d) as applicable.
² For nontank vessels with a fuel and cargo capacity less than 2,500 barrels, the indicated response resources that must be located within the stipulated response times in the specified geographic areas need only be identified and planned for in the nontank vessel response plan, but not ensured available by contract. Submission of a written consent from the response resource provider must accompany the plan for approval. This is considered an acceptable "other approved means." See 33 CFR 155.5020, "Contract or other approved means," paragraph (5).

³ Dispersant response resources are only required for waters where dispersant pre-authorization has been authorized IAW the Area Contingency Plan. See 33 CFR 155.5050(j).

⁴ Aerial oil spill tracking response resources are not required on Rivers.

§ 155.5052 Response plan development and evaluation criteria for nontank vessels carrying group V petroleum oil.

Owners and operators of nontank vessels that carry group V petroleum oil as fuel or cargo must meet the requirements of 33 CFR 155.1052.

§ 155.5055 Training.

(a) A nontank vessel response plan submitted to meet the requirements of § 155.5035 must identify the training to

be provided to persons having responsibilities under the plan, including members of the vessel crew, the qualified individual, and the spill management team. The training program must differentiate between that training provided to vessel personnel and that training provided to shore-based personnel. Appendix C of this part provides additional guidance regarding training.

(b) A nontank vessel owner or operator must comply with the vessel response plan training requirements of 33 CFR 155.1055(b) through (f).

§ 155.5060 Exercises.

(a) A nontank vessel owner or operator required by § 155.5035 to have a response plan must conduct exercises as necessary to ensure that the plan will function in an emergency. Both

announced and unannounced exercises must be included.

(b) A nontank vessel owner or operator must comply with the vessel response plan exercise requirements of 33 CFR 155.1060.

§ 155.5062 Inspection and maintenance of response resources.

The owner or operator of a nontank vessel required to submit a response plan under this part must comply with the response resource inspection and maintenance requirements of 33 CFR 155.1062.

§ 155.5065 Procedures for plan submission and approval.

(a) An owner or operator of a nontank vessel to which this subpart applies must submit one complete English language copy, in paper format, of a nontank vessel response plan to Commandant, Office of Vessel Activities (CG-543), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, *Attn:* Vessel Response Plan Review Team. The plan must be submitted at least 60 days before the vessel intends to operate upon the navigable waters of the United States.

(b) The owner or operator of a nontank vessel must include a statement certifying that the nontank vessel response plan meets the applicable requirements of this subpart and the requirements of subparts D, E, F, and G if applicable. The owner or operator must also include a statement certifying that the owner or operator has ensured the availability of, through contract or other approved means, the necessary private resources to respond, to the maximum extent practicable, to a worst case discharge or substantial threat of such a discharge from their vessel as required under this subpart. CG Form "Application for Approval/Revision of Vessel Pollution Response Plans" (CG-6083) located at: <http://homeport.uscg.mil/vrpapplication> can be used in lieu of a cover letter to make initial application for plan submission and approval. When submitted properly, this application form meets the requirement for a vessel response plan certification statement as required by this paragraph.

(c) If the Coast Guard determines that the plan meets all requirements of this subpart, the Coast Guard will notify the vessel owner or operator with an approval letter. The plan will be valid for a period of 5 years from the date of approval, conditional upon satisfactory annual updates.

(d) If the Coast Guard reviews the plan and determines that it does not

meet all of the requirements, the Coast Guard will notify the vessel owner or operator of the nontank vessel response plan deficiencies. The nontank vessel owner or operator must then resubmit the revised plan or corrected portions or pages of the plan, within the time period specified in the written notice provided by the Coast Guard.

§ 155.5067 Alternative planning criteria.

(a) When the owner or operator of a nontank vessel believes that national planning criteria contained elsewhere in this part are inappropriate to the vessel for the areas in which it is intended to operate, the owner or operator may request acceptance of alternative planning criteria by the Coast Guard. Submission of an alternative planning criteria request must be made 120 days before the vessel intends to operate under the proposed alternative, or as soon as is practicable. The alternative planning criteria request must be endorsed by the COTP with jurisdiction over the geographic area(s) affected before being considered by Commandant, Office of Vessel Activities (CG-543), for the review and approval of the respective nontank vessel response plan. In any case, the request must be received by CG-543 with an endorsement by the respective COTP no later than 45 days before the vessel intends to operate under the alternative planning criteria.

(b) The alternative planning criteria request should detail all elements of the nontank plan where deviations from the requirements in this subpart are being proposed or have not been met. Response equipment, techniques, or procedures identified in the alternative planning criteria request should be submitted in accordance with the evaluation criteria of appendix B of this part. The request should contain at a minimum:

(1) Reason(s) and supporting information for the alternative planning criteria request;

(2) Identification of regulations necessitating the alternative planning criteria request;

(3) Proposals for alternative procedures, methods, or equipment standards, where applicable, to provide for an equivalent level of planning, response, or pollution mitigation strategies;

(4) Prevention and mitigation strategies that ensure low risk of spills and adequate response measures as a result of the alternative planning criteria; and

(5) Environmental and economic impact assessments of the effects.

(c) The granting or denial of an alternative planning criteria request will be decided by Commandant, Office of Vessel Activities (CG-543), and will be issued in writing.

§ 155.5070 Procedures for plan review, revision, and amendment.

(a) The owner or operator of a nontank vessel must review the nontank vessel response plan annually and submit a letter to Commandant, Office of Vessel Activities (CG-543) certifying that the review has been completed. This review must occur within one month of the anniversary date of Coast Guard approval of the plan.

(b) A nontank vessel response plan prepared and submitted under this subpart must be revised and amended, as necessary, in accordance with § 155.1070.

§ 155.5075 Appeal procedures.

(a) A nontank vessel owner or operator who disagrees with a deficiency determination may submit a petition for reconsideration to the Assistant Commandant for Marine Safety, Security and Stewardship, Commandant (CG-5), Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, within the time period required for compliance or within seven days from the date of receipt of the Coast Guard notice of a deficiency determination, whichever is less. After considering all relevant material presented, the Coast Guard will notify the vessel owner or operator of the final decision.

(1) Unless the vessel owner or operator petitions for reconsideration of the Coast Guard's decision, the vessel's owner or operator must correct the response plan deficiencies within the period specified in the Coast Guard's initial determination.

(2) If the vessel owner or operator petitions the Coast Guard for reconsideration, the effective date of the Coast Guard notice of deficiency determination may be delayed pending a decision by the Coast Guard. Petitions to the Coast Guard must be submitted in writing, via the Coast Guard official who issued the requirement to amend the response plan, within five days of receipt of the notice.

(b) Within 21 days of notification that a nontank vessel response plan is not approved, the vessel owner or operator may appeal that determination to the Assistant Commandant for Marine Safety, Security and Stewardship. This appeal must be submitted in writing to Commandant (CG-5), Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001.

15. In appendix B to Part 155,
 a. Revise paragraphs 1.1, 2.6, 2.7, 3.1, 4.2.2, 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 7.1, 7.2, 7.2.3, 7.2.4, and 7.3.1; and
 b. Add paragraph 8.1.1 to read as follows:

Appendix B To Part 155—Determining and Evaluating Required Response Resources for Vessel Response Plans

* * * * *

1.1 The purpose of this appendix is to describe the procedures for identifying response resources to meet the requirements of subparts D, E, F, G, and J of this part. These guidelines will be used by the vessel owner or operator in preparing the response plan and by the Coast Guard to review vessel response plans. Response plans submitted under subparts F and G of this part will be evaluated under the guidelines in section 2 and Table 1 of this appendix.

* * * * *

2.6 The requirements of subparts D, E, F, G, and J of this part establish response resource mobilization and response times. The location that the vessel operates farthest from the storage location of the response resources must be used to determine whether the resources are capable of arriving on scene within the time required. A vessel owner or operator shall include the time for notification, mobilization, and travel time of resources identified to meet the maximum most probable discharge and Tier 1 worst case discharge requirements. For subparts D and E of this part, Tier 2 and 3 resources must be notified and mobilized as necessary to meet the requirements for arrival on scene. An on-water speed of 5 knots and a land speed of 35 miles per hour is assumed, unless the vessel owner or operator can demonstrate otherwise.

2.7 For subparts D, E, and J of this part, in identifying equipment, the vessel owner or operator must list the storage location, quantity, and manufacturer's make and model, unless the oil spill removal organization(s) providing the necessary response resources have been evaluated by the Coast Guard, and their capability has been determined to equal or exceed the response capability needed by the vessel. For oil recovery devices, the effective daily recovery capacity, as determined using section 6 of this appendix, must be included. For boom, the overall boom height (draft plus freeboard) must be included. A vessel owner or operator is responsible for ensuring that the identified boom has compatible connectors.

* * * * *

3.1 A vessel owner or operator must identify and ensure, by contract or other approved means, that sufficient response resources are available to respond to the 50-barrel average most probable discharge at the point of an oil transfer involving a vessel that carries oil as a primary cargo or a nontank vessel carrying oil as cargo. The equipment must be designed to function in the operating environment at the point of oil transfer. These resources must include—

* * * * *

4.2.2 Ten percent of the total oil capacity.
 * * * * *

5.1 A vessel owner or operator, as applicable under the regulations prescribed in this part, must identify and ensure, by contract or other approved means, that sufficient response resources are available to respond to the worst case discharge of oil to the maximum extent practicable. Section 7 of this appendix describes the method to determine the required response resources.

5.2 Oil spill recovery devices identified to meet the applicable worst case discharge planning volume must be located such that they can arrive at the scene of a discharge within the time specified for the applicable response tier listed in §§ 155.1050(g) and 155.5050(g).

5.3 The effective daily recovery capacity for oil recovery devices identified in a response plan must be determined using the criteria in section 6 of this appendix. A vessel owner or operator, as applicable under the regulations prescribed in this part, shall identify the storage locations of all equipment that must be used to fulfill the requirements for each tier.

5.4 A vessel owner or operator, as applicable under the regulations prescribed in this part, must identify the availability of temporary storage capacity to meet the requirements of section 9.2 of this appendix. If available storage capacity is insufficient to meet this requirement, then the effective daily recovery capacity must be downgraded to the limits of the available storage capacity.

5.5 When selecting response resources necessary to meet the response plan requirements, the vessel owner or operator, as applicable under the regulations prescribed in this part, must ensure that a portion of those resources are capable of being used in close-to-shore response activities in shallow water. The following percentages of the on-water response equipment identified for the applicable geographic area must be capable of operating in waters of 6 feet or less depth:

- (i) Open ocean—none.
- (ii) Offshore—10 percent.
- (iii) Nearshore, inland, Great Lakes, and rivers and canals—20 percent.

5.6 In addition to oil spill recovery devices and temporary storage capacity, a vessel owner or operator, as applicable under the regulations prescribed in this part, must identify in the response plan and ensure the availability of, through contract or other approved means, sufficient boom that can arrive on scene within the required response times for oil containment and collection. The specific quantity of boom required for collection and containment will depend on the specific recovery equipment and strategies employed. Table 2 of this appendix lists the minimum quantities of additional boom required for shoreline protection that a vessel owner or operator shall identify in the response plan and ensure the availability of, through contract or other approved means.

5.7 A vessel owner or operator, as applicable under the regulations prescribed in this part, must also identify in the response plan and ensure, by contract or other approved means, the availability of an oil spill removal organization capable of

responding to a shoreline cleanup operation involving the calculated volume of emulsified oil that might impact the affected shoreline. The volume of oil for which a vessel owner or operator should plan for should be calculated through the application of factors contained in Tables 3 and 4 of this appendix. The volume calculated from these tables is intended to assist the vessel owner or operator in identifying a contractor with sufficient resources. This planning volume is not used explicitly to determine a required amount of equipment and personnel.

* * * * *

7.1 A vessel owner or operator, as applicable under the regulations prescribed in this part, must plan for a response to a vessel's worst case discharge oil planning volume. The planning for on-water recovery must take into account a loss of some oil to the environment due to evaporations and natural dissipation, potential increases in volume due to emulsification, and the potential for deposit of some oil on the shoreline.

7.2 The following procedures must be used to calculate the planning volume used by a vessel owner or operator, as applicable under the regulations prescribed in this part, for determining required on-water recovery capacity:

* * * * *

7.2.3 The adjusted volume is multiplied by the on-water oil recovery resource mobilization factor found in Table 5 of this appendix from the appropriate operating area and response tier to determine the total on-water oil recovery capacity in barrels per day that must be identified or contracted for to arrive on scene within the applicable time for each response tier. Three tiers are specified. For higher volume port areas, the contracted tiers of resources must be located such that they can arrive on scene within 12, 36, and 60 hours of the discovery of an oil discharge. For the Great Lakes, these tiers are 18, 42, and 66 hours. For rivers and canals, inland, nearshore, and offshore, these tiers are 24, 48, and 72 hours. For the open ocean area, these tiers are 24, 48, and 72 hours with an additional travel time allowance of 1 hour for every additional 5 nautical miles from shore. For nontank vessels, only Tier 1 is specified.

7.2.4 The resulting on-water recovery capacity in barrels per day for each tier is used to identify response resources necessary to sustain operations in the applicable geographic area. The equipment must be capable of sustaining operations for the time period specified in Table 3 of this appendix. A vessel owner or operator, as applicable under the regulations prescribed in this part, shall identify and ensure the availability of, through contract or other approved means, sufficient oil spill recovery devices to provide the effective daily oil recovery capacity required. If the required capacity exceeds the applicable cap described in Table 6 of this appendix, then a vessel owner or operator must contract only for the quantity of resources required to meet the cap, but shall identify sources of additional resources as indicated in § 155.1050(p). For a vessel that carries multiple groups of oil, the required effective daily recovery capacity

for each group is calculated and summed before applying the cap.

* * * * *

7.3.1 The following must be determined: The total volume of oil carried; the appropriate group for the type of petroleum oil carried [persistent (groups II, III, and IV) or non-persistent (group I)]; and the geographic area(s) in which the vessel operates. For a vessel carrying different oil groups, each group must be calculated separately. Using this information, Table 3 of this appendix must be used to determine the percentages of the total oil volume to be used for shoreline cleanup resource planning.

* * * * *

8.1.1 A vessel owner or operator, as applicable under the regulations prescribed in this part, must plan either for a dispersant capacity to respond to a vessel's worst case discharge (WCD) of oil, or for the amount of the dispersant resource capability as required by § 155.1050(k)(3) of this chapter, whichever is the lesser amount. When planning for the cumulative application capacity that is required, the calculations should account for the loss of some oil to the environment due to natural dissipation causes (primarily evaporation). The following procedure should be used to determine the cumulative application requirements:

* * * * *

16. In appendix C to Part 155—
a. Revise paragraphs 2.2.3.1, 2.2.14, 2.2.15, 2.2.15.1, 2.2.15.2, 2.2.15.3, 2.2.15.4, and 2.2.15.5 to read as follows:

Appendix C to Part 155—Training Elements for Oil Spill Response Plans

* * * * *

2.2.3.1 Operational activities associated with internal or external fuel and cargo transfers;

* * * * *

2.2.14 Actions to take, in accordance with designated job responsibilities, in the event of a transfer system leak, tank overflow, or suspected fuel or cargo tank or hull leak.

2.2.15 Information on the oil handled by the vessel or facility, including familiarity with:

2.2.15.1 Cargo material safety data sheets (including oil carried as fuel);

2.2.15.2 Chemical characteristics of all oils carried as fuel or cargo;

2.2.15.3 Special handling procedures for all oils carried as fuel or cargo;

2.2.15.4 Health and safety hazards associated with all oils carried as fuel or cargo; and

2.2.15.5 Spill and firefighting procedures for all oils carried as fuel or cargo.

* * * * *

PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

17. The authority citation for part 160 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. Chapter 701; Department of Homeland Security Delegation No. 0170.1. Subpart C is also issued under the authority of 33 U.S.C. 1225 and 46 U.S.C. 3715.

§ 160.206 [Amended]

18. In § 160.206, in Table 160.206—

a. In Required information column, after item (1)(viii), add “(ix) USCG Vessel Response Plan Control Number, if applicable” and

b. In each of remaining three columns of the newly added row (1)(ix), add an “X”.

Dated: August 14, 2009.

Lincoln D. Stroh,

Captain, U.S. Coast Guard, Acting Director of Prevention Policy.

[FR Doc. E9–20310 Filed 8–28–09; 8:45 am]

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Part IV

Department of Homeland Security

Coast Guard

**33 CFR Parts 154 and 155
Vessel and Facility Response Plans for
Oil: 2003 Removal Equipment
Requirements and Alternative Technology
Revisions; Final Rule**

**DEPARTMENT OF HOMELAND
SECURITY**
Coast Guard
33 CFR Parts 154 and 155
[Docket No. USCG–2001–8661]
RIN 1625–AA26 [Formerly RIN 2115–AG05]
**Vessel and Facility Response Plans for
Oil: 2003 Removal Equipment
Requirements and Alternative
Technology Revisions**
AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is updating its requirements for oil-spill removal equipment associated with vessel response plans and marine transportation-related facility response plans. This update is based on an ongoing review of these requirements conducted by the Coast Guard pursuant to our regulations. These changes will add requirements for new response technologies and revise methods and procedures for responding to oil spills upon the navigable waters of the United States, adjoining shorelines, and the exclusive economic zone. The Coast Guard is also revising the compliance date for updates of vessel response plans (VRPs) required by the Salvage and Marine Firefighting final rule. This extension of the compliance date will ensure that plan holders are not required to update their VRPs twice within a 12-month period.

DATES: This final rule is effective September 30, 2009. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of September 30, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2001–8661 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning this rule, call or e-mail LT Xochitl Castañeda, Office of Vessel Activities, Vessel Response Plan Program, (CG–5431) telephone 202–372–1225, or vrp@uscg.mil. If you have questions on

viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

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I. Abbreviations

- AMPD average most probable discharge
- ANSI American National Standards Institute
- API American Petroleum Institute
- ASTM American Society for Testing and Materials
- BA Biodegradation Accelerant
- bbls barrels
- BR Bioremediation
- caps Capability Limits
- COTP Captain of the Port
- DMP Dispersant Mission Planner
- DMP2 Dispersant Mission Planner 2
- DPEIS Draft Programmatic Environmental Impact Statement
- EDAC effective daily application capacity
- EIS Environmental Impact Statement
- EPA Environmental Protection Agency
- FAA Federal Aviation Administration
- FOSC Federal On-Scene Coordinator
- FPEIS Final Programmatic Environmental Impact Statement
- FRFA Final Regulatory Flexibility Analysis
- FRP facility response plan
- FWPCA Federal Water Pollution Control Act
- IBR Incorporation by Reference
- IEC International Electrotechnical Commission
- IMO International Maritime Organization
- ISB in-situ burning
- MMPD maximum most probable discharge
- MMS Minerals Management Service
- MOU memoranda of understanding
- MTC Makah Tribal Council
- MTR marine transportation-related
- NAICS North American Industry Classification System
- NARA National Archives and Records Administration
- NCP National Contingency Plan
- NEMA National Electrical Manufacturers Association
- NEPA National Environmental Policy Act

- NFPA National Fire Protection Association
- NOAA National Oceanic & Atmospheric Administration
- NPRM notice of proposed rulemaking
- NSFCC National Strike Force Coordination Center
- NTTA National Technology Transfer and Advancement Act
- NVIC Navigation and Vessel and Inspection Circular
- OCIMF Oil Companies International Marine Forum
- OCONUS outside the continental United States
- OPA 90 Oil Pollution Act of 1990
- OSRO Oil Spill Removal Organization
- PEIS Programmatic Environmental Impact Statement
- RA regulatory assessment
- RRT regional response team
- SBA Small Business Administration
- UAMA Usual and Accustomed Marine Area
- VRP vessel response plan
- WCD worst case discharge

II. Regulatory History

In 1996, the Coast Guard published final tank vessel response plan regulations (61 FR 1052 (January 12, 1996)) and final marine transportation related (MTR) facilities response plan regulations (61 FR 7890 (February 29, 1996)) pursuant to the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380) and Executive Order 12777. These regulations contain minimum on-water oil removal equipment requirements that plan holders (vessel and/or facility owners and operators) transporting or transferring petroleum oil must meet to be prepared for an oil spill. Under these regulations, the Coast Guard periodically reviews existing oil removal equipment requirements to determine if increases in mechanical recovery systems and additional requirements for new response technologies are practicable.

On January 27, 1998, the Coast Guard published a Request for Comments (63 FR 3861) regarding our intent to conduct a review of oil removal equipment response plan requirements. In the request, we stated that the 1993 oil removal equipment requirements would remain in effect until the review was complete. On June 24, 1998, we published a Notice of Meetings (63 FR 34500) that announced three public workshops. The meetings were set up to solicit comments on potential changes to oil removal equipment requirements associated with the response plan regulations (33 CFR parts 153, 154 and 155) for mechanical recovery, dispersants, and other spill removal technologies. The meetings were held at the following places and times:

- Friday, July 24, 1998, from 9:30 a.m. to 3 p.m. at the Oakland Airport

Hilton, One Hegenberger Road, Oakland, California 94621;
 • Wednesday, August 19, 1998, from 9:30 a.m. to 3 p.m. at the Houston Marriott West Loop-by the Galleria, 1750 West Look South, Houston, Texas 77027; and

• Wednesday, September 16, 1998, from 9:30 a.m. to 3 p.m. at the U.S. Department of Transportation, Nassif Building, Room 2230, 400 Seventh Street, SW., Washington, DC 20590.

Based on comments to the **Federal Register** notice and the three workshops, the Coast Guard commissioned an in-depth assessment of advances in oil spill response equipment since 1993. We completed the assessment, "Summary Report of Public Workshop for Response Plan Equipment CAPs," in May 1999 and, based on its recommendations, published a notice of decision (65 FR 710, January 6, 2000) that announced a 25-percent increase in on-water mechanical recovery equipment for response plans of MTR facilities and tank vessels, effective April 6, 2000. Furthermore, we started a regulatory project to evaluate the potential for

additional increases in mechanical on-water recovery and new requirements for other response technologies, which would, if practicable, become effective in 2003.

To ensure that a broad range of environmental issues is adequately considered in the rulemaking, the Coast Guard prepared a Programmatic Environmental Impact Statement (PEIS) for revising the oil removal equipment requirements for tank vessels and MTR facilities response plans. On September 1, 2000, we published a Notice of Intent to prepare and circulate a draft PEIS (65 FR 53335). We requested public input on environmental concerns related to the alternatives for increasing spill removal equipment requirements for an oil discharge, and suggested analyses or methodologies for inclusion in the PEIS.

The Coast Guard received 70 comments in response to the 1998 Request for Comments and from the three public workshops. Those comments, as well as the recommendation of the Federal Government-Oil Spill Response Industry Partnership Action Team, were

placed on the Federal rulemaking docket for this rulemaking and addressed in the notice of proposed rulemaking (NPRM).

On October 11, 2002, the Coast Guard published an NPRM in the **Federal Register** (67 FR 63331) entitled, "Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions." On November 19, 2002, we published a notice of public meeting and extension of the comment period (67 FR 69697). The meeting was held on December 18, 2002, at Coast Guard Headquarters in Washington, DC, and the comment period closed on April 8, 2003.

The NPRM described five regulatory alternatives, including a "no action" alternative, which emphasized either mechanical or non-mechanical response assets. In addition to addressing different modes of oil-spill response, the alternatives included differing capabilities within each response mode. The five regulatory alternatives presented in the NPRM and considered by the Coast Guard are summarized briefly below:

Alternative 1	No action (2000 response requirements remain effective without modification).	
Alternative 2	Mechanical recovery ...	Increase of 25 percent for all operating areas of water (inland, nearshore, offshore, Open Ocean, Great Lakes, rivers and canals).
	Dispersants	No response requirements.
	Aerial tracking	Required.
Alternative 3	Mechanical recovery ...	Increase of 25 percent for all operating areas of water (inland, nearshore, offshore, Open Ocean, Great Lakes, rivers and canals).
	Dispersants	Option A Effective Daily Application Capability (EDAC) for Tier 1 response time.
	Aerial tracking	Required.
	In-situ burning	Credit against mechanical recovery.
Alternative 4	Mechanical recovery ...	Increase of 25 percent for certain operating areas of water (inland, Great Lakes, rivers and canals).
	Dispersants	Option B EDAC for Tier 1 response time.
	Aerial tracking	Required.
	In-situ burning	Credit against mechanical recovery.
Alternative 5	Mechanical recovery ...	No added response requirements.
	Dispersants	Option B EDAC for Tier 1 response time.
	Aerial tracking	Required.
	In-situ burning	Credit against mechanical recovery.

We received 116 comments on the proposed rule in response to the NPRM, which are discussed below in the "Discussion of Comments and Changes" section of this preamble.

On December 31, 2008, the Coast Guard published the Salvage and Marine Firefighting final rule (73 FR 80618). In that final rule, the Coast Guard amended the vessel response plan salvage and marine firefighting requirements for tank vessels carrying oil. The revisions clarified the salvage and marine firefighting services that must be identified in VRPs and set new

response plan requirements for each of the required salvage and marine firefighting services. The final rule also revised 33 CFR 1520 addressing when plan holders were required to comply with the new salvage and marine firefighting requirements to change the compliance date from 6 months to 18 months after the December 31, 2008, publication of the final rule based on public comments on the issue.

III. Background and Purpose

Under OPA 90 and Executive Order 12777, the Coast Guard is authorized to

issue regulations requiring the owners and operators of tank vessels and MTR facilities to prepare and submit response plans. OPA 90 amended the Federal Water Pollution Control Act (FWPCA) to require the preparation and submission of oil spill response plans by the owners or operators of certain facilities and vessels. It also required these vessels and facilities to operate in compliance with their submitted response plans. Vessel and facility owners or operators were told to submit a response plan to the Coast Guard for approval to handle,

store, or transport oil. In 1996, the Coast Guard published final tank vessel response plan regulations (61 FR 1052 (January 12, 1996)) and final MTR facility response plan regulations (61 FR 7890 (February 29, 1996)). These regulations defined the minimum on-water oil removal equipment requirements that plan holders transporting or transferring petroleum oil must meet to be prepared for an oil spill. Under these regulations, the Coast Guard periodically reviews the existing oil removal equipment requirements to determine if increases in mechanical recovery systems and additional requirements for new response technologies are practicable. The Coast Guard is promulgating this final rule in keeping with its obligation to periodically review and update these requirements.

IV. Discussion of Comments and Changes

During the comment period, we received 116 comments. Discussion of comments on the NPRM, including those from the public meetings, are organized into sections concerning general comments, mechanical recovery, dispersants, and aerial tracking. Material on the comparative merits of mechanical recovery and dispersants is included in the dispersants section.

A. General Comments

This section concerns in-situ burning (ISB), costs and benefits, environmental impacts, editorial changes, compliance dates, and other subjects of a general nature.

We received several comments on the use of ISB. In the NPRM, burn credits were proposed to offset the requirements for mechanical recovery, rather than requiring specific ISB response requirements. As a result of further Coast Guard analysis and associated public comments received on the Draft Programmatic Environmental Impact Statement (DPEIS), we decided not to include ISB or the associated burn credits in the regulatory scheme. Because ISB is eliminated in our final decision, we are not addressing comments that solely concern ISB. However, we still evaluated ISB credits in the Final PEIS because they remained reasonable (but not selected) alternatives.

We removed ISB from this rulemaking because allowing a credit for ISB may reduce the amount of mechanical recovery response equipment available in areas where ISB pre-authorizations are in place. Removal of the ISB credit will prevent the potential for reduction in mechanical recovery equipment.

Removal of the ISB credit is justified because on-water ISB is, operationally, too limited an option to require the capability nationally. There are only limited opportunities to employ ISB in open waters. Those limitations, however, are so severe, and the cost of ISB equipment so high, that the Coast Guard cannot justify requiring stockpiling of ISB equipment in addition to required mechanical recovery stockpiles. Furthermore, ISB has very limited potential for use with on-water spills, even in the event of catastrophic oil releases from vessels. ISB has significant potential value for use on land, in marshes, and other areas. However, in those situations, the oil is usually stabilized in place and specialized burn booms addressed in these regulations are either not required at all, or are not subjected to emergency delivery. ISB may also be useful in response to a continuous discharge, such as an incident involving an oil production facility. However, such facilities are not covered in this rulemaking. ISB may offer some benefit for response to oil trapped in ice. But, in those areas, icing is typically a seasonal situation, such that the loss of mechanical recovery capability has not been justified. If local area planning committees determine that the loss of mechanical recovery is justified, then they may work with plan holders to permit alternative compliance strategies that may accommodate some tradeoff between mechanical recovery and ISB equipment.

For the reasons set out above, the Coast Guard is eliminating the offer of credit against mechanical recovery for ISB capability. The ISB pre-authorizations in place provide sufficient incentive to encourage plan holders to stockpile ISB equipment if such equipment will be useful in addressing response situations without requiring them in the regulations.

Since vessel and facility owners or operators are not required to contract with Oil Spill Removal Organizations (OSROs) for ISB resources, we removed the ISB tables from the final rule.

Two commenters believed that the benefits of the proposed regulations do not justify the costs of implementation. Furthermore, the commenters stated that future regulations should focus on oil spill prevention.

As technology and science advance, regulations must change to facilitate those advances. Regulation implementation cost was considered in the development of these regulations. While the number and volume of small spills have decreased, these regulations are aimed at minimizing catastrophic

spills. These regulations consider advances in technology and scientific understanding, and changes in regional oil spill response preparedness efforts. Additionally, they establish the appropriate roles for various response technologies, including dispersants, ISB, and aerial monitoring.

Another commenter asked why the Coast Guard is implementing increased mandatory recovery capabilities when current containment requirements and equipment have adequately addressed the problem.

This rule does not increase the mechanical recovery capabilities already required. It requires that dispersants complement the existing capability. Dispersants may reduce environmental damage from an oil spill in circumstances where use of mechanical recovery systems is not practical. For instance, in rough seas, mechanical containment and recovery systems are of little use while dispersants are very effective at scattering the oil and reducing shoreline impacts.

Several commenters expressed general concern with the costs discussed in the assessment of the proposed rule. However, some commenters did not provide specific data or additional details that would support their concerns and, as a result, we were unable to address their comments directly.

One commenter was concerned with the limited use of dispersants and the limited availability of application platforms for mandatory dispersant use. This rule does not make dispersant use mandatory. It seeks to ensure the availability of dispersant capability within limited areas where pre-authorizations exist. The establishment of pre-authorization areas and the decision to use dispersants in any incident is governed by EPA in 40 CFR 300.900 *et seq.* and are not within the scope of this rulemaking.

One commenter believed this rulemaking would have an adverse impact on his small business because he thought his company could no longer act as an independent OSRO. This commenter was responding to a change to the OSRO classification process carried out by the National Strike Force Coordination Center (NSFCC). At one time, the NSFCC, classified OSROs who were capable of providing average most probable discharge (AMPD) coverage to a plan holder. Under the current classification process implemented in 2002, the NSFCC no longer classifies OSROs that only provide AMPD response resources and coverage. AMPD response resources must be ensured

available, as applicable, by the plan holder and verified at the Coast Guard Captain of the Port (COTP) zone level. This commenter was concerned that the result would be that he could no longer provide AMPD coverage. The comment is outside the scope of this rulemaking. Furthermore, AMPD coverage for mechanical recovery remains unchanged by this final rule.

Several commenters stated that requiring ISB and dispersant equipment in remote areas would place a large financial burden on responsible parties in certain areas of Alaska where there are few facilities and little or no infrastructure for response. Therefore, they suggested the requirements be modified for Alaskan waters outside of Prince William Sound and Cook Inlet. One of these commenters requested the regulations be modified to account for the short periods of the year when dispersants can be successfully used in areas such as Cook Inlet.

The Coast Guard agrees that requiring dispersant and ISB capability in remote areas of Alaska may impose an undue burden on plan holders. This concern was one of many factors in the decision not to require ISB response equipment. As dispersant response equipment is only required for plan holders operating in pre-authorization areas, and because Alaska has no pre-authorizations as of September 27, 2008, this concern is not an immediate issue.

In Alaska, the Area Planning Committee and the Regional Response Team have at least two options within the parameters of the regulations. They may either determine that pre-authorization in remote areas is not feasible because of the potential financial burden, or they may adopt pre-authorization but recommend that some, or all, plan holders be exempted from complying in accordance with the provisions of 33 CFR 154.108 for facilities or 33 CFR 155.130 for vessels. As part of the exemption request, alternative procedures, methods, and equivalent standards must be evaluated and implemented if available. This requirement would facilitate the decision process but leave the burden of providing the capability to the Area Committee and Regional Response Team. The Coast Guard has addressed the standard case in most of the country, but has provided sufficient flexibility at the local and regional levels to address local issues and concerns.

The Coast Guard strongly agrees with the need for the regulations to be sufficiently flexible to allow consideration of alternatives. There are already provisions in 33 CFR 154.1065 and 33 CFR 155.1065 intended precisely

for this purpose. Plan holders, especially in remote areas of Alaska, Hawaii, and Guam, are encouraged to work with the Coast Guard and local response communities to determine suitable alternatives to the regulations that might be approved by the Coast Guard.

Three commenters believed the Coast Guard should specifically define the methods used to determine compliance with dispersant (ISB and aerial surveillance) capability and availability. Another commenter felt procedures should be published to classify dispersant providers and aerial observation personnel. One commenter felt that requiring plan holders to list all resources would place an unreasonable burden on plan holders. In addition, several commenters stated that effective daily application capacity (EDAC) and other tabulated information is inaccurate and that recalculations should be made using the National Oceanic & Atmospheric Administration (NOAA) dispersant planner. One commenter recommended that an industry or government workgroup be established to update the NOAA Dispersant Mission Planner.

Effective daily application capacities have been revised using the NOAA dispersant planning calculator (the updated version is now simply called the Dispersant Mission Planner 2 [DMP2]). Therefore, rather than including tables approximating dispersant delivery response times in the regulations, which would be cumbersome to update in light of new technology, the Coast Guard decided to reference the DMP2, which was recently updated by a joint government and industry workgroup for this purpose. Plan holders can download the DMP2 and other spill tools from the Internet at the following URL: <http://response.restoration.noaa.gov/spilltools>.

While the Coast Guard will use this calculator to assess plan holder dispersant plans, plan holders are not obligated to use it as a planning tool.

Adequate dispersant application platforms will be evaluated by the NSFCC using the DMP2 based on an OSRO-submitted list that identifies sufficient and appropriately trained personnel, specific aircraft, vessels, delivery systems, dispersant, and any other input parameters specified in the calculator. The list should also provide the location of each identified item. Regarding availability of response resources, the NSFCC will use the DMP2, as specified in the regulations, to determine response times to the scene and EDAC. Accordingly, the definition of DMP2 in § 155.1020 has been revised

from the definition proposed in the NPRM to clarify that the NSFCC will use the DMP2 application for evaluating dispersant classification levels. OSROs with dispersant capability must be identified in a vessel response plan in the same manner as is currently required of Coast Guard classified OSROs [see 33 CFR 155.1035(6)–(10)]. If the Coast Guard evaluates an OSRO for dispersants and determines their capability is equal to, or exceeds, the response capability needed by the vessel, only the OSRO and its applicable classification need to be identified. If the OSRO has not been evaluated for dispersant capability the appendix must contain comprehensive response lists.

Aircraft air speeds will be limited as indicated in the calculator because these are planning standards and not response standards. Vessel speeds will be limited to five knots as indicated in the regulations. The NSFCC will use those standards to determine time to dispersant loading point, if different from delivery resource point, and then draw a radius from the dispersant stock point to determine response coverage provided by those resources. For dispersant vessels on water, response radius will be limited to 35 nautical miles from home base or usual station for tier 1 responses, 60 miles for tier 2 responses, and 180 miles for tier 3 responses.

The OSRO classification processed by the NSFCC will ensure consistency of assumptions and terminology used by response service providers across the country and will also provide feedback for the national response resource inventory database maintained by the NSFCC. The classification is not intended to certify capability. Certification is the responsibility of the vessel and facility response plan holders who will rely on these services.

Vessel and facility response plan holders must ensure these dispersant service providers meet the response requirements in the regulations. The vessel response plan certification statement required by the regulations is the plan holder's certification that the cited items are available to deliver dispersants in accordance with applicable ASTM International standards within the timeframes specified in the regulations.

The NSFCC, in cooperation with regional and local area-planning committees, will conduct periodic visits verifying that dispersant response providers' equipment and personnel are available to provide the required services. These visits may be unannounced. No actual deployment will be required as part of these visits,

but maintenance records and material condition may be examined. Furthermore, plan holders must conduct deployment exercises of these resources at least annually. Finally, industry plan holders must include deployment of these resources as part of periodic participation in government or industry-led area exercises when those exercises include these resources in the scenario.

One commenter encouraged the Coast Guard to apply this rulemaking to non-tank vessels and other facilities and entities that might spill oil into the environment. Otherwise, the commenter maintained, the entire burden for services, which may benefit these other entities, will fall to a small segment of the potential spillers.

As a result of the Coast Guard and Maritime Transportation Act of 2004, the Coast Guard is also developing proposed response plan regulations for non-tank vessels over 400 gross tons. These regulations may be added to 33 CFR 155 as a new subpart. This action may result in similar oil spill planning standards for tank and non-tank vessels, including the requirements for dispersant capability and aerial observation platforms.

With respect to other facilities and entities, the U.S. Minerals Management Service (MMS) has followed this rulemaking closely and will determine what, if any, changes they will make to their requirements for the offshore oil exploration and production facilities it regulates. The Environmental Protection Agency (EPA) and Pipeline and Hazardous Materials Safety Administration are also monitoring this rulemaking for consistency and impact on the industry segments these agencies regulate.

Several commenters objected to the proposed requirement for plan holders to comply with these regulations within 8 months of publication of the final rule. Some were particularly concerned with the regulation's focus on development of a nationwide dispersant capability. This focus will require acquisition and outfitting of multiple aircraft in multiple locations, along with dispersant stockpile depots and a logistical network to ensure compliance. Additionally, commenters argued, it may also require Federal Aviation Administration (FAA) approval of individual airframes and other implementation obstacles. Finally, commenters explained that because of the cost of compliance, none of these steps can be initiated until the nature and details of the final rule become clear.

The Coast Guard agrees and has amended § 154.1065(e) and

§ 155.1070(i) to extend the compliance date for facility and vessel owners or operators to 18 months from the publication of the final rule.

One commenter suggested renumbering Table 154.1050(k) to 154.1050(j) to conform to the numbering convention in the rest of the regulations.

ISB tables will be removed from the regulations because ISB resources will no longer be used as an alternative to offset a portion of the required mechanical recovery equipment/capability.

Two commenters noted that Table 154.1045(i) should include a footnote indicating that these response time frames are based on application in daylight hours. For example, in Alaska, where days are very short in winter, these response time frames should not apply to all tier 2 or tier 3 quantities in a limited operational period.

Dispersant application requirements assume 12 hours of daylight in each tier period as a planning standard, not a performance standard. More precisely, tier 1 assumes that daylight begins upon notification and ends at hour 12. For tier 2, planners can estimate daylight to begin at hour 24 and end at hour 36 and for tier 3, daylight begins at hour 48 and ends at hour 60. This is a planning standard, not a performance standard, which presumes that average daylight over a 12-month period is 12 hours. The 12-hour assumption permits practical planning for an oil spill; however seasonal variance should be taken into account during actual response operations. As noted previously in this discussion of comments section, rather than including tables approximating dispersant delivery response times in the regulations, we have decided to reference NOAA's Dispersant Mission Planner 2 (DMP2). The DMP2 is available from the Internet at the following URL: <http://response.restoration.noaa.gov/spilltools>. Therefore, a footnote to the table is not applicable.

Additionally, paragraphs (j) and (p) of Part 155.1050 have been removed.

Two commenters wanted to know whether vessel speed waivers conducted under the OSRO guidelines will be accepted or, if not, whether the plan holder or OSRO will have to go through a separate waiver procedure.

Existing response delivery speed waivers will still apply if owners and/or operators can provide transit calculations demonstrating greater speed of transit than the assumed five knots over water or 35 miles per hour over land.

Several commenters supported the decision that only plan holders

operating in areas where dispersant use has been pre-authorized are required to have dispersant resources available. One of these commenters was concerned that the regulations would require plan holders operating in inland areas to comply with the dispersant capability requirements. Another commenter supported exemptions for inland barges. One commenter believed no inland waters exist where the commenter's vessels operate that are pre-approved for dispersant use.

The Coast Guard recognizes there are no pre-authorizations in inland areas (e.g., estuarine or freshwater) at this time. It is possible, although not likely, that such pre-authorizations may be developed over time. Currently, however, facilities and vessels operating in inland areas, including ports and harbors, rivers, and the Great Lakes, will not be required to have dispersant resources available. If pre-authorization is established in any of those waters, plan holders operating in the waters covered by that pre-authorization will be expected to comply within 24 months of the date of publication of a **Federal Register** notice advising of the pre-authorization. The 24-month compliance time frame will allow owners and operators to stockpile the requisite dispersants and supporting delivery assets.

One commenter suggested that the final rule define facilities that handle petroleum as primary cargo as those whose primary business is the frequent shipping and/or receiving of oil and therefore are facilities where the probability of oil releases is significantly greater than it is for facilities that handle oil infrequently.

The definition of the term "facilities" for the purposes of these regulations was already established with the promulgation of the facility response plan regulations in 1993. See 33 CFR 154.1020. Additionally, the local Coast Guard Captain of the Port can upgrade or downgrade the classification of a facility based on its operating status. See 33 CFR 154.1016. The frequency of transfers at a particular location is not the only factor determining probability that the facility will suffer a major spill incident.

Several commenters urged the Coast Guard to publish a list of pre-authorization areas and expedited approval zones for both dispersant use and ISB to clarify who is presently required to provide this equipment. One commenter recommended that the regulations clearly state where dispersant and ISB use is pre-authorized. Another commenter felt that governmental agencies do not have the

resources or motivation to develop pre-authorization agreements.

Pre-authorization areas are contained in individual Area Contingency Plans available at <http://www.homeport.uscg.mil> under Port Directory. Additionally, the Coast Guard published a list of pre-authorization areas at <http://www.uscg.mil/vrp/reg/disperse.shtml>.

The Coast Guard Office of Incident Management and Preparedness at Headquarters (CG-533) maintains this list in coordination with Regional Response Teams. If new or revised pre-authorizations are received, the Coast Guard will post the document on the Web site and publish a notice in the **Federal Register**. Plan holders within newly established pre-authorized areas will have 24 months from the date of publication of a pre-authorization area to achieve compliance.

One commenter recommended that dispersant planning only be required in areas actually pre-authorized for dispersant use or pre-approved with consultation, and not in areas only designated for quick approval of dispersant use. The Coast Guard agrees. To eliminate ambiguity and confusion, the rule will apply to pre-approved areas only.

One commenter recognized the value of input from qualified OSROs, and requested that the Coast Guard solicit their expertise.

The Coast Guard agrees and has followed a deliberate public process in this regulatory development. Since 1998, the Coast Guard has engaged in frequent dialogue with Federal, State, and local government agencies, industry, and OSROs. Throughout this process, the Coast Guard has incorporated many recommendations provided by OSROs.

One commenter requested that the regulations not require detailed equipment lists, but instead require just a "simple reference" to the OSRO contracted by the plan holder.

The Coast Guard agrees. The regulations will allow plan holders to reference in their plans an OSRO that provides dispersants, is classified by the Coast Guard, and whose availability has been ensured by contract or other approved means.

One commenter agreed with the Coast Guard that it is the sole responsibility of the potential spiller to pay for all costs associated with maintaining large incident response capability.

Several commenters felt it was premature to evaluate the proposed regulations prior to publication of the programmatic environmental impact statement (PEIS). One felt the comment

period should be extended until the PEIS was completed.

The Coast Guard disagrees. The comment period for the NPRM was open for approximately 6 months [Oct 2002 to Apr 2003], and the comment period for the DPEIS was open for 3 months [in 2005]. There was ample opportunity to comment following publication of the NPRM and the notice of availability for the DPEIS.

Specifically, on June 1, 2005, we published the DPEIS. Shortly after the DPEIS publication we held four public hearings in July 2005. Public comments received on the DPEIS and the NPRM prompted the Coast Guard to alter its proposed action. As such, the new alternative 5 (without the ISB) was evaluated in the final PEIS, and was the selected alternative.

The final PEIS has been completed. It describes the reasonable alternatives evaluated, the affected environment, and the environmental impacts associated with the alternatives on the resources analyzed.

Three commenters were concerned that requirements for the Gulf of Mexico were higher than those for other areas of the country due to the large presence of oil and gas production facilities in that area. Oil and gas production facilities are not regulated by the Coast Guard, so they should not be used in establishing a Coast Guard requirement or to justify an increased level of dispersant coverage. The commenters also urged coordination with the Minerals Management Service (MMS), which regulates those facilities, to ensure consistent regulatory standards between agencies.

The planning volumes in the Gulf of Mexico are higher because oil tanker traffic there is much higher than it is elsewhere in the country. This is partly due to the fact that much of the oil produced in this region, and most of the crude oil refined in the United States, travels on ships operating in and out of Gulf of Mexico ports. The Coast Guard developed this rule in close cooperation with MMS.

One commenter stated that there are several plans which utilize bioremediation in spill response, contrary to what was stated in the NPRM preamble.

The Coast Guard acknowledges that various regional and local area planning documents around the country appropriately use bioremediation in response to spills. However, none of these plans endorses the immediate use of bioremediation in treating large volumes of oil on water. Rather, bioremediation is generally seen as a "polishing tool" for use on shoreline

areas when further removal of remaining oil is impracticable or environmentally damaging. Unlike on-water mechanical recovery, on-water ISB, and chemical dispersion, bioremediation is not an initial response option and does not need to be applied within the first few days of a spill. Days or weeks may pass before bioremediation use is even considered during a response. The Coast Guard supports the use of biobased products as a part of the response evolution and encourages national, regional, and local area planners to consider use of bioremediation and bioacceleration. However, it is not necessary for vessel and facility owners to contract in advance for this response tool.

A related comment recommended that this rule include a provision to require use of dispersants determined to be environmentally preferable products in accordance with Executive Orders 13101, 13134, and 13148.

Executive Order 13101 requires consideration of waste prevention in reference to our pollution response policies. In this instance we have complied with Executive Order 13101 by ensuring that our regulation does not contradict 40 CFR Part 300—National Oil and Hazardous Substances Pollution Contingency Plan. Part 300 describes the structure and procedures for preparing for and responding to discharges of oil and releases of hazardous substances, pollutants, and contaminants. Recycling is the preferred disposal alternative cited in 40 CFR 300.310.

Executive Order 13134 encourages the development of a comprehensive national strategy, including research, development, and private sector incentives, to stimulate the creation and early adoption of technologies needed to make biobased products and bioenergy cost-competitive in large national and international markets. Although we note the commenter's concern with regard to these products, the focus of this rule is on responding to oil spills with the technologies currently available. The Coast Guard may consider additional technologies as they become available.

Executive Order 13148 charges Federal agencies with ensuring that all necessary actions are taken to integrate comprehensive environmental accountability in the agencies' day-to-day decisionmaking and long-term planning processes. In this instance, we have integrated environmental accountability into this rulemaking process by complying with the mandates of the National Environmental Protection Act (please see the final Environmental Impact Statement on the

docket USCG-2000-7833). Further, in response to actual spills, the Coast Guard is accountable, as the Federal On-Scene Coordinator, for response operations within our jurisdiction (40 CFR 300). This jurisdiction includes oversight of disposal operations.

One commenter asked the Coast Guard to revise or clarify the terms "inland" and "nearshore" in the preamble.

"Inland area" and "nearshore area," as used in the preamble, are defined in the existing vessel and facility response plan regulations at 33 CFR 154.1020 and 155.1020.

One commenter requested that the Coast Guard amend its "Guidelines for the U.S. Coast Guard Oil Spill Removal Organization Classification Program" to include detailed guidance on how the Coast Guard will evaluate, inspect, and classify OSROs that provide dispersant services.

Once final regulations have been promulgated, the Coast Guard will provide adequate guidance to industry for classification as a dispersant OSRO.

One commenter recommended that the Coast Guard recognize all applicable ASTM standards for dispersants. The ASTM represents broad-based industry and government review of equipment and procedural standards. The commenter stated that all of the applicable standards should be referenced in the regulations.

The Coast Guard agrees and has included a list of all relevant ASTM standards to 33 CFR 155.140(b) and 154.140(b).

Several commenters suggested that the Coast Guard remove the definitions "dispersant operations group supervisor" and "in-situ burn operations group supervisor" from the regulations. The commenters argued these are spill management positions, which are appropriately described in other Coast Guard guidance, such as the Coast Guard Incident Management Handbook, and are overly prescriptive and unnecessary for the implementation of these regulations.

The Coast Guard agrees and has removed the terms from the definitions. Plan holders should still ensure that these positions are addressed in their spill management team structures for both plan holder-led and government-led response operations.

One commenter suggested the definition of "effective daily application capacity (EDAC)" be amended to include the assumption that the application system is used in accordance with approved standards and within acceptable operating parameters.

The Coast Guard agrees that the EDAC for dispersants assumes the application system is used in accordance with ASTM standards and that operations occur within acceptable environmental conditions (e.g., sea state, winds, visibility) assigned in the National Contingency Plan (NCP) (40 CFR 300.900 *et seq.*). The regulations describe these parameters in detail. However, to reinforce the intent of these planning standards, the Coast Guard has amended the definition of EDAC in §§ 154.1020 and 155.1020 to include, "* * * when operated in accordance with approved standards and within acceptable environmental conditions" as specified in the NCP.

Another commenter recommended increasing the proposed EDACs for dispersants.

The Coast Guard disagrees. Many factors were considered when establishing the defined EDAC levels in these regulations, including cost-benefit analysis, availability of delivery systems, stockpiling dispersants, effective use, and statistics on volumes of spills where dispersants could be an effective mitigation technique. The Coast Guard does not intend to change the required minimum EDAC levels.

One commenter felt that the regulations should include a minimum threshold volume of persistent oil transferred (or transfer capability) to trigger the dispersant planning requirements for facilities.

The Coast Guard concurs. The applicability requirements for facility response plans are found at 33 CFR 154.1015. These applicability requirements specify that a facility response plan is required to be submitted for approval if a facility is capable of transferring oil or hazardous materials to a vessel that has a total capacity of 250 bbls or more.

One commenter recommended that the applicability of dispersant planning regulations be based upon risk assessments. Those facilities that can demonstrate through quantitative risk analysis that they are less likely to have spills in pre-authorized areas should be exempt from the regulations.

The Coast Guard disagrees. Risk assessment tools have proven their utility in providing "quantitative" support to decision-making processes within industry and government agencies. However, the subjective nature of quantifying risk would make enforcement of these regulations difficult, if not impossible, using the commenter's suggested method. The applicability of the regulations is based upon a risk assessment conducted by the Coast Guard. It was determined that

those facilities and vessels subject to the regulations pose enough risk to warrant the requirement of this additional equipment coverage.

One commenter felt that an assessment that arbitrarily starts with a 25-percent increase without justification appears to bias the work product.

The Coast Guard assumes the commenter refers to the planned 25-percent increase in mechanical recovery that was rejected by the Coast Guard. This topic is discussed in some detail under the "Mechanical Recovery" section of this preamble, which immediately follows this section.

One commenter recommended that the Coast Guard clarify the language used in referring to OSROs regarding evaluation, approval, certification, and classification.

In some cases, the regulations are broad or general to avoid being prescriptive. The NSFCC evaluates OSRO capabilities based on documentation submitted by an OSRO. This documentation includes detailed equipment specification and personnel qualifications. Based on the documentation review, the NSFCC issues a classification to an OSRO. The classification is a general estimate of an OSRO's generic capability and does not imply that an OSRO can satisfy any individual plan holder's requirements. Current and future guidelines for OSRO evaluation may be found at <http://www.uscg.mil/hq/nsfweb/nsfcc/ops/ResponseSupport/RRAB/osroclassifiedguidelines.html>. NSFCC and Coast Guard field personnel visit OSRO equipment sites to verify the accuracy of documentation submitted.

One commenter asked if an OSRO could provide services to several plan holders. Specifically, would an OSRO need multiple sets of supplies and equipment to cover a minimum number of plan holders and have the capability to respond to simultaneous worst-case discharges? If not, what would the OSRO or a plan holder that contracted their services need to provide during the time the OSRO's services were being used by another plan holder or while supplies were being restocked and/or equipment decontaminated after a major response?

The availability of services to meet a plan holder's needs is the plan holder's responsibility. In the event of a spill, the Coast Guard will expect the plan holder to respond in accordance with its plans, regardless of other spill events that may be occurring at the time of the response. Therefore, in its planning process, the plan holder should discuss with its service providers their ability to handle multiple incidents and the number of

other plan holders to which the service provider is already committed.

Also, if a plan holder's capabilities are diminished because service-provider resources are committed elsewhere for a response, that plan holder is obligated to notify the Coast Guard Captain of the Port (COTP) for the zone in which the plan holder operates of: (1) The plan holder's reduced capability, and (2) the plan holder's plans for overcoming the shortfall. This will enable the COTP to determine whether any operating restrictions should be imposed on the plan holder until such shortfalls are overcome. The Coast Guard recently published guidance to the public addressing this issue. See Navigation and Vessel and Inspection Circular (NVIC) 01-07, "Guidance on Vessel and Facility Response Plans in Relation to Oil Spill Removal Organization (OSRO) Resource Movements During Significant Pollution Events."

The NVIC is available on the Internet at: <http://www.uscg.mil/hq/g-m/nvic/0-07/NVIC%2001-07.pdf>.

B. Mechanical Recovery

Several commenters claimed that the mechanical recovery equipment requirement was sufficient in 1993. They argued that, since spill volume is considerably less today than in 1993, increasing the requirement for mechanical recovery equipment is unjustified. Several of these commenters supported the Coast Guard's decision not to increase mechanical recovery caps and agreed that raising the caps would not cause a significant benefit. Other commenters disagreed and favored a 25-percent increase in mechanical recovery equipment, which was supported by a Coast Guard report published in 1999. See *Response Plan Equipment Caps Review*, pages 1-3, and 55, which is available in the docket.

The Coast Guard has concluded that an increase in mechanical recovery equipment is unjustified at this time. This rule eliminates provisions in §§ 154.1045(i) and 155.1050(j) that permit plan holders to offset their mechanical recovery equipment inventory by as much as 25 percent in exchange for including dispersants in their response plans. This change will effectively increase mechanical recovery equipment requirements for some plan holders.

The Coast Guard also recognizes that oil spill volume decreased significantly since the implementation of oil spill prevention regulations and innovative industry measures. Because spill volume is significantly down, mechanical removal equipment

inventory requirements have not increased.

At the same time, mechanical recovery equipment effectiveness has, historically, been relatively low compared to that of dispersants. According to a 2001 International Petroleum Industry Environmental Conservation Association report:

Estimates of dispersant effectiveness should be compared with estimates of the effectiveness of physical methods, which are more constrained by rough sea conditions than dispersant application. When appropriate, and under most circumstances, dispersants can generally remove a significantly greater proportion of oil from the water surface than physical methods.

Dispersants and Their Role in Oil Spill Response, p. 10 (2d Ed., November 2001).

Although the two recovery modes are often preferred in different environments, the effectiveness of mechanical recovery fails to support a conclusion that significantly increased inventory would produce commensurate benefits. In fact, requiring additional mechanical equipment above the current requirements would not result in an appreciable increase in the ability to remove spilled oil from the water. Investment in dispersants, though, is expected to lead to significantly improved response capability.

Additionally, in 2000, the Coast Guard convened a panel of 11 oil spill response experts who came from the response industry, the Coast Guard, and academia. That panel concluded that "there was no justification for increasing mechanical recovery mode amounts * * *." See *Regulatory Assessment for Changes to Vessel and Facility Response Plans: 2003 Response Requirements for Mechanical Recovery, Dispersants, In Situ Burning, and Aerial Tracking*, Appendix A, pages 28, 29, 34 and 35 (February 2002), which is available on the docket. That judgment was validated by field experience when, immediately after Hurricanes Katrina and Rita in 2005, ten major and medium oil spills were cleaned up using mechanical recovery. Despite this huge spike in demand for mechanical equipment, only one plan holder requested a waiver for mechanical equipment capability reduced below minimum requirements.

For these reasons, the Coast Guard agrees that an increase in mechanical recovery equipment is unjustified. The current total requirement for oil spill response assets, which includes a 25-percent increase in 2000 (see earlier "Regulatory History" section), continues to be adequate.

While another 25-percent increase is not supported at this time, the Coast Guard recognizes that the amount of mechanical recovery equipment is still inadequate to address fully the worst-case threat, or cases where environmental conditions render mechanical recovery ineffective or impracticable. For this reason, the Coast Guard will continue to evaluate the environmental benefits, cost efficiency, and practicality of increasing mechanical recovery capability requirements. This continuing evaluation is part of the Coast Guard's long-term commitment to achieving and maintaining an optimum mix of oil spill response capability across the full spectrum of response modes. Accordingly, 33 CFR 154.1045(o) and § 155.1050(q) were added to reflect this future assessment.

Two commenters believed that the existing Coast Guard regulations stated that mechanical recovery equipment requirements would be increased by 25 percent in 2003. One commenter recommended an increase in capability limits (caps) for mechanical recovery equipment on the Great Lakes and inland water areas if other areas gained the benefit of additional equipment. Another commenter noted that an increase was never scheduled for 2003.

Previous regulations at 33 CFR 154.1045(n) and § 155.1050(p) required the Coast Guard to establish caps in 2003, based on a review of mechanical recovery, dispersant, ISB, and oil-spill tracking technologies. Those regulations required a review (*Response Plan Equipment Caps Review*, completed by the U.S. Coast Guard in May 1999; see 65 FR 710 (January 6, 2000)) but did not require or propose an increase for any of those technologies.

C. Dispersants

This section addresses comments on dispersants, including their use in remote areas, classification, delivery platforms, ratios, environmental impacts, response times, peer review, compliance, and training.

Several commenters agreed that requiring dispersant availability is acceptable, though they pointed out that the most likely and desirable method of response in nearshore waters is mechanical recovery.

The Coast Guard agrees that the most desirable and likely method of response in nearshore waters is, and will remain, mechanical recovery. However, weather conditions or spill size may create conditions unsuitable for mechanical recovery. Therefore, the availability of other technologies to plan holders, especially dispersant technology, is

appropriate. It is also important to emphasize that these regulations intend only to make dispersant equipment available. Regulations regarding actual use in any situation are contained in the National Contingency Plan (NCP).

Several commenters supported our decision not to allow offsets (reductions in the quantity of mechanical recovery equipment required) for plan holders maintaining dispersant capability.

One commenter supported the development and use of new technologies for oil spill response in Prince William Sound, but believed mechanical recovery remains the best-suited recovery platform.

The Coast Guard agrees that under certain conditions, spills in any environment, including Prince William Sound, are amenable to mechanical recovery. However, under other conditions, in seas of greater than 2 to 3 feet and winds greater than 16 knots, even the best mechanical recovery systems are likely to be ineffective. Under such conditions, dispersants provide a practicable option which allows responders to mitigate the negative effects of spilled oil before it moves into sensitive nearshore and onshore habitats. However, if a particular area committee or regional response team is not satisfied that there is sufficient credible scientific data to assess environmental tradeoffs between dispersant use, shoreline cleanup, and mechanical recovery, then the committee or team is fully empowered not to allow the use of a dispersant-response option, as authorized under 40 CFR 300, subpart J.

Two commenters stated that the regulations require them to maintain equipment they may never use.

To avoid unnecessary stockpiling of dispersant equipment, the Coast Guard requires equipment only in areas where it has been predetermined that dispersants would be a viable oil spill mitigation technique and pre-authorizations have been established. Dispersant resources will not be located where their use was never considered or deemed appropriate. If and when new areas gain pre-authorization, plan holders operating in waters covered by that pre-authorization will be expected to comply within 24 months of the date of publication of a **Federal Register** notice advising of the pre-authorization.

The pre-authorization agreements indicate that dispersant use may be appropriate and will be approved for use in a spill incident meeting certain predetermined criteria that may occur in the covered area. The regulations will ensure that the dispersant equipment and materials are available, and that the

cost of maintaining those resources is shared equitably among all potential private sector users.

Three commenters objected to the statement that plan holders should use private-sector aircraft and not count on Coast Guard or other government aircraft to apply dispersants. The commenters argued that this would destroy industry incentive to build a strong dispersant capability. Both Alaska and Hawaii are remote areas that have relied on memoranda of understanding (MOU) between industry and the Coast Guard to provide Coast Guard C-130 aircraft to serve as dispersant platforms. The commenters felt the proposed rule threatens these MOU and formally requested that Alaska and Hawaii be exempted from the regulations because the proposed rule does not take into account the limited availability of aircraft in these and other remote locations.

The Coast Guard agrees that provision of response resources is the responsibility of members of the regulated industry who are potential spillers. In fact, these regulations are based on the Coast Guard's determination that it is economically and technically feasible for the regulated industry to contract with the response industry to establish and maintain these resources at the levels specified in the regulations. For the Coast Guard or any other government agency to offer these resources in place of the response industry may place the government in competition with industry and is contradictory to 33 U.S.C. 1321. Even in remote areas like Hawaii, tier 2 and tier 3 resources can be provided through contract with mainland dispersant providers. Nevertheless, the Coast Guard acknowledges that U.S. Air Force Reserve and Coast Guard aircraft have been made available through MOUs with local regional response communities in Hawaii, Alaska, the Caribbean, and Ohio. The Coast Guard will re-evaluate MOUs periodically to ensure an appropriate balance of private resources is maintained. Therefore, Alaska and Hawaii are not exempted from the regulations.

The previously mentioned MOUs are limited in scope and degrees of commitment. They are intended to provide support in excess of commercially-available resources unless government resources are engaged in other missions. All agree to provide aircraft, if available. In all cases, however, the government considers this a secondary mission, on a "not to interfere with primary missions" basis. There is no assurance that aircraft or

crews will be available at any time. In fact, for a period of time beginning in 2003, the U.S. Air Force Reserve had to suspend its participation in its MOU with the Coast Guard, due to overseas commitments. Likewise, Coast Guard aircraft and crews routinely support law enforcement, maritime security, and search and rescue missions. For these reasons, availability of government resources is not assured and does not satisfy the regulatory standard or intent.

We received several comments relating to Federal aircraft resources. One commenter suggested that the Coast Guard should allow State and industry stakeholders to work with the Coast Guard in each area to define a strategy tailored to that area's unique needs, including the use of government aircraft. This commenter also questioned the volume of dispersants required for stockpiles and the potential "shelf life" of stockpiles. Another commenter requested that the Coast Guard clarify the availability of Federal (aircraft) resources in the event of a major oil spill. And a different commenter urged that guidance language be provided and alternative compliance strategies (for aircraft resources) be included in the regulations. This commenter was particularly concerned about the ability to use Coast Guard C-130 aircraft as dispersant platforms in the Hawaiian Islands.

The Federal Water Pollution Control Act (FWPCA) and existing regulations clearly require the plan holder to rely on private sector resources, not government resources (*e.g.*, Coast Guard C-130 aircraft), in meeting its response needs. This is partly due to the concern that the response is a private sector responsibility, the equipment is available in the private sector, and, if the government were to provide the equipment, the government would be interfering with the private sector and free enterprise.

All plan holders everywhere are affected by the limited availability of aircraft, the volume of dispersant to be stockpiled, and the "shelf life" of these products. This is primarily a tier 1 issue where, in Alaska, Hawaii, and other select areas of the country, dispersant resources will have to be locally available. The regulations recognize the burden this imposes by limiting the amount of dispersant that needs to be delivered in the first 12 hours of the incident, so that local areas can rely on aircraft that are typically more readily available in the local area.

For tier 2 and tier 3, it is feasible for commercial aircraft, strategically located on the mainland, to reach either Alaska

or Hawaii within established time frames. The Coast Guard anticipates that the plan holders will ultimately establish a small number of strategic dispersant and aircraft stockpiles on the U.S. mainland that will be fully capable of satisfying all tier 2 and tier 3 requirements in nearly all remote areas of the U.S., including Alaska and Hawaii. Therefore, those areas should not be unfairly burdened in achieving compliance with the regulations.

The Coast Guard has drafted these regulations to establish a national standard for compliance by industry. It is not appropriate to exempt automatically any area of the U.S. from these regulations. At the same time, the regulations do include a provision for alternate planning criteria and deviation from the regulations. This is outlined in 33 CFR 154.107 for Facilities and 33 CFR 155.1065(f) for vessels.

For example, while the regulations require facility plan holders to rely on commercial, fixed-wing aircraft, local COTPs will have the flexibility to accept the use of rotary-wing aircraft in facility response plans, especially for tier 1 response, if the plan holder can demonstrate an equivalent level of delivery capability. Alternatives for facilities required to comply with these regulations are permitted under 33 CFR 154.107 and alternatives for vessels are permitted under the provisions of 33 CFR 155.1065(f).

One commenter stated that OSRO dispersant capability should not be classified by the NSFCC without input from the local COTP.

The Coast Guard agrees that local input into the classification process followed by the NSFCC is very important. The NSFCC is well aware of its responsibility to solicit local input into any deviation from the regulatory standard in classifying an OSRO. The OSRO guidelines, as well as guidance in the field, have reiterated that the OSRO classification process merely validates compliance with a national standard. Furthermore, Vessel and Facility plan holders are required to certify, to the Coast Guard, that response plans meet the applicable standards in accordance with 33 CFR 154.1060(b) and 33 CFR 155.1065(b), respectively.

Several commenters felt that the Coast Guard should specifically reevaluate restrictions that limit dispersant aircraft to 50 percent of the dispersant delivery vehicle capability. One commenter recommended that the minimum percentage of dispersants delivered by fixed-winged aircraft be increased from 50 percent to 90 percent due to the limited capability of helicopter and vessel delivery systems. Another

commenter recommended that the maximum flexibility for application platforms be maintained at the tier 1 level, and the 50-percent fixed-wing dispersant platform requirement be applied against the entire 60-hour application planning period. One commenter suggested the regulations be goal-oriented and non-prescriptive of aircraft in order to ensure long-term applicability of the regulations. Another commenter wanted dispersants applied from vessels to be considered as fulfilling part of the required tier 1 spill response.

The regulatory requirement is not intended to restrict reliance on fixed-wing aircraft. During an actual response, the responsible party or plan holder would ensure more application resources be brought to bear according to the needs of the particular incident. Fifty percent is a minimum, not a maximum. The regulations are goal-oriented in that they prescribe the amount of dispersant a plan holder should have available to be applied. The Coast Guard has recognized the effectiveness of fixed-wing aircraft and will require that 50 percent of dispersant platforms be fixed-wing aircraft. If more fixed-wing aircraft are necessary to deliver the required dispersants, then the plan holder, in consultation with the FOOSC, will take appropriate response action. To avoid creating regulations that are too prescriptive, the 50-percent requirement is intended as a minimum, and ensures a viable dispersant capability.

One commenter disagreed with the proposed requirement that 50 percent of dispersant capability be delivered by fixed-wing aircraft for all tiers. The commenter stated that fixed-wing aircraft are expensive to maintain on standby and that helicopters and vessels could be used to meet tier 1 requirements in certain operating areas.

The Coast Guard agrees that vessels and rotary-wing aircraft can meet tier 1 response times under certain scenarios if stationed in close proximity to spills. Accordingly, provisions of alternate compliance are allowed in the existing regulations. Requiring 50-percent fixed-wing dispersant capability was based upon several planning factors, including the geographic scale of coverage in the offshore environment, the time it takes to arrive on scene, and the application time. As these regulations require planning for tier 1 operations up to 50 miles from shore, and because forward vessel speed is calculated at a standard speed of five knots, vessels cannot be relied upon to meet tier 1 capabilities. Furthermore, rotary-wing aircraft are restricted in their ability to operate in

the offshore environment and their dispersant-carrying capacities are very limited. Therefore, the regulations require planning for use of fixed-wing aircraft. Because these speeds and capacity limitations are assumptions, the regulations allow consideration of alternatives, such as the use of rotary-wing aircraft and vessels, if it can be demonstrated that alternate systems adequately address special local conditions. Refer to 33 CFR 154.107 and 33 CFR 155.1065(f) for provision to allow alternatives.

One commenter stated that the dispersant-aircraft tables should identify aircraft by make and model number. This was done for the Douglas-made aircraft (DC-3, DC-4, DC-6) and the Lockheed (C-130), but not for helicopters and air tractors.

The regulations are intended to serve as a planning tool, which approximates capability instead of serving as an all-inclusive guide. The Coast Guard recognizes that not only are there different air frames produced by a single manufacturer, but that individual airframe types (e.g., C-130) include various models, not all of which are suitable for dispersant use. Therefore, it would be impossible to list all possible types of aircraft that might be used for such operations. The Coast Guard will rely on the plan holder to certify that specific aircraft contracted for dispersant application are suitable for this service and meet all FAA requirements for this service. Rather than listing all aircraft, plan holders are encouraged to correlate non-listed aircraft with the listed aircraft that most closely matches the available aircraft's capabilities.

One commenter believed aircraft should be required to apply dispersants using a racetrack pattern, which is best for spraying dispersants.

The Coast Guard will rely on the Dispersant Mission Planner 2 (DMP2) for calculating dispersant-application capabilities of all dispersant-delivery vehicles. Plan holders are encouraged to do likewise. The DMP2 relies on best practices, including application patterns and turning times, in calculating application parameters.

One commenter stated that safety requires all aircraft considered for use 50 nautical miles from shore and beyond to be multi-engined with ample fuel capacity.

The Coast Guard agrees that safety is of the greatest importance. The regulations require that all aircraft and pilots be fully certified by the appropriate agencies, including the FAA, for the operating environment and intended mission of the aircraft.

Because aircraft safety requirements are outside the scope of this rulemaking, we cannot impose the requirements suggested by the commenter.

Two commenters questioned the use of a 1:20 dispersant ratio and suggested that some dispersants have shown that they can be effective when applied at ratios of 1:50 or higher, under fairly rigorous conditions. One commenter recommended that the column showing oil treated, in tables 154.1045(i) and 155.1050(k), be deleted because it is unrelated to regulatory criteria for gallons of dispersant to be applied.

The commenter was concerned that listing the amount of oil treated may cause confusion for the response community about the amount of oil that might be dispersed in a response. The commenter argued the 1:20 dispersant application ratio is only a rough approximation based on current technology. If advances are made in dispersant formulations and greater evidence of dispersant effectiveness is gained, then application ratios may climb to 1:30, 1:50, or even higher. The column in Tables 154.1045(i) and 155.1050(k) cannot be deleted without impacting dispersant capability because the listed quantity of oil treated is for planning purposes only, it cannot be deleted without impacting dispersant capability. The tables list the maximum amount of oil to be treated for planning purposes only. The tables also identify the minimum quantity of dispersants needed to be ensured by contract or other approved means. The ratios have been constructed and listed as such to eliminate the need to revise the regulations at a later date based upon dispersant improvements.

Another commenter recommended using the tables in 154.1045(i) and 155.1050(k) as the basic standard and requiring that appropriate application be determined by the plan holder given existing environmental conditions.

The quantity of oil treated as identified in table 154.1045(i) and table 155.1050(k) is the basic standard, or minimum amount, for which the plan holder must contract. The tables set the planning standard to ensure that the equipment and materials are in place and available to respond to a worst-case scenario. The Coast Guard opted to use the 1:20 ratio as a planning standard, based on the fact that many of the pre-authorization agreements around the country cite application at a ratio of 1:20. Moreover, this ratio represents an optimal situation for oil spills that are less responsive to dispersion, either due to the oil type when initially spilled, or to the effects of weathering on the oil over time.

With regard to the plan holder's use of dispersants in an actual response scenario, this rule does not address the environmental conditions for use. Dispersant use conditions are set out in the Area Contingency Plans and Regional Contingency Plans, as appropriate, pursuant to 40 CFR 300.910.

One commenter noted that structuring the rule to specify minimum dispersant spraying capacity over time rather than for the amount of oil to be dispersed is an implied acknowledgement that oil slick dispersal will not be in accordance with the 1:20 assumption.

The Coast Guard agrees. The 1:20 ratio is a planning standard; it is not a performance standard. It provides clear guidance to the plan holder regarding the quantity of dispersant to be stockpiled along with the number and types of delivery vehicles. In actual response, it is anticipated that initial applications may be made at ratios of, for example, 1:50 or 1:100, depending on oil type, but with the overall ratio average of 1:20 for the entire spill.

One commenter supported the requirement for aerial observers and offered that the observers could serve three roles:

1. Providing information on spill location, size and trajectory;
2. Providing guidance to response assets, including recommendations for response tactics; and
3. Evaluating effectiveness of dispersant application.

Another commenter recommended that plan holders be required to have the equipment and capability necessary to implement the special monitoring of applied response technologies protocols for dispersant monitoring.

The Coast Guard agrees. By requiring training in protocols outlined in ASTM F1779-08, including NOAA's "Open Water Oil Identification Job Aid for Aerial Observation" and "Characteristic Coastal Habitats," aerial observers should be prepared to fulfill all three of these roles. See 155.1050(l)(2)(iii).

One commenter wanted the proposed Appendix B Table 7 or Table 8 to reflect the requirement for dedicated vessel and aircraft crews for the dispersant-delivery platforms.

The Coast Guard disagrees and feels this requirement would be too prescriptive and costly. Additionally, these tables were removed and replaced by the DMP2 planning tool.

One commenter supported the requirement for advanced planning for dispersant use, as the window of opportunity to use a dispersant once an oil spill has occurred is limited.

Another commenter suggested that the Coast Guard should raise its spill planning volume for dispersant use from a requirement to treat 26,190 barrels of oil to a requirement to treat 100,000 barrels of oil.

We believe the commenter is referencing the methodology which resulted in the tables found in 33 CFR 154.1045(i) and 155.1050(k). Current regulations governing response plans limit the total required amount of all equipment for which vessel and facility owners and operators must contract for in advance (mechanical recovery, dispersant, *etc.*) to the predicted loss of cargo from two tanks of a vessel rather than total loss of all cargo. The Coast Guard will not increase required dispersant stockpile levels at this time. The Coast Guard acknowledges that spills may occur that far exceed the volumes contemplated in the regulations. However, the Coast Guard has determined that a limit of 26,190 barrels is the optimum practical limit based on the costs and benefits in establishing and maintaining massive quantities of response equipment, combined with the limits of dispersant technologies. This number is based on a 40,000-barrel spill reduced by evaporation, natural dispersion, and other weathering effects.

The commenter stated that a dispersant requirement is unnecessary and inappropriate because it has limited utility and is subject to the government's decision. The commenter believes that the government should not fund such limited utility initiatives.

Response options are designed to have specific utility for the circumstances they address, but the responsibility for maintaining the infrastructure to apply those options rests with the potential spillers.

One commenter objected to the specification that at least 50 percent of the dispersant capability be provided by fixed-wing aircraft and suggested that plan holders be required to have the capability without reference to specific delivery systems.

The Coast Guard has included references to specific dispersant application platforms by way of the Dispersant Mission Planner 2 (DMP2) in an effort to aid plan holders in the planning process. The platform specifications are intended as a tool to describe baseline presumptions about those capabilities. Plan holders are free to develop capabilities within those parameters or to suggest reasonable alternatives to them if those alternatives can be shown to achieve equal coverage.

The Coast Guard has determined that the fixed-wing aircraft is the most

efficient and rapidly deployed dispersant delivery system. While deviations from the 50-percent requirement will be considered on a case-by-case basis, the Coast Guard believes that, given current technology, a minimum of 50 percent is achievable.

We received several comments relating to dispersant testing and effectiveness. Two commenters believed that the Coast Guard's rationale could be strengthened if the final rule included data and citations supporting the conclusion that dispersant technologies have been sufficiently documented and would, in certain circumstances, produce net environmental benefits compared to reliance on mechanical methods alone. Another commenter recommended extensive testing of dispersant and ISB use and, in particular, the long-term effects of dispersed oil.

The Coast Guard only partially agrees with these commenters, because the primary source documents for our conclusions are the National Academy of Sciences' "Using Oil Spill Dispersants on the Sea" and the dispersant use pre-authorization agreements adopted around the country in accordance with the requirements of 40 CFR 300.900, subpart J of the National Oil and Hazardous Substances Pollution Contingency Plan. In accordance with those EPA regulations, the EPA, Department of the Interior, Department of Commerce, and State trustee agencies to the area committees and regional response teams determine whether pre-authorization for dispersants or other technologies are appropriate, and if so, under what conditions.

This reliance on trustee agencies to make such decisions was specifically put in place to ensure that any decision to use these technologies was taken in the best interest of the environment; that is, to produce a net environmental benefit. We are confident that the decisions of Federal and State trustee agencies at the regional and local level are sound, rational, and in the best interest of the environment. The purpose of these regulations is to support those decisions by making available to the regions and areas the tools they need for execution. Therefore, it is our position that the matters of further testing/research concerning dispersant and/or ISB use, and the effects of dispersed oil, fall outside the scope of this rulemaking.

One commenter recommended that the Coast Guard should communicate information to the regional response teams (RRTs) and other stakeholders about conditions unfavorable for

dispersant use in order to help guard against indiscriminant use. The conditions can include material discharged, weather conditions, receiving waters, environmental risk, and other factors.

The Coast Guard maintains constant communications with the RRTs and the Coast Guard Federal On-Scene Coordinators (FOSCs) regarding this and related subjects. Since 1998, the Coast Guard has sponsored a series of facilitated consensus workshops at the local level that brought natural resource trustees together with local responders to examine the ecological risks associated with dispersants and other oil spill response options.

In partnership with the other Federal agencies of the National Response System, the Coast Guard actively supports the activities of the science and technology Committee of the National Response Team, whose function is to provide scientific and technical data of this nature to RRTs and area committees alike. The Coast Guard is a major sponsor of the International Oil Spill Conference, which convenes every three years and serves as a forum to disseminate the latest information on dispersants and other technologies to the response community. The CAPS Report (1999) points out that dispersants have reduced effectiveness with certain types of oil and when used in conditions of reduced salinity or calm winds.

Two commenters expressed concern that the proposed rule would result in requests for dispersant use in areas that are inappropriate, such as freshwater. Therefore, the commenters suggested that certain plan holders, such as those likely to discharge oil only into freshwater, be exempted. Another commenter opposed dispersant and aerial tracking requirements for inland tank barge operations.

The Coast Guard agrees. Dispersants should not be used in areas that are inappropriate, and we support the continued reliance on the dispersant use decision processes established by the EPA in 40 CFR 300, subpart J. The rule exempts any plan holder not operating in pre-authorized areas from compliance with the dispersant equipment requirements. However, because the EPA rule does not specifically exclude freshwater from dispersant use consideration, the Coast Guard regulations are flexible enough to allow imposition of requirements in those areas, should RRTs and area committees deem such use environmentally beneficial.

One commenter was concerned that the Coast Guard's inclusion of a

proposed start time for dispersant application of 7 hours is overly prescriptive and may prevent earlier responses. Another commenter felt the time frames for aerial dispersant applications are too aggressive and recommended that dispersants be available for application outside the continental United States (OCONUS) in 24 hours, at low volume ports in 12 hours, and at high volume ports in 6 hours.

The dispersant operations start time is a planning standard and represents the maximum time allowed for planning to respond anywhere. It is expected that most actual response operations will begin in less than 7 hours and not over 7 hours. The Coast Guard believes that there should be no variation in the time frame, regardless of the location (*e.g.*, OCONUS) or the volume of the port (*low vs. high*). Basing response times upon the proximity of the spill location to environmentally sensitive areas may be more accurate, but the regulations do not intend to be so prescriptive.

One commenter was concerned about linking dispersant requirements to regional response team (RRT) pre-approvals because this would place undue pressure on RRTs in inland areas. If inland pre-approvals are established in the future, the available supply of dispersants and aircraft would likely be sufficient without further regulatory action.

The Coast Guard disagrees. In fact, this rule is necessary to ensure that dispersant capabilities are available to meet the needs identified in the pre-authorization agreements. Without the existence of the pre-authorizations, it would not be practicable to require dispersant capability. On the other hand, it is not this rule, but the National Contingency Plan (NCP), that puts pressure on inland RRTs to make decisions regarding these kinds of countermeasures. The requirement for RRTs to decide whether or not to pre-authorize various countermeasures is contained in 40 CFR 300.910. While there may be sufficient equipment available to support dispersant use needs in newly pre-authorized areas, plan holders in those newly pre-authorized areas would not be required to ensure the availability of this equipment by contract or other approved means unless specifically required by State or Federal agencies.

One commenter stated that the use of dispersants creates the erroneous impression that there is no need to prevent a spill in the first place if dispersants are available as a response option.

The Coast Guard disagrees. All spill response options need to be considered to the extent that they may limit the damage caused by the oil itself once a spill has occurred. However, the Coast Guard continues to emphasize in all its programs that prevention is its highest priority. The Coast Guard will continue to pursue appropriate standards for vessel construction, inspection, and maintenance programs, while emphasizing competence and training requirements for vessel crews, vessel navigational and operations tools, and procedures.

One commenter suggested adding a requirement that tier 2 and tier 3 aerial platforms be capable of applying dispersants in pre-authorized areas, ranging out to 200 nautical miles.

Requiring dispersant capability ranging out to 200 miles is not justified, and this conclusion is supported by a combination of factors. The low percentage of spills occurring more than 50 nautical miles offshore combined with the limited time frame for effective use of dispersants means that only a small volume of oil spills would benefit from this additional requirement. The limited benefits would not justify the cost to maintain this level of preparedness.

Several commenters felt that fire-monitor type dispersant application systems should be held to the same high level of independent peer review testing and documentation as aircraft and boat spray boom applications.

The Coast Guard agrees. The intent of the regulations is to apply a similar level of review to fire monitors as is currently applied to vessel and aircraft application systems, both of which are subject to ASTM standards. Sections 154.1045(i)(2)(iii) and 155.1050(k)(2)(iii) were amended to clarify that "fire-monitor applicators and adequate criteria must be documented by presentation of independent, peer reviewed scientific evidence (e.g., an ASTM standard) * * *."

Two commenters claimed that the 2005 National Research Council report entitled "Understanding Oil Dispersants: Efficacy and Effects" supported the conclusions that insufficient information exists to responsibly pre-approve application of dispersants. On the contrary, the study states on page 11 that, "the information base used by decision makers dealing with spills in areas where the consequences of dispersant use are fairly straightforward, has been adequate (for example, situations where rapid dilution has the potential to reduce the possible risk to sensitive habitat enough to allow the

establishment of pre-approval zones)." The study explains further on page 12 that, "[i]n deep open-water settings (deeper than 10 m or roughly 30 feet) where there is rapid dilution of the dispersed oil, impacts to water-column and benthic resources are likely to be low, thus most of the pre-approval zones are defined in terms of distance offshore and minimum water depths."

One commenter stated that a requirement for a logistics support plan should be added to the regulations to ensure that the dispersant systems can be effectively and timely deployed.

The regulations need not be so prescriptive. The regulations are already goal-oriented and require the ability to apply dispersants.

One commenter noted the limited capability of vessel dispersant systems to meet tier 1 capabilities because of their speed of advance of five knots.

The five knots speed of advance is provided for planning purposes only. OSROs may request nonstandard classification from the NSFCC. If the supporting documentation accompanying their request is acceptable to the NSFCC, the OSRO may use a higher vessel speed for their classification.

One commenter supported the use of dispersants in appropriate settings in the offshore environment. As discussed above, the Coast Guard agrees that dispersant use in certain conditions is appropriate.

Another commenter felt that training in dispersant strategies should be required as part of the proposed dispersant planning requirements.

OSROs will need to meet certain training proficiencies as required in their certification processes. The regulations do not seek to be as prescriptive as the commenter suggests.

D. Aerial Tracking

This part concerns availability, capability, response time, technology, applicability, and training.

One commenter felt that requiring plan holders to have aerial tracking capability is unnecessary because this capability is essential to reduce spill costs and to improve cleanup efficiency. Therefore, plan holders will have aerial tracking capability available without being required to do so.

Based on the May 1999 Response Plan Equipment CAPs Review and the conclusions of an expert panel documented in the February 2002 Regulatory Assessment for the NPRM, the Coast Guard is certain that aerial tracking capability is necessary and appropriate to ensure efficient cleanup operations. However, the Coast Guard

recognizes that unless required by regulations to do so, industry will be insufficiently motivated to guarantee availability of these services, especially in remote offshore areas where these services are most likely to be needed. Additionally, it is in the best interest of the plan holder to have trained aerial observer capability to reduce inefficiency of response resource utilization, thus reducing unnecessary response costs.

Several commenters stated that aerial tracking requirements are supported but should account for refueling periods and be limited to daylight hours only. They felt that aerial tracking requirements were too prescriptive and should better reflect the realities of different aerial missions. Examples of these missions include the need to return to base for fuel, download pictures, and change crews, and the recognition that for mechanical recovery operations at least, it is not necessary to have aircraft continuously on-scene for an entire operational period.

The Coast Guard agrees. The regulations were modified to make it clear that plan holders should plan to have aerial tracking capabilities available to support response operations for entire daily operational periods. As operations are not routinely conducted during darkness, these operational periods will be less than 10 hours per day when there is less than 10 hours of daylight, and longer than 10 hours when there is more than 10 hours of daylight. The 10-hour operational period is offered as a planning target. An individual plan holder may choose to plan more precisely, based on actual length of daylight operational periods.

Additionally, the regulations do not intend to require continuous on-scene surveillance; they require sufficient surveillance to ensure effective employment of response resources. Continuous aerial tracking is appropriate to track dispersant applications. For mechanical recovery operations, routine over-flights are expected versus continuous surveillance. The purpose of the over-flight is to track oil trajectories and to reorient on-water equipment to the largest patches of oil.

Several commenters objected to the need to have aerial tracking resources on-scene within 3 hours of an incident. This objection is based on the fact that, in the early hours of an incident, the government typically relies on its own aircraft for spill assessment.

The stated purpose of the aerial tracking resources is to ensure that response resources are appropriately directed to the heaviest concentrations

of oil for cleanup. Therefore, it is logical to require aerial tracking resources to arrive on-scene within the same timeframe as the other response resources.

Another commenter stated that the prescribed time to establish aerial surveillance in the regulations is unrealistic. One commenter felt that the three-hour response time could not be justified based upon cost and applicability to marine transportation-related (MTR) facilities. However, another commenter felt the three-hour response time was reasonable. Finally, one commenter wanted the regulations to recognize different missions for spill plotting and area delineation.

The Coast Guard agrees with the concerns expressed about rapid response times for aerial-tracking resources; these response times are intended to ensure that aerial-tracking resources arrive prior to tier 1, 2, and 3 resources being in place. The requirement is based on time of arrival on-scene, not on mobilization time. Aerial-tracking resources should be on-scene before or at the time that response equipment begins operations to help optimize initial response activities. No aerial-tracking resources are required to support average most probable discharge (AMPD) or maximum most probable discharge (MMPD) planning.

One commenter stated that the Coast Guard gave tracking buoys, global positioning systems, and satellite and aerial imaging only a cursory review and urged the Coast Guard to be more open-minded about their potential for use. Another commenter stated that the regulations should be less prescriptive and allow for the use of these technologies.

The Coast Guard reviewed these and other technologies from the standpoint of practicability. The Coast Guard does not think that these technologies have sufficiently proven that they will significantly enhance the ability to recover or otherwise mitigate the effects of spilled oil. The Coast Guard does not think that the benefits of these technologies justify the costs to the response community, and therefore, it is not practicable to require industry to incur the costs of establishing and maintaining these capabilities. However, the regulations do not prohibit their use, and the Coast Guard encourages plan holders to explore other options to maximize the ability to track response operations.

The Coast Guard continues to monitor development of other technologies. If these technologies can be demonstrated to be effective in supporting nighttime operations, with full regard and

consideration for worker health and safety on water at night, then the Coast Guard may consider a regulatory change at a later date requiring plan holders to acquire the systems. This would likely be accompanied by a substantial increase in mechanical equipment requirements because the current requirements are based on operations being limited to daylight hours only.

One commenter stated that the aerial tracking requirement should not apply to vessels and facilities operating on rivers and other confined waters where the direction of movement of spilled oil is well known and easily tracked from shore and by responding vessels. Several commenters supported aerial tracking for open waters, but wanted alternatives for inland waters and rivers to avoid burdensome costs and to allow for more practical spill-tracking methods.

The Coast Guard agrees and has clarified that vessels and facilities operating on inland rivers will not be required to maintain aerial tracking capabilities. However, vessels operating on the open waters of the Great Lakes will be required to maintain these capabilities.

One commenter recommended that plan holders should only need to reference aerial tracking resources approved by the Coast Guard rather than submit a detailed list of aerial tracking capabilities. The commenter noted that all other response resource lists allowed this exception. For those plan holders who have ensured the availability of aerial platforms for dispersant application purposes and who intend to use these platforms for aerial tracking purposes, the Coast Guard agrees and has added new sections 154.1035(i)(10)(iii), 154.1040(j)(10)(iii), and 154.1035(b)(3)(vi)(D). If aerial platforms for dispersant application are not going to be used for aerial tracking purposes, then a detailed list of aerial tracking capabilities will be required to be submitted in accordance with 33 CFR 154.1045(j) and 33 CFR 155.1050(m). The Coast Guard does not intend to implement a national classification system for the purpose of classifying providers of aerial tracking platforms and resources.

One commenter supported increased over-flight capability and advances in technology such as infrared tracking and satellite imaging.

The Coast Guard agrees, and encourages advancements in technology. Once these advancing technologies are proven to prevent or mitigate damage from oil spills in an economically feasible fashion, the Coast

Guard will examine the viability of requiring them.

One commenter felt that aerial tracking requirements were never part of any public discussion, dialogue, consultation, or study group. Therefore, the commenter felt that requirements are impractical, unrealistic, and unachievable.

The Coast Guard disagrees. The public had an opportunity to comment on specific requirements for aerial tracking of mechanical recovery through the NPRM. Further, aerial tracking was also contained in the Notice of Intent for the EIS, published in September, 2000, and in the Draft Programmatic EIS, published in April, 2005. The requirement for aerial surveillance of dispersant and ISB operations has consistently been part of discussions regarding the use of these tools. In addition, the parameters for the aerial surveillance requirements for mechanical recovery were examined by a group of response community experts during the development of the regulatory assessment. Nevertheless, the Coast Guard attempted to address some of the commenter's concerns by clarifying aerial tracking requirements both in this preamble and in the regulations themselves [see §§ 154.1045(j) and 155.1050(l)].

We received two comments relating to training requirements for aerial tracking and observation of oil spills. One commenter stated that the regulations should distinguish between training requirements for aerial observers assigned to "spotting for on-water recovery operations" and those "performing overall assessment of the spill." Another commenter recommended that plan holders be permitted to certify plan holder personnel as aerial observers instead of meeting other specific training.

The Coast Guard disagrees. Because aerial tracking personnel are critical to the success of directing mechanical recovery resources and dispersant delivery, this rule calls for well-defined and concise training criteria. The aerial observation personnel are primarily responsible for monitoring and directing on-water clean up operations. This responsibility requires knowledge of oil characteristics and the capabilities and limitations of response resources, as well as familiarity with spill trajectories, resources at risk, coastal habitat identification, *etc.*

One commenter stated that a pilot cannot act as an observer and that this may adversely impact the plan holder's ability to provide aerial surveillance in a timely fashion.

Usually, the pilot's primary responsibility is to fly the plane and the observer's job is to direct spill assets. The Coast Guard believes it will be easier and quicker to match a trained observer with a trained pilot than to find and mobilize a pilot who is also a trained observer. The aerial observation personnel are primarily responsible for monitoring and directing on-water clean up operations.

One commenter noted that under adverse weather, aerial surveillance will not be possible and the regulations do not address this issue.

The regulations are written for planning purposes and cannot address every situation that may be encountered in an oil spill response. The regulations require the availability of, and planning for, certain capabilities.

One commenter felt that the requirements for an aerial surveillance aircraft can be fulfilled by the dispersant application aircraft when it is not involved in dispersant application.

The Coast Guard agrees, as long as the aircraft is not required to do both jobs at the same time.

V. Additional Changes

We are revising the compliance date for updates for VRPs required by the Salvage and Marine Firefighting final rule, which published on December 31, 2008 (73 FR 80618) found in 33 CFR 155.4020. This revision will delay compliance from June 1, 2010, until February 22, 2011. We are making this revision to ensure that plan holders are not required to update their VRPs twice within a 12-month period. Otherwise, a plan holder wishing to complete both updates at once would need to comply with the earlier salvage and marine firefighting compliance date, and would not receive the full benefit of the compliance period provided in this final rule.

VI. Incorporation by Reference

The Director of the Federal Register has approved the material in §§ 154.106 and 155.140 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. The new items incorporated by reference in this rule are: ASTM F1413–07, Standard Guide for Oil Spill Dispersant Application Equipment: Boom and Nozzle System; ASTM F1737–07, Standard Guide for Use of Oil Spill Dispersant Application Equipment During Spill Response: Boom and Nozzle Systems; and ASTM F1779–08, Standard Practice for Reporting Visual Observations of Oil on Water. Additionally, we have updated the reference to NFPA 70, National Electric Code, to reflect the edition

currently used by industry. Copies of the material are available from the sources listed in those sections.

VI. Regulatory Analysis

We developed this rule after considering numerous statutes and executive orders related to rulemaking.

A. Administrative Procedure Act

The Coast Guard is issuing the revision to 33 CFR 155.4020 without prior notice and opportunity for comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to the revision in this rule because doing so would be contrary to the public interest. Without this change, vessel response plan holders would be required to update their response plans twice within a 12-month time period, which would be unduly burdensome. Soliciting comment on this revision is also unnecessary, as it is unlikely that these plan holders would oppose the delay in compliance for the salvage and marine firefighting provisions within their response plans. Without this delay, a plan holder wishing to complete both updates at once would need to comply with the earlier salvage and marine firefighting compliance date, and would not receive the full benefit of the compliance period provided in this final rule. Those plan holders wishing to comply earlier may still do so.

B. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. A final Regulatory Assessment (“Regulatory Analysis”) is available in the docket as indicated under **ADDRESSES**. A summary of the analysis follows:

This rulemaking is not an economically significant action under Section 3(f)(1) of the Order because the rulemaking will not have an annual effect on the economy of \$100 million or more.

The response resources considered in the final rule were:

Mechanical recovery—increase the amount of mechanical recovery equipment available for oil spill response. There is currently a large amount of mechanical recovery equipment available for oil spill response.

Dispersants—require a minimum amount of dispersant capability for oil spill response. Applying dispersant requires additional equipment and stockpiles of dispersant. Dispersants can diffuse large amounts of oil for quicker spill recovery but have limiting factors, including location and conditions.

Aerial tracking of the oil spill—require aerial tracking capabilities in the event of an oil spill. Aerial tracking of a spill increases the efficiency of other response resources.

The rule directly regulates vessels carrying oil in bulk and marine transportation related (MTR) oil facilities that are required to have an oil response plan under the current vessel response plan (VRP) or facility response plan (FRP) rules. We estimate that there are 795 VRP plan holders and 2,798 FRP plan holders. These plan holders contract with Oil Spill Removal Organizations (OSROs) to ensure that response resources required by regulations are available to mitigate a worst case discharge (WCD) oil spill. As a result, we anticipate these plan holders will incur the costs associated with revised response requirements through price increases from OSROs.

We considered the costs and effectiveness of the five regulatory alternatives discussed in this preamble (*see* the “Regulatory History” and “Background and Purpose” sections for more information on the regulatory alternatives). These alternatives provide combinations that emphasize either mechanical or non-mechanical response assets. We anticipate the increased cost to the plan holders from the rulemaking will begin when the rule becomes effective. For the preferred alternative (5), the estimated first-year cost is \$25.96 million with a recurring annual cost of \$8.40 million (non-discounted estimates).

Since the equipment considered has an estimated 15-year replacement interval, we estimated cost for 15 years (2009–2023). The 15-year cost of the preferred alternative is \$92.92 million at a 7-percent discount rate, and \$117.33 million at a 3-percent discount rate. The preferred alternative is the least expensive of the five alternatives. Table 1 presents the costs, benefits, and cost effectiveness (*i.e.*, costs divided by benefits) for each regulatory alternative

considered over the 15-year period of analysis.

TABLE 1—TOTAL COST, BENEFIT, AND COST EFFECTIVENESS BY REGULATORY ALTERNATIVE (2009–2023)*

Alternative	7 percent			3 percent		
	Cost (\$M)	Benefit (bbls)	Cost effectiveness	Cost (\$M)	Benefit (bbls)	Cost effectiveness
1	\$0	0	NA	\$0	0	NA
2	84.56	11,492	\$7,358	102.13	15,590	\$6,551
3	129.53	62,348	2,077	159.91	84,584	1,891
4	112.97	63,039	1,792	140.63	85,521	1,644
5	92.92	63,039	1,474	117.33	85,521	1,372

* Costs are in \$ million (\$M) and benefits are in barrels (bbls). Costs and benefits are discounted at 7 and 3 percent.

Alternative 5 uses a combination of dispersant capability and aerial surveillance to provide the most cost-effective improvement in oil spill

response. Related equipment costs drive the national cost of this rule. Table 2 displays the discounted first-year cost and annualized costs across the period

of analysis associated with the preferred alternative (5) by requirement.

TABLE 2—COSTS OF THE PREFERRED ALTERNATIVE
[\$ Millions]

Requirements	Initial costs (2009)*		Annualized (2009–2023)	
	7%	3%	7%	3%
Dispersants Option B	\$8.79	\$9.13	\$4.84	\$4.73
Aerial tracking	9.48	9.84	2.71	2.53
Employee training	0.36	0.38	0.39	0.39
Recordkeeping	5.63	5.86	2.26	2.17
Total	24.26	25.21	10.20	9.82

* Total non-discounted (1st year) initial cost is \$25.96 million.

From our analysis, we conclude that Alternative 5 is the most cost-effective alternative from the standpoint of a potential worst-case discharge. See the Regulatory Analysis available in the docket for more details.

We received comments on the Regulatory Analysis for the NPRM. These comments divide into concerns about the overall cost of the regulations and the impact of the regulations on the Oil Spill Removal Organizations (OSROs) indirectly affected by the rule. Responses to these comments are summarized in the “General Comments” section of the rule.

We note that this rule only directly regulates vessels carrying oil in bulk and marine transportation related oil facilities that are required to have an oil response plan under the current vessel response plan or facility response plan rules. Consequently, we believe that the impact of this rule on OSROs is indirect since individual OSROs are not required by this rule to provide additional services. OSROs would make a business decision whether the revenue generated by providing additional services would provide the financial return sufficient to

justify the cost of providing such services.

Regulatory Flexibility Analyses are required to include only the direct impacts of a regulation on a small entity that is required to comply with the regulation. *Mid-Tex Electric Coop. v. FERC*, 773 F.2d 327, 340–343 (D.C. Cir. 1985) (holding indirect impact of a regulation on small entities that do business with or are otherwise dependent on the regulated entities not considered in RFA analyses). See also *Cement Kiln Recycling Coalition v. EPA*, 255 F.3d 855, 869 (DC Cir. 2001) (In passing the Regulatory Flexibility Act, “Congress did not intend to require that every agency consider every indirect effect that any regulation might have on small businesses in any stratum of the national economy. * * * [T]o require an agency to assess the impact on all of the nation’s small businesses possibly affected by a rule would be to convert every rulemaking process into a massive exercise in economic modeling, an approach we have already rejected.”). See, also, Regulatory Flexibility Improvements Act, Hearing before the Subcommittee on Commercial and Administrative Law, Committee on the

Judiciary, on H.R. 682, 109th Cong., 2nd Sess. (2006), at 13 (Statement of Thomas Sullivan, Chief Counsel for Advocacy, Small Business Administration, testifying on the RFA by noting that “the RFA * * * does not require agencies to analyze indirect impacts.”)

C. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule will have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. We have prepared a Final Regulatory Flexibility Analysis (FRFA) assessing the potential impact on small entities from this rulemaking. The FRFA is in the final Regulatory Analysis, which is available in the docket as indicated under ADDRESSES.

We determined which plan holders were small entities based on an evaluation of North American Industry

Classification System (NAICS) codes, publicly available and proprietary revenue and employee size data, and the size standards published by the Small Business Administration (SBA). We found 90 percent of VRP holders and 87 percent of FRP holders to be small.

The estimated first year and annually recurring costs to FRP holders are \$525 and \$129, respectively. The estimated first year and annually recurring costs for VRP holders are higher at \$1,838 and \$732, respectively. This cost difference is due to the requirement that VRP holders provide dispersant capability, while most FRP holders are in areas where dispersant use will be impracticable. We found that the costs of this rule will have less than a 1-percent revenue impact on affected small plan holders. We have determined that this rulemaking will not have a significant economic impact on a substantial number of small entities under section 605(b) of the Regulatory Flexibility Act.

We did receive comments about the cost for small OSROs to purchase new equipment. Based on information from industry, we expect most of the costs from this rule will be passed on to plan holders. In comparison to OSRO revenues, any costs not passed will be low and impact revenues by less than 1 percent. In addition, most OSROs do not provide all services being required for plan holders. As small OSROs are not required to provide any of the services mandated by this regulation, any impact of this regulation on OSROs is indirect. A small OSRO is not required to provide any of the services mandated by this regulation. Most small OSROs will need to contract with other entities or access other resources in the case of a worst-case discharge. Small OSROs will only provide these services if they consider them to be beneficial to the company.

D. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offered to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking. As indicated in the "Regulatory History" section of the preamble, the Coast Guard held a public meeting to receive public comment and to explain the NPRM to affected parties, including small entities.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman

and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

E. Collection of Information

This rule calls for a collection of information (COI) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collections, and a description of those who must collect the information, follow.

This rule modifies COI 1625-0066, "Vessel and Facility Response Plans (Domestic and International), and Additional Response Requirements for Prince William Sound Alaska." The estimate below covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Vessel and Facility Response Plans (Domestic and International), and Additional Response Requirements for Prince William Sound Alaska.

OMB Control Number: 1625-0066.

Summary of the Collection of Information: Vessel Response Plan (VRP) holders and Facility Response Plan (FRP) holders will need to collect additional information to comply with the rule for oil-spill response requirements.

This information includes: Name and contact information for oil spill responders for each vessel or facility with appropriate equipment and resources located in each zone of operation; specific lists of equipment that the resource providers will make available in case of an incident in each zone; and certification that the responders are qualified and have given permission to be included in the plan. OSROs will also need to update contracts and their own records to add dispersant capabilities when appropriate.

Need for Information: The information is necessary to show evidence that plan holders have properly planned to prevent or mitigate oil outflow and to provide that information to the Coast Guard for its use in emergency response.

Use of Information: The Coast Guard will use this information to determine

whether a vessel or facility meets the statutory requirements.

Description of the Respondents: The respondents are OSROs and vessel and facility response plan holders.

Number of Respondents: The number of respondents is 3,683-3,593 plan holders (795 VRP plan holders + 2,798 FRP plan holders) and 90 OSROs.

Frequency of Response: Each respondent will have one response per year (amending and submitting the response plan the first year; updating in subsequent years).

Burden of Response: According to information from the Coast Guard's Office of Vessel Activities, the estimated burden for the 3,593 plan holders is 27.5 hours the first year and 8 hours each additional year and the estimated burden for the 90 OSROs is 2 hours per year for each plan holder the first year and 1 hour per year for each plan holder in the following years.

Estimate of Total Annual Burden: The existing OMB-approved total annual burden, as adjusted in December 2006, is 220,559 hours. The total additional hours requested for this rulemaking are 56,889. This rule increases the estimated annual burden for plan holders by 98,808 hours ($27.5 \times 3,593$) the first year, followed by 28,744 hours per year ($8 \times 3,593$) in subsequent years. The rule will increase the estimated annual burden for OSROs by 7,186 hours the first year ($2 \times 3,593$), followed by 3,593 hours per year ($1 \times 3,593$) in subsequent years. The new burden as a result of this rulemaking is 277,448 hours.

In addition to this rulemaking, COI 1625-0066 is being revised by 2 other Coast Guard rulemakings. These rulemakings are—(1) Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil [Docket No. USCG-1998-3417; RIN 1625-AA19]; and (2) Nontank Vessel Response Plans and Other Vessel Response Plan Requirements [Docket No. USCG-2008-0180; RIN 1625-AB27]. Once these rulemakings are finalized, the hour burden for 1625-0066 may differ from the figures noted above. See the COI preamble section of each rulemaking for details on how the hour burden will differ.

As required by 44 U.S.C. 3507(d), we submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. OMB has not yet completed its review of this collection, and the response plan reporting and recordkeeping requirements of this rule will not be enforced until this collection is approved by OMB. We will publish a notice in the **Federal Register**

announcing the effective date of those requirements after OMB approves the collection.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

F. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

G. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year. Although this rule will not result in such expenditure, we discuss the effects of this rule elsewhere in this preamble.

H. Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

I. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

J. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

K. Indian Tribal Governments

The Coast Guard received two comment letters from Indian Tribal Government sources in response to the Draft Programmatic Environmental Impact Statement (DPEIS). Those letters from the Makah Tribal Council (MTC) and the Northwest Indian Fisheries Commission disagreed with the selection of Alternative 5 in the DPEIS,

and suggested that consultation with the Makah Tribal Council was necessary. Additionally, the Coast Guard received a letter from the MTC dated May 30, 2006, concerning revised provisions on dispersants in the Northwest Area Contingency Plan. All three letters expressed concern that dispersant use on or near the Makah Usual and Accustomed Marine Area could cause environmental damage.

The Coast Guard agrees that consultation pursuant to Executive Order 13175 is appropriate. The Makah Usual and Accustomed Marine Area (UAMA) is excluded from the dispersant pre-approval zone described in the Northwest Area Contingency Plan, § 4610.1. After consultations between the MTC and the Coast Guard, the MTC decided that it preferred the UAMA to not be exempt from the requirements of this rule. Had the MTC chosen otherwise, the UAMA would have been explicitly exempt from the requirements of this rule, even if the Northwest Area Contingency Plan were to include the UAMA in a pre-approval zone at some future date. With regard to the Makah Tribe's preference for increasing mechanical recovery requirements, please see the discussion of mechanical recovery in section IV (B) of this preamble.

In consideration of the foregoing, the Coast Guard certifies all relevant requirements under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, have been met.

L. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order. Though it is a "significant regulatory action" under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

M. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these

standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule uses the following voluntary consensus standards: ASTM F1413–07, Standard Guide for Oil Spill Dispersant Application Equipment: Boom and Nozzle Systems; ASTM F1737–07, Standard Guide for Use of Oil Spill Dispersant Application Equipment During Spill Response: Boom and Nozzle Systems; and, ASTM F1779–08, Standard Practice for Reporting Visual Observations of Oil on Water. The sections that reference these standards and the locations where these standards are available are listed in 33 CFR 154.106 and 155.140.

N. Environment

We analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and concluded that preparation of an Environmental Impact Statement (EIS) was necessary. A final "Environmental Impact Statement" has been completed and a "Record of Decision" was made. This record was based on the assumption that this rulemaking would result in a net environmental benefit within the context of oil spill response efforts. The EIS is available in the docket.

List of Subjects

33 CFR Part 154

Alaska, Fire prevention, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Incorporation by reference.

33 CFR Part 155

Alaska, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Incorporation by reference.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 154 and 155 as follows:

PART 154—FACILITIES TRANSFERRING OIL OR HAZARDOUS MATERIAL IN BULK

■ 1. The authority citation for part 154 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6), and (m)(2); sec. 2, E.O. 12777, 56 FR 54757; Department of Homeland Security Delegation No. 0170.1. Subpart F is also issued under 33 U.S.C. 2735.

■ 2. Revise § 154.106 to read as follows:

§ 154.106 Incorporation by reference: Where can I get a copy of the publications incorporated by reference in this part?

(a) Certain material is incorporated by reference (IBR) into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to <http://www.archives.gov/federal-register/code-of-federal-regulations/ibr-locations.html>. Also, it is available for inspection at the Coast Guard, Office of Port and Facility Activities, Cargo and Facilities Division (CG-5332), 2100 Second Street SW., Washington, DC 20593-0001, 202-372-2234 and is available from the sources indicated in this section below.

(b) American Petroleum Institute (API), 1220 L Street NW., Washington, DC 20037, 202-682-8000, <http://www.api.org/>:

(1) API Standard 2000, Venting Atmospheric and Low-Pressure Storage Tanks (Nonrefrigerated and Refrigerated), Third Edition, January 1982 (reaffirmed December 1987), IBR approved for § 154.814.

(2) API Recommended Practice 550, Manual on Installation of Refinery Instruments and Control Systems, Part II—Process Stream Analyzers, Section 1—Oxygen Analyzers, Fourth Edition, February 1985, IBR approved for § 154.824.

(c) American National Standards Institute (ANSI), 11 West 42nd Street, New York, NY 10036, 202-293-8020, <http://www.ansi.org/>:

(1) ANSI B16.5, Steel Pipe Flanges and Flanged Fittings, 1988, IBR approved for §§ 154.500, 154.808, and 154.810.

(2) ANSI B16.24, Bronze Pipe Flanges and Flange Fittings Class 150 and 300, 1979, IBR approved for §§ 154.500 and 154.808.

(3) ANSI B31.3, Chemical Plant and Petroleum Refinery Piping, 1987 (including B31.3a-1988, B31.3b-1988, and B31.3c-1989 addenda), IBR approved for §§ 154.510 and 154.808.

(d) ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, 610-832-9585, <http://www.astm.org/>:

(1) ASTM F631-93, Standard Guide for Collecting Skimmer Performance Data in Controlled Environments, IBR approved for Appendix C.

(2) ASTM F715-95, Standard Test Methods for Coated Fabrics Used for Oil Spill Control and Storage, IBR approved for Appendix C.

(3) ASTM F722-82 (1993), Standard Specification for Welded Joints for Shipboard Piping Systems, IBR approved for Appendix A and Appendix B.

(4) ASTM F1122-87 (1992), Standard Specification for Quick Disconnect Couplings, IBR approved for § 154.500.

(5) ASTM F1155-98, Standard Practice for Selection and Application of Piping System Materials, IBR approved for Appendix A and Appendix B.

(6) ASTM F1413-07, Standard Guide for Oil Spill Dispersant Application Equipment: Boom and Nozzle Systems, IBR approved for § 154.1045.

(7) ASTM F1737-07, Standard Guide for Use of Oil Spill Dispersant Application Equipment During Spill Response: Boom and Nozzle Systems, IBR approved for § 154.1045.

(8) ASTM F1779-08, Standard Practice for Reporting Visual Observations of Oil on Water, IBR approved for § 154.1045.

(e) International Electrotechnical Commission (IEC), Bureau Central de la Commission Electrotechnique Internationale, 1 rue de Varembe, Geneva, Switzerland, +41-22-919-02-11, <http://www.iec.ch/>:

(1) IEC 309-1—Plugs, Socket-Outlets and Couplers for Industrial Purposes: Part 1, General Requirements, 1979, IBR approved for § 154.812.

(2) IEC 309-2—Plugs, Socket-Outlets and Couplers for Industrial Purposes: Part 2, Dimensional Interchangeability Requirements for Pin and Contact-tube Accessories, 1981, IBR approved for § 154.812.

(f) National Electrical Manufacturers Association (NEMA), 1300 North 17th Street, Suite 1752, Rosslyn, Virginia 22209, 703-841-3200, <http://www.nema.org/>:

(1) ANSI NEMA WD-6—Wiring Devices, Dimensional Requirements, 1988, IBR approved for § 154.812.

(2) [Reserved]

(g) National Fire Protection Association (NFPA), 1 Battery March Park, Quincy, MA 02269-9101, 617-770-3000, <http://www.nfpa.org/>:

(1) NFPA 51B, Standard for Fire Prevention in Use of Cutting and

Welding Processes, 1994, IBR approved for § 154.735.

(2) NFPA 70, National Electrical Code, 2008, IBR approved for § 154.812.

(h) Oil Companies International Marine Forum (OCIMF), 29 Queen Anne's Gate, London, SW1H 9BU, England, +44-0-20-7654-1200, <http://www.ocimf.com/>:

(1) International Safety Guide for Oil Tankers and Terminals, Section 6.10, Fourth Ed., 1996, IBR approved for § 154.810.

(2) International Safety Guide for Oil Tankers and Terminals, Sections 9.1, 9.2, 9.3 and 9.5, Fourth Ed., 1996, IBR approved for § 154.735.

3. In § 154.500, revise paragraph (d)(2) to read as follows:

§ 154.500 Hose assemblies.

* * * * *

(d) * * *

(2) Flanges that meet ANSI B16.5 or B16.24 (both incorporated by reference; see § 154.106); or

* * * * *

■ 4. In § 154.510, revise paragraph (a) to read as follows:

§ 154.510 Loading arms.

(a) Each mechanical loading arm used for transferring oil or hazardous material and placed into service after June 30, 1973, must meet the design, fabrication, material, inspection, and testing requirements in ANSI B31.3 (incorporated by reference; see § 154.106).

* * * * *

■ 5. In § 154.735, revise paragraphs (l) introductory text and (s) introductory text to read as follows:

§ 154.735 Safety requirements.

* * * * *

(l) All welding or hot work conducted on or at the facility is the responsibility of the facility operator. The COTP may require that the operator of the facility notify the COTP before any welding or hot work operations are conducted. Any welding or hot work operations conducted on or at the facility must be conducted in accordance with NFPA 51B (incorporated by reference; see § 154.106). The facility operator shall ensure that the following additional conditions or criteria are met:

* * * * *

(s) Tank cleaning or gas freeing operations conducted by the facility on vessels carrying oil residues or mixtures shall be conducted in accordance with sections 9.1, 9.2, 9.3, and 9.5 of the OCIMF International Safety Guide for Oil Tankers and Terminals (ISGOTT)

(incorporated by reference; see § 154.106), except that—

■ 6. In § 154.808, revise paragraph (b) to read as follows:

§ 154.808 Vapor control system, general.

(b) Vapor collection system piping and fittings must be in accordance with ANSI B31.3 (incorporated by reference; see § 154.106) and designed for a maximum allowable working pressure of at least 150 psig. Valves and flanges must be in accordance with ANSI B16.5 or B16.24 (both incorporated by reference; see § 154.106), 150 pound class.

■ 7. In § 154.810, revise paragraphs (d)(5)(i) and (g) to read as follows:

§ 154.810 Vapor line connections.

(d) * * *
(5) * * *

(i) A bolt hole arrangement complying with the requirements for 150 pound class ANSI B16.5 (incorporated by reference; see § 154.106) flanges, and

(g) The facility vapor connection must be electrically insulated from the vessel vapor connection in accordance with section 6.10 of the OCIMF International Safety Guide for Oil Tankers and Terminals (incorporated by reference; see § 154.106).

■ 8. In § 154.812, revise paragraphs (a)(1), (a)(2), and (b)(6) introductory text to read as follows:

§ 154.812 Facility requirements for vessel liquid overfill protection.

(a) * * *
(1) ANSI/NEMA WD6 (incorporated by reference; see § 154.106);
(2) NFPA 70, National Electrical Code, Articles 410–57 and 501–12; incorporated by reference; see § 154.106); and

(b) * * *
(6) Has a female connecting plug for the tank barge level sensor system with a 5 wire, 16 amp connector body meeting IEC 309–1/309–2 (incorporated by reference; see § 154.106) which is:

■ 9. In § 154.814, revise paragraph (j)(4) to read as follows:

§ 154.814 Facility requirements for vessel vapor overpressure and vacuum protection.

(j) * * *

(4) Has been tested for relieving capacity in accordance with paragraph

1.5.1.3 of API 2000 (incorporated by reference; see § 154.106) with a flame screen fitted.

■ 10. In § 154.824, revise paragraph (f)(1) to read as follows:

§ 154.824 Inerting, enriching, and diluting systems.

(f) * * *

(1) Be installed in accordance with API Recommended Practice 550 (incorporated by reference; see § 154.106);

■ 11. In § 154.1020, add the definitions “Dispersant-application platform,” “Dispersant Mission Planner 2,” “Effective Daily Application Capacity or EDAC,” “Gulf Coast,” “Operational effectiveness monitoring,” “Pre-authorization for dispersant use,” and “Primary dispersant staging site” in alphabetical order to read as follows:

§ 154.1020 Definitions.

Dispersant-application platform means the vessel or aircraft outfitted with the dispersant-application equipment acting as the delivery system for the dispersant onto the oil spill.

Dispersant Mission Planner 2 or (DMP2) means an Internet-downloadable application that estimates EDAC for different dispersant response systems. The NSFCC will use DPMP2 for evaluating OSRO dispersant classification levels.

Effective Daily Application Capacity or *EDAC* means the estimated amount of dispersant that can be applied to a discharge by an application system given the availability of supporting dispersant stockpiles, when operated in accordance with approved standards and within acceptable environmental conditions.

Gulf Coast means, for the purposes of dispersant-application requirements, the region encompassing the following Captain of the Port Zones:

- (1) Corpus Christi, TX.
- (2) Houston/Galveston, TX.
- (3) Port Arthur, TX.
- (4) Morgan City, LA.
- (5) New Orleans, LA.
- (6) Mobile, AL.
- (7) St. Petersburg, FL.

Operational effectiveness monitoring means monitoring concerned primarily with determining whether the dispersant was properly applied and how the dispersant is affecting the oil.

Pre-authorization for dispersant use means an agreement, adopted by a regional response team in coordination with area committees, which authorizes the use of dispersants at the discretion of the Federal On-Scene Coordinator without the further approval of other Federal or State authorities. These pre-authorization areas are generally limited to particular geographic areas within each region.

Primary dispersant staging site means a site designated within a Captain of the Port zone that has been identified as a forward staging area for dispersant application platforms and the loading of dispersant stockpiles. Primary staging sites are typically the planned locations where platforms load or reload dispersants before departing for application at the site of the discharge and may not be the locations where dispersant stockpiles are stored or application platforms are home-based.

■ 10. In § 154.1035—

- a. Revise paragraph (b)(3)(iv);
- b. Redesignate paragraph (b)(3)(v) as paragraph (b)(3)(ix); and,
- c. Add new paragraphs (b)(3)(v), (b)(3)(vi), (b)(3)(vii), and (b)(3)(viii) to read as follows:

§ 154.1035 Specific requirements for facilities that could reasonably be expected to cause significant and substantial harm to the environment.

(b) * * *
(3) * * *

(iv) This subsection of the plan must identify the oil spill removal organizations and the spill management team that will be capable of providing the following resources:

(A) Equipment and supplies to meet the requirements of §§ 154.1045, 154.1047, or subparts H or I of this part, as appropriate.

(B) Trained personnel necessary to continue operation of the equipment and staff the oil spill removal organization and spill management team for the first 7 days of the response.

(v) This section must include job descriptions for each spill management team member within the organizational structure described in paragraph (b)(3)(iii) of this section. These job descriptions must include the responsibilities and duties of each spill management team member in a response action.

(vi) For facilities that handle, store, or transport group II through group IV petroleum oils, and that operate in waters where dispersant use is pre-authorized, this subsection of the plan must also separately list the resource

providers and specific resources, including appropriately trained dispersant-application personnel, necessary to provide the dispersant capabilities required in this subpart. All resource providers and resources must be available by contract or other approved means as described in § 154.1028(a). The dispersant resources to be listed within this section must include the following:

(A) Identification of each primary dispersant staging site to be used by each dispersant-application platform to meet the requirements of this subpart.

(B) Identification of the platform type, resource-providing organization, location, and dispersant payload for each dispersant-application platform identified. Location data must identify the distance between the platform's home base and the identified primary dispersant staging site for this section.

(C) For each unit of dispersant stockpile required to support the effective daily application capacity (EDAC) of each dispersant-application platform necessary to sustain each intended response tier of operation, identify the dispersant product resource provider, location, and volume. Location data must include the stockpile's distance to the primary staging sites where the stockpile would be loaded onto the corresponding platforms.

(D) If an oil spill removal organization has been evaluated by the Coast Guard, and its capability is equal to or exceeds the response capability needed by the owner or operator, the section may identify only the oil spill removal organization, and not the information required in paragraphs (b)(3)(vi)(A) through (b)(3)(vi)(C) of this section.

(vii) This subsection of the plan must also separately list the resource providers and specific resources necessary to provide aerial oil tracking capabilities required in this subpart. The oil tracking resources to be listed within this section must include the following:

(A) The identification of a resource provider; and

(B) Type and location of aerial surveillance aircraft that are ensured available, through contract or other approved means, to meet the oil tracking requirements of § 154.1045(j).

(viii) For mobile facilities that operate in more than one COTP zone, the plan must identify the oil spill removal organization and the spill management team in the applicable geographic-specific appendix. The oil spill removal organization(s) and the spill management team discussed in paragraph (b)(3)(iv) of this section must be included for each COTP zone in which the facility will handle, store, or transport oil in bulk.

* * * * *

■ 11. In § 154.1045—

■ a. Revise paragraph (i) as set out below;

■ b. Redesignate paragraphs (j), (k), (l), (m), and (n) as paragraphs (k), (l), (m), (n), and (o), respectively;

■ c. Add new paragraph (j) to read as follows;

■ d. Revise newly designated paragraph (o) to read as set out below:

§ 154.1045 Response plan development and evaluation criteria for facilities that handle, store, or transport Group I through Group IV petroleum oils.

* * * * *

(i) The owner or operator of a facility that handles, stores, or transports groups II through IV petroleum oils within the inland, nearshore, or offshore areas where pre-authorization for dispersant use exists must identify in their response plan, and ensure the availability of, through contract or other approved means, response resources capable of conducting dispersant operations within those areas.

(1) Dispersant response resources must be capable of commencing dispersant-application operations at the site of a discharge within 7 hours of the decision by the Federal On-Scene Coordinator to use dispersants.

(2) Dispersant response resources must include all of the following:

(i) Sufficient volumes of dispersants for application as required by paragraph

(i)(3) of this section. Any dispersants identified in a response plan must be of a type listed on the National Oil and Hazardous Substances Pollution Contingency Plan Product Schedule (which is contained in 40 CFR part 300, and available online from the U.S. Government Printing Office).

(ii) Dispersant-application platforms capable of delivering and applying the dispersant on a discharge in the amounts as required by paragraph (i)(3) of this section. At least 50 percent of each EDAC tier requirement must be achieved through the use of fixed-wing, aircraft-based application platforms. For dispersant-application platforms not detailed within the DMP2, adequacy of performance criteria must be documented by presentation of independent evaluation materials (e.g., field tests and reports of actual use) that record the performance of the platform.

(iii) Dispersant-application systems that are consistent in design with, and are capable of applying dispersants within, the performance criteria in ASTM F1413-07 (incorporated by reference, see § 154.106). For dispersant-application systems not fully covered by ASTM F1413-07, such as fire monitor-type applicators, adequacy of performance criteria must be documented by presentation of independent evaluation materials (e.g., laboratory tests, field tests, and reports of actual use) that record the design of performance specifications.

(iv) Dispersant-application personnel trained in and capable of applying dispersants according to the recommended procedures contained within ASTM F1737-07 (incorporated by reference, see § 154.106).

(3) Dispersant stockpiles, application platforms, and other supporting resources must be available in a quantity and type sufficient to treat a facility's worst-case discharge (as determined by using the criteria in appendix C, section 8) or in quantities sufficient to meet the requirements in Table 154.1045(i) of this section, whichever is the lesser amount.

TABLE 154.1045(i)—TIERS FOR EFFECTIVE DAILY APPLICATION CAPABILITY

	Response time for completed application (hours)	Dispersant application dispersant: oil treated in gallons (Gulf Coast)	Dispersant application dispersant: oil treated in gallons all other U.S.
Tier 1	12	8,250:165,000	4,125:82,500
Tier 2	36	23,375:467,000	23,375:467,000
Tier 3	60	23,375:467,000	23,375:467,000
Total	60	55,000:1,100,000	50,875:1,017,500

Note to Table 154.1045(i): Gulf Coast Tier 1 is higher due to greater potential spill size and frequency in that area, and it is assumed that dispersant stockpiles would be centralized in the Gulf area. Alternative application ratios may be considered based upon submission to Coast Guard Headquarters, Office of Incident Management and Preparedness (CG-533, 202-372-2234, 2100 2nd Street, SW., room 2100, Washington, DC 20593) of peer-reviewed scientific evidence of improved capability.

(j) The owner or operator of a facility handling Groups I through IV petroleum oil as a primary cargo must identify in the response plan, and ensure the availability through contract or other approved means, of response resources necessary to provide aerial oil tracking to support oil spill assessment and cleanup activities. Facilities operating exclusively on inland rivers are not required to comply with this paragraph. Aerial oil tracking resources must:

(1) Be capable of arriving at the site of a discharge in advance of the arrival of response resources identified in the plan for tiers 1, 2, and 3 Worst-Case Discharge response times, and for a distance up to 50 nautical miles from shore (excluding inland rivers);

(2) Be capable of supporting oil spill removal operations continuously for three 10-hour operational periods during the initial 72 hours of the discharge;

(3) Include appropriately located aircraft and personnel capable of meeting the response time requirement for oil tracking from paragraph (j)(1) of this section; and

(4) Include sufficient numbers of aircraft, pilots, and trained observation personnel to support oil spill removal operations, commencing upon initial assessment, and capable of coordinating on-scene cleanup operations, including dispersant and mechanical recovery operations. Observation personnel must be trained in:

(i) The protocols of oil-spill reporting and assessment, including estimation of slick size, thickness, and quantity; and

(ii) The use of assessment techniques in ASTM F1779-08 (incorporated by reference, *see* § 154.106), and familiar with the use of other guides, such as NOAA's "Open Water Oil Identification Job Aid for Aerial Observation," and NOAA's "Characteristic Coastal Habitats" guide (available on the Internet at <http://response.restoration.noaa.gov/use> the following links in the order presented: Home|Emergency Response|Responding to Oil Spills).

(o) The Coast Guard will continue to evaluate the environmental benefits,

cost efficiency and practicality of increasing mechanical recovery capability requirements. This continuing evaluation is part of the Coast Guard's long term commitment to achieving and maintaining an optimum mix of oil spill response capability across the full spectrum of response modes. As best available technology demonstrates a need to evaluate or change mechanical recovery capacities, a review of cap increases and other requirements contained within this subpart may be performed. Any changes in the requirements of this section will occur through a public notice and comment process. During this review, the Coast Guard will determine if established caps remain practicable and if increased caps will provide any benefit to oil spill recovery operations. The review will include, at least, an evaluation of:

(1) Best available technologies for containment and recovery;

(2) Oil spill tracking technology;

(3) High rate response techniques;

(4) Other applicable response technologies; and

(5) Increases in the availability of private response resources.

* * * * *

■ 12. In § 154.1065, add new paragraph (e) to read as follows:

§ 154.1065 Plan review and revision procedures.

* * * * *

(e) If required by §§ 154.1035(b)(3) or 154.1045, a new or existing facility owner or operator must submit the required dispersant and aerial oil tracking resource revisions to a previously submitted or approved plan, made pursuant to §§ 154.1035(b)(3) or 154.1045, to the COTP and all other holders of the response plan for information or approval no later than February 22, 2011.

■ 13. In appendix C to Part 154, revise section 8 and amend Table 5 in section 9 by revising the entries for "February 18, 2003" to read as follows:

Appendix C to Part 154—Guidelines for Determining and Evaluating Required Response Resources for Facility Response Plans

* * * * *

8. Determining the Capability of High-Rate Response Methods

8.1. Calculate cumulative dispersant application capacity as follows:

8.1.1 A facility owner or operator must plan either for a dispersant capacity to respond to a facility's worst case discharge (WCD) of oil, or for the amount of the dispersant resource cap as required by § 154.1045(i)(3) of this chapter, whichever is

the lesser amount. When planning for the cumulative application capacity required, the calculations must account for the loss of some oil to the environment due to natural dissipation causes (primarily evaporation). The following procedure must be used to determine the cumulative application requirements:

8.1.2 Determine the WCD volume of oil in gallons and the appropriate oil group for the type of petroleum oil (persistent Groups II, III, and IV). For facilities with mixed petroleum oils, assume a total WCD volume using the group that constitutes the largest portion of the oil being handled or the group with the smallest natural dissipation factor;

8.1.3 Multiply the total WCD amount in gallons by the natural dissipation factor for the appropriate oil group as follows: Group II factor is 0.50; Group III is 0.30; and Group IV is 0.10. This represents the amount of oil that can be expected to be lost to natural dissipation in a nearshore environment. Subtract the oil amount lost to natural dissipation from the total WCD amount to determine the remaining oil available for treatment by dispersant application; and

8.1.4 Multiply the oil available for dispersant treatment by the dispersant-to-oil planning application ratio of 1 part dispersant to 20 parts oil (0.05). The resulting number represents the cumulative total dispersant-application capability that must be ensured available within the first 60 hours.

8.1.5(i) The following is an example of the procedure described in paragraphs 8.1.1 through 8.1.4 above: A facility with a 1,000,000 gallon WCD of crude oil (specific gravity 0.87) is located in an area with pre-authorization for dispersant use in the nearshore environment on the U.S. East Coast:

WCD: 1,000,000 gallons, Group III oil.
Natural dissipation factor for Group III: 30 percent.

General formula to determine oil available for dispersant treatment: $(WCD) - [(WCD) \times (\text{natural dissipation factor})] = \text{available oil}$.

E.g., $1,000,000 \text{ gal} - (1,000,000 \text{ gal} \times .30) = 700,000 \text{ gallons of available oil}$.

Cumulative application capacity = Available oil \times planning application ratio (1 gal dispersant/20 gals oil = 0.05).

E.g., $700,000 \text{ gal oil} \times (0.05) = 35,000 \text{ gallons cumulative dispersant-application capacity}$.

(ii) The requirements for cumulative dispersant-application capacity (35,000 gallons) for this facility's WCD is less than the overall dispersant capability for non-Gulf Coast waters required by § 155.1045(i)(3) of this chapter. Because paragraph 8.1.1 of this appendix requires owners and operators to ensure the availability of the lesser of a facility's dispersant requirements for WCD or the amount of the dispersant cap provided for in § 154.1045(i)(3), the facility in this example would be required to ensure the availability of 35,000 gallons of dispersant. More specifically, this facility would be required to meet the following tier requirements in § 154.1045(i)(3), which total 35,000 gallons application:

Tier 1—4,125 gallons—Completed in 12 hours.

Tier 2—23,375 gallons—Completed in 36 hours.

Tier 3—7,500 gallons—Completed in 60 hours.

8.2 Determine Effective Daily Application Capacities (EDACs) for dispersant response systems as follows:

8.2.1 EDAC planning estimates for compliance with the dispersant application requirements in § 154.1045(i)(3) are to be based on:

8.2.1.1 The spill occurring at the facility;

8.2.1.2 Specific dispersant application platform operational characteristics identified in the Dispersant Mission Planner 2 or as demonstrated by operational tests;

8.2.1.3 Locations of primary dispersant staging sites; and

8.2.1.4 Locations and quantities of dispersant stockpiles.

8.2.2 EDAC calculations with supporting documentation must be submitted to the NSFCC for classification as a Dispersant Oil Spill Removal Organization.

8.2.3(i) EDAC can also be calculated using the Dispersant Mission Planner 2

(DMP2). The DMP2 is a downloadable application that calculates EDAC for different dispersant response systems. It is located on the Internet at: <http://www.response.restoration.noaa.gov/spilltools>.

(ii) The DMP2 contains operating information for the vast majority of dispersant application platforms, including aircraft, both rotary and fixed wing, and vessels. The DMP2 produces EDAC estimates by performing calculations based on performance parameters of dispersant application platforms, locations of primary dispersant staging sites, home-based airport or port locations, and the facility location (for the spill site).

8.2.4 For each Captain of the Port zone where a dispersant response capability is required, the response plan must identify:

8.2.4.1 The type, number, and location of each dispersant-application platform intended for use to meet dispersant delivery requirements specified in § 154.1045(i)(3) of this chapter;

8.2.4.2 The amount and location of available dispersant stockpiles to support each platform; and,

8.2.4.3 A primary staging site for each platform that will serve as its base of operations for the duration of the response.

8.3 In addition to the equipment and supplies required, a facility owner or operator must identify a source of support to conduct the monitoring and post-use effectiveness evaluation required by applicable regional plans and ACPs.

8.4 Identification of the resources for dispersant application does not imply that the use of this technique will be authorized. Actual authorization for use during a spill response will be governed by the provisions of the National Oil and Hazardous Substances Contingency Plan (40 CFR part 300) and the applicable Local or Area Contingency Plan.

9. Additional Equipment Necessary To Sustain Response Operations

* * * * *

TABLE 5—RESPONSE CAPABILITY CAPS BY OPERATING AREA

	Tier 1	Tier 2	Tier 3
* * * * *			
February 18, 2003:			
All except rivers & canals & Great Lakes	12.5K bbls/day	25K bbls/day	50K bbls/day.
Great Lakes	6.25K bbls/day	12.3K bbls/day	25K bbls/day.
Rivers & canals	1,875 bbls/day	3,750 bbls/day	7,500 bbls/day.
* * * * *			

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

■ 14. The authority citation for part 155 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); E.O. 11735, 3 CFR, 1971–1975 Comp., p. 793. Sections 155.100 through 155.130, 150.350 through 155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) are also issued under 33 U.S.C. 1903(b). Sections 155.480, 155.490, 155.750(e), and 155.775 are also issued under 46 U.S.C. 3703. Section 155.490 also issued under section 4110(b) of Pub. L. 101–380.

Note: Additional requirements for vessels carrying oil or hazardous materials are contained in 46 CFR parts 30 through 40, 150, 151, and 153.

■ 15. In § 155.140—

- (a) In paragraph (a), after the words “Washington, DC 20593–0001” add the phone number “, 202–372–1251”; and,
- (b) Add new paragraphs (c)(4), (c)(5), and (c)(6) to read as follows:

§ 155.140 Incorporation by reference.

* * * * *
(c) * * *

(4) ASTM F1413–07, Standard Guide for Oil Spill Dispersant Application Equipment: Boom and Nozzle Systems, incorporation by reference approved for § 155.1050.

(5) ASTM F1737–07, Standard Guide for Use of Oil Spill Dispersant-Application Equipment During Spill Response: Boom and Nozzle Systems, incorporation by reference approved for § 155.1050.

(6) ASTM F1779–08, Standard Practice for Reporting Visual Observations of Oil on Water, incorporation by reference approved for § 155.1050.

* * * * *

■ 16. In § 155.230, revise paragraph (b)(1)(i)(D) to read as follows:

§ 155.230 Emergency control systems for tank barges.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(D) Each operator of the system should wear a safety belt or harness secured by a lanyard to a lifeline, drop line, or fixed structure such as a welded padeye, if the sea or the weather

warrants this precaution. Each safety belt, harness, lanyard, lifeline, and drop line must meet the specifications of ANSI A10.14 (incorporated by reference, see § 155.140).

* * * * *

■ 17. Revise § 155.235 to read as follows:

§ 155.235 Emergency towing capability for oil tankers.

An emergency towing arrangement shall be fitted at both ends on board all oil tankers of not less than 20,000 deadweight tons (dwt), constructed on or after September 30, 1997. For oil tankers constructed before September 30, 1997, such an arrangement shall be fitted at the first scheduled dry-docking, but not later than January 1, 1999. The design and construction of the towing arrangement shall be in accordance with IMO resolution MSC.35(63) (incorporated by reference; see § 155.140).

■ 18. In § 155.1020, add the following definitions, “Dispersant-application platform,” “Dispersant Mission Planner 2 (DMP2),” “Effective daily application capacity or EDAC,” “Gulf Coast,” “Operational effectiveness monitoring,”

“Pre-authorization for dispersant,” and “Primary dispersant staging site” in alphabetical order to read as follows:

§ 155.1020 Definitions.

Dispersant-application platform means the vessel or aircraft outfitted with the dispersant-application equipment acting as the delivery system for the dispersant onto the oil spill.

Dispersant Mission Planner 2 (DMP2) means an Internet-downloadable application that estimates EDAC for different dispersant response systems. The NSFCC will use DPMP2 for evaluating OSRO dispersant classification levels.

Effective daily application capacity or EDAC means the estimated amount of dispersant that can be applied to a discharge by an application system, given the availability of supporting dispersant stockpiles, when operated in accordance with approved standards and within acceptable environmental conditions.

Gulf Coast means for the purposes of dispersant application requirements, the regions encompassing the following Captain of the Port Zones:

- (1) Corpus Christi, TX;
- (2) Houston/Galveston, TX;
- (3) Port Arthur, TX;
- (4) Morgan City, LA;
- (5) New Orleans, LA;
- (6) Mobile, AL; and
- (7) St. Petersburg, FL.

Operational effectiveness monitoring means monitoring concerned primarily with determining whether the dispersant was properly applied and how the dispersant is affecting the oil.

Pre-authorization for dispersant use means an agreement, adopted by a regional response team in coordination with area committees, that authorizes the use of dispersants at the discretion of the Federal On-Scene Coordinator without the further approval of other Federal or State authorities. These pre-authorization areas are generally limited to particular geographic areas within each region.

Primary dispersant staging site means a site designated within a Captain of the Port zone which is identified as a forward staging area for dispersant-application platforms and the loading of dispersant stockpiles. Primary staging sites would normally be the planned location where the platform would load or reload dispersants prior to departing for application at the site of the discharge and may not be the location

where dispersant stockpiles are stored or application platforms are home based.

■ 19. In § 155.1035—

- a. Revise paragraph(c)(5)(i) and paragraph (i)(9); and,
- b. Add paragraphs (i)(10) and (i)(11) to read as follows:

§ 155.1035 Response plan requirements for manned vessels carrying oil as a primary cargo.

(i) The format and content of the ship-to-ship transfer procedures must be consistent with the Ship to Ship Transfer Guide (Petroleum) (incorporated by reference; see § 155.140) published jointly by the International Chamber of Shipping and the Oil Companies International Marine Forum (OCIMF).

(9) For vessels that handle, store, or transport Group I through Group V petroleum oils, the appendix must also separately list the resource providers identified to provide the salvage, vessel firefighting, and lightering capabilities required in this subpart.

(10) For vessels that handle, store, or transport Group II through Group IV petroleum oils, and that operate in waters where dispersant use pre-authorization agreements exist, the appendix must also separately list the resource providers and specific resources, including appropriately trained dispersant-application personnel, necessary to provide, if appropriate, the dispersant capabilities required in this subpart. All resource providers and resources must be available by contract or other approved means. The dispersant resources to be listed within this section must include the following:

- (i) Identification of each primary dispersant staging site to be used by each dispersant-application platform to meet the requirements of § 155.1050(k) of this chapter;
- (ii) Identification of the platform type, resource provider, location, and dispersant payload for each dispersant-application platform identified. Location data must identify the distance between the platform's home base and the identified primary dispersant-staging site(s) for this section.
- (iii) For each unit of dispersant stockpile required to support the effective daily application capacity (EDAC) of each dispersant-application

platform necessary to sustain each intended response tier of operation, identify the dispersant product resource provider, location, and volume. Location data must include the distance from the stockpile to the primary staging sites where the stockpile would be loaded onto the corresponding platforms. If an oil spill removal organization has been evaluated by the Coast Guard and its capability has been determined to meet the response capability needed by the owner or operator, the section may identify the oil spill removal organization only, and not the information required in paragraphs (i)(10)(i) through (i)(10)(iii) of this section.

(11) The appendix must also separately list the resource providers and specific resources necessary to provide oil-tracking capabilities required in this subpart. The oil tracking resources to be listed within this section must include the following:

- (i) The identification of a resource provider; and
- (ii) The type and location of aerial surveillance aircraft that have been ensured available, through contract or other approved means, to meet the oil tracking requirements of § 155.1050(l) of this chapter.

■ 18. In § 155.1040—

- a. Revise paragraph (j)(9); and,
- b. Add new paragraphs (j)(10) and (j)(11) to read as follows:

§ 155.1040 Response plan requirements for unmanned tank barges carrying oil as a primary cargo.

(9) The appendix must include a separate listing of the resource providers identified to provide the salvage, vessel firefighting, and lightering capabilities required in this subpart.

(10) The appendix must include a separate listing of the resource providers and specific resources necessary to provide, if appropriate, the dispersant capabilities required in this subpart. The dispersant resources to be listed within this section must include:

- (i) Identification of a primary dispersant-staging site or sites to be used by each dispersant-application platform that is ensured available, through contract or other approved means, to meet the requirements of § 155.1050(k);
- (ii) Identification of the type, resource provider, location, and dispersant payload for each dispersant-application platform identified and ensured available. Location data must identify the distance between the platform's

home base and the identified primary dispersant staging sites for this section; and,

(iii) For each unit of dispersant stockpile required to support the effective daily application capacity (EDAC) of each dispersant-application platform necessary to sustain each intended response tier of operation, identification of the dispersant product resource provider, location, and volume. Location data must include the stockpile's distance to the primary staging sites where it will be loaded onto the corresponding platforms. If an oil spill removal organization has been evaluated by the Coast Guard and its capability has been determined to equal or exceed the response capability needed by the owner or operator, the appendix may identify only the oil spill removal organization, and not the information required in paragraphs (j)(10)(i) through (j)(10)(iii) of this section.

(11) The appendix must include a separate listing of the resource providers and specific resources necessary to provide oil-tracking capabilities required in this subpart. The oil tracking resources listed within this section must include:

(i) The identification of a resource provider; and,

(ii) The type and location of aerial surveillance aircraft that have been ensured available, through contract or other approved means, to meet the oil tracking requirements of § 155.1050(l) of this chapter.

* * * * *

- 19. In § 155.1050—
- a. Remove paragraph (j);
- b. Redesignate paragraph (p) as paragraph (q), and revise the newly redesignated paragraph (q);
- c. Redesignate paragraphs (k), (l), (m), (n), and (o) as paragraphs (j), (m), (n), (o), and (p), respectively; and,
- d. Add new paragraphs (k), and (l) to read as follows:

§ 155.1050 Response plan development and evaluation criteria for vessels carrying groups I through IV petroleum oil as a primary cargo.

* * * * *

(k) The owner or operator of a vessel carrying groups II through IV petroleum oil as a primary cargo that operates in any inland, nearshore, or offshore area with pre-authorization for dispersant use must identify in their response plan, and ensure availability through contract or other approved means, of response resources capable of conducting dispersant operations within those areas.

(1) Dispersant response resources must be capable of commencing dispersant-application operations at the site of a discharge within 7 hours of the decision by the Federal On-Scene Coordinator to use dispersants.

(2) Dispersant response resources must include all of the following:

(i) Sufficient dispersant capability for application as required by paragraph (k)(3) of this section. Any dispersants identified in a response plan must be of a type listed on the National Oil and Hazardous Substances Pollution Contingency Plan Product Schedule

(contained in 40 CFR part 300, and available online from the U.S. Government Printing Office).

(ii) Dispersant-application platforms capable of delivering and applying dispersant in the amounts required by paragraph (k)(3) of this section. At least 50 percent of each effective daily application capacity (EDAC) tier requirement must be achieved through the use of fixed wing aircraft-based application platforms. The adequacy of dispersant-application platforms not detailed within the Dispersant Mission Planner 2 must be documented by presentation of independent evaluation materials (e.g., field tests and reports of actual use).

(iii) Dispersant-application personnel trained in and capable of applying dispersants within the performance criteria in ASTM F1413-07 (incorporated by reference, see § 155.140). The adequacy of dispersant-application systems not fully covered by ASTM F1413-07, such as fire monitor-type applicators, must be documented by presentation of independent evaluation materials (e.g., laboratory tests, field tests, and reports of actual use).

(iv) Dispersant-application systems ensured to be available, including trained personnel, that are capable of applying dispersants in accordance with the recommended procedures in ASTM F1737-07 (incorporated by reference, see § 155.140).

TABLE 155.1050(k)—TIERS FOR EFFECTIVE DAILY APPLICATION CAPABILITY

	Response time for completed application	Dispersant application dispersant: oil treated in gallons (Gulf Coast)	Dispersant application dispersant: oil treated in gallons All other U.S.
Tier 1	12	8,250:165,000	4,125:82,500
Tier 2	36	23,375:467,000	23,375:467,000
Tier 3	60	23,375:467,000	23,375:467,000
Total	60	55,000:1,100,000	50,875:1,017,500

Note: Gulf Coast Tier 1 is higher due to greater potential spill size and frequency in that area, and it is assumed that dispersant stockpiles would be centralized in the Gulf area. Alternative application ratios may be considered based on submission to Coast Guard Headquarters, Office of Incident Management & Preparedness (CG-533) of peer-reviewed scientific evidence of improved capability.

(3) Dispersant stockpiles, application platforms, and other supporting resources must be ensured available in a quantity and type sufficient to treat a

vessel's worst case discharge (as determined by using the criteria in Section 8 of appendix B), or in quantities sufficient to meet the requirements in Table 155.1050(k), whichever is the lesser amount.

(l) The owner or operator of a vessel carrying groups I through IV petroleum oil as a primary cargo must identify in the response plan, and ensure their availability through contract or other approved means, response resources necessary to provide aerial oil tracking to support oil spill assessment and

cleanup activities. Vessels operating on inland rivers are not required to comply with this paragraph.

(1) Aerial oil tracking resources must be capable of arriving at the site of a discharge in advance of the arrival of response resources identified in the plan for tiers 1, 2, and 3 Worst Case Discharge response times, and for a distance up to 50 nautical miles from shore (excluding inland rivers).

(2) Aerial oil tracking resources must include the following:

(i) Appropriately located aircraft and personnel capable of meeting the response time requirement for oil tracking in § 155.1050(l)(1) of this section;

(ii) Sufficient numbers of aircraft, pilots, and trained observation personnel to support oil spill operations, commencing upon initial assessment, and capable of coordinating on-scene cleanup operations, including dispersant, in-situ burning, and mechanical recovery operations;

(iii) Observation personnel must be trained in the protocols of oil spill reporting and assessment, including estimation of slick size, thickness, and quantity. Observation personnel must be trained in the use of assessment techniques in ASTM F1779-08 (incorporated by reference, see § 155.140), and familiar with the use of pertinent guides, including, but not limited to, NOAA's "Open Water Oil Identification Job Aid for Aerial Observation" and the "Characteristic Coastal Habitats" guide; and

(iv) The capability of supporting oil spill removal operations continuously for three 10-hour operational periods during the initial 72 hours of the discharge.

* * * * *

(q) The Coast Guard will continue to evaluate the environmental benefits, cost efficiency and practicality of increasing mechanical recovery capability requirements. This continuing evaluation is part of the Coast Guard's long term commitment to achieving and maintaining an optimum mix of oil spill response capability across the full spectrum of response modes. As best available technology demonstrates a need to evaluate or change mechanical recovery capacities, a review of cap increases and other requirements contained within this subpart may be performed. Any changes in the requirements of this section will occur through a public notice and comment process. During this review, the Coast Guard will determine if established caps remain practicable and if increased caps will provide any benefit to oil spill recovery operations. The review will include and evaluation of:

- (1) Best available technologies for containment and recovery;
- (2) Oil spill tracking technology;
- (3) High rate response techniques;
- (4) Other applicable response technologies; and
- (5) Increases in the availability of private response resources.

■ 20. In § 155.1070, add new paragraph (i) to read as follows:

§ 155.1070 Procedures for plan review, revision, amendment and appeal.

* * * * *

(i) If required by §§ 155.1035(i), 155.1040(j), and 155.1050 (k) and (l), a new or existing vessel owner or operator must submit the required dispersant and aerial oil tracking resource revisions to a previously submitted or approved plan, made pursuant to §§ 155.1035(i), 155.1040(j), and 155.1050(k) and (l), to Coast Guard Headquarters, Office of Vessel Activities (CG-543) and all other holders of the response plan for information or approval no later than February 22, 2011.

§ 155.4020 [Amended]

■ 21. In § 155.4020, amend paragraphs (a) and (c)(1) by removing the date "June 1, 2010" and adding in its place "February 22, 2011".

■ 22. In Appendix B to Part 155:

■ A. Amend section 7.2.4. by removing the last 3 sentences and adding 2 sentences in their place.

■ B. Revise section 8.

■ C. Amend Table 6 in section 9 by revising the entries for "February 18, 2003".

The additions and revisions read as follows:

**APPENDIX B TO PART 155—
DETERMINING AND EVALUATING
REQUIRED RESPONSE RESOURCES
FOR VESSEL RESPONSE PLANS**

* * * * *

*7. Calculating the Worst Case Discharge
Planning Volumes*

* * * * *

7.2.4 * * * If the required capacity exceeds the applicable cap described in Table 6 of this appendix, then a vessel owner or operator must contract for at least the quantity of resources required to meet the cap, but must identify sources of additional resources as indicated in § 155.1050(p). For a vessel that carries multiple groups of oil, the required effective daily recovery capacity for each group is calculated and summed before applying the cap.

* * * * *

*8. Determining the Capability of High-Rate
Response Methods*

8.1 Calculate cumulative dispersant application capacity requirements as follows:

8.1.1 A vessel owner or operator must plan either for a dispersant capacity to respond to a vessel's worst case discharge (WCD) of oil, or for the amount of the dispersant resource capability as required by § 155.1050(k)(3) of this chapter, whichever is the lesser amount. When planning for the cumulative application capacity that is required, the calculations should account for the loss of some oil to the environment due to natural dissipation causes (primarily evaporation). The following procedure should be used to determine the cumulative application requirements:

8.1.2 Determine the WCD volume of oil carried in gallons, and the appropriate oil group for the type of petroleum oil carried (Groups II, III, IV). For vessels carrying different oil groups, assume a WCD using the oil group that constitutes the largest portion of the oil being carried, or the oil group with the smallest natural dissipation factor;

8.1.3 Multiply the WCD in gallons by the natural dissipation factor for the appropriate oil group as follows: Group II factor is 0.50; Group III factor is 0.30; and Group IV factor is 0.10. This represents the amount of oil that can be expected to be lost to natural dissipation. Subtract the WCD lost to natural dissipation from the total oil amount carried to determine the remaining oil available for treatment by dispersant-application; and

8.1.4 Multiply the oil available for dispersant treatment by the dispersant to oil planning application ratio of 1 part dispersant to 20 parts oil (0.05). The resulting number represents the cumulative total dispersant-application capability that must be ensured available within the first 60 hours.

8.1.5(i) The following is an example of the procedure described in paragraphs 8.1.1 through 8.1.4 above: A vessel with a 1,000,000 gallons capacity of crude oil (specific gravity 0.87) will transit through an area with pre-authorization for dispersant use in the nearshore environment on the U.S. East Coast.

WCD: 1,000,000 gallons, Group III oil.
Natural Dissipation Factor for Group III: 30 percent.

General formula to determine oil available for dispersant treatment: ((WCD)—[(WCD) × (natural dissipation factor)] = available oil.

E.g., 1,000,000 gal — (1,000,000 gal × 0.30) = 700,000 gallons of available oil.

Cumulative application capacity = Available oil × planning application ratio (1 gal dispersant/20 gals oil = 0.05).

E.g., 700,000 gal oil × (0.05) = 35,000 gallons cumulative dispersant-application capacity.

(ii) The requirements for cumulative dispersant-application capacity (35,000 for this vessel's WCD is less than the overall dispersant capability cap for non-Gulf Coast waters required by § 155.1050(k) of this chapter. Because paragraph 8.1.1 of this appendix requires owners and operators to ensure the availability of the lesser of a vessel's dispersant requirements for WCD or the amount of the dispersant cap provided for in § 155.1050(k)(3), the vessel in this example would be required to ensure the availability of 35,000 gallons of dispersant. More specifically, this vessel would be required to meet the following tier requirements in § 155.1050(k), which total 35,000 gallons application:

Tier—1 4,125 gallons—Completed in 12 hours.

Tier—2 23,375 gallons—Completed in 36 hours.

Tier—3 7,500 gallons—Completed in 60 hours.

8.2 Determining Effective Daily Application Capacities "EDACs" for dispersant response systems as follows:

8.2.1 EDAC planning estimates for compliance with the dispersant application

requirements in § 155.1050(k)(3) are to be based on:

- 8.2.1.1 The spill occurring at sites 50 nautical miles off shore furthest from the primary dispersant staging site(s);
 - 8.2.1.2 Specific dispersant application platform operational characteristics identified in the Dispersant Mission Planner 2 or as demonstrated by operational tests;
 - 8.2.1.3 Locations of primary dispersant staging sites; and
 - 8.2.1.4 Locations and quantities of dispersant stockpiles.
- 8.2.2 EDAC calculations with supporting documentation must be submitted to the NSFCC for classification as a Dispersant Oil Spill Removal Organization.
- 8.2.3(i) EDAC can also be calculated using the Dispersant Mission Planner 2 (DMP2). The DMP2 is a downloadable application that calculates EDAC for different dispersant response systems. It is located on the Internet at: <http://www.response.restoration.noaa.gov/spilltools>

(ii) The DMP2 contains operating information for the vast majority of dispersant application platforms, to include aircraft, both rotary and fixed wing, and vessels. The DMP2 produces EDAC estimates by performing calculations that are based on performance parameters of dispersant application platforms, locations of primary dispersant staging sites, home based airport or port locations, and for planning purposes, a 50 mile from shore dispersant application site. The 50 mile offshore site used in the DMP2 would be the location furthest from the primary dispersant staging site identified in the vessel response plan.

8.2.4 For each Captain of the Port Zone where a dispersant response capability is required, the response plan must identify the following:

8.2.4.1 The type, number, and location of each dispersant application platform intended for use in meeting dispersant delivery requirements specified in § 155.1050(k)(3) of this chapter;

8.2.4.2 The amount and location of available dispersant stockpiles to support each platform; and

8.2.4.3 A primary staging site for each platform that will serve as its base of operations for the duration of the response.

8.3 In addition to the equipment and supplies required, a vessel owner or operator must identify a source of support to conduct the monitoring and post-use effectiveness evaluation required by applicable Local and Area Contingency Plans.

8.4 Identification of the resources for dispersant application does not imply that the use of this technique will be authorized. Actual authorization for use during a spill response will be governed by the provisions of the National Oil and Hazardous Substances Contingency Plan (40 CFR part 300) and the applicable Local or Area Contingency Plan.

9. Additional Equipment Necessary To Sustain Response Operations

* * * * *

TABLE 6—RESPONSE CAPABILITY CAPS BY OPERATING AREA

	Tier 1	Tier 2	Tier 3
* * * * *			
February 18, 2003:			
All except rivers & canals & Great Lakes	12.5K bbls/day	25K bbls/day	50K bbls/day.
Great Lakes	6.25K bbls/day	12.3K bbls/day	25K bbls/day.
Rivers & canals	1,875 bbls/day	3,750 bbls/day	7,500 bbls/day.
* * * * *			

Dated: August 14, 2009.
Lincoln D. Stroh,
Captain, U.S. Coast Guard, Acting Director of Prevention Policy.
 [FR Doc. E9-20311 Filed 8-28-09; 8:45 am]
BILLING CODE 4910-15-P



Federal Register

**Monday,
August 31, 2009**

Part V

**Department of the
Interior**

Fish and Wildlife Service

50 CFR Part 20

**Migratory Bird Hunting; Early Seasons
and Bag and Possession Limits for
Certain Migratory Game Birds in the
Contiguous United States, Alaska, Hawaii,
Puerto Rico, and the Virgin Islands; Final
Rule**

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 20**

[FWS–R9–MB–2008–0124; 91200–1231–9BPP–L2]

RIN 1018–AW31

Migratory Bird Hunting; Early Seasons and Bag and Possession Limits for Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

SUMMARY: This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits of mourning, white-winged, and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; sea ducks; early (September) waterfowl seasons; migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; and some extended falconry seasons. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule permits taking of designated species during the 2009–10 season.

DATES: This rule is effective on September 1, 2009.

ADDRESSES: You may inspect comments received on the migratory bird hunting regulations during normal business hours at the Service's office in Room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, VA. You may obtain copies of referenced reports from the street address above, or from the Division of Migratory Bird Management's Web site at <http://www.fws.gov/migratorybirds/>, or at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Robert Blohm, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:**Regulations Schedule for 2009**

On April 10, 2009, we published in the **Federal Register** (74 FR 16339) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through

20.107, 20.109, and 20.110 of subpart K. Major steps in the 2009–10 regulatory cycle relating to open public meetings and **Federal Register** notifications were also identified in the April 10 proposed rule. Further, we explained that all sections of subsequent documents outlining hunting frameworks and guidelines were organized under numbered headings.

On May 27, 2009, we published in the **Federal Register** (74 FR 25209) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations, providing detailed information on the 2009–10 regulatory schedule, and announcing the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings.

On June 24 and 25, 2009, we held open meetings with the Flyway Council Consultants at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2009–10 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2009–10 regular waterfowl seasons. On July 24, 2009, we published in the **Federal Register** (74 FR 36870) a third document specifically dealing with the proposed frameworks for early-season regulations. On August 25, 2009, we published in the **Federal Register** a final rule which contained final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits.

On July 29–30, 2009, we held open meetings with the Flyway Council Consultants at which the participants reviewed the status of waterfowl and developed recommendations for the 2009–10 regulations for these species. Proposed hunting regulations were discussed for late seasons. We published proposed frameworks for the 2009–10 late-season migratory bird hunting regulations in an August 13, 2009 **Federal Register** (74 FR 41008).

The final rule described here is the sixth in the series of proposed, supplemental, and final rulemaking documents for migratory game bird

hunting regulations and deals specifically with amending subpart K of 50 CFR part 20. It sets hunting seasons, hours, areas, and limits for mourning, white-winged, and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; sea ducks; early (September) waterfowl seasons; mourning doves in Hawaii; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; youth waterfowl hunting day; and some extended falconry seasons.

National Environmental Protection Act (NEPA) Consideration

NEPA considerations are covered by the programmatic document "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published a notice of availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our record of decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available by writing to the street address indicated under the caption **ADDRESSES**.

In a notice published in the September 8, 2005 **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as detailed in the March 9, 2006 **Federal Register** (71 FR 12216). A scoping report summarizing the scoping comments and scoping meetings is available by either writing to the street address indicated under **ADDRESSES** or by viewing on our Web site at <http://www.fws.gov/migratorybirds/>.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. * * *." Consequently, we conducted formal consultations to ensure that actions

resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to jeopardize the continued existence of any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this section 7 consultation are public documents available for public inspection at the street address indicated under **ADDRESSES**.

Executive Order 12866

The Office of Management and Budget has determined that this rule is significant and has reviewed this rule under Executive Order 12866. OMB bases its determination of regulatory significance upon the following four criteria:

a. Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

b. Whether the rule will create inconsistencies with other Federal agencies' actions.

c. Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. Whether the rule raises novel legal or policy issues.

An Economic Analysis was prepared for the 2008–09 season. This analysis was based on data from the 2006 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in Regulatory Flexibility Act section below). This analysis estimates consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are (1) Issue restrictive regulations allowing fewer days than those issued during the 2007–08 season, (2) Issue moderate regulations allowing more days than those in alternative 1, and (3) Issue liberal regulations identical to the regulations in the 2007–08 season. For the 2008–09 season, we chose alternative 3, with an estimated consumer surplus across all flyways of \$205–\$270 million. For the upcoming 2009–10 season, we again considered these three alternatives and again chose

alternative 3 for ducks. We made minor modifications to the season frameworks for some other species, but these do not significantly change the economic impacts of the rule, which were not quantified for other species. For these reasons, we have not conducted a new Economic Analysis, but the 2008–09 analysis is part of the record for this rule and is available at <http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs> or at <http://www.regulations.gov>.

Regulatory Flexibility Act

The regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, and 2008. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2008 Analysis was based on the 2006 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately \$1.2 billion at small businesses in 2008. Copies of the Analysis are available by writing to the street address indicated under **ADDRESSES** or from our Web site at <http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs> or at <http://www.regulations.gov>.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, it has an annual effect on the economy of \$100 million or more.

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has

approved the information collection requirements of our Migratory Bird Surveys and assigned control number 1018–0023 (expires 2/28/2011). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. A Federal agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, it allows hunters to exercise otherwise unavailable privileges and, therefore, reduces restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, “Government-to-Government Relations

with Native American Tribal Governments” (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally-recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in the April 10 **Federal Register**, we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2009–10 migratory bird hunting season. The resulting proposals were contained in a separate August 11, 2009, proposed rule (74 FR 36870). By virtue of these actions, we have consulted with affected Tribes.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Indian Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from

which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We find that “good cause” exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and therefore, under authority of the Migratory Bird Treaty

Act (July 3, 1918), as amended (16 U.S.C. 703–711), these regulations will take effect immediately upon publication. Accordingly, with each conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State or Territory on those species of migratory birds for which open seasons are now prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: August 20, 2009.

Will Shafroth,

Acting Assistant Secretary for Fish and Wildlife and Parks.

■ For the reasons set out in the preamble, title 50, chapter I, subchapter B, part 20, subpart K of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703–712; Fish and Wildlife Act of 1956, 16 U.S.C. 742 a–j, Public Law 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

BILLING CODE 4310–55–P

-Note - The following annual hunting regulations provided for by §§20.101 through 20.106 and 20.109 of 50 CFR 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

2. Section 20.101 is revised to read as follows:

§20.101 Seasons, limits, and shooting hours for Puerto Rico and the Virgin Islands.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset.

CHECK COMMONWEALTH REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

(a) Puerto Rico

	Season Dates	Limits	
		Bag	Possession
Doves and Pigeons			
Zenaida, white-winged, and mourning doves (1)	Sept. 5-Nov. 2	20	20
Scaly-naped pigeons	Sept. 5-Nov. 2	5	5
Ducks	Nov. 14-Dec. 21 & Jan. 9-Jan. 25	6 6	12 12
Common Moorhens	Nov. 14-Dec. 21 & Jan. 9-Jan. 25	6 6	12 12
Common Snipe	Nov. 14-Dec. 21 & Jan. 9-Jan. 25	8 8	16 16

(1) Not more than 10 Zenaida and 3 mourning doves in the aggregate.

Restrictions: In Puerto Rico, the season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, purple gallinule, American coot, Caribbean coot, white-crowned pigeon, and plain pigeon.

Closed Areas: Closed areas are described in the July 24, 2009 Federal Register (74 FR 36870).

(b) Virgin Islands

	Season Dates	Limits	
		Bag	Possession
Zenaida doves	Sept. 1-Sept. 30	10	10
Ducks	CLOSED		

Restrictions: In the Virgin Islands, the seasons are closed for ground or quail doves, pigeons, ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, and purple gallinule.

Closed Areas: Ruth Cay, just south of St. Croix, is closed to the hunting of migratory game birds.

3. Section 20.102 is revised to read as follows:

§20.102 Seasons, limits, and shooting hours for Alaska.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset. Area descriptions were published in the July 24, 2009 Federal Register (74 FR 36870).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Area Seasons	Dates
North Zone	Sept. 1-Dec. 16
Gulf Coast Zone	Sept. 1-Dec. 16
Southeast Zone	Sept. 16-Dec. 31
Pribilof & Aleutian Islands Zone	Oct. 8-Jan. 22
Kodiak Zone	Oct. 8-Jan. 22

Daily Bag and Possession Limits						
Area	Ducks (1)	Dark Geese (2)(3)(4)	Light Geese (2)	Brant(2)(3)	Common Snipe	Sandhill Cranes (5)
North Zone	10-30	4-8	4-8	2-4	8-16	3-6
Gulf Coast Zone	8-24	4-8	4-8	2-4	8-16	2-4
Southeast Zone	7-21	4-8	4-8	2-4	8-16	2-4
Pribilof and Aleutian Islands Zone	7-21	4-8	4-8	2-4	8-16	2-4
Kodiak Zone	7-21	4-8	4-8	2-4	8-16	2-4

(1) The basic duck bag limits may include no more than 1 canvasback daily, 3 in possession, and may not include sea ducks. In addition to the basic duck limits, sea duck limits of 10 daily, 20 in possession, singly or in the aggregate, including no more than 6 each of either harlequin or long-tailed ducks, are allowed. Special sea duck limits will be available to non-residents, but at lower daily limits than residents, and they may take no more than a possession limit of 20 per season, including no more than 4 each of harlequin and long-tailed ducks, black, surf, and white-winged scoters, and king and common eiders. Sea ducks include scoters, common and king eiders, harlequin ducks, long-tailed ducks, and common and red-breasted mergansers. The season for Steller's and spectacled eiders is closed.

(2) Dark geese include Canada and white-fronted geese. Light geese include snow geese and Ross' geese. Separate limits apply to brant. The season for emperor geese is closed Statewide.

(3) In Units 5 and 6, the taking of Canada geese is only permitted from September 28 through December 16. In the Middleton Island portion of Unit 6, the taking of Canada geese is by special permit only, with a maximum of 10 permits for the season and a daily bag and possession limit of 1. The season shall close if incidental harvest includes 5 dusky Canada geese. In Units 6-B, 6-C, and on Hinchinbrook and Hawkins Islands in Unit 6-D, a special, permit-only Canada goose season may be offered. Hunters must have all harvested geese checked and classified to subspecies. The daily bag limit is 4 daily and 8 in possession. The Canada goose season will close in all of the permit areas if the total dusky goose harvest reaches 40.

(4) In Units 9, 10, 17, and 18, dark goose limits are 6 per day, 12 in possession; however, no more than 2 may be Canada geese in Units 9(E) and 18; and no more than 4 may be Canada geese in Units 9(A-C), 10 (Unimak Island portion), and 17.

(5) In Unit 17, the daily bag limit for sandhill cranes is 2 and the possession limit is 4.

Falconry: The total combined bag and possession limit for migratory game birds taken with the use of a falcon under a falconry permit is 3 per day, 6 in possession, and may not exceed a more restrictive limit for any species listed in this subsection.

Special Tundra Swan Season: In Units 17, 18, 22, and 23, there will be a tundra swan season from September 1 through October 31 with a season limit of 3 tundra swans per hunter. This season is by registration permit only; hunters will be issued 1 permit allowing the take of up to 3 tundra swans. Hunters will be required to file a harvest report after the season is completed. Up to 500 permits may be issued in Unit 18, 300 permits each in Units 22 and 23, and 200 permits in Unit 17.

4. Section 20.103 is revised to read as follows:

§20.103 Seasons, limits, and shooting hours for doves and pigeons.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the July 24, 2009 Federal Register (74 FR 36870).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

(a) Doves

Note: Unless otherwise specified, the seasons listed below are for mourning doves only.

	Season Dates	Bag	Limits Possession
<u>EASTERN MANAGEMENT UNIT</u>			
<u>Alabama (1)</u>			
North Zone			
12 noon to sunset	Sept. 5 only	15	15
½ hour before sunrise to sunset	Sept. 6-Oct. 4 & Oct. 24-Nov. 7 & Dec. 12-Jan. 5	15 15 15	15 15 15
South Zone			
12 noon to sunset	Oct. 3 only	15	15
½ hour before sunrise to sunset	Oct. 4-Nov. 1 & Nov. 26-Nov. 29 & Dec. 5-Jan. 9	15 15 15	15 15 15
<u>Delaware</u>			
	Sept. 1-Sept. 26 & Oct. 19-Oct. 31 & Dec. 10-Jan. 9	15 15 15	30 30 30
<u>Florida (1)</u>			
12 noon to sunset	Oct. 3-Oct. 26	15	30
½ hour before sunrise to sunset	Nov. 14-Nov. 29 & Dec. 12-Jan. 10	15 15	30 30
<u>Georgia (1)</u>			
12 noon to sunset	Sept. 5 only	15	30
½ hour before sunrise to sunset	Sept. 6-Sept. 20 Oct. 10-Oct. 18 & Nov. 26-Jan. 9	15 15 15	30 30 30
<u>Illinois (1) (2)</u>			
	Sept. 1-Oct. 31 & Nov. 7-Nov. 15	15 15	30 30
<u>Indiana (1)</u>			
	Sept. 1-Oct. 18 & Nov. 6-Nov. 27	15 15	30 30
<u>Kentucky (1)</u>			
11 a.m. to sunset	Sept. 1 only	15	30
½ hour before sunrise to sunset	Sept. 2-Oct. 24 & Nov. 26-Dec. 4 & Dec. 26-Jan. 1	15 15 15	30 30 30
<u>Louisiana (1)</u>			
North Zone			
12 noon to sunset	Sept. 5 only	15	30
½ hour before sunrise to sunset	Sept. 6-Sept. 20 & Oct. 10-Nov. 8 & Dec. 12-Jan. 4	15 15 15	30 30 30

	Season Dates	Bag	Limits Possession
<u>Louisiana (cont.)</u>			
South Zone			
12 noon to sunset	Sept. 5 only	15	30
½ hour before sunrise to sunset	Sept. 6-Sept. 13 & Oct. 17-Nov. 29 & Dec. 19-Jan. 4	15 15 15	30 30 30
<u>Maryland (1)</u>			
12 noon to sunset	Sept. 1-Oct. 10	15	30
½ hour before sunrise to sunset	Nov. 14-Nov. 27 & Dec. 18-Jan. 2	15 15	30 30
<u>Mississippi (1)</u>			
North Zone			
	Sept. 5-Sept. 27 & Oct. 10-Nov. 3 & Dec. 25-Jan. 15	15 15 15	30 30 30
South Zone			
	Sept. 5-Sept. 13 & Oct. 10-Nov. 4 & Dec. 12-Jan. 15	15 15 15	30 30 30
<u>North Carolina</u>			
12 noon to sunset	Sept. 5	15	30
½ hour before sunrise to sunset	Sept. 6-Oct. 10 & Nov. 23-Nov. 28 & Dec. 19-Jan. 15	15 15 15	30 30 30
<u>Ohio (1)</u>			
	Sept. 1-Oct. 25 & Dec. 7-Dec. 21	15 15	30 30
<u>Pennsylvania (1)</u>			
12 noon to sunset	Sept. 1-Sept. 26 &	15	30
½ hour before sunrise to sunset	Oct. 24-Nov. 28 & Dec. 26-Jan. 2	15 15	30 30
<u>Rhode Island</u>			
12 noon to sunset	Sept. 19-Oct. 3	12	24
½ hour before sunrise to sunset	Oct. 17-Nov. 15 & Dec. 24-Jan. 7	12 12	24 24
<u>South Carolina</u>			
12 noon to sunset	Sept. 5-Sept. 7	15	30
½ hour before sunrise to sunset	Sept. 8-Oct. 10 & Nov. 21-Nov. 28 & Dec. 21-Jan. 15	15 15 15	30 30 30

	Season Dates	Bag	Limits Possession
<u>Tennessee</u>			
12 noon to sunset	Sept. 1 only	15	30
½ hour before sunrise to sunset	Sept. 2-Sept. 26 & Oct. 10-Oct. 25 & Dec. 19-Jan. 15	15 15 15	30 30 30
<u>Virginia</u>			
12 noon to sunset	Sept. 5-Sept. 26	15	30
½ hour before sunrise to sunset	Oct. 7-Nov. 7 & Dec. 25-Jan. 9	15 15	30 30
<u>West Virginia</u>			
12 noon to sunset	Sept. 1 only	15	30
½ hour before sunrise to sunset	Sept. 2-Oct. 10 & Oct. 26-Nov. 11 & Dec. 21-Jan. 2	15 15 15	30 30 30
<u>Wisconsin</u>			
	Sept. 1-Nov. 9	15	30
<u>CENTRAL MANAGEMENT UNIT</u>			
<u>Arkansas (1)</u>			
	Sept. 5-Oct. 18 & Dec. 5-Dec. 30	15 15	30 30
<u>Colorado (1)</u>			
	Sept. 1-Nov. 9	15	30
<u>Kansas (1)</u>			
	Sept. 1-Oct. 31 & Nov. 7-Nov. 15	15 15	30 30
<u>Minnesota</u>			
	Sept. 1-Oct. 30	15	30
<u>Missouri (1)</u>			
	Sept. 1-Nov. 9	15	30
<u>Montana</u>			
	Sept. 1-Oct. 30	15	30
<u>Nebraska (1)</u>			
	Sept. 1-Oct. 30	15	30
<u>New Mexico (1)</u>			
North Zone	Sept. 1-Nov. 9	15	30
South Zone	Sept. 1-Oct. 9 & Dec. 1-Dec. 31	15 15	30 30
<u>North Dakota</u>			
	Sept. 1-Oct. 30	15	30

	Season Dates	Bag	Limits Possession
<u>Oklahoma (1)</u>			
North Zone	Sept. 1-Nov. 9	15	30
Southwest Zone	Sept. 1-Oct. 31 & Dec. 26-Jan. 3	15 15	30 30
<u>South Dakota</u>	Sept. 1-Oct. 30	15	30
<u>Texas (3)</u>			
North Zone	Sept. 1-Oct. 25 & Dec. 26-Jan. 9	15 15	30 30
Central Zone	Sept. 1-Oct. 25 & Dec. 26-Jan. 9	15 15	30 30
South Zone			
Special Area	Sept. 18-Nov. 3 & Dec. 26-Jan. 13	15 15	30 30
(Special Season)			
12 noon to sunset	Sept. 5-Sept. 6 & Sept. 12-Sept. 13	15 15	30 30
Remainder of the South Zone	Sept. 18-Nov. 3 & Dec. 26-Jan. 17	15 15	30 30
<u>Wyoming</u>	Sept. 1-Oct. 30	15	30
<u>WESTERN MANAGEMENT UNIT</u>			
<u>Arizona (4)</u>	Sept. 1-Sept. 15 & Nov. 20-Jan. 3	10 10	20 20
<u>California (5)</u>	Sept. 1-Sept. 15 & Nov. 7-Dec. 21	10 10	20 20
<u>Idaho</u>	Sept. 1-Sept. 30	10	20
<u>Nevada (5)</u>	Sept. 1-Sept. 30	10	20
<u>Oregon</u>	Sept. 1-Sept. 30	10	20
<u>Utah (5)</u>	Sept. 1-Sept. 30	10	20
<u>Washington</u>	Sept. 1-Sept. 30	10	20
<u>OTHER POPULATIONS</u>			
<u>Hawaii (6)</u>	Nov. 7-Nov. 28 & Dec. 5-Dec. 27 & Jan. 1-Jan. 18	10 10 10	10 10 10

- (1) The daily bag limit is for mourning and white-winged doves in the aggregate.
- (2) In Illinois, shooting hours are sunrise to sunset.
- (3) In Texas, the daily bag limit is either 15 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves with a maximum 70-day season. Possession limits are twice the daily bag limit. During the special season in the Special White-winged Dove Area of the South Zone, the daily bag limit is 15 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 4 may be mourning doves and 2 may be white-tipped doves. Possession limits are twice the daily bag limit.
- (4) In Arizona, during September 1 through 15, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-wing doves. During November 20 through January 3, the daily bag limit is 10 mourning doves. The possession limit is twice the daily bag limit. See State regulations for restrictive shooting hours in certain areas.
- (5) In Utah and the areas of California and Nevada open to white-winged dove hunting, the daily bag limit is 10 and the possession limit is 20 mourning and white-winged doves in the aggregate.
- (6) In Hawaii, the season is only open on the island of Hawaii. The daily bag and possession limits are 10 mourning doves, spotted doves and chestnut-bellied sandgrouse in the aggregate. Shooting hours are from one-half hour before sunrise through one-half hour after sunset. Hunting is permitted only on weekends and State holidays.

(b) Band-tailed Pigeons

	Season Dates	Limits	
		Bag	Possession
<u>Arizona</u> (1)	Sept. 11-Oct. 4	5	10
<u>California</u>			
North Zone	Sept. 19-Sept. 27	2	4
South Zone	Dec. 19-Dec. 27	2	4
<u>Colorado</u>	Sept. 1-Sept. 30	5	10
<u>New Mexico</u> (2)			
North Zone	Sept. 1-Sept. 20	5	10
South Zone	Oct. 1-Oct. 20	5	10
<u>Oregon</u>	Sept. 15-Sept. 23	2	4
<u>Utah</u> (3)	Sept. 1-Sept. 30	5	10
<u>Washington</u>	Sept. 15-Sept. 23	2	4

- (1) See State regulations for additional information and restrictions.
- (2) In New Mexico, each band-tailed pigeon hunter must have a band-tailed pigeon hunting permit issued by the State.

(3) In Utah, each band-tailed pigeon hunter must have either a band-tailed pigeon hunting permit or a special bird permit stamp issued by the State.

5. Section 20.104 is revised to read as follows:

§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the July 24, 2009 Federal Register (74 FR 36870).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-season regulations for further information.

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
Daily bag limit	25 (1)	15 (2)	3	8
Possession limit	25 (1)	30 (2)	6	16

ATLANTIC FLYWAY

<u>Connecticut</u> (3)	Sept. 1-Sept. 4 & Sept. 8-Nov. 12	Sept. 1-Sept. 4 & Sept. 8-Nov. 12	Oct. 30-Nov. 28	Oct. 30-Nov. 28
<u>Delaware</u>	Sept. 4-Nov. 12	Sept. 4-Nov. 12	Nov. 23-Dec. 12 & Dec. 24-Jan. 2	Nov. 23-Dec. 12 & Dec. 24-Jan. 2
<u>Florida</u>	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Dec. 19-Jan. 17	Nov. 1-Feb. 15
<u>Georgia</u>	Sept. 19-Oct. 21 & Oct. 31-Dec. 6	Sept. 19-Oct. 21 & Oct. 31-Dec. 6	Dec. 19-Jan. 17	Nov. 15-Feb. 28
<u>Maine</u>	Sept. 1-Nov. 9	Closed	Oct. 1-Oct. 24 & Oct. 26-Oct. 31	Sept. 1-Dec. 16
<u>Maryland</u> (4)	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Nov. 7-Nov. 27 & Jan. 15-Jan. 23	Sept. 30-Nov. 27 & Dec. 14-Jan. 30
<u>Massachusetts</u> (5)	Sept. 1-Nov. 7	Closed	Deferred	Sept. 1-Dec. 16
<u>New Hampshire</u>	Closed	Closed	Oct. 6-Nov. 4	Sept. 15-Nov. 4
<u>New Jersey</u> (6)				
North Zone	Sept. 1-Nov. 8	Sept. 1-Nov. 8	Oct. 15-Nov. 7	Sept. 18-Jan. 2
South Zone	Sept. 1-Nov. 8	Sept. 1-Nov. 8	Nov. 7-Nov. 28 & Jan. 1-Jan. 2	Sept. 18-Jan. 2

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
<u>New York</u> (7)	Sept. 1-Nov. 9	Closed	Oct. 6-Nov. 4	Sept. 1-Nov. 9
<u>North Carolina</u>	Sept. 5-Nov. 13	Sept. 5-Nov. 13	Jan. 1-Jan. 30	Nov. 13-Feb. 27
<u>Pennsylvania</u> (8)	Sept. 1-Nov. 9	Closed	Oct. 17-Nov. 14	Oct. 17-Nov. 28
<u>Rhode Island</u> (9)	Sept. 5-Nov. 13	Sept. 5-Nov. 13	Nov. 1-Nov. 30	Sept. 5-Nov. 13
<u>South Carolina</u>	Sept. 18-Sept. 23 & Oct. 5-Dec. 7	Sept. 18-Sept. 23 & Oct. 5-Dec. 7	Jan. 2-Jan. 31	Nov. 14-Feb. 28
<u>Vermont</u>	Closed	Closed	Deferred	Deferred
<u>Virginia</u>	Sept. 8-Oct. 3 & Oct. 5-Nov. 17	Sept. 8-Oct. 3 & Oct. 5-Nov. 17	Nov. 7-Nov. 21 & Dec. 26-Jan. 9	Oct. 8-Oct. 12 & Oct. 21-Jan. 30
<u>West Virginia</u>	Sept. 1-Nov. 7	Closed	Oct. 23-Nov. 21	Sept. 1-Dec. 12
<u>MISSISSIPPI FLYWAY</u>				
<u>Alabama</u> (10)	Nov. 27-Jan. 31	Nov. 27-Jan. 31	Dec. 18-Jan. 31	Nov. 14-Feb. 28
<u>Arkansas</u>	Sept. 12-Nov. 20	Closed	Nov. 7-Dec. 21	Nov. 1-Feb. 15
<u>Illinois</u> (11)	Sept. 5-Nov. 13	Closed	Oct. 17-Nov. 30	Sept. 5-Dec. 20
<u>Indiana</u> (12)	Sept. 1-Nov. 9	Closed	Oct. 15-Nov. 28	Sept. 1-Dec. 16
<u>Iowa</u> (13)	Sept. 5-Nov. 13	Closed	Oct. 3-Nov. 16	Sept. 5-Nov. 30
<u>Kentucky</u>	Sept. 1-Nov. 9	Closed	Oct. 17-Nov. 30	Sept. 16-Nov. 1 & Nov. 26-Jan. 24
<u>Louisiana</u> (14)	Sept. 12-Sept. 27	Sept. 12-Sept. 27	Dec. 18-Jan. 31	Deferred
<u>Michigan</u> (15)	Sept. 15-Nov. 14	Closed	Sept. 19-Nov. 2	Sept. 15-Nov. 14
<u>Minnesota</u>	Sept. 1-Nov. 4	Closed	Sept. 19-Nov. 2	Sept. 1-Nov. 4
<u>Mississippi</u>	Sept. 26-Dec. 4	Sept. 26-Dec. 4	Dec. 18-Jan. 31	Nov. 14-Feb. 28
<u>Missouri</u>	Sept. 1-Nov. 9	Closed	Oct. 15-Nov. 28	Sept. 1-Dec. 16
<u>Ohio</u>	Sept. 1-Nov. 9	Closed	Oct. 10-Nov. 23	Sept. 1-Nov. 29 & Dec. 7-Dec. 23
<u>Tennessee</u>	Deferred	Closed	Oct. 24-Dec. 7	Nov. 14-Feb. 28
<u>Wisconsin</u>	Deferred	Closed	Sept. 19-Nov. 2	Deferred

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
<u>CENTRAL FLYWAY</u>				
<u>Colorado</u>	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
<u>Kansas</u>	Sept. 1-Nov. 9	Closed	Oct. 17-Nov. 30	Sept. 1-Dec. 16
<u>Montana</u>	Closed	Closed	Closed	Sept. 1-Dec. 16
<u>Nebraska (16)</u>	Sept. 1-Nov. 9	Closed	Sept. 19-Nov. 2	Sept. 1-Dec. 16
<u>New Mexico (16)</u>	Sept. 19-Nov. 27	Closed	Closed	Oct. 17-Jan. 31
<u>North Dakota</u>	Closed	Closed	Sept. 19-Nov. 2	Sept. 19-Dec. 6
<u>Oklahoma</u>	Sept. 1-Nov. 9	Closed	Nov. 1-Dec. 15	Oct. 1-Jan. 15
<u>South Dakota (17)</u>	Closed	Closed	Closed	Sept. 1-Oct. 31
<u>Texas</u>	Sept. 12-Sept. 27 & Oct. 31-Dec. 23	Sept. 12-Sept. 27 & Oct. 31-Dec. 23	Dec. 18-Jan. 31	Oct. 31-Feb. 14
<u>Wyoming</u>	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
<u>PACIFIC FLYWAY</u>				
<u>Arizona</u>	Closed	Closed	Closed	Deferred
<u>California</u>	Closed	Closed	Closed	Oct. 17-Jan. 31
<u>Colorado</u>	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
<u>Idaho:</u>				
Area 1	Closed	Closed	Closed	Deferred
Area 2	Closed	Closed	Closed	Deferred
<u>Montana</u>	Closed	Closed	Closed	Sept. 1-Dec. 16
<u>Nevada</u>	Closed	Closed	Closed	Deferred
<u>New Mexico (16)</u>	Sept. 19-Nov. 27	Closed	Closed	Oct. 17-Jan. 31
<u>Oregon</u>	Closed	Closed	Closed	Deferred
<u>Utah</u>	Closed	Closed	Closed	Oct. 3-Jan. 16
<u>Washington</u>	Closed	Closed	Closed	Deferred
<u>Wyoming</u>	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16

- (1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these species.
- (2) All bag and possession limits for clapper and king rails apply singly or in the aggregate of the two species and, unless otherwise specified, the limits are in addition to the limits on sora and Virginia rails in all States. In Delaware, the limits for clapper and king rails are 10 daily and 20 in possession. In Connecticut and Maryland, the limits for clapper and king rails are 10 daily and 10 in possession.
- (3) In Connecticut, the daily bag and possession limits may not contain more than 1 king rail. The common snipe daily bag and possession limits are 3 and 6, respectively.
- (4) In Maryland, no more than 1 king rail may be taken per day.
- (5) In Massachusetts, the sora rail limits are 5 daily and 5 in possession; the Virginia rail limits are 10 daily and 10 in possession.
- (6) In New Jersey, the season for king rails is closed by State regulation.
- (7) In New York, the rail daily bag and possession limits are 8 and 16, respectively. Seasons for sora and Virginia rails and common snipe are closed on Long Island.
- (8) In Pennsylvania, the daily bag and possession limits for rails are 3 and 6, respectively.
- (9) In Rhode Island, the sora and Virginia rails limits are 3 daily and 6 in possession, singly or in the aggregate; the clapper and king rail limits are 1 daily and 2 in possession, singly or in the aggregate; the common snipe limits are 5 daily and 10 in possession.
- (10) In Alabama, the rail limits are 15 daily and 15 in possession, singly or in the aggregate.
- (11) In Illinois, shooting hours are from sunrise to sunset.
- (12) In Indiana, the sora rail limits are 25 daily and 25 in possession. The season on Virginia rails is closed.
- (13) In Iowa, the limits for sora and Virginia rails are 12 daily and 24 in possession.
- (14) Additional days occurring after September 30 will be published with the late season selections.
- (15) In Michigan, the aggregate limits for sora and Virginia rails are 8 daily and 16 in possession.
- (16) In Nebraska and New Mexico, the rail limits are 10 daily and 20 in possession.
- (17) In South Dakota, the snipe limits are 5 daily and 15 in possession.

6. Section 20.105 is amended by revising paragraphs (a) through (f) to read as follows:

§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the July 24, 2009 Federal Register (74 FR 36870).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-seasons regulations for further information.

(a) Common Moorhens and Purple Gallinules

	Season Dates	Limits	
		Bag	Possession
<u>ATLANTIC FLYWAY</u>			
<u>Delaware</u>	Sept. 4-Nov. 12	15	30
<u>Florida (1)</u>	Sept. 1-Nov. 9	15	30
<u>Georgia</u>	Deferred	--	-
<u>New Jersey</u>	Sept. 1-Nov. 8	10	20
<u>New York</u>			
Long Island	Closed	--	-
Remainder of State	Sept. 1-Nov. 9	8	16
<u>North Carolina</u>	Sept. 5-Nov. 13	15	30
<u>Pennsylvania</u>	Sept. 1-Nov. 9	3	6
<u>South Carolina</u>	Sept. 18-Sept. 23 & Oct. 5-Dec. 7	15 15	30 30
<u>Virginia</u>	Deferred	--	-
<u>West Virginia</u>	Deferred	--	-
<u>MISSISSIPPI FLYWAY</u>			
<u>Alabama</u>	Nov. 27-Jan. 31	15	15
<u>Arkansas</u>	Sept. 1-Nov. 9	15	30
<u>Kentucky</u>	Sept. 1-Nov. 9	15	30
<u>Louisiana (2)</u>	Sept. 12-Sept. 27	15	30
<u>Michigan</u>	Deferred	--	--
<u>Minnesota</u>	Deferred	--	--
<u>Mississippi</u>	Sept. 26-Dec. 4	15	30
<u>Ohio</u>	Sept. 1-Nov. 9	15	30
<u>Tennessee</u>	Deferred	--	--
<u>Wisconsin</u>	Deferred	--	-

	Season Dates	Limits	
		Bag	Possession
<u>CENTRAL FLYWAY</u>			
<u>New Mexico</u>			
Zone 1	Oct. 3-Dec. 11	1	2
Zone 2	Oct. 3-Dec. 11	1	2
<u>Oklahoma</u>	Sept. 1-Nov. 9	15	30
<u>Texas</u>	Sept. 12-Sept. 27 & Oct. 31-Dec. 23	15 15	30 30
<u>Wyoming</u>	Deferred	--	-
<u>PACIFIC FLYWAY</u>			
All States	Deferred	--	-

(1) The season applies to common moorhens only.

(2) Additional days occurring after September 30 will be published with the late season selections.

(b) Sea Ducks (scoter, eider, and long-tailed ducks in Atlantic Flyway).

Within the special sea duck areas, the daily bag limit is 7 scoter, eider, and long-tailed ducks, singly or in the aggregate, of which no more than 4 may be scoters. Possession limits are twice the daily bag limit. These limits may be in addition to regular duck bag limits only during the regular duck season in the special sea duck hunting areas.

	Season Dates	Limits	
		Bag	Possession
<u>Connecticut</u> (1)	Sept. 22-Jan. 23	5	10
<u>Delaware</u>	Sept. 22-Jan. 23	7	14
<u>Georgia</u>	Deferred	--	--
<u>Maine</u> (2)	Oct. 1-Jan. 31	7	14
<u>Maryland</u>	Deferred	--	--
<u>Massachusetts</u>	Deferred	--	--
<u>New Hampshire</u> (3)	Oct. 1-Jan. 15	7	14
<u>New Jersey</u>	Sept. 24-Jan. 26	7	14

	Season Dates	Limits	
		Bag	Possession
<u>New York</u>	Oct. 17-Jan. 31	7	14
<u>North Carolina</u>	Deferred	--	-
<u>Rhode Island</u>	Oct. 10-Jan. 24	5	10
<u>South Carolina</u>	Deferred	--	--
<u>Virginia</u>	Deferred	--	-

NOTE: Notwithstanding the provisions of this Part 20, the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia and Maryland in those areas described, delineated, and designated in their respective hunting regulations as special sea duck hunting areas.

(1) In Connecticut, the daily bag limit may include no more than 4 long-tailed ducks.

(2) In Maine, the daily bag limit for eiders is 4, and the possession limit is 8.

(3) In New Hampshire, the daily bag limit may include no more than 4 eiders, or 4 long-tailed ducks.

(c) Early (September) Duck Seasons.

Note: Unless otherwise specified, the seasons listed below are for teal only.

	Season Dates	Limits	
		Bag	Possession
<u>ATLANTIC FLYWAY</u>			
<u>Delaware</u> (1)	Sept. 2-Sept. 19	4	8
<u>Florida</u> (2)	Sept. 26-Sept. 30	4	8
<u>Georgia</u>	Sept. 12-Sept. 27	4	8
<u>Maryland</u> (1)(3)	Sept. 16-Sept. 30	4	8
<u>North Carolina</u> (1)	Sept. 12-Sept. 30	4	8
<u>South Carolina</u> (3)	Sept. 15-Sept. 30	4	8
<u>Virginia</u> (1)	Sept. 21-Sept. 30	4	8
<u>MISSISSIPPI FLYWAY</u>			
<u>Alabama</u>	Sept. 5-Sept. 20	4	8
<u>Arkansas</u> (3)	Sept. 12-Sept. 27	4	8

	Season Dates	Limits	
		Bag	Possession
<u>Illinois</u> (3)	Sept. 5-Sept. 20	4	8
<u>Indiana</u> (3)	Sept. 5-Sept. 20	4	8
<u>Iowa</u> (4)			
North Zone	Sept. 19-Sept. 23	--	--
South Zone	Sept. 19-Sept. 23	--	--
<u>Kentucky</u> (2)	Sept. 16-Sept. 20	4	8
<u>Louisiana</u>	Sept. 12-Sept. 27	4	8
<u>Mississippi</u>	Sept. 12-Sept. 27	4	8
<u>Missouri</u> (3)	Sept. 12-Sept. 27	4	8
<u>Ohio</u> (3)	Sept. 5-Sept. 20	4	8
<u>Tennessee</u> (2)	Sept. 12-Sept. 16	4	8
<u>CENTRAL FLYWAY</u>			
<u>Colorado</u> (1)	Sept. 12-Sept. 20	4	8
<u>Kansas</u>			
Low Plains	Sept. 19-Sept. 26	4	8
High Plains	Sept. 12-Sept. 27	4	8
<u>Nebraska</u> (1)			
Low Plains	Sept. 5-Sept. 20	4	8
High Plains	Sept. 5-Sept. 13	4	8
<u>New Mexico</u>	Sept. 19-Sept. 27	4	8
<u>Oklahoma</u>	Sept. 12-Sept. 27	4	8
<u>Texas</u>			
High Plains	Sept. 12-Sept. 27	4	8
Rest of State	Sept. 12-Sept. 27	4	8

(1) Area restrictions. See State regulations.

(2) In Florida, Kentucky, and Tennessee, the daily bag limit is 4 wood ducks and teal in the aggregate, of which no more than 2 may be wood ducks. The possession limit is twice the daily bag limit.

(3) Shooting hours are from sunrise to sunset.

(4) In Iowa, the September season is part of the regular season, and limits will conform to those set for the regular season.

(d) Special Early Canada Goose Seasons.

	Season Dates	Limits	
		Bag	Possession
<u>ATLANTIC FLYWAY</u>			
<u>Connecticut (1)</u>			
North Zone	Sept. 1-Sept. 4 & Sept. 8-Sept. 30	15	30
South Zone	Sept. 15-Sept. 30	15	30
<u>Delaware</u>	Sept. 1-Sept. 25	15	30
<u>Florida</u>	Sept. 5-Sept. 30	5	10
<u>Georgia</u>	Sept. 5-Sept. 27	5	10
<u>Maine</u>			
Northern Zone	Sept. 1-Sept. 25	6	12
Southern Zone	Sept. 1-Sept. 25	8	16
<u>Maryland (1)(2)</u>			
Eastern Unit	Sept. 1-Sept. 15	8	16
Western Unit	Sept. 1-Sept. 25	8	16
<u>Massachusetts</u>			
Central Zone	Sept. 8-Sept. 25	7	14
Coastal Zone	Sept. 8-Sept. 25	7	14
Western Zone	Sept. 8-Sept. 25	7	14
<u>New Hampshire</u>	Sept. 8-Sept. 25	5	10
<u>New Jersey (1)(2)(3)</u>	Sept. 1-Sept. 30	15	30
<u>New York</u>			
Lake Champlain Zone	Sept. 8-Sept. 25	5	10
Northeastern Zone	Sept. 1-Sept. 25	8	16
Western Zone	Sept. 1-Sept. 25	8	16
Southeastern Zone	Sept. 1-Sept. 25	8	16
Long Island Zone	Sept. 8-Sept. 30	8	16
<u>North Carolina (4)(5)</u>	Sept. 1-Sept. 30	15	30
<u>Pennsylvania (1)</u>			
SJBP Zone (6)	Sept. 1-Sept. 25	3	6
Rest of State (7)	Sept. 1-Sept. 25	8	16
<u>Rhode Island</u>	Sept. 1-Sept. 30	15	30
<u>South Carolina</u>			
Early-Season Hunt Unit	Sept. 1-Sept. 30	15	30

	Season Dates	Limits	
		Bag	Possession
<u>Vermont</u>			
Lake Champlain Zone (8)	Sept. 8-Sept. 25	5	10
Interior Vermont Zone	Sept. 8-Sept. 25	5	10
Connecticut River Zone (9)	Sept. 8-Sept. 25	5	10
<u>Virginia</u> (10)	Sept. 1-Sept. 25	10	20
<u>West Virginia</u>	Sept. 1-Sept. 19	5	10
<u>MISSISSIPPI FLYWAY</u>			
<u>Alabama</u>	Sept. 1-Sept. 15	5	10
<u>Arkansas</u>	Sept. 1-Sept. 15	5	10
<u>Illinois</u>			
Northeast Zone	Sept. 1-Sept. 15	5	10
North Zone	Sept. 1-Sept. 15	5	10
Central Zone	Sept. 1-Sept. 15	5	10
South Zone	Sept. 1-Sept. 15	2	4
<u>Indiana</u>	Sept. 1-Sept. 15	5	10
<u>Iowa</u>			
South Goose Zone			
Des Moines Goose Zone	Sept. 1-Sept. 15	5	10
Cedar Rapids/Iowa City Goose Zone	Sept. 1-Sept. 15	5	10
Remainder of South Zone	Closed		
North Goose Zone			
Cedar Falls/Waterloo Zone	Sept. 1-Sept. 15	5	10
Remainder of North Zone	Closed		
<u>Kentucky</u> (11)	Sept. 5-Sept. 13	2	4
<u>Michigan</u>			
Upper Peninsula	Sept. 1-Sept. 10	5	10
Lower Peninsula:			
Huron, Saginaw, and Tuscola Counties	Sept. 1-Sept. 10	5	10
Remainder	Sept. 1-Sept. 15	5	10
<u>Minnesota</u>			
Twin Cities Metro Zone	Sept. 5-Sept. 22	5	10
Southeast Goose Zone	Sept. 5-Sept. 22	5	10
Five Goose Zone	Sept. 5-Sept. 22	5	10
Northwest Goose Zone	Sept. 5-Sept. 22	5	10
<u>Mississippi</u> (12)	Sept. 1-Sept. 15	5	10
<u>Ohio</u> (11)	Sept. 1-Sept. 15	4	8

	Season Dates	Limits	
		Bag	Possession
<u>Tennessee</u>	Sept. 1-Sept. 15	5	10
<u>Wisconsin</u>	Sept. 1-Sept. 15	5	10
<u>CENTRAL FLYWAY</u>			
<u>Nebraska</u> (11)			
Sept. Canada Goose Unit	Sept. 5-Sept. 13	5	10
<u>North Dakota</u>			
Missouri River Zone	Sept. 1-Sept. 7	5	10
Remainder of State	Sept. 1-Sept. 15	5	10
<u>Oklahoma</u>	Sept. 12-Sept. 21	5	10
<u>South Dakota</u> (11)	Sept. 5-Sept. 30	5	10
<u>PACIFIC FLYWAY</u>			
<u>Colorado:</u>	Sept. 1-Sept. 9	3	6
<u>Oregon:</u>			
Northwest Zone	Sept. 5-Sept. 14	5	10
Southwest Zone (13)	Sept. 5-Sept. 14	5	10
East Zone (13)	Sept. 5-Sept. 14	5	10
<u>Washington:</u>			
Mgmt. Area 2B	Sept. 1-Sept. 15	5	10
Mgmt. Areas 1 & 3	Sept. 10-Sept. 15	5	10
Mgmt. Area 4 & 5	Closed	--	--
Mgmt. Area 2A	Sept. 10-Sept. 15	3	6
<u>Wyoming</u>	Sept. 1-Sept. 8	2	4

(1) Shooting hours are one-half hour before sunrise to one-half hour after sunset.

(2) The use of shotguns capable of holding more than 3 shotshells is allowed.

(3) The use of electronic calls is allowed.

(4) In North Carolina, the use of unplugged guns and electronic calls is allowed in that area west of U.S. Highway 17 only.

(5) In North Carolina, shooting hours are one-half hour before sunrise to one-half hour after sunset in that area west of U.S. Highway 17 only.

(6) In Pennsylvania, in the area south of SR 198 from the Ohio state line to intersection of SR 18, SR 18 south to SR 618, SR 618 south to US Route 6, US Route 6 east to US Route 322/SR 18, US Route 322/SR 18 west to intersection of SR 3013, SR 3013 south to the Crawford/Mercer County line, not including the Pymatuning State Park Reservoir and an area to extend 100 yards inland from the shoreline of the reservoir, excluding the area east of SR 3011 (Hartstown Road), the daily bag limit is one goose. The season is closed on State Game Lands 214.

(7) In Pennsylvania, in the area of Lancaster and Lebanon Counties north of the Pennsylvania Turnpike, east of SR 501 to SR 419, south of SR 419 to the Lebanon-Berks County line, west of the Lebanon-Berks County line and the Lancaster-Berks County line to SR 1053, west of SR 1053 to the Pennsylvania Turnpike I-76, the daily bag limit is 1 goose with a possession limit of 2 geese. On State Game Lands No. 46 (Middle Creek Wildlife Mgmt Area), the season is closed.

(8) In Vermont, in Addison County north of Route 125, the daily bag and possession limit is 2 and 4, respectively.

(9) In Vermont, the Connecticut River Zone, set by New Hampshire, is the same as the New Hampshire Inland Zone.

(10) In Virginia, shooting hours are one-half hour before sunrise to one-half hour after sunset from September 1 to September 19, and one-half hour before sunrise to sunset from September 21 to September 25 in the area east of I-95 where the September teal season is open. Shooting hours are one-half hour before sunrise to one-half hour after sunset from September 1 to September 25 in the area west of I-95.

(11) See State regulations for additional information and restrictions.

(12) In Mississippi, the season is closed on Roebuck Lake in Leflore County.

(13) In Oregon, the season is closed in the Southcoast Zone and the Klamath County Zone.

(e) Regular Goose Seasons.

Note: Bag and possession limits will conform to those set for the regular season.

Season Dates

MISSISSIPPI FLYWAY

Michigan (1)

Canada:

North Zone	Sept. 16-Oct. 30
Middle Zone	Deferred
South Zone	Deferred
White-fronted and Brant	Deferred
Light geese	Deferred

Wisconsin

Horicon Zone	Sept. 16-Sept. 30
Collins Zone	Sept. 16-Sept. 30
Exterior Zone	Sept. 19-Sept. 30

(1) In Michigan, season dates for the Muskegon Wastewater, Saginaw County, Allegan County, and Tuscola/Huron Goose Management Units in the South Zone will be established in the late-season regulatory process.

(f) Youth Waterfowl Hunting Days

The following seasons are open only to youth hunters. Youth hunters must be accompanied into the field by an adult at least 18 years of age. This adult cannot duck hunt but may participate in other open seasons.

Definitions

Youth Hunters: Includes youths 15 years of age or younger.

The Atlantic Flyway: Includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

The Mississippi Flyway: Includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

The Central Flyway: Includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

The Pacific Flyway: Includes Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

Note: Bag and possession limits will conform to those set for the regular season unless there is a special season already open (e.g., September Canada goose season), in which case, that season's daily bag limit will prevail.

Season Dates

ATLANTIC FLYWAY

Connecticut

Ducks, mergansers, coots, and geese

Oct. 10 & 12

Delaware

Ducks, geese, brant, mergansers, and coots

Oct. 17

Florida

Deferred

Georgia

Ducks, geese, mergansers, coots, moorhens, and gallinules

Nov. 14 & 15

Maine

Ducks, mergansers, and coots

Sept. 26

Maryland (1)

Ducks, mergansers, coots, and Canada geese

Deferred

Massachusetts

Deferred

New Hampshire

Ducks, geese, mergansers, and coots

Sept. 26 & 27

New Jersey

Ducks, geese, mergansers, coots, moorhens, and gallinules

North Zone

Oct. 3

South Zone

Nov. 6 & 7

Coastal Zone

Oct. 31

Season Dates

New York (2)

Ducks, mergansers, coots, brant, and Canada geese (2)	
Long Island Zone	Nov. 7 & 8
Lake Champlain Zone	Sept. 26 & 27
Northeastern Zone	Sept. 19 & 20
Southeastern Zone	Sept. 19 & 20
Western Zone	Oct. 11 & 12

North Carolina

Deferred

Pennsylvania

Ducks, mergansers, Canada geese, coots, and moorhens	Sept. 19
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Rhode Island

Ducks, mergansers and coots	Oct. 24 & 25
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South Carolina

Deferred

Vermont

Ducks, geese, mergansers and coots	Sept. 26 & 27
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Virginia

Deferred

West Virginia (3)

Ducks, geese, mergansers, coots, moorhens, and gallinules	Sept. 26
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MISSISSIPPI FLYWAY

Alabama

Ducks, mergansers, coots, geese, moorhens, and gallinules	Feb. 6 & 7
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Arkansas

Deferred

Illinois

Deferred

Indiana

Deferred

Iowa

Ducks, geese, mergansers, and coots	
North Zone	Oct. 3 & 4
South Zone	Oct. 3 & 4

Kentucky

Deferred

Louisiana

Deferred

Michigan

Ducks, geese, mergansers, coots, moorhens, and gallinules	Sept. 19 & 20
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	Season Dates
<u>Minnesota</u>	
Ducks, geese, mergansers, coots, moorhens, and gallinules	Sept. 19
<u>Mississippi</u>	Deferred
<u>Missouri</u>	Deferred
<u>Ohio</u>	Deferred
<u>Tennessee</u>	Deferred
<u>Wisconsin</u>	
Ducks, geese, mergansers, coots, moorhens, and gallinules	Sept. 19 & 20
<u>CENTRAL FLYWAY</u>	
<u>Colorado</u>	
Ducks, dark geese, mergansers, and coots	
Mountain/Foothills Zone	Sept. 26 & 27
Eastern Plains Zone	Sept. 26 & 27
<u>Kansas (4)</u>	Deferred
<u>Montana</u>	
Ducks, geese, mergansers, and coots	Sept. 26 & 27
<u>Nebraska (5)</u>	
Ducks, geese, mergansers, and coots	Sept. 26 & 27
<u>New Mexico</u>	
Ducks, mergansers, coots, and moorhens	
North Zone	Oct. 3 & 4
South Zone	Oct. 17 & 18
<u>North Dakota</u>	
Ducks, geese, mergansers, and coots	Sept. 19 & 20
<u>Oklahoma</u>	Deferred
<u>South Dakota (6)</u>	
Ducks, Canada geese, mergansers, and coots	Sept. 19 & 20
<u>Texas</u>	Deferred
<u>Wyoming</u>	
Ducks, geese, mergansers, and coots	
Zone 1	Sept. 26 & 27
Zone 2	Sept. 19 & 20

Season Dates

PACIFIC FLYWAY

Arizona

Deferred

California

Ducks, geese, mergansers, coots, moorhens, and gallinules

Northeastern Zone

Sept. 26 & 27

Colorado River Zone

Deferred

Southern Zone

Deferred

Southern San Joaquin Valley Zone

Deferred

Balance-of-State Zone

Deferred

Colorado

Ducks, geese, mergansers, and coots

Oct. 17 & 18

Idaho

Ducks, Canada geese, mergansers, coots, moorhens, and gallinules

Sept. 26 & 27

Montana

Ducks, geese, mergansers, and coots

Sept. 26 & 27

Nevada

Deferred

New Mexico

Ducks, mergansers, moorhens, and coots

Oct. 10 & 11

Oregon (7)

Ducks, Canada geese, mergansers, coots, moorhens, and gallinules

Sept. 26 & 27

Utah

Ducks, geese, mergansers, coots, moorhens, and gallinules

Sept. 19

Washington

Ducks, Canada geese, mergansers, and coots

Sept. 26 & 27

Wyoming

Ducks, dark geese, mergansers, and coots

Sept. 19 & 20

(1) In Maryland, the accompanying adult must be at least 21 years of age and possess a valid Maryland hunting license (or be exempt from the license requirement). This accompanying adult may not shoot or possess a firearm.

(2) In New York, the daily bag limit for Canada geese is 2.

(3) In West Virginia, the accompanying adult must be at least 21 years of age.

(4) In Kansas, the adult accompanying the youth must possess any licenses and/or stamps required by law for that individual to hunt waterfowl.

(5) In Nebraska, see State regulations for additional information on the daily bag limit.

(6) In South Dakota, the limit for Canada geese is 3, except in areas where the Special Early Canada goose season is open. In those areas, the limit is the same as for that special season.

(7) In Oregon, the Canada goose season is closed for the youth hunt in the Northwest Special Permit Goose Zone and the Northwest General Zone.

7. Section 20.106 is revised to read as follows:

§20.106 Seasons, limits, and shooting hours for sandhill cranes.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting and Hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the July 24, 2009 Federal Register (74 FR 36870).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-season regulations for further information.

	Season Dates	Limits	
		Bag	Possession
<u>CENTRAL FLYWAY</u>			
<u>Colorado</u> (1)	Oct. 3-Nov. 29	3	6
<u>Kansas</u> (1)(2)(3)	Nov. 11-Jan. 7	3	6
<u>Montana</u>			
Regular Season Area (1)	Sept. 26-Nov. 22	3	6
Special Season Area (4)	Sept. 5-Sept. 20		2 per season
<u>New Mexico</u>			
Regular Season Area (1)	Oct. 31-Jan. 31	3	6
Middle Rio Grande Valley Area (4)(5)			
	Oct. 31-Nov. 1 &	3	6
	Nov. 14 &	3	6
	Nov. 21-Nov. 22 &	3	6
	Dec. 5-Dec. 6 &	3	6
	Jan. 9-Jan. 10	3	6
Southwest Area (4)	Oct. 31-Nov. 8 &	3	6
	Jan. 2-Jan. 3	3	6
Estancia Valley (4)	Oct. 31-Nov. 8	3	6

	Season Dates	Bag	Limits	
				Possession
<u>North Dakota</u> (1)				
Area 1	Sept. 19-Nov. 15	3		6
Area 2	Sept. 19-Oct. 25	2		4
<u>Oklahoma</u> (1)				
	Deferred	--		-
<u>South Dakota</u> (1)				
	Sept. 26-Nov. 22	3		6
<u>Texas</u> (1)				
	Deferred	--		-
<u>Wyoming</u>				
Regular Season (Area 7) (1)	Sept. 19-Nov. 15	3		6
Riverton-Boysen Unit (Area 4) (4)	Sept. 19-Oct. 9		1 per season	
Big Horn and Park Counties (Area 6) (4)	Sept. 19-Oct. 4		1 per season	
<u>PACIFIC FLYWAY</u>				
<u>Arizona</u> (4)				
	Nov. 13-Nov. 15 &		3 per season	
	Nov. 21-Nov. 23 &		3 per season	
	Nov. 25-Nov. 27 &		3 per season	
	Nov. 29-Dec. 1 &		3 per season	
	Dec. 3-Dec. 5 &		3 per season	
	Dec. 11-Dec. 13		3 per season	
<u>Idaho</u> (4)				
Area 1	Sept. 1-Sept. 30	2		9 per season
Areas 2-5	Sept. 1-Sept. 15	2		9 per season
<u>Montana</u>				
Special Season Area (4)	Sept. 5-Sept. 20		2 per season	
<u>Utah</u> (4)				
Rich County	Sept. 5-Sept. 13		1 per season	
Cache County	Sept. 5-Sept. 13		1 per season	
Eastern Box Elder County	Sept. 5-Sept. 13		1 per season	
Uintah County	Sept. 19-Sept. 27		1 per season	
<u>Wyoming</u> (4)				
Bear River Area (Area 1)	Sept. 1-Sept. 8		1 per season	
Salt River Area (Area 2)	Sept. 1-Sept. 8		1 per season	
Eden-Farson Area (Area 3)	Sept. 1-Sept. 8		1 per season	
Uinta County (Area 5)	Sept. 1-Sept. 8		1 per season	

- (1) Each person participating in the regular sandhill crane seasons must have a valid sandhill crane hunting permit and/or a State-issued Harvest Information Survey Program (HIP) certification for game bird hunting in their possession while hunting.
- (2) In Kansas, shooting hours are from one-half hour after sunrise until 2:00 p.m through November 30, and from sunrise until 2:00 p.m. December 1 through the close of the season.
- (3) In Kansas, each person desiring to hunt sandhill cranes in Kansas is required to pass an annual, on-line sandhill crane identification examination.
- (4) Hunting is by State permit only. See State regulations for further information.
- (5) In New Mexico, in the Middle Rio Grande Valley Area, the season is only open for youth hunters on November 14. See State regulations for further details.

8. Section 20.109 is revised to read as follows:

§20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the July 24, 2009 Federal Register (74 FR 36870). For those extended seasons for ducks, mergansers, and coots, area descriptions were published in an August 13, 2009 Federal Register (74 FR 41008) and will be published again in a late-September 2009 Federal Register.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Daily bag limit 3 migratory birds, singly or in the aggregate.

Possession limit 6 migratory birds, singly or in the aggregate.

These limits apply to falconry during both regular hunting seasons and extended falconry seasons -- unless further restricted by State regulations. The falconry bag and possession limits are not in addition to regular season limits. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas. Only extended falconry seasons are shown below. Many States permit falconry during the gun seasons. Please consult State regulations for details.

For ducks, mergansers, coots, geese, and some moorhen seasons; additional season days occurring after September 30 will be published with the late-season selections. Some States have deferred selections. Consult late-season regulations for further information.

Extended Falconry Dates

ATLANTIC FLYWAY

Delaware

Mourning doves	Sept. 28-Oct. 17 & Jan. 21-Feb. 6
Rail	Nov. 13-Dec. 19
Woodcock	Sept. 28-Oct. 8 & Jan. 4-Mar. 10
Snipe	Sept. 28-Oct. 8 & Jan. 4-Mar. 10

Florida

Doves	Oct. 27-Nov. 13 & Nov. 30-Dec. 11 & Jan. 11-Jan. 17
Rails	Nov. 10-Dec. 16
Woodcock	Nov. 24-Dec. 18 & Jan. 18-Mar. 10
Common moorhens	Nov. 10-Dec. 14

Georgia

Moorhens, gallinules, and sea ducks	Nov. 30-Dec. 11 & Feb. 1-Feb. 12
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Maryland

Doves	Oct. 11-Oct. 31 & Jan. 3- Jan. 18
Rails	Nov. 10-Dec. 16
Woodcock	Oct. 1-Oct. 31 & Jan. 24-Mar. 10

North Carolina

Mourning doves	Oct. 17-Nov. 21
Rails	Nov. 21-Dec. 26
Woodcock	Nov. 14-Dec. 31 & Feb. 1-Feb. 27

Extended Falconry Dates

North Carolina (cont.)

Common moorhens Nov. 21-Dec. 26

Pennsylvania

Doves Sept. 28-Oct. 23 &
Nov. 30-Dec. 10

Rails Nov. 10-Dec. 16

Woodcock Sept. 1-Oct. 16 &
Nov. 16-Dec. 17

Snipe Sept. 1-Oct. 16 &
Nov. 30-Dec. 17

Moorhens and gallinules Nov. 10-Dec. 16

Virginia

Mourning Doves Sept. 27-Oct. 6 &
Nov. 28-Dec. 24

Woodcock Oct. 16-Nov. 6 &
Nov. 22-Dec. 25 &
Jan. 10-Jan. 30

Rails Nov. 18-Dec. 23

MISSISSIPPI FLYWAYIllinois

Doves Nov. 1-Nov. 6 &
Nov. 16-Dec. 16

Rails Sept. 1-Sept. 4 &
Nov. 14-Dec. 16

Woodcock Sept. 1-Oct. 16 &
Dec. 1-Dec. 16

Indiana

Doves Oct. 19-Nov. 5 &
Jan. 1-Jan. 19

Woodcock Sept. 20-Oct. 14 &
Nov. 29-Jan. 4

Extended Falconry Dates

Indiana (cont.)

Ducks, mergansers, and coots (1)
North Zone Sept. 27-Sept. 30

Louisiana

Doves Sept. 21-Oct. 6

Woodcock Oct. 28-Dec. 17 &
Feb. 1-Feb. 11

Minnesota

Woodcock Sept. 1-Sept. 18 &
Nov. 3-Dec. 16

Rails and snipe Nov. 5-Dec. 16

Missouri

Mourning and white-winged doves Nov. 10-Dec. 16

Ohio

Ducks Sept. 1-Sept. 16

Canada geese Sept. 1-Sept. 15

Tennessee

Mourning doves Sept. 27-Oct. 9 &
Oct. 26-Nov. 18

Ducks (1) Sept. 17-Oct. 22

Wisconsin

Rails, snipe, moorhens, and gallinules (1) Sept. 1-Sept. 25

Woodcock Sept. 1-Sept. 18

Ducks, mergansers, and coots Sept. 19-Sept. 20

CENTRAL FLYWAY

Montana (2)

Ducks, mergansers, and coots (1) Sept. 23-Sept. 30

Extended Falconry Dates

Nebraska

Ducks, mergansers, and coots

High Plains

Sept. 5-Sept. 13 &

Sept. 26-Sept. 27

Low Plains

Sept. 1-Sept. 30

New Mexico

Doves

North Zone

Nov. 10-Nov. 12 &

Nov. 28-Dec. 31

South Zone

Oct. 10-Nov. 12 &

Nov. 28-Nov. 30

Band-tailed pigeons

North Zone

Sept. 21-Dec. 16

South Zone

Oct. 21-Jan. 15

Ducks and coots

Sept. 19-Sept. 27

Sandhill cranes

Regular Season Area

Oct. 17-Oct. 30

Estancia Valley Area

Nov. 9-Dec. 29

Common moorhens

Dec. 12-Jan. 17

Sora and Virginia rails

Nov. 28-Jan. 3

North Dakota

Ducks, mergansers, and coots

Sept. 7-Sept. 11 &

Sept. 14-Sept. 18

Snipe

Sept. 7-Sept. 11 &

Sept. 14-Sept. 18

South Dakota

Ducks, mergansers, and coots (1)

High Plains

Sept. 4-Sept. 11

Low Plains

North Zone

Sept. 4-Sept. 18 &

Sept. 21-Sept. 25

Middle Zone

Sept. 4-Sept. 18 &

Sept. 21-Sept. 25

South Zone

Sept. 4-Sept. 18 &

Sept. 21-Sept. 30

Extended Falconry Dates

Texas

Doves	Nov. 19-Dec. 25
Rails and gallinules	Dec. 26-Jan. 31
Woodcock	Nov. 24-Dec. 17

Wyoming

Rails	Nov. 10-Dec. 16
Ducks, mergansers, and coots (1)	
Zone 1	Sept. 26-Sept. 27 & Oct. 21-Oct. 26
Zone 2	Sept. 19-Sept. 20 & Oct. 21-Oct. 28

PACIFIC FLYWAY

Arizona

Doves	Sept. 16-Nov. 1
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New Mexico

Doves	
North Zone	Nov. 10-Nov. 12 & Nov. 28-Dec. 31
South Zone	Oct. 10-Nov. 12 & Nov. 28-Dec. 31
Band-tailed pigeons	
North Zone	Sept. 21-Dec. 16
South Zone	Oct. 21-Jan. 15

Oregon

Mourning doves	Oct. 1-Dec. 16
Band-tailed pigeons (3)	Sept. 1-Sept. 14 & Sept. 24-Dec. 16

Utah

Doves and band-tailed pigeons	Oct. 1-Dec. 16
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Extended Falconry Dates

Washington

Mourning doves

Oct. 1-Dec. 16

Wyoming

Rails

Nov. 10-Dec. 16

Ducks, mergansers,
and coots (1)

Sept. 19-Sept. 20

- (1) Additional days occurring after September 30 will be published with the late-season selections.
- (2) In Montana, the bag limit is 2 and the possession limit is 6.
- (3) In Oregon, no more than 1 pigeon daily in bag or possession.

[FR Doc. E9-20739 Filed 8-28-09; 8:45 am]

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Federal Register

**Monday,
August 31, 2009**

Part VI

Department of Homeland Security

6 CFR Part 5

**Privacy Act of 1974: Implementation of
Exemptions; Final Rules**

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS-2009-0057]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security U.S. Customs and Border Protection—009 Electronic System for Travel Authorization System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a Department of Homeland Security U.S. Customs and Border Protection system of records entitled the "Department of Homeland Security U.S. Customs and Border Protection—009 Electronic System for Travel Authorization System of Records" from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the Department of Homeland Security U.S. Customs and Border Protection—009 Electronic System for Travel Authorization system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective August 31, 2009.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Laurence E. Castelli (202-325-0280), Chief, Privacy Act Policy and Procedures Branch, U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Mint Annex, 799 Ninth Street, NW., Washington, DC 20001-4501. For privacy issues contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 32657, June 10, 2008, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/U.S. Customs and Border Protection (CBP)—009 Electronic System for Travel Authorization system.

The DHS/CBP—009 Electronic System for Travel Authorization system of records notice was published concurrently in the **Federal Register**, 73 FR 32720, June 10, 2008, and comments were invited on both the notice of proposed rulemaking and system of records notice. No comments were received.

Public Comments

DHS received no comments on the notice of proposed rulemaking or the system of records notice. DHS will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information, Privacy.

For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: Public Law 107-296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to Part 5, Exemption of Record Systems under the Privacy Act, the following new paragraph "20":

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

20. The DHS/CBP—009 Electronic System for Travel Authorization system of records consists of electronic and paper records and will be used by DHS and its Components. The DHS/CBP—009 Electronic System for Travel Authorization system is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: The enforcement of civil and criminal laws; investigations, inquiries, and proceedings thereunder; and national security and intelligence activities. The DHS/CBP—009 Electronic System for Travel Authorization system contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3), (e)(8), and (g) pursuant to 5 U.S.C. 552a(j)(2), and (k)(2). Further, no exemption shall be asserted with respect to information maintained in the system as it relates to data submitted by or on behalf of a person who travels to visit the United States and crosses the border, nor shall an exemption be asserted with respect to the

resulting determination (approval or denial). After conferring with the appropriate component or agency, DHS may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement purposes of the systems from which the information is recompiled or in which it is contained. Exemptions from the above particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, when information in this system of records may impede a law enforcement or national security investigation:

(a) From subsection (c)(3) (Accounting for Disclosure) because making available to a record subject the accounting of disclosures from records concerning him or her would specifically reveal any investigative interest in the individual. Revealing this information could reasonably be expected to compromise ongoing efforts to investigate a violation of U.S. law, including investigations of a known or suspected terrorist, by notifying the record subject that he or she is under investigation. This information could also permit the record subject to take measures to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid or impede the investigation.

(b) From subsection (e)(8) (Notice on Individuals) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on DHS and other agencies and could alert the subjects of counterterrorism or law enforcement investigations to the fact of those investigations when not previously known.

(c) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: August 20, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9-20744 Filed 8-28-09; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS-2009-0059]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security U.S. Customs and Border Protection—010 Persons Engaged in International Trade in Customs and Border Protection Licensed/Regulated Activities System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend

its regulations to exempt portions of a Department of Homeland Security U.S. Customs and Border Protection system of records entitled the "Department of Homeland Security U.S. Customs and Border Protection—010 Persons Engaged in International Trade in Customs and Border Protection Licensed/Regulated Activities System of Records" from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the DHS/CBP—010 Persons Engaged in International Trade in Customs and Border Protection Licensed/Regulated Activities system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective August 31, 2009.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Laurence E. Castelli (202–325–0280), Chief, Privacy Act Policy and Procedures Branch, U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Mint Annex, 799 Ninth Street, NW., Washington, DC 20001–4501. For privacy issues contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 77541, December 19, 2008, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/U.S. Customs and Border Protection (CBP)—010 Persons Engaged in International Trade in CBP Licensed/Regulated Activities system. The DHS/CBP—010 Persons Engaged in International Trade in CBP Licensed/Regulated Activities system of records notice was published concurrently in the **Federal Register**, 73 FR 77753, December 19, 2008, and comments were invited on both the notice of proposed rulemaking and system of records notice. No comments were received.

Public Comments

DHS received no comments on the notice of proposed rulemaking or the system of records notice. DHS will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: Public Law 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to Part 5, Exemption of Record Systems under the Privacy Act, the following new paragraph "21":

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

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21. The DHS/CBP—010 Persons Engaged in International Trade in CBP Licensed/Regulated Activities system of records consists of electronic and paper records and will be used by DHS and its components. The DHS/CBP—010 Persons Engaged in International Trade in CBP Licensed/Regulated Activities is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: The enforcement of civil and criminal laws; investigations, inquiries, and proceedings thereunder; and national security and intelligence activities. The DHS/CBP—010 Persons Engaged in International Trade in CBP Licensed/Regulated Activities contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f), and (g) pursuant to 5 U.S.C. 552a(j)(2). Additionally, the Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) pursuant to 5 U.S.C. 552a(k)(2). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual

who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to national security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise investigations by: Revealing the existence of an otherwise confidential investigation and thereby provide an opportunity for the subject of an investigation to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative efforts; reveal the identity of witnesses in investigations, thereby providing an opportunity for the subjects of the investigations or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or reveal the identity of confidential informants, which would negatively affect the informant's usefulness in any ongoing or future investigations and discourage members of the public from cooperating as confidential informants in any future investigations.

(f) From subsections (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish

requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's: Refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant, timely and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Dated: August 20, 2009.

Mary Ellen Callahan,
Chief Privacy Officer, Department of
Homeland Security.

[FR Doc. E9-20745 Filed 8-28-09; 8:45 am]

BILLING CODE 9110-06-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS-2009-0061]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security U.S. Customs and Border Protection—011 TECS System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of Department of Homeland Security U.S. Customs and Border Protection system

of records entitled the "Department of Homeland Security U.S. Customs and Border Protection—011 TECS System of Records" from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the Department of Homeland Security U.S. Customs and Border Protection—011 TECS system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective August 31, 2009.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Laurence E. Castelli (202-325-0280), Chief, Privacy Act Policy and Procedures Branch, U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Mint Annex, 799 Ninth Street, NW., Washington, DC 20001-4501. For privacy issues contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 77537, December 19, 2008, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/U.S. Customs and Border Protection (CBP)—011 TECS system. The DHS/CBP—011 TECS system of records notice was published concurrently in the **Federal Register**, 73 FR 77778, December 19, 2008, and comments were invited on both the notice of proposed rulemaking and system of records notice. No comments were received.

Public Comments

DHS received no comments on the notice of proposed rulemaking or the system of records notice. DHS will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: Public Law 107-296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to Part 5, Exemption of Record Systems under the Privacy Act, the following new paragraph "22":

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

22. The DHS/CBP—011 TECS system of records consists of electronic and paper records and will be used by DHS, its Components, and other Federal agencies. The DHS/CBP—011 TECS is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: The enforcement of civil and criminal laws; investigations, inquiries, and proceedings thereunder; and national security and intelligence activities. The DHS/CBP—011 TECS contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, Tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f), and (g) pursuant to 5 U.S.C. 552a(j)(2). Additionally, the Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) pursuant to 5 U.S.C. 552a(k)(2). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to

impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to national security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation or subject of interest would alert the subject to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities or national security matter.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise investigations by: Revealing the existence of an otherwise confidential investigation and thereby provide an opportunity for the subject of an investigation to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative efforts; reveal the identity of witnesses in investigations, thereby providing an opportunity for the subjects of the investigations or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or reveal the identity of confidential informants, which would negatively affect the informant's usefulness in any ongoing or future investigations and discourage members of the public from cooperating as confidential informants in any future investigations.

(f) From subsections (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it

is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's: Refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant, timely and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Dated: August 20, 2009.

Mary Ellen Callahan,
Chief Privacy Officer, Department of
Homeland Security.

[FR Doc. E9-20765 Filed 8-28-09; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS-2009-0056]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security U.S. Customs and Border Protection—012 Closed Circuit Television System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a Department of Homeland Security U.S. Customs and Border Protection system of records entitled the "Department of Homeland Security U.S. Customs and Border Protection—012 Closed Circuit Television System of Records" from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the Department of Homeland Security U.S. Customs and Border Protection—012 Closed Circuit Television system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective August 31, 2009.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Laurence E. Castelli (202-325-0280), Chief, Privacy Act Policy and Procedures Branch, U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Mint Annex, 799 Ninth Street, NW., Washington, DC 20001-4501. For privacy issues contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 77539, December 19, 2008, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/U.S. Customs and Border Protection (CBP)—012 Closed Circuit Television system. The DHS/CBP—012 Closed Circuit Television system of records notice was published concurrently in the **Federal Register**, 73 FR 77799, December 19, 2008, and comments were invited on both the notice of proposed rulemaking and system of records notice. No comments were received.

Public Comments

DHS received no comments on the notice of proposed rulemaking or the system of records notice. DHS will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: Public Law 107-296, 116 Stat. 2135, 6 U.S.C. 101 et seq.; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to Part 5, Exemption of Record Systems under the Privacy Act, the following new paragraph "23":

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

23. The DHS/CBP—012 Closed Circuit Television system of records consists of electronic and paper records and will be used by DHS and its components. The DHS/CBP—012 Closed Circuit Television system is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: The enforcement of civil and criminal laws; investigations, inquiries, and proceedings thereunder; and national security and intelligence activities. The DHS/CBP—012 Closed Circuit Television system contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f), and (g) pursuant to 5 U.S.C. 552a(j)(2). Additionally, the Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) pursuant to 5 U.S.C. 552a(k)(2). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise investigations by: Revealing the existence of an otherwise confidential investigation and thereby provide an opportunity for the subject of an investigation to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative efforts; reveal the identity of witnesses in investigations, thereby providing an opportunity for the subjects of the investigations or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or reveal the identity of confidential informants, which would negatively affect the informant's usefulness in any ongoing or future investigations and discourage members of the public from cooperating as confidential informants in any future investigations.

(f) From subsections (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of

investigative techniques, procedures, and evidence.

(i) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's: Refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant, timely and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Dated: August 20, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9-20754 Filed 8-28-09; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS-2009-0054]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security U.S. Customs and Border Protection—013 Seized Assets and Case Tracking System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a Department of Homeland Security U.S. Customs and Border Protection system of records entitled the "Department of Homeland Security U.S. Customs and Border Protection—013 Seized Assets and Case Tracking System of Records" from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the Department of Homeland Security U.S. Customs and Border Protection—013 Seized Assets and Case Tracking System of Records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective August 31, 2009.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Laurence E. Castelli (202-325-0280), Chief, Privacy Act Policy and Procedures Branch, U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Mint Annex, 799 Ninth Street,

NW., Washington, DC 20001-4501. For privacy issues contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 77546, December 19, 2008, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the Department of Homeland Security U.S. Customs and Border Protection (CBP)—013 Seized Assets and Case Tracking system. The DHS/CBP—013 Seized Assets and Case Tracking system of records notice was published concurrently in the **Federal Register**, 73 FR 77764, December 19, 2008, and comments were invited on both the notice of proposed rulemaking and system of records notice. No comments were received.

Public Comments

DHS received no comments on the notice of proposed rulemaking or the system of records notice. DHS will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: Public Law 107-296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to Part 5, Exemption of Record Systems under the Privacy Act, the following new paragraph “24”:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

24. The DHS/CBP—013 Seized Assets and Case Tracking System (SEACATS) consists of electronic and paper records and will be used by DHS and its components. The DHS/CBP—013 Seized Assets and Case Tracking System is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: The enforcement of civil and criminal laws; investigations, inquiries, and

proceedings thereunder; and national security and intelligence activities. The DHS/CBP—013 Seized Assets and Case Tracking System contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f), and (g) pursuant to 5 U.S.C. 552a(j)(2). Additionally, the Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (I), and (f) pursuant to 5 U.S.C. 552a(k)(2). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to national security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may

aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise investigations by: Revealing the existence of an otherwise confidential investigation and thereby provide an opportunity for the subject of an investigation to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative efforts; reveal the identity of witnesses in investigations, thereby providing an opportunity for the subjects of the investigations or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or reveal the identity of confidential informants, which would negatively affect the informant's usefulness in any ongoing or future investigations and discourage members of the public from cooperating as confidential informants in any future investigations.

(f) From subsections (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude the officers and agents of DHS components' from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's:

Refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant timely and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Dated: August 20, 2009.

Mary Ellen Callahan,
Chief Privacy Officer, Department of
Homeland Security.

[FR Doc. E9-20753 Filed 8-28-09; 8:45 am]

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**DEPARTMENT OF HOMELAND
SECURITY**

Office of the Secretary

6 CFR Part 5

[Docket No. DHS-2009-0060]

**Privacy Act of 1974: Implementation of
Exemptions; Department of Homeland
Security U.S. Customs and Border
Protection—014 Regulatory Audit
Archive System of Records**

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a Department of Homeland Security U.S. Customs and Border Protection system of records entitled the "Department of Homeland Security U.S. Customs and Border Protection—014 Regulatory Audit Archive System of Records" from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the Department of Homeland Security U.S. Customs and Border Protection—014 Regulatory Audit Archive system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective August 31, 2009.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Laurence E. Castelli (202-325-0280), Chief, Privacy Act Policy and Procedures Branch, U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Mint Annex, 799 Ninth Street, NW., Washington, DC 20001-4501. For privacy issues contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 77536, December 19, 2008, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/U.S. Customs and Border Protection (CBP)—014 Regulatory Audit Archive system. The DHS/CBP—014 Regulatory Audit Archive system of records notice was published concurrently in the **Federal Register**, 73 FR 77807, December 19, 2008, and comments were invited on both the notice of proposed rulemaking and system of records notice. No comments were received.

Public Comments

DHS received no comments on the notice of proposed rulemaking or the system of records notice. DHS will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

**PART 5—DISCLOSURE OF RECORDS
AND INFORMATION**

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: Public Law 107-296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to Part 5, Exemption of Record Systems under the Privacy Act, the following new paragraph "25":

**Appendix C to Part 5—DHS Systems of
Records Exempt From the Privacy Act**

* * * * *

25. The DHS/CBP—014 Regulatory Audit Archive system of records consists of electronic and paper records and will be used by DHS and its components. The DHS/CBP—014 Regulatory Audit Archive system is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: The enforcement of civil and criminal laws; investigations, inquiries, and proceedings thereunder; and national security and intelligence activities. The DHS/CBP—014 Regulatory Audit Archive system contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies. The Secretary of Homeland

Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) pursuant to 5 U.S.C. 552a(k)(2). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses,

and potential witnesses, and confidential informants.

Dated: August 20, 2009.

Mary Ellen Callahan,
Chief Privacy Officer, Department of
Homeland Security.

[FR Doc. E9-20751 Filed 8-28-09; 8:45 am]

BILLING CODE 9110-06-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS-2009-0051]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security U.S. Customs and Border Protection—015 Automated Commercial System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a Department of Homeland Security U.S. Customs and Border Protection system of records entitled the "Department of Homeland Security U.S. Customs and Border Protection—015 Automated Commercial System of Records" from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the Department of Homeland Security U.S. Customs and Border Protection—015 Automated Commercial System from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective August 31, 2009.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Laurence E. Castelli (202-325-0280), Chief, Privacy Act Policy and Procedures Branch, U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Mint Annex, 799 Ninth Street, NW., Washington, DC 20001-4501. For privacy issues contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 77548, December 19,

2008, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/U.S. Customs and Border Protection (CBP)—015 Automated Commercial System. The DHS/CBP Automated Commercial System of records notice was published concurrently in the **Federal Register**, 73 FR 77759, December 19, 2008, and comments were invited on both the notice of proposed rulemaking and system of records notice. No comments were received.

Public Comments

DHS received no comments on the notice of proposed rulemaking or the system of records notice. DHS will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information, Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: Public Law 107-296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552.

■ 2. At the end of Appendix C to Part 5, add the following new paragraph "26":

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

26. The DHS/CBP—015 Automated Commercial System (ACS) system of records consists of electronic and paper records and will be used by DHS and its Components. The DHS/CBP—015 Automated Commercial System is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: The enforcement of civil and criminal laws; investigations, inquiries, and proceedings thereunder; and national security and intelligence activities. The DHS/CBP—015 Automated Commercial System contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3), (e)(8), and (g) pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). Further, no exemption shall be asserted with respect to information maintained in the system as it relates to data submitted by or on behalf of a person who

travels to visit the United States and crosses the border, nor shall an exemption be asserted with respect to the resulting determination (approval or denial). After conferring with the appropriate component or agency, DHS may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement purposes of the systems from which the information is recompiled or in which it is contained. Exemptions from the above particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, when information in this system of records may impede a law enforcement or national security investigation:

(a) From subsection (c)(3) (Accounting for Disclosure) because making available to a record subject the accounting of disclosures from records concerning him or her would specifically reveal any investigative interest in the individual. Revealing this information could reasonably be expected to compromise ongoing efforts to investigate a violation of U.S. law, including investigations of a known or suspected terrorist, by notifying the record subject that he or she is under investigation. This information could also permit the record subject to take measures to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid or impede the investigation.

(b) From subsection (e)(8) (Notice on Individuals) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on DHS and other agencies and could alert the subjects of counterterrorism or law enforcement investigations to the fact of those investigations when not previously known.

(c) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: August 20, 2009.

Mary Ellen Callahan,
Chief Privacy Officer, Department of
Homeland Security.

[FR Doc. E9-20780 Filed 8-28-09; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS-2009-0058]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security U.S. Customs and Border Protection—016 Nonimmigrant Information System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend

its regulations to exempt portions of a Department of Homeland Security U.S. Customs and Border Protection system of records entitled the "Department of Homeland Security U.S. Customs and Border Protection—016 Nonimmigrant Information System of Records" from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the Department of Homeland Security U.S. Customs and Border Protection—016 Nonimmigrant Information system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

Additionally, two administrative errors were made at the time of publishing and are corrected through this final rule. Two systems of records notices were issued the same system of records notice number. Both U.S. Customs and Border Protection system of records notices Nonimmigrant Information system of records and Electronic System for Travel Authorization system of records were published with number 009. Electronic System for Travel Authorization system of records will remain with number 009 and Nonimmigrant Information system of records will be reassigned number 016. Second, the notice of proposed rulemaking for the Nonimmigrant Information system of records was incorrectly published with the name "Nonimmigrant Inspection System." The name of the proposed rule and this final rule will be Nonimmigrant Information System.

DATES: *Effective Date:* This final rule is effective August 31, 2009.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Laurence E. Castelli (202–325–0280), Chief, Privacy Act Policy and Procedures Branch, U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Mint Annex, 799 Ninth Street, NW., Washington, DC 20001–4501. For privacy issues contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 77549, December 19, 2008, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system

of records is the DHS/U.S. Customs and Border Protection (CBP)—016 Nonimmigrant Information System. The DHS/CBP—016 Nonimmigrant Information system of records notice was published concurrently in the **Federal Register**, 73 FR 77739, December 19, 2008, and comments were invited on both the notice of proposed rulemaking and system of records notice. No comments were received.

Public Comments

DHS received no comments on the notice of proposed rulemaking or the system of records notice. DHS will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Privacy, Freedom of information.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: Public Law 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to Part 5, Exemption of Record Systems under the Privacy Act, the following new paragraph "27":

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

27. The DHS/CBP–009 Nonimmigrant Information system of records consists of electronic and paper records and will be used by DHS and its Components. The DHS/CBP–009 Nonimmigrant Information System is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: The enforcement of civil and criminal laws; Investigations, inquiries, and proceedings thereunder; and national security and intelligence activities. The DHS/CBP–009 Nonimmigrant Information System contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, Tribal, foreign, or international government agencies. This system may contain records or information pertaining to the accounting of disclosures made from the Nonimmigrant Information System to other law enforcement and counterterrorism agencies (Federal, State, Local, Foreign, International or Tribal) in accordance with the published routine uses. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 522(c)(3), (e) (8), and (g) of the Privacy Act of 1974, as

amended, as necessary and appropriate to protect accounting of these disclosures only, pursuant to 5 U.S.C. 552a (j)(2), and (k)(2). Further, no exemption shall be asserted with respect to biographical or travel information submitted by, and collected from, a person's travel documents or submitted from a government computer system to support or to validate those travel documents. After conferring with the appropriate component or agency, DHS may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement purposes of the systems from which the information is recompiled or in which it is contained. Exemptions from the above particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, when information in this system of records is recompiled or is created from information contained in other systems of records subject to exemptions for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosure) because making available to a record subject the accounting of disclosures from records concerning him or her would specifically reveal any investigative interest in the individual. Revealing this information could reasonably be expected to compromise ongoing efforts to investigate a violation of U.S. law, including investigations of a known or suspected terrorist, by notifying the record subject that he or she is under investigation. This information could also permit the record subject to take measures to impede the investigation, *e.g.*, destroy evidence, intimidate potential witnesses, or flee the area to avoid or impede the investigation.

(b) From subsection (e)(8) (Notice on Individuals) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on DHS and other agencies and could alert the subjects of counterterrorism or law enforcement investigations to the fact of those investigations when not previously known.

(c) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: August 20, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9–20778 Filed 8–28–09; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS-2009-0072]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security U.S. Immigration and Customs Enforcement—007 Law Enforcement Support Center Alien Criminal Response Information Management System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a Department of Homeland Security U.S. Immigration and Customs Enforcement system of records entitled the “Department of Homeland Security U.S. Immigration and Customs Enforcement—007 Law Enforcement Support Center Alien Criminal Response Information Management System of Records” from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the Department of Homeland Security U.S. Immigration and Customs Enforcement—007 Law Enforcement Support Center Alien Criminal Response Information Management system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective August 31, 2009.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Lyn Rahilly (202-732-3300), Privacy Officer, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Washington, DC 20024, e-mail: ICEPrivacy@dhs.gov. For privacy issues contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 74637, December 9, 2008, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/U.S. Immigration

and Customs Enforcement (ICE)—007 Law Enforcement Support Center Alien Criminal Response Information Management system. The DHS/ICE—007 Law Enforcement Support Center Alien Criminal Response Information Management system of records notice was published concurrently in the **Federal Register**, 73 FR 74739, December 9, 2008, and comments were invited on both the notice of proposed rulemaking and system of records notice. No comments were received.

Public Comments

DHS received no comments on the notice of proposed rulemaking and system of records notice. DHS will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: 6 U.S.C. 101 *et seq.*; Public Law 107-296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to Part 5, the following new paragraph “28”:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

28. The DHS/ICE—007 Law Enforcement Support Center (LESC) Alien Criminal Response Information Management (ACRIME) system of records consists of electronic and paper records and will be used by DHS and its components. The DHS/ICE—007 Law Enforcement Support Center Alien Criminal Response Information Management system is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: The enforcement of civil and criminal laws; investigations, inquiries, and proceedings thereunder; and national security and intelligence activities. The DHS/ICE—007 Law Enforcement Support Center Alien Criminal Response Information Management system contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system of records from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3),

(e)(4)(G), (e)(4)(H), and (e)(5) and (e)(8); (f), and (g) pursuant to 5 U.S.C. 552a(j)(2). Additionally, the Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f) pursuant to 5 U.S.C. 552a(k)(2). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in identifying or establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise investigations

by: Revealing the existence of an otherwise confidential investigation and thereby provide an opportunity for the subject of an investigation to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative efforts; reveal the identity of witnesses in investigations, thereby providing an opportunity for the subjects of the investigations or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or reveal the identity of confidential informants, which would negatively affect the informant's usefulness in any ongoing or future investigations and discourage members of the public from cooperating as confidential informants in any future investigations.

(f) From subsections (e)(4)(G), (H) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's: Refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant, timely and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Dated: August 20, 2009.

Mary Ellen Callahan,
Chief Privacy Officer, Department of
Homeland Security.

[FR Doc. E9-20763 Filed 8-28-09; 8:45 am]

BILLING CODE 9111-28-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5, Appendix C

[Docket No. DHS-2009-0073]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security U.S. Immigration and Customs Enforcement—008 Search, Arrest, and Seizure System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a Department of Homeland Security U.S. Immigration and Customs Enforcement system of records entitled the "Department of Homeland Security U.S. Immigration and Customs Enforcement—008 Search, Arrest, and Seizure System of Records" from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the Department of Homeland Security U.S. Immigration and Customs Enforcement—008 Search, Arrest, and Seizure system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective August 31, 2009.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Lyn Rahilly (202-732-3300), Privacy Officer, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Washington, DC 20024, e-mail: ICEPrivacy@dhs.gov. For privacy issues contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 74632, December 9, 2008, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/U.S. Immigration and Customs Enforcement (ICE)—008 Search, Arrest, and Seizure system. The DHS/ICE—008 Search, Arrest, and Seizure system of records notice was published concurrently in the **Federal Register**, 73 FR 74732, December 9,

2008, and comments were invited on both the notice of proposed rulemaking and system of records notice. No comments were received.

Public Comments

DHS received no comments on the notice of proposed rulemaking or the system of records notice. DHS will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.
■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: 6 U.S.C. 101 et seq.; Pub. L. 107-296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to Part 5, the following new paragraph "29":

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

29. The DHS/ICE—008 Search, Arrest, and Seizure system of records consists of electronic and paper records and will be used by DHS and its components. The DHS/ICE—008 Search, Arrest, and Seizure system is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: The enforcement of civil and criminal laws; investigations, inquiries, and proceedings thereunder; and national security and intelligence activities. The DHS/ICE—008 Search, Arrest, and Seizure system contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5) and (e)(8); (f), and (g) pursuant to 5 U.S.C. 552a(j)(2). Additionally, the Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f) pursuant to 5 U.S.C. 552a(k)(2). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or

potential criminal, civil, or regulatory violation to the existence of the investigation, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise investigations by: Revealing the existence of an otherwise confidential investigation and thereby provide an opportunity for the subject of an investigation to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative efforts; reveal the identity of witnesses in investigations, thereby providing an opportunity for the subjects of the investigations or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or reveal the identity of confidential informants, which would negatively affect the informant's usefulness in any ongoing or future investigations and discourage

members of the public from cooperating as confidential informants in any future investigations.

(f) From subsections (e)(4)(G) and (H) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's: Refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant, timely and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Dated: August 20, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9-20761 Filed 8-28-09; 8:45 am]

BILLING CODE 9111-28-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS-2009-0070]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security U.S. Immigration and Customs Enforcement—009 External Investigations System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a Department of Homeland Security U.S. Immigration and Customs Enforcement system of records entitled the "Department of Homeland Security U.S. Immigration and Customs Enforcement—009 External Investigations System of Records" from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the Department of Homeland Security U.S. Immigration and Customs Enforcement—009 External Investigations system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective August 31, 2009.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Lyn Rahilly (202-732-3300), Privacy Officer, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Washington, DC 20024, e-mail: ICEPrivacy@dhs.gov. For privacy issues contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 75372, December 11, 2008, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the Department of Homeland Security U.S. Immigration and Customs Enforcement—009 External Investigations system. The Department of Homeland Security U.S. Immigration and Customs Enforcement—009 External

Investigations system of records notice was published concurrently in the **Federal Register**, 73 FR 75452, December 11, 2008, and comments were invited on both the notice of proposed rulemaking and the system of records notice. No comments were received.

Public Comments

DHS received no comments on the notice of proposed rulemaking or the system of records notice. DHS will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: 6 U.S.C. 101 et seq.; Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to Part 5, the following new paragraph “30”:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

30. The DHS/ICE—009 External Investigations system of records consists of electronic and paper records and will be used by DHS and its components. The DHS/ICE—009 External Investigations system is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: The enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; and national security and intelligence activities. The DHS/ICE—009 External Investigations system contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), and (e)(5) and (e)(8); (f), and (g) pursuant to 5 U.S.C. 552a(j)(2). Additionally, the Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f) pursuant to 5 U.S.C. 552a(k)(2). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise investigations by: Revealing the existence of an otherwise confidential investigation and thereby provide an opportunity for the subject of an investigation to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative efforts; reveal the identity of witnesses in investigations, thereby providing an opportunity for the subjects of the investigations or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or reveal

the identity of confidential informants, which would negatively affect the informant's usefulness in any ongoing or future investigations and discourage members of the public from cooperating as confidential informants in any future investigations.

(f) From subsections (e)(4)(G) and (H) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's: Refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant, timely and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Dated: August 20, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9–20762 Filed 8–28–09; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS-2009-0053]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security U.S. Immigration and Customs Enforcement—010 Confidential and Other Sources of Information System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a Department of Homeland Security U.S. Immigration and Customs Enforcement system of records entitled the “Department of Homeland Security U.S. Immigration and Customs Enforcement—010 Confidential and Other Sources of Information System of Records” from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the Department of Homeland Security U.S. Immigration and Customs Enforcement—010 Confidential and Other Sources of Information system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: Effective Date: This final rule is effective August 31, 2009.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Lyn Rahilly (202-732-3300), Privacy Officer, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Washington, DC 20024, e-mail: ICEPrivacy@dhs.gov. For privacy issues contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 74635, December 9, 2008, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/U.S. Immigration and Customs Enforcement (ICE)—010 Confidential and Other Sources of Information system. The DHS/ICE—010

Confidential and Other Sources of Information system of records notice was published concurrently in the **Federal Register**, 73 FR 74729, December 9, 2008, and comments were invited on both the notice of proposed rulemaking and system of records notice. No comments were received.

Public Comments

DHS received no comments on the notice of proposed rulemaking or the system of records notice. DHS will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: 6 U.S.C. 101 *et seq.*; Public Law 107-296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to Part 5, the following new paragraph “31”:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

31. The DHS/ICE—010 Confidential and Other Sources of Information (COSI) system of records consists of electronic and paper records and will be used by DHS and its components. The DHS/ICE—010 Confidential and Other Sources of Information system is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: the enforcement of civil and criminal laws; and investigations, inquiries, and proceedings there under; and national security and intelligence activities. The DHS/ICE—010 Confidential and Other Sources of Information system contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5) and (e)(8); (f), and (g) pursuant to 5 U.S.C. 552a(j)(2). Additionally, the Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f) pursuant to 5 U.S.C. 552a(k)(2). Exemptions from these particular subsections are justified, on a case-

by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise investigations by: Revealing the existence of an otherwise confidential investigation and thereby provide an opportunity for the subject of an investigation to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative efforts; reveal the identity of witnesses in investigations, thereby providing an opportunity for the subjects of the investigations or others to harass, intimidate, or otherwise interfere

with the collection of evidence or other information from such witnesses; or reveal the identity of confidential informants, which would negatively affect the informant's usefulness in any ongoing or future investigations and discourage members of the public from cooperating as confidential informants in any future investigations.

(f) From subsections (e)(4)(G) and (H) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's: Refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant, timely and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Dated: August 20, 2009.

Mary Ellen Callahan,
Chief Privacy Officer, Department of
Homeland Security.

[FR Doc. E9-20750 Filed 8-28-09; 8:45 am]

BILLING CODE 9111-28-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS-2009-0037]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security U.S. Citizenship and Immigration Services—006 Fraud Detection and National Security Data System

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a Department of Homeland Security U.S. Citizenship and Immigration Services system of records entitled the "Department of Homeland Security U.S. Citizenship and Immigration Services—006 Fraud Detection and National Security Data System of Records" from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the Department of Homeland Security U.S. Citizenship and Immigration Services—006 Fraud Detection and National Security Data system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective August 31, 2009.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Donald Hawkins (202-272-8000), Privacy Officer, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529. For privacy issues contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 48155, August 18, 2008, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/U.S. Citizenship and Immigration Services (USCIS)—006 Fraud Detection and National Security Data System. The DHS/USCIS—006

Fraud Detection and National Security Data system of records notice was published concurrently in the **Federal Register**, 73 FR 48231, August 18, 2008, and comments were invited on both the notice of proposed rulemaking and the system of records notice. No comments were received.

Public Comments

DHS received no comments on the notice of proposed rulemaking or system of records notice. DHS will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: Public Law 107-296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. At the end of Appendix C to Part 5, Exemption of Record Systems Under the Privacy Act, add the following new paragraph "32":

* * * * *

32. The DHS/USCIS—006 Fraud Detection and National Security Data System (FDNS-DS) system of records consists of a stand alone database and paper files that will be used by DHS and its components. The DHS/USCIS—006 Fraud Detection and National Security Data System is a case management system used to record, track, and manage immigration inquiries, investigative referrals, law enforcement requests, and case determinations involving benefit fraud, criminal activity, public safety and national security concerns. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) pursuant to 5 U.S.C. 552a (k)(2). These exemptions apply only to the extent that records in the system are subject to exemption pursuant to 5 U.S.C. 552a (k)(2). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation; and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the

accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G) and (e)(4)(H) (Agency Requirements) because portions of this system are exempt from the individual access provisions of subsection (d) which exempts providing access because it could alert a subject to the nature or existence of an investigation, and thus there could be no procedures for that particular data. Procedures do exist for access for those portions of the system that are not exempted.

(e) From subsection (e)(4)(I) (Agency Requirements) because providing such source information would impede law enforcement or intelligence by compromising the nature or existence of a confidential investigation.

(f) From subsection (f) (Agency Rules) because portions of this system are exempt from the access and amendment provisions of subsection (d).

Dated: August 20, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9-20760 Filed 8-28-09; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS-2009-0075]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security U.S. Coast Guard—028 Family Advocacy Program System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a Department of Homeland Security U.S. Coast Guard system of records entitled the “Department of Homeland Security U.S. Coast Guard—028 Family Advocacy Program System of Records” from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the Department of Homeland Security U.S. Coast Guard—028 Family Advocacy Program system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective August 31, 2009.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: David Roberts (202-475-3521), Privacy Officer, United States Coast Guard. For privacy issues contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 77553, December 19, 2008, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/U.S. Coast Guard (USCG)—028 Family Advocacy Program system. The DHS/USCG—028 Family Advocacy Program system of records notice was published concurrently in the **Federal Register**, 73 FR 77782, December 19, 2008. Comments were invited on both the notice of proposed rulemaking and the system of records notice. No comments were received.

Public Comments

DHS received no comments on the notice of proposed rulemaking or the system of records notice. DHS will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: 6 U.S.C. 101 et seq.; Pub. L. 107-296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to Part 5, the following new paragraph “33”:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

33. The DHS/USCG—028 Family Advocacy Case Records system of records consists of electronic and paper records and will be used by DHS and its components. The DHS/USCG—028 Family Advocacy Case Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under. The DHS/USCG—028 Family Advocacy Case Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) pursuant to 5 U.S.C. 552a(k)(2). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

Dated: August 20, 2009.

Mary Ellen Callahan,
Chief Privacy Officer, Department of
Homeland Security.

[FR Doc. E9-20759 Filed 8-28-09; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS-2009-0076]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security; U.S. Coast Guard—029 Notice of Arrival and Departure System

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a Department of Homeland Security U.S. Coast Guard system of records entitled the “Department of Homeland Security U.S. Coast Guard—029 Notice of Arrival and Departure System of Records” from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the Department of Homeland Security U.S. Coast Guard—029 Notice of Arrival and Departure system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective September 30, 2009.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: David Roberts (202-475-3521), Privacy Officer, United States Coast Guard. For privacy issues contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 75373, December 11, 2008, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/U.S. Coast Guard (USCG)—029 Notice of Arrival and Departure system. The DHS/USCG—029 Notice of Arrival and Departure system of records notice was published concurrently in the **Federal Register**, 73 FR 75442, December 11, 2008, and comments were invited on both the notice of proposed rulemaking and system of records notice. No comments were received.

Public Comments

DHS received no comments on the notice of proposed rulemaking or system of records notice. DHS will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Privacy, Freedom of information.

■ For the reasons stated in the preamble, DHS amends 6 CFR chapter I as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: Public Law 107-296, 116 Stat. 2135, (6 U.S.C. 101 *et seq.*); 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. At the end of Appendix C to Part 5, add the following new paragraph “34”:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act.

* * * * *

34. The DHS/USCG—029 Notice of Arrival and Departure system consists of electronic and paper records and will be used by DHS and its components. The DHS/USCG—029 Notice of Arrival and Departure system is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: The enforcement of civil and criminal laws; investigations, inquiries, and proceedings thereunder. The DHS/USCG—029 Notice of Arrival and Departure system contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies, as well as private corporate or other entities. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f), and (g) pursuant to 5 U.S.C. 552a(j)(2). Additionally, the Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) pursuant to 5 U.S.C. 552a(k)(2). However, these exemptions apply only to the extent that information in this system of records is recompiled or is created from information contained in other systems of records. After conferring with the appropriate component or agency, DHS may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement purposes of the systems from which the information is recompiled or in which it is contained. Exemptions from the above particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, when information in this system of records is recompiled or is created from information contained in other systems of records subject to exemptions for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, and reveal investigative interest on the part

of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to national security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation or subject of interest would alert the subject to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities or national security matter.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise investigations by: Revealing the existence of an otherwise confidential investigation and thereby provide an opportunity for the subject of an investigation to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative efforts; reveal the identity of witnesses in investigations, thereby providing an opportunity for the subjects of the investigations or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or reveal the identity of confidential informants, which would negatively affect the informant's usefulness in any ongoing or future investigations and discourage members of the public from cooperating as confidential informants in any future investigations.

(f) From subsections (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's: Refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant timely and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Dated: August 20, 2009.

Mary Ellen Callahan,
Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9-20758 Filed 8-28-09; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS-2009-0046]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security U.S. Secret Service—001 Criminal Investigation Information System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a Department of Homeland Security U.S. Secret Service system of records entitled the "Department of Homeland Security U.S. Secret Service—001 Criminal Investigation Information System of Records" from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the Department of Homeland Security U.S. Secret Service—001 Criminal Investigation Information system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective August 31, 2009.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Latita Payne (202-406-6370), Privacy Point of Contact, United States Secret Service, Washington, DC 20223. For privacy issues contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 77544, December 19, 2008, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of the U.S. Secret Service (Secret Service) protective functions and its criminal, civil, and administrative enforcement responsibilities. The system of records is the DHS/Secret Service—001 Criminal Investigation Information system. The DHS/Secret Service—001 Criminal Investigation Information system of records notice was published concurrently in the **Federal Register**, 73 FR 77729, December 19, 2008, and comments were invited on both the notice of proposed rulemaking and system of records notice. No comments were received.

Public Comments

DHS received no comments on the notice of proposed rulemaking or system of records notice. DHS will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: Public Law 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to Part 5, Exemption of Record Systems under the Privacy Act, the following new paragraph “35”:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

35. The DHS/Secret Service—001 Criminal Investigation Information system of records consists of electronic and paper records and will be used by DHS and its components. The DHS/Secret Service—001 Criminal Investigation Information system is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: The enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; the protection of the President of the United States or other individuals and locations pursuant to Section 3056 and 3056A of Title 18. The DHS/Secret Service—001 Criminal Investigation Information system contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, international government agencies, as well as private corporate, education and other entities. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f), and (g) pursuant to 5 U.S.C. 552a(j)(2). Additionally, the Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (I), and (f) pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(3). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, or protective inquiry, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or the Secret Service’s protective mission. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, or inquiry, to tamper with witnesses or

evidence, and to avoid detection or apprehension, which would undermine the entire investigative or inquiry process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, or protective inquiry to the existence of the investigation or inquiry, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation or inquiry, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement or protective activities and/or could disclose security-sensitive information that could be detrimental to homeland security or the protective mission of the Secret Service.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law or protective inquiries, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation or protective inquiry. In the interests of effective law enforcement, and/or the protective mission of the Secret Service, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity, or a threat to an individual, location or event protected or secured by the Secret Service.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation or protective inquiry would alert the subject to the nature or existence of an investigation or inquiry, thereby interfering with the related investigation or inquiry and law enforcement or protective activities.

(e) From subsection (e)(3) (Notice to Individuals Providing Information) because providing such detailed information would impede law enforcement or protective activities in that it could compromise investigations or inquiries by: Revealing the existence of an otherwise confidential investigation or inquiry and thereby provide an opportunity for the subject of an investigation or inquiry to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative or protective efforts; reveal the identity of witnesses in investigations or inquiries, thereby providing an opportunity for the subjects of the investigations or inquiries or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or reveal the identity of confidential informants, which would negatively affect the informant’s usefulness in any ongoing or future investigations or protective activities and discourage members of the public from cooperating as confidential informants in any future investigations or protective activities.

(f) From subsections (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency

Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to the existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative or protective efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Maintenance of Information Used in Making any Determination) because in the collection of information for law enforcement and protective purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude Secret Service DHS agents from using their investigative and protective training and exercising good judgment to both conduct and report on investigations or other protective activities.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS’ ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, or/and could result in disclosure of investigative or protective techniques, procedures, and evidence.

(i) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals’ rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency’s: Refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant, timely and complete records; or failure to otherwise comply with an individual’s right to access or amend records.

Dated: August 20, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9–20757 Filed 8–28–09; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2009–0047]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security U.S. Secret Service—003 Non-Criminal Investigation Information System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a Department of Homeland Security U.S. Secret Service system of records entitled the “Department of Homeland Security U.S. Secret Service—003 Non-Criminal Investigation Information System of Records” from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the Department of Homeland Security U.S. Secret Service—003 Non-Criminal Investigation Information system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective August 31, 2009.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Latita Payne (202–406–6370), Privacy Point of Contact, United States Secret Service, Washington, DC 20223. For privacy issues contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 77546, December 19, 2008, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of the U.S. Secret Service’s (Secret Service) protective functions and its criminal, civil, and administrative enforcement responsibilities. The system of records is the DHS/Secret Service—003 Non-Criminal Investigation Information system. The DHS/Secret Service—003 Non-Criminal Investigation Information system of records notice was published concurrently in the **Federal Register**, 73 FR 77813, December 19, 2008, and comments were invited on both the notice of proposed rulemaking and the system of records notice. No comments were received.

Public Comments

DHS received no comments on the notice of proposed rulemaking or the system of records notice. DHS will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: 6 U.S.C. 101 *et seq.*; Public Law 107–296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to Part 5, the following new paragraph “36”:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

36. The DHS/Secret Service—003 Non-Criminal Investigation Information system of records consists of electronic and paper records and will be used by DHS and its components. The DHS/Secret Service—003 Non-Criminal Investigation Information system is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: The enforcement of civil and criminal laws; criminal, civil, protective and background investigations and inquiries, and proceedings thereunder; the protection of the President of the United States or other individuals and locations pursuant to Section 3056 and 3056A of Title 18; and the hiring of employees through an application process which includes the use of polygraph examinations. The DHS/Secret Service—003 Non-Criminal Investigation Information system contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies, as well as private corporate, educational and other entities. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f), and (g) pursuant to 5 U.S.C. 552a(j)(2). Additionally, the Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) pursuant to 5 U.S.C. 552a(k)(1), (k)(2), (k)(3), (k)(5), and (k)(6). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, or protective inquiry, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the

accounting would therefore present a serious impediment to law enforcement efforts and/or the Secret Service’s protective mission. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation or inquiry, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative or inquiry process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, or protective inquiry to the existence of the investigation or inquiry, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation or inquiry, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement or protective activities and/or could disclose security-sensitive information that could be detrimental to homeland security or the protective mission of the Secret Service.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law or protective inquiries, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation or protective inquiry. In the interests of effective law enforcement and/or the protective mission of the Secret Service, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity, or a threat to an individual, location or event protected or secured by the Secret Service.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation or protective inquiry would alert the subject to the nature or existence of an investigation or inquiry, thereby interfering with the related investigation or inquiry and law enforcement or protective activities.

(e) From subsection (e)(3) (Notice to Individuals Providing Information) because providing such detailed information would impede law enforcement or protective activities in that it could compromise investigations or inquiries by: Revealing the existence of an otherwise confidential investigation or inquiry and thereby provide an opportunity for the subject of an investigation or inquiry to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative or protective efforts; reveal the identity of witnesses in investigations or inquiries, thereby providing an opportunity for the subjects of the investigations or inquiries or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or reveal the identity of confidential informants, which would negatively affect the

informant's usefulness in any ongoing or future investigations or protective activities and discourage members of the public from cooperating as confidential informants in any future investigations or protective activities.

(f) From subsections (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to the existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative or protective efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Maintenance of Information Used in Making any Determination) because in the collection of information for law enforcement and protective purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude Secret Service agents from using their investigative and protective training, and exercising good judgment to both conduct and report on investigations or other protective activities.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, or could result in disclosure of investigative or protective techniques, procedures, and evidence.

(i) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's: Refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant, timely and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Dated: August 20, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9-20756 Filed 8-28-09; 8:45 am]

BILLING CODE 4810-42-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS-2009-0048]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security U.S. Secret Service—004 Protection Information System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a Department of Homeland Security U.S. Secret Service system of records entitled the "Department of Homeland Security U.S. Secret Service—004 Protection Information System of Records" from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the Department of Homeland Security U.S. Secret Service—004 Protection Information system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective August 31, 2009.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Latita Payne (202-406-6370), Privacy Point of Contact, United States Secret Service, Washington, DC 20223. For privacy issues contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 77551, December 19, 2008, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of the U.S. Secret Service (Secret Service) protective functions and its criminal, civil, and administrative enforcement responsibilities. The system of records is the DHS/Secret Service—004 Protection Information system. The DHS/Secret Service—004 Protection Information system of records notice was published concurrently in the **Federal Register**, 73 FR 77733, December 19, 2008, and comments were invited on both the notice of proposed

rulemaking and system of records notice. No comments were received.

Public Comments

DHS received no comments on the notice of proposed rulemaking or system of records notice. DHS will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: Public Law 107-296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to Part 5, Exemption of Record Systems under the Privacy Act, the following new paragraph "37":

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

37. The DHS/Secret Service—004 Protection Information system of records consists of electronic and paper records and will be used by DHS and its components. The DHS/Secret Service—004 Protection Information system is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: the enforcement of civil and criminal laws; investigations, inquiries, and proceedings thereunder; and the protection of the President of the United States or other individuals and locations pursuant to Sections 3056 and 3056A of Title 18. The DHS/Secret Service—004 Protection Information system contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, Tribal, foreign, or international government agencies, as well as private corporate or other entities. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f), and (g) pursuant to 5 U.S.C. 552a(j)(2). Additionally, the Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(3). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation or a protective inquiry to the existence of the investigation or inquiry, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or the Secret Service's protective mission. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation or inquiry, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative or inquiry process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, or protective inquiry to the existence of the investigation or inquiry, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, or inquiry to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations, law enforcement or protective activities and/or could disclose security-sensitive information that could be detrimental to homeland security or the protective mission of the Secret Service.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law or protective inquiries, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation or protective inquiry. In the interests of effective law enforcement and/or the protective mission of the Secret Service,

it is appropriate to retain all information that may aid in establishing patterns of unlawful activity, or a possible threat to an individual, location or event protected or secured by the Secret Service.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation or protective inquiry would alert the subject to the nature or existence of an investigation or inquiry, thereby interfering with the related investigation or inquiry and law enforcement or protective activities.

(e) From subsection (e)(3) (Notice to Individuals Providing Information) because providing such detailed information would impede law enforcement or protective activities in that it could compromise investigations or inquiries by: Revealing the existence of an otherwise confidential investigation or inquiry and thereby provide an opportunity for the subject of an investigation or inquiry to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative or protective efforts; reveal the identity of witnesses, thereby providing an opportunity for the subjects of the investigations or inquiries or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or reveal the identity of confidential informants, which would negatively affect the informant's usefulness in any ongoing or future investigations or protective activities and discourage members of the public from cooperating as confidential informants in any future investigations or protective activities.

(f) From subsections (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to the existence of records pertaining to them in the system of records or otherwise setting up procedures

pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative and protective efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Maintenance of Information Used in Making any Determination) because in the collection of information for law enforcement and protective purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude Secret Service agents from using their investigative and protective training and exercising good judgment to both conduct and report on investigations or other protective activities.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative or protective techniques, procedures, and evidence.

(i) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's: refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant, timely and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Dated: August 20, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9-20755 Filed 8-28-09; 8:45 am]

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H.R. 774/P.L. 111-50

To designate the facility of the United States Postal Service located at 46-02 21st Street in Long Island City, New York, as the "Geraldine Ferraro Post Office Building". (Aug. 19, 2009; 123 Stat. 1979)

H.R. 987/P.L. 111-51

To designate the facility of the United States Postal Service located at 601 8th Street in Freedom, Pennsylvania, as the "John Scott Challis, Jr. Post Office". (Aug. 19, 2009; 123 Stat. 1980)

H.R. 1271/P.L. 111-52

To designate the facility of the United States Postal Service located at 2351 West Atlantic Boulevard in Pompano Beach, Florida, as the "Elijah Pat Larkins Post Office Building". (Aug. 19, 2009; 123 Stat. 1981)

H.R. 1275/P.L. 111-53

Utah Recreational Land Exchange Act of 2009 (Aug. 19, 2009; 123 Stat. 1982)

H.R. 1397/P.L. 111-54

To designate the facility of the United States Postal Service located at 41 Purdy Avenue in Rye, New York, as the "Caroline O'Day Post Office Building". (Aug. 19, 2009; 123 Stat. 1989)

H.R. 2090/P.L. 111-55

To designate the facility of the United States Postal Service located at 431 State Street in Ogdensburg, New York, as the "Frederic Remington Post Office Building". (Aug. 19, 2009; 123 Stat. 1990)

H.R. 2162/P.L. 111-56

To designate the facility of the United States Postal Service

located at 123 11th Avenue South in Nampa, Idaho, as the "Herbert A Littleton Postal Station". (Aug. 19, 2009; 123 Stat. 1991)

H.R. 2325/P.L. 111-57

To designate the facility of the United States Postal Service located at 1300 Matamoros Street in Laredo, Texas, as the "Laredo Veterans Post Office". (Aug. 19, 2009; 123 Stat. 1992)

H.R. 2422/P.L. 111-58

To designate the facility of the United States Postal Service located at 2300 Scenic Drive in Georgetown, Texas, as the "Kile G. West Post Office Building". (Aug. 19, 2009; 123 Stat. 1993)

H.R. 2470/P.L. 111-59

To designate the facility of the United States Postal Service located at 19190 Cochran Boulevard FRNT in Port Charlotte, Florida, as the "Lieutenant Commander Roy H. Boehm Post Office Building". (Aug. 19, 2009; 123 Stat. 1994)

H.R. 2938/P.L. 111-60

To extend the deadline for commencement of construction of a hydroelectric project. (Aug. 19, 2009; 123 Stat. 1995)

H.J. Res. 44/P.L. 111-61

Recognizing the service, sacrifice, honor, and

professionalism of the Noncommissioned Officers of the United States Army. (Aug. 19, 2009; 123 Stat. 1996)

S.J. Res. 19/P.L. 111-62

Granting the consent and approval of Congress to amendments made by the State of Maryland, the Commonwealth of Virginia, and the District of Columbia to the Washington Metropolitan Area Transit Regulation Compact. (Aug. 19, 2009; 123 Stat. 1998)

Last List August 14, 2009

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