9–16–09 Wednesday
Vol. 74 No. 178 Sept. 16, 2009

Pages 47431–47710

Federal Register

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 74 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, October 20, 2009
9 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

Printed on recycled paper.

Contents

Federal Register

Vol. 74, No. 178

Wednesday, September 16, 2009

Agriculture Department
See Food Safety and Inspection Service
See Forest Service

Bonneville Power Administration
NOTICES
Electrical Interconnection of the Kittitas Valley Wind Project, 47570

Centers for Disease Control and Prevention
NOTICES
Request for Information:
1–Bromopropane, 47593–47594
Alternative Duty; Temporary Reassignment for Health Care Workers who Work with Hazardous Drugs, 47594–47595
Glutaraldehyde, 47595–47596

Centers for Medicare & Medicaid Services
RULES
Medicare Program:
Limitation on Recoupment of Provider and Supplier Overpayments, 47458–47470
PROPOSED RULES
Children's Health Insurance Program:
Allotment Methodology and States' Fiscal Year 2009 CHIP Allotments, 47517–47536

Civil Rights Commission
NOTICES
Meetings; Sunshine Act, 47550–47551

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 47551

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 47563–47565
Agency Information Collection Activities; Proposals, Submissions, and Approvals; Correction, 47565

Energy Department
See Bonneville Power Administration
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board, Portsmouth, 47566
Ultra-Deepwater Advisory Committee, 47565
Unconventional Resources Technology Advisory Committee, 47565–47566

Environmental Protection Agency
RULES
Pesticide Tolerances:
Acetochlor, 47445–47451
Boscalid, 47440–47445
Tolerance Actions:
Ametryn, Amitraz, Ammonium Soap Salts of Higher Fatty Acids, Bitertanol, Coppers, et al., 47451–47457
PROPOSED RULES
Proposed Tolerance Actions:
Mancozeb, Maneb, Metiram, and Thiram, 47507–47517
NOTICES
Access to Confidential Business Information:
Battelle Memorial Institute and Its Identified Subcontractors, 47572–47573
CGI Federal Inc., 47571–47572
Guident Technologies Inc. and Its Identified Subcontractors, 47573–47574
Amendment to Ziram and Ferbam Reregistration Eligibility Decisions:
Dimethyldithiocarbamate Salts, 47574–47575
Meetings:
FIFRA Scientific Advisory Panel, 47575–47581
Receipt of Requests to Voluntarily Cancel or to Amend to Terminate Uses of Certain Pesticide Registrations:
Dimethyldithiocarbamate Salts, 47581–47583
Region III's Use of Web Site to Provide Notice of Intent to Terminate Pesticide Producing Establishment Registrations, 47583

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Requirements for Amateur Rocket Activities; Correction, 47435
PROPOSED RULES
Flightcrew Alerting; Reopening of Comment Period, 47494–47495
Proposed Modification of the New York, NY, Class B Airspace Area:
Proposed Establishment of the New York Class B Airspace Hudson River and East River Exclusion Special Flight Rules Area, 47495–47500
NOTICES
Issuance of Final Report:
2008 Amateur-Built Aircraft Aviation Rulemaking Committee, 47642–47643
National Parks Overflights Advisory Group Aviation Rulemaking Committee; Membership, 47643

Federal Communications Commission
RULES
Television Broadcasting Services:
Biloxi, MS, 47483
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 47583–47585

Federal Deposit Insurance Corporation
PROPOSED RULES
Expiration of the Issuance Period for the Debt Guarantee Program:
Establishment of Emergency Guarantee Facility, 47489–47494

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 47585–47587

Federal Election Commission
NOTICES
Filing Dates for Massachusetts Senate Special Election, 47587–47588

Federal Emergency Management Agency
RULES
Flood Mitigation Grants and Hazard Mitigation Planning, 47471–47483
NOTICES
Major Disaster Declaration:
New York, 47596–47597

Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 47566–47569
Applications:
Duke Energy Carolinas LLC, 47569
Keene, NH, 47569–47570
Environmental Impact Statements; Availability, etc.:
Alabama Power Co., 47570
Star Mill, Inc., 47570–47571
Filings:
PacifiCorp, 47571
Petition for Declaratory Order:
Dow Chemical Co., Dow Pipeline Co., and Dow Hydrocarbons and Resources LLC, 47571

Federal Reserve System
NOTICES
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 47588–47589

Federal Transit Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 47638–47639
Environmental Impact Statements; Availability, etc.:
Capitol Expressway Light Rail Project, San Jose and Santa Clara County, CA, 47640–47642

Financial Crimes Enforcement Network
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 47643–47644

Financial Crisis Inquiry Commission
NOTICES
Open Meeting, 47550

Fish and Wildlife Service
RULES
Endangered and Threatened Wildlife and Plants:
Reinstatement of Protections for the Gray Wolf in the Western Great Lakes, etc., 47483–47488
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
12-Month Finding on a Petition To Remove the Bliss Rapids Snail (Taylorconcha serpenticola) From the List of Endangered and Threatened Wildlife, 47536–47545
NOTICES
Environmental Impact Statements; Availability, etc.:
Bayou Sauvage National Wildlife Refuge, Orleans Parish, LA; Final Comprehensive Conservation Plan, 47614–47616

Food and Drug Administration
RULES
Ophthalmic and Topical Dosage Form New Animal Drugs:
Diclofenac, 47435–47436
NOTICES
National Fisheries Institute; Filing of Food Additive Petition; Amendment, 47592–47593

Food Safety and Inspection Service
PROPOSED RULES
Cooperative Inspection Programs:
Interstate Shipment of Meat and Poultry Products, 47648–47669

Foreign Claims Settlement Commission
NOTICES
Meetings; Sunshine Act, 47617–47618

Forest Service
NOTICES
Meetings:
Ravalli County Resource Advisory Committee, 47550
Shasta County Resource Advisory Committee, 47550

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See National Institutes of Health

Homeland Security Department
See Federal Emergency Management Agency
See Transportation Security Administration

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 47597–47599
Funding Availability:
Self-Help Homeownership Opportunity Program (SHOP); Clarifications and Technical Corrections, 47599
Regulatory Waiver Requests Granted (Second Quarter of Calendar Year 2009), 47599–47614

Industry and Security Bureau
NOTICES
Meetings:
Emerging Technology and Research Advisory Committee, 47558

Inter-American Foundation
NOTICES
Meetings; Sunshine Act, 47614

Interior Department
See Fish and Wildlife Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Modifications of Commercial Mortgage Loans Held by a Real Estate Mortgage Investment Conduit, 47436–47439

PROPOSED RULES
Definition of Solid Waste Disposal Facilities for Tax-exempt Bond Purposes, 47500–47507
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 47643–47644

International Trade Administration
NOTICES
Final Results and Partial Rescission of Antidumping Duty Administrative Review:
Frozen Warmwater Shrimp from Thailand, 47551–47555
Initiation of Antidumping Duty Changed Circumstances Review:
Pressure Sensitive Plastic Tape from Italy, 47555–47557
Partial Rescission of Antidumping Duty Administrative Review:
Certain Activated Carbon from the People's Republic of China, 47558–47559

International Trade Commission
NOTICES
Investigations:
Certain Liquid Crystal Display Modules, Products Containing Same, and Methods Using the Same, 47616–47617
Certain Video Displays, Components, and Products Containing Same, 47616

Justice Department
See Foreign Claims Settlement Commission

Maritime Administration
NOTICES
Agreements Filed, 47639
Ocean Transportation Intermediary License Applicants, 47643

Millennium Challenge Corporation
NOTICES
Report on Countries that are Candidates for Millennium Challenge Account Eligibility in Fiscal Year 2010, etc., 47618–47619
Report to Congress:
Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance (Fiscal Year 2010), 47620–47623

National Archives and Records Administration
RULES
Facility Locations and Hours, 47439–47440
NOTICES
Records Schedules; Availability and Request for Comments, 47623–47624

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 47589–47592
National Center for Complementary and Alternative Medicine, 47592

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fisheries off West Coast States; Pacific Coast Groundfish Fishery:
Data Collection for the Trawl Rationalization Program, 47545–47549
NOTICES
Hydrographic Services Review Panel Charter Renewal, 47555
Magnuson–Stevens Act Provisions:
General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits, 47557–47558
Stellwagen Bank National Marine Sanctuary Advisory Council; Availability of Seats; Request for Applications, 47559
Takes of Marine Mammals Incidental to Specified Activities:
Taking Marine Mammals Incidental to Boom Exercise Drills at Point Mugu, CA, 47559–47563

Nuclear Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 47624–47625
Issuance of Director's Decision:
Indiana Michigan Power Co., Donald C. Cook Nuclear Plant (Unit 1), 47625–47626
Meetings:
ACRS Subcommittee on AP1000, 47626
ACRS Subcommittee on Planning and Procedures, 47626

Postal Regulatory Commission
NOTICES
Meetings; Sunshine Act, 47626–47627

Presidential Documents
ADMINISTRATIVE ORDERS
China; Passenger Vehicle and Light Truck Tires, Imports (Presidential Determination)
No. 2009–28 of September 11, 2009, 47433–47434
Trading With the Enemy Act; Continuation of Certain Authorities (Presidential Determination)
No. 2009–27 of September 11, 2009, 47431

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 47628
Meetings:
Securities Lending and Short Sale Roundtable, 47628–47629
Meetings; Sunshine Act, 47629
Order Approving the Eleventh Charges Amendment to the Second Restatement of the Consolidated Tape Association Plan, etc., 47629
Self-Regulatory Organizations; Proposed Rule Changes:
Financial Industry Regulatory Authority Inc., 47630–47631, 47633–47634
International Securities Exchange LLC, 47631–47633
NASDAQ OMX PHLX, Inc., 47634–47636

Small Business Administration
NOTICES
Disaster Declarations:
California, 47627
Pennsylvania, 47627–47628

State Department
NOTICES
Additional Designation of Two Entities Pursuant to Executive Order (13382), 47636–47637
Meetings:
Advisory Committee on International Economic Policy, 47637

Shipping Coordinating Committee; Correction, 47637

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 47614

Surface Transportation Board
NOTICES
Abandonment Exemptions:
Soo Line Railroad Co. d/b/a Canadian Pacific Railway Co.; Hennepin County, MN, 47638
Discontinuance of Service Exemption:
R.J. Corman Railroad Co./Tennessee Terminal, LLC; Shelby County, TN, 47639–47640

Thrift Supervision Office
NOTICES
Appointment of Receiver:
Platinum Community Bank; Rolling Meadows, IL, 47644
Vantus Bank; Sioux City, IA, 47644

Transportation Department
See Federal Aviation Administration
See Federal Transit Administration
See Maritime Administration
See Surface Transportation Board
See Transportation Security Administration
NOTICES
Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q), 47637–47638

Transportation Security Administration
RULES
Air Cargo Screening, 47672–47710

Treasury Department
See Financial Crimes Enforcement Network
See Internal Revenue Service
See Thrift Supervision Office

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 47645

Separate Parts In This Issue

Part II
Agriculture Department, Food Safety and Inspection Service, 47648–47669

Part III
Homeland Security Department, Transportation Security Administration, 47672–47710

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Administrative Orders:

Presidential Determinations:

No. 2009-27 of September 11, 2009 47431

No. 2009-28 of September 11, 2009 47433

9 CFR

Proposed Rules:

321 47648

332 47648

381 47648

12 CFR

Proposed Rules:

370 47489

14 CFR

101 47435

Proposed Rules:

25 47494

71 47495

93 47495

21 CFR

524 47435

26 CFR

1 47436

602 47436

Proposed Rules:

1 47500

17 47500

36 CFR

1253 47439

40 CFR

180 (3 documents) 47440, 47445, 47451

Proposed Rules:

180 47507

42 CFR

405 47458

Proposed Rules:

457 47517

44 CFR

59 47471

61 47471

78 47471

79 47471

80 47471

201 47471

206 47471

47 CFR

73 47483

49 CFR

1515 47672

1520 47672

1522 47672

1540 47672

1544 47672

1546 47672

1548 47672

1549 47672

50 CFR

17 47483

Proposed Rules:

17 47536

660 47545

Federal Register
Vol. 74, No. 178
Wednesday, September 16, 2009

Presidential Documents

Title 3—

The President

Presidential Determination No. 2009–27 of September 11, 2009

Continuation of the Exercise of Certain Authorities Under the Trading With the Enemy Act

Memorandum for the Secretary of State [and] the Secretary of the Treasury

Under section 101(b) of Public Law 95–223(91 Stat. 1625; 50 U.S.C. App. 5(b) note), and a previous determination on September 12, 2008 (73 *FR* 54055, September 17, 2008), the exercise of certain authorities under the Trading With the Enemy Act is scheduled to terminate on September 14, 2009.

I hereby determine that the continuation for 1 year of the exercise of those authorities with respect to Cuba is in the national interest of the United States.

Therefore, consistent with the authority vested in me by section 101(b) of Public Law 95–223, I continue for 1 year, until September 14, 2010, the exercise of those authorities with respect to Cuba as implemented by the Cuban Assets Control Regulations, 31 C.F.R. Part 515.

The Secretary of the Treasury is authorized and directed to publish this determination in the *Federal Register*.

THE WHITE HOUSE,
Washington, September 11, 2009

[FR Doc. E9–22408
Filed 9–15–09; 8:45 am]
Billing code 4811–33–P

Presidential Documents

Presidential Determination No. 2009–28 of September 11, 2009

Imports of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China

Memorandum for the Secretary of Commerce[,] the Secretary of Labor[, and] the United States Trade Representative

On July 9, 2009, the United States International Trade Commission(USITC) submitted a report to me that contained a determination pursuant to its investigation under section 421 of the Trade Act of 1974, as amended (the ''Trade Act''), that certain passenger vehicle and light truck tires from the People's Republic of China (China) are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.

By proclamation I have issued today (the ''proclamation''), and after considering all relevant aspects of the investigation, I have proclaimed actions of the type described in section 421(a) of the Trade Act. I have determined that the most appropriate action is application of an additional duty on imports of certain passenger vehicle and light truck tires from China, as defined in paragraph 4 of the proclamation. I have also determined that such action shall be in effect for a period of 3 years.

Specifically, I have proclaimed an additional duty on imports of the products described in paragraph 4 of the proclamation, which for the first year shall be in the amount of 35 percent *ad valorem* above the column 1 general rate of duty. For the second year, the additional duty shall be in the amount of 30 percent *ad valorem* above the column 1 general rate of duty, and in the third year, the additional duty shall be in the amount of 25 percent *ad valorem* above the column 1 general rate of duty.

In order to assist workers, firms, and their communities that have been or are affected by the market disruption, I direct the Secretary of Commerce and the Secretary of Labor to expedite consideration of any Trade Adjustment Assistance applications received from domestic passenger vehicle and light truck tire producers, their workers, or communities and to provide such other requested assistance or relief as they deem appropriate, consistent with their statutory mandates.

The United States Trade Representative is authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, September 11, 2009

[FR Doc. E9–22409
Filed 9–15–09; 8:45 am]
Billing code 3190–01–P

Rules and Regulations

Federal Register
Vol. 74, No. 178
Wednesday, September 16, 2009

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 101

[Docket No. FAA–2007–27390; Amendment No. 101–8]

RIN 2120–AI88

Requirements for Amateur Rocket Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is making an editorial change to the amateur rocket regulations. This action corrects an unintentional error in the difference between statute and nautical miles. The intent is to ensure the regulations are clear and accurate.

DATES: This amendment is effective September 16, 2009.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this final rule, contact Charles P. Brinkman, Licensing and Safety Division (AST–200), Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue, Washington, DC 20591, telephone (202) 267–7715, e-mail *Phil.Brinkman@faa.gov.* For legal questions concerning this final rule, contact Gary Michel, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, Washington, DC 20591, telephone (202) 267–3148.

SUPPLEMENTARY INFORMATION:

Background

On Friday, July 31, 2009 (74 FR 38092), the FAA published a technical amendment to the final rule ''Requirements for Amateur Rocket Activities.'' The final rule was published on December 4, 2008 (73 FR 73768). During the review process, we determined that an additional minor amendment is needed in part 101.

In the first line of § 101.25(e), the number ''8'' (kilometers) is changed to ''9.26'' to correct the metric conversion when the word ''statute'' is replaced with the word ''nautical''.

Technical Correction

This technical correction merely ensures correct placement of miscellaneous words. There are no other changes to the existing regulatory text.

Justification for Immediate Adoption

Because this action is editorial, the FAA finds that notice and public comment under 5 U.S.C. section 553(b) is unnecessary. For the same reason, the FAA finds good cause exists under 5 U.S.C. section 553(d) for making this rule effective upon publication.

List of Subjects for 14 CFR Part 101

Aircraft, Aviation safety.

The Amendment

■ In consideration of the foregoing, the FAA amends 14 CFR part 101, as follows:

PART 101—MOORED BALLOONS, KITES, UNMANNED ROCKETS AND UNMANNED FREE BALLOONS

■ 1. The authority citation for part 101 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113–40114, 45302, 44502, 44514, 44701–44702, 44721, 46308.

§ 101.25 [Amended]

■ 2. Amend § 101.25(e) by removing the number ''8'' and adding the number ''9.26'' in its place and removing the word ''statute'' and adding the word ''nautical'' in its place.

Issued in Washington, DC, on September 10, 2009.

Brenda D. Courtney,

Acting Director, Office of Rulemaking.

[FR Doc. E9–22341 Filed 9–15–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

[Docket No. FDA–2009–N–0665]

Ophthalmic and Topical Dosage Form New Animal Drugs; Diclofenac

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Boehringer Ingelheim Vetmedica, Inc. The supplemental NADA provides for a revised human food safety warning for use of diclofenac sodium topical cream in horses.

DATES: This rule is effective September 16, 2009.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8337, e-mail: *melanie.berson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Boehringer Ingelheim Vetmedica, Inc., 2621 North Belt Highway, St. Joseph, MO 64506–2002, filed a supplement to NADA 141–186 that provides for use of SURPASS (1% diclofenac sodium) Topical Cream in horses for the control of pain and inflammation associated with osteoarthritis. The supplemental NADA provides for a revised human food safety warning on product labeling. The supplemental NADA is approved as of August 25, 2009, and the regulations are amended in 21 CFR 524.590 to reflect the approval.

Approval of this supplemental NADA did not require review of additional safety or effectiveness data or information. Therefore, a freedom of information summary is not required.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 524

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 524.590 [Amended]

■ 2. In § 524.590, remove the first sentence of paragraph (c)(3) ''Not for use in horses intended for food.'' and in its place add ''Do not use in horses intended for human consumption.''.

Dated: September 11, 2009.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E9–22292 Filed 9–15–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9463]

RIN 1545–BG77

Modifications of Commercial Mortgage Loans Held by a Real Estate Mortgage Investment Conduit (REMIC)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations that expand the list of permitted loan modifications to include certain modifications that are often made to commercial mortgages. Changes to the regulations are necessary to better accommodate evolving practices in the commercial-mortgage industry. These changes will affect lenders, borrowers, servicers, and sponsors of securitizations of mortgages in REMICs.

DATES: *Effective Date:* These regulations are effective on or after September 16, 2009.

Applicability Date: For date of applicability, *see* § 1.860A–1(b).

FOR FURTHER INFORMATION CONTACT: Diana Imholtz or Susan Thompson Baker at (202) 622–3930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2110. The collection of information in this final regulation is in § 1.860G–2(b)(7). This information is required in order to show that certain modifications to mortgages permitted by this final regulation will not cause the modified mortgage to cease to be a qualified mortgage. The collection of information is voluntary to obtain a benefit.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to 26 CFR part 1 under section 860G of the Internal Revenue Code (Code). In Notice 2007–17 (2007–1 CB 748 (March 19, 2007)), the IRS and the Treasury Department requested input on whether the present REMIC regulations should be amended to permit additional types of modifications incurred in connection with commercial mortgage loans. *See* § 601.601(d)(2)(ii)(*b*). The IRS and the Treasury Department received several comments in response to this request (the Notice 2007–17 Comments). After consideration of the Notice 2007–17 Comments, the IRS and the Treasury Department published in the **Federal Register** (72 FR 63523) on November 9, 2007, proposed regulations (REG–127770–07) that would expand the list of permitted loan modifications to include certain modifications that are often made to commercial mortgages. The IRS and the Treasury Department received additional comments in response to the proposed regulations (the Proposed Regulation Comments). A public hearing was requested and was held on April 4, 2008 (73 FR 12041). After consideration of the Proposed Regulation Comments, the proposed regulations are adopted as revised by this Treasury decision.

Summary of Comments and Explanation of Provisions

Except as specifically provided in § 1.860G–2(b)(3), if there is a significant modification of an obligation that is held by a REMIC, then the modified obligation is treated as one that was newly issued in exchange for the unmodified obligation that it replaced. *See* § 1.860G–2(b)(1). For this purpose, the rules in § 1.1001–3(e) determine whether a modification is ''significant.'' *See* § 1.860G–2(b)(2). Because of when it is treated as having been acquired in the deemed exchange, a significantly modified obligation generally fails to be a qualified mortgage. Section 1.860G–2(b)(3), however, contains a list of modifications that are expressly permitted without regard to the section 1001 modification rules.

The final regulations expand this list of permitted exceptions to include changes in collateral, guarantees, and credit enhancement of an obligation and changes to the recourse nature of an obligation. These changes are permitted so long as the obligation continues to be principally secured by an interest in real property. The final regulations also clarify when a release of a lien on real property securing a qualified mortgage does not disqualify the mortgage.

The Proposed Regulation Comments included requests for clarification and recommendations relating to the following: (i) The lien release rule; (ii) the requirement to retest the collateral value; (iii) the appraisal requirement; (iv) changes in the nature of an obligation from nonrecourse to recourse; (v) investment trusts; and (vi) other proposals set forth in the Notice 2007–17 Comments that were not included in the proposed regulations.

1. The Lien Release Rule

The proposed regulations would provide that a lien release pursuant to certain changes in collateral would not cause a qualified mortgage to cease to be a qualified mortgage on the date the lien is released. Commentators indicated that, as drafted, the proposed regulations could be interpreted to prohibit other types of lien releases, including lien releases that are occasioned by a default or reasonably foreseeable default under § 1.860G–2(b)(3)(i) and lien releases that are permitted pursuant to the terms of the mortgage loan and are not modifications for purposes of § 1.1001–3. In response

to these comments, the final regulations clarify that a release of a lien on real property that does not result in a significant modification under § 1.1001–3 (for example, a release or substitution of collateral pursuant to the borrower's unilateral option under the terms of the mortgage loan) is not a release that disqualifies a mortgage loan, so long as the mortgage continues to be principally secured by real property after giving effect to any releases, substitutions, additions, or other alterations to the collateral. Similarly, the final regulations clarify that a lien release occasioned by a default or a reasonably foreseeable default is not a release that disqualifies the mortgage, so long as the principally-secured test continues to be satisfied.

2. The Requirement To Retest the Collateral Value

Section 1.860G–2(a)(1) of the regulations provides that an obligation is principally secured by an interest in real property if the fair market value of the real property that secures the obligation equals at least 80 percent of the adjusted issue price of the obligation. The regulations require the 80-percent test to be satisfied either at the time the obligation was originated or at the time the sponsor contributes the obligation to the REMIC. After the startup day, the regulations do not require ongoing satisfaction of the 80-percent test.

Because certain types of modifications permitted by the proposed regulations could affect the value of the collateral securing the mortgage loan, the proposed regulations would require the 80-percent test to be satisfied at the time the mortgage loan is modified with respect to changes in collateral, guarantees, and credit enhancement of an obligation or with respect to changes to the recourse nature of an obligation. Commentators indicated that retesting should be required only when the modification could cause a decrease in the value of real property collateral relative to the mortgage loan amount. For this reason, commentators further indicated that changes in guarantees, credit enhancements or the recourse nature of an obligation, as well as the addition of collateral, do not have the effect of decreasing the value of the real property securing the mortgage loan and, therefore, these types of changes should not require retesting.

To ensure that a modified mortgage loan continues to be principally secured by an interest in real property, the IRS and the Treasury Department continue to believe that it is appropriate to retest at the time of the modification. Accordingly, the final regulations retain the retesting requirement, but amend the proposed standards for satisfying the principally secured test as described in section 3 in this preamble. In addition, to provide a more flexible standard for changes that do not decrease the value of real property securing the mortgage loan, the final regulations provide an alternative method for satisfying the principally secured test.

For these types of changes (for example, a change from recourse to nonrecourse, or vice versa), the final regulations provide that a modified mortgage loan continues to be principally secured by real property if the fair market value of the interest in real property that secures the loan immediately after the modification equals or exceeds the fair market value of the interest in real property that secured the loan immediately before the modification. This alternative test is consistent with the general rule that a decline in the value of collateral does not cause a mortgage loan to cease to be principally secured by real property. The final regulations provide an example to illustrate the application of this alternative method for satisfying the principally secured test.

The final regulations also require retesting with respect to a lien release that is not a significant modification for purposes of § 1.1001–3 (for example, a release of real property collateral pursuant to the borrower's unilateral option under the terms of the mortgage loan). Here as well, the principally secured test is satisfied if either the 80-percent test is satisfied based on the current value of the real property securing the mortgage or the value of the real property collateral after the modification is no less than the value of the real property collateral immediately before.

For purposes of retesting with respect to alterations to real property collateral, the transaction causing the alteration is looked at in its entirety in determining the value of the real property collateral. For example, if, as part of an overall plan to make improvements to real property collateral that secures a mortgage loan, a borrower demolishes an existing building and constructs a new building on that real property, the fair market value of the real property collateral is determined by taking into account both the demolition of the existing building and the construction of the new building.

3. The Appraisal Requirement

For purposes of retesting as of the date of modification, the proposed regulations would require a current appraisal determined by an independent appraiser. Several commentators indicated that requiring a formal appraisal in connection with a loan modification is a stricter standard than is currently required for satisfying the 80-percent test at the startup day. *See* § 1.860G–2(a)(3). For a number of business reasons, commentators indicated that servicers need more flexibility in complying with this retesting requirement and, therefore, requested that the proposed regulations be amended to permit servicers to use other types of reasonable valuation methods.

In response to these comments and to make the retesting requirement more consistent with the current rules for satisfying the 80-percent test at the startup day, the final regulations provide that the principally-secured test will be satisfied if the servicer reasonably believes that the modified mortgage loan satisfies the 80-percent test at the time of the modification. The final regulations provide that a servicer must base a reasonable belief upon a commercially reasonable valuation method. The final regulations set forth a nonexclusive list of commercially reasonable valuation methods that can be used by servicers for retesting purposes. These same commercially reasonable methods can be used under the alternative test to establish that the value of the real property collateral immediately after the modification is no less than the value of the real property collateral immediately before it.

4. Changes in the Nature of an Obligation From Nonrecourse to Recourse

The final regulations clarify that changes in the nature of an obligation from nonrecourse (or substantially all nonrecourse) to recourse (or substantially all recourse) are permitted so long as the obligation continues to be principally secured by an interest in real property.

5. Investment Trusts

Section 301.7701–4(c) of the Procedure and Administration Regulations provides that an investment trust is not classified as a trust if there is a power under the trust agreement to vary the investment of the certificate holders. The IRS and the Treasury Department understand that changes to the terms of commercial mortgage loans held by investment trusts may raise issues as to whether a ''power to vary'' is present, and commentators recommended that the scope of the regulation project be expanded to permit investment trusts to modify

commercial mortgage loans in the same manner as REMICs. To avoid a significant delay in the publication of these final regulations, their scope has not been expanded to include modifications of mortgage loans held by investment trusts. In a separate notice to be published in the Internal Revenue Bulletin contemporaneously with these final regulations, the IRS and the Treasury Department intend to request comments on this issue.

6. Other Proposals Set Forth in the Notice 2007–17 Comments

In the Proposed Regulation Comments, commentators requested that the IRS and the Treasury Department reconsider other proposed loan modifications that were set forth in the Notice 2007–17 Comments but that were not included in the proposed regulations. For the reasons indicated in the preamble to the proposed regulations, the IRS and the Treasury Department determined that the remaining changes requested by commentators should not be included in the final regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation.

It is hereby certified that the collection of information requirement in this regulation will not have a significant economic impact on a substantial number of small business entities. This certification is based on the fact that the REMICs affected by this regulation will not be classified as small business entities. According to the Small Business Administration definition of a ''small business,'' 13 CFR 121.201, a REMIC is classified under Sector 52 (Finance and Insurance), Subsector 525 (Funds, Trusts and Other Financial Vehicles) under the category ''Other Financial Vehicle'', NAICS code 525990, and is only considered a small business entity if it accumulates less than 6.5 million dollars in annual receipts. REMICs affected by this regulation generally hold pools of commercial mortgage loans with an average loan size of 18.1 million dollars, and have greater than 6.5 million dollars in annual receipts. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Diana Imholtz of the Office of Associate Chief Counsel (Financial Institutions and Products). Other personnel from the IRS and the Treasury Department participated, however, in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of the Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

Section 1.860A–0 also issued under 26 U.S.C. 860G(e).

Section 1.860G–2 also issued under 26 U.S.C. 860G(e). * * *

■ **Par. 2.** Section 1.860A–0 is amended by revising the entry for § 1.860G–2(a)(8) and adding an entry for § 1.860G–2(b)(7) to read as follows:

§ 1.860A–0 Outline of REMIC provisions.

* * * * *

§ 1.860G–2 Other rules.

(a) * * *

(8) Release of a lien on an interest in real property securing a qualified mortgage; defeasance.

* * * * *

(b) * * *

(7) Test for determining whether an obligation continues to be principally secured following certain types of modifications.

* * * * *

■ **Par. 3.** Section 1.860A–1 is amended by adding paragraph (b)(6) to read as follows:

§ 1.860A–1 Effective dates and transition rules.

* * * * *

(b) * * *

(6) *Exceptions for certain modified obligations.* Paragraphs (a)(8)(i), (b)(3)(v), (b)(3)(vi), and (b)(7) of § 1.860G–2 apply to modifications made to the terms of an obligation on or after September 16, 2009.

■ **Par. 4.** Section 1.860G–2 is amended by:

■ 1. Revising paragraphs (a)(8), (b)(3)(iii) and (b)(3)(iv).

■ 2. Adding paragraphs (b)(3)(v), (b)(3)(vi) and (b)(7).

The additions and revisions read as follows:

§ 1.860G–2 Other rules.

(a) * * *

(8) *Release of a lien on an interest in real property securing a qualified mortgage; defeasance.* If a REMIC releases its lien on an interest in real property that secures a qualified mortgage, that mortgage ceases to be a qualified mortgage on the date the lien is released unless—

(i) The REMIC releases its lien in a modification that—

(A) Either is not a significant modification as defined in paragraph (b)(2) of this section or is one of the listed exceptions set forth in paragraph (b)(3) of this section; and

(B) Following that modification, the obligation continues to be principally secured by an interest in real property as determined by paragraph (b)(7) of this section; or

(ii) The mortgage is defeased in the following manner—

(A) The mortgagor pledges substitute collateral that consists solely of government securities (as defined in section 2(a)(16) of the Investment Company Act of 1940 as amended *(15 U.S.C. 80a–1)*);

(B) The mortgage documents allow such a substitution;

(C) The lien is released to facilitate the disposition of the property or any other customary commercial transaction, and not as part of an arrangement to collateralize a REMIC offering with obligations that are not real estate mortgages; and

(D) The release is not within 2 years of the startup day.

* * * * *

(b) * * *

(3) * * *

(iii) Waiver of a due-on-sale clause or a due-on-encumbrance clause;

(iv) Conversion of an interest rate by a mortgagor pursuant to the terms of a convertible mortgage;

(v) A modification that releases, substitutes, adds, or otherwise alters a substantial amount of the collateral for,

a guarantee on, or other form of credit enhancement for, a recourse or nonrecourse obligation, so long as the obligation continues to be principally secured by an interest in real property following the release, substitution, addition, or other alteration as determined by paragraph (b)(7) of this section; and

(vi) A change in the nature of the obligation from recourse (or substantially all recourse) to nonrecourse (or substantially all nonrecourse), or from nonrecourse (or substantially all nonrecourse) to recourse (or substantially all recourse), so long as the obligation continues to be principally secured by an interest in real property following such a change as determined by paragraph (b)(7) of this section.

* * * * *

(7) *Test for determining whether an obligation continues to be principally secured following certain types of modifications.* (i) For purposes of paragraphs (a)(8)(i), (b)(3)(v), and (b)(3)(vi) of this section, the obligation continues to be principally secured by an interest in real property following the modification only if, as of the date of the modification, the obligation satisfies either paragraph (b)(7)(ii) or paragraph (b)(7)(iii) of this section.

(ii) The fair market value of the interest in real property securing the obligation, determined as of the date of the modification, must be at least 80 percent of the adjusted issue price of the modified obligation, determined as of the date of the modification. If, as of the date of the modification, the servicer reasonably believes that the obligation satisfies the criterion in the preceding sentence, then the obligation is deemed to do so. A reasonable belief does not exist if the servicer actually knows, or has reason to know, that the criterion is not satisfied. For purposes of this paragraph (b)(7)(ii), a servicer must base a reasonable belief on—

(A) A current appraisal performed by an independent appraiser;

(B) An appraisal that was obtained in connection with the origination of the obligation and, if appropriate, that has been updated for the passage of time and for any other changes that might affect the value of the interest in real property;

(C) The sales price of the interest in real property in the case of a substantially contemporary sale in which the buyer assumes the seller's obligations under the mortgage; or

(D) Some other commercially reasonable valuation method.

(iii) If paragraph (b)(7)(ii) of this section is not satisfied, the fair market value of the interest in real property that secures the obligation immediately after the modification must equal or exceed the fair market value of the interest in real property that secured the obligation immediately before the modification. The criterion in the preceding sentence must be established by a current appraisal, an original (and updated) appraisal, or some other commercially reasonable valuation method; and the servicer must not actually know, or have reason to know, that the criterion in the preceding sentence is not satisfied.

(iv) *Example.* The following example illustrates the rules of this paragraph (b)(7).

Example. (i) S services mortgage loans that are held by R, a REMIC. Borrower B is the issuer of one of the mortgage loans held by R. The original amount of B's mortgage loan was $100,000, and the loan was secured by real property X. At the time the loan was contributed to R, property X had a fair market value of $90,000. Sometime after the loan was contributed to R, B experienced financial difficulties such that it was reasonably foreseeable that B might default on the loan if the loan was not modified. Accordingly, S altered various terms of B's loan to substantially reduce the risk of default. The alterations included the release of the lien on property X and the substitution of real property Y for property X as collateral for the loan. At the time the loan was modified, its adjusted issue price was $100,000. The fair market value of property X immediately before the modification (as determined by a commercially reasonable valuation method) was $70,000, and the fair market value of property Y immediately after the modification (as determined by a commercially reasonable valuation method) was $75,000.

(ii) The alterations to B's loan are a significant modification within the meaning of § 1.1001–3(e). The modification, however, is described in paragraphs (a)(8)(i) and (b)(3) of this section. Accordingly, the modified loan continues to be a qualified mortgage if, immediately after the modification, the modified loan continues to be principally secured by an interest in real property, as determined by paragraph (b)(7) of this section.

(iii) Because the modification includes the release of the lien on property X and substitution of property Y for property X, the modified loan must satisfy paragraph (b)(7)(i) of this section (which requires satisfaction of either paragraph (b)(7)(ii) or paragraph (b)(7)(iii) of this section). The modified loan does not satisfy paragraph (b)(7)(ii) of this section because property Y is worth less than $80,000 (the amount equal to 80 percent of the adjusted issue price of the modified mortgage loan). The modified loan, however, satisfies paragraph (b)(7)(iii) of this section because the fair market value of the interest in real estate (real property Y) that secures the obligation immediately after the modification ($75,000) exceeds the fair market value of the interest in real estate (real property X) that secured the obligation immediately before the modification ($70,000). Accordingly, the modified loan satisfies paragraph (b)(7)(i) of this section and continues to be principally secured by an interest in real property.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 5.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 6.** Section 602.101, paragraph (b) is amended by adding the entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control no.
* * * * *	
1.860G–2	1545–2110
* * * * *	

Approved: September 9, 2009.

Linda M. Kroening,

Acting Deputy Commissioner for Services and Enforcement.

Michael Mundaca,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E9–22215 Filed 9–15–09; 8:45 am]

BILLING CODE 4830–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1253

[Docket NARA–09–0002]

RIN 3095–AB61

NARA Facility Locations and Hours

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: NARA is changing the hours open to the public for our Kansas City, Missouri, and New York City regional archives. The Kansas City regional archives relocated on March 17, 2009, to the Union Station Complex at 400 West Pershing Road, Kansas City, Missouri. NARA is shifting the hours open to the public at the New York City regional archives to better serve the public for the range of hours covering the majority of visits. This rule will affect the public.

DATES: *Effective date:* October 16, 2009.

FOR FURTHER INFORMATION CONTACT: Marilyn Redman at 301–837–3174.

SUPPLEMENTARY INFORMATION: The location of NARA's Kansas City regional archives has changed. This document updates 36 CFR Part 1253 with the new location information. Also, NARA is changing the hours for our Kansas City location and existing New York City location.

NARA published a proposed rule on June 12, 2009, in the **Federal Register** (74 FR 27956) for a 60 day public comment period. We notified several of our constituent groups by e-mail and provided a notice about the proposed rule on our Web site, *http://www.archives.gov.* The public comment period closed on August 11, 2009; we received one public comment. The commenter remarked only about the change in hours and agreed that the change made sense if that would assist visitors. The commenter added that it would be helpful to have one night during the week or longer hours on Saturday for those who cannot visit during conventional business hours. The comment does not specify whether the concern relates to either, or to both, research locations. If a need for additional hours becomes evident in the future, and available resources support extending our hours, we will further explore the matter. As a result, we have made no changes in this final rule.

This rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB). As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on a substantial number of small entities because this rule applies to individual researchers. This rule does not have any federalism implications. This rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking.

List of Subjects in 36 CFR Part 1253

Archives and records.

■ For the reasons set forth in the preamble, NARA amends part 1253 of title 36, Code of Federal Regulations, as follows:

PART 1253—LOCATIONS OF RECORDS AND HOURS OF USE

■ 1. The authority citation for part 1253 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

■ 2. Amend § 1253.7 by revising paragraphs (c) and (g) as follows:

§ 1253.7 Regional Archives.

* * * * *

(c) NARA—Northeast Region (New York City) is located at 201 Varick Street, 12th Floor, New York, NY 10014–4811 (entrance on Houston Street, between Varick and Hudson). The hours are 9 a.m. to 5 p.m., Monday through Friday. The telephone number is 212–401–1620 or Toll Free 1–866–840–1752.

* * * * *

(g) NARA—Central Plains Region (Kansas City) is located at 400 West Pershing Road, Kansas City, MO 64108. The hours are 8 a.m. to 4 p.m., Tuesday through Saturday. The telephone number is 816–268–8000.

* * * * *

Dated: September 11, 2009.

Adrienne C. Thomas,

Acting Archivist of the United States.

[FR Doc. E9–22403 Filed 9–15–09; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0624; FRL–8431–1]

Boscalid; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of boscalid in or on coffee, green bean imported and amends the tolerance for banana, imported. BASF, Inc., requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). This regulation is also a removing tolerance for cucumber, and one tolerance for vegetable, root, subgroup 1A, except sugar beet, garden beet, radish, and turnip which are superceded with higher tolerances formerly published in the **Federal Register** of March 28, 2008 (73 FR 16553) (FRL–8354–4).

DATES: This regulation is effective September 16, 2009. Objections and requests for hearings must be received on or before November 16, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0624. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Bryant Crowe, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0025; e-mail address: *crowe.bryant@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access

this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0624 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before November 16, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2008–0624, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerances

In the **Federal Register** of November 5, 2008 (73 FR 65849) (FRL–8385–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 8E7366, PP 8E7367) by BASF Corporation, P.O. Box 13528, 26 Davis Drive, Research Triangle, NC 27709. The petitions requested that 40 CFR 180.589 be amended by increasing the tolerance for residues of the fungicide boscalid, 3-pyridinecarboxamide, 2-chloro-N-(4′-chloro(1,1′-biphenyl))-2-yl, in or on banana from 0.2 parts per million (ppm) to 0.5 ppm (PP 8E7366), and establishing a tolerance for coffee, green bean at 0.05 ppm (PP 8E7367). That notice referenced a summary of the petitions prepared by BASF Corporation, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. One comment was received from a private citizen. EPA's response to comment is discussed in Unit IV.C.

Additionally, in this action EPA is correcting an error in a prior tolerance rulemaking for boscalid (73 FR 16553) (March 28, 2008). In that action, EPA amended the boscalid tolerances for cucumber and vegetable, root, subgroup 1A , except sugar beet, garden beet, radish, and turnip by increasing the level of each of those tolerances. Inadvertently, however, the revised tolerance levels were added to the CFR without removing the prior tolerances. This action removes the prior tolerances.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of boscalid on banana, imported at 0.40 ppm, and coffee, green bean, imported at 0.05 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follow.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Boscalid has low acute toxicity via the oral, dermal, and inhalation routes of exposure and is not an eye or skin irritant. Dermal sensitization could not be determined because the skin sensitization study was inadequate. The target organs for boscalid are the thyroid and liver.

An acute endpoint was not selected because no adverse effects attributable to a single exposure to boscalid were seen in the database, including the developmental toxicity studies. The chronic dietary, incidental oral, dermal, and inhalation endpoints were all selected from three co-critical studies: The chronic rat study, the rat carcinogenicity study, and a 1-year feeding study in dogs. The dose selected for regulation of oral, dermal, and inhalation risk at all durations, for all populations, is the ''no- observed-adverse-effect level'' of 21.8 milligrams/kilogram/day (mg/kg/day) based on thyroid and hepatic toxicity seen in rats and dogs at higher dose levels.

Boscalid is classified as exhibiting ''suggestive evidence of carcinogenicity.'' Evidence of carcinogenicity was seen in males (significant trend, and pair-wise at the high dose) and in females (trend only) in rats or mice or both; however, in both sexes no malignancies were seen. Only benign tumors were observed, and these occurred at dose levels above the dose level used to establish the chronic population adjusted dose (cPAD). Additionally, there is no concern for mutagencity. EPA has concluded that the cPAD is protective of any tumor response seen in the boscalid cancer studies.

Specific information on the studies received and the nature of the adverse effects caused by boscalid as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-

adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the ''Boscalid – Human Health Risk Assessment of the Proposed Food Use of the Fungicide on Imported Coffee'' on pages 16–21 in docket ID number EPA–HQ–OPP–2008–0624.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which the NOAEL in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-, intermediate-, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm; http://www.epa.gov/oppfead1/trac/science, and http://www.epa.gov/pesticides/trac/science/aggregate.pdf.*

A summary of the toxicological endpoints for boscalid used for human risk assessment can be found at *http://www.regulations.gov* in the ''Boscalid – Human Health Risk Assessment of the Proposed Food Use of the Fungicide on Imported Coffee'' on pages 6–7 in docket ID number EPA–HQ–OPP–2008–0624.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to boscalid, EPA considered exposure under the petitioned-for tolerances as well as all existing boscalid tolerances in (40 CFR part 180.589). EPA assessed dietary exposures from boscalid in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. No such effects were identified in the toxicological studies for boscalid; therefore, a quantitative acute dietary exposure assessment was not conducted.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. As to residue levels in food, EPA made the following assumption for the chronic exposure assessments: The assessment was based on tolerance level residues for existing uses, recommended tolerance levels for banana and coffee, and 100% crop treated assumptions.

iii. *Cancer*. For the reasons set forth in Unit II.A., EPA has concluded that the cPAD is protective of any cancer effects with boscalid. EPA's estimate of chronic exposure as described above is relied upon to evaluate whether any exposure could exceed the cPAD and thus pose a cancer risk.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for boscalid in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of boscalid. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

The current requests for an increased tolerance in banana, and a new use on coffee, do not affect the estimated drinking water concentrations (EDWCs) because both requests are for tolerances on imported commodities. As a result, the EDWCs used in the previous assessment ''Boscalid - Human Health Risk Assessment to support proposed new uses on fresh herbs (herbs subgroup 19A), avocado, black sapote, canistel, mamey sapote, mango, papaya, sapodilla, star apple and cotton'' on page 15 in docket ID number EPA–HQ–OPP–2008–0624 at *http://www.regulations.gov* were used in this assessment as well. The EDWCs were based on the turf use.

Based on the First Index Reservoir Screening Tool (FIRST), and Screening Concentration in Ground Water (SCI-GROW) models, the EDWCs of boscalid for chronic exposures for non-cancer assessments are estimated to be 29.6 ppb for surface water and 0.63 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 0.029 ppm was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Boscalid is currently registered for the following uses that could result in residential exposures: Golf course turf, strawberries, caneberries, and tree fruit grown at ''U-pick'' farms and orchards. EPA assessed residential exposure using the following assumptions: Dermal post-application exposure for golfers exposed to treated turf. The duration of exposure is anticipated to be short-term.

Based on the low vapor pressure of boscalid (7 x 10-9 hPa), the outdoor nature of the uses, and the weight of evidence from available residue studies, the Agency does not anticipate post-application inhalation exposures from the currently approved uses of boscalid.

In addition, U-pick activities are considered to be one-time (<1 day) events. As no adverse effects were seen in the boscalid toxicity database resulting from a single exposure to the chemical a post-application exposure assessment is not required for this scenario.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found boscalid to share a common mechanism of toxicity with any other substances, and boscalid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that boscalid does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. In the 2-generation reproduction study in rats, body weight effects were seen in the mid-and-high doses in the second generation male pups. However, the degree of concern is low for the quantitative evidence of susceptibility seen in this study, since the body weight effects were seen in only one sex and only after dosing for two generations. There is a clear NOAEL for the body weight effects seen in the rat 2-generation reproduction study and EPA is regulating based on a POD below where these effects are seen.

In the developmental neurotoxicity study, transient body weight effects were seen in one sex at postnatal days 1–4 with the animals recovering by postnatal day 11. Body weight effects were also seen in the high dose, which was the limit dose. The degree of concern for these effects are low since the effects are either transient in nature or occurred at the limit dose and EPA is regulating based on a POD below where these effects are seen.

While qualitative sensitivity was seen in the rabbit developmental study, the fetal effects were seen only at the limit dose in the presence of maternal toxicity. Further, since EPA is regulating based on a POD which is an order of magnitude below where these effects are seen in the rabbit developmental study, EPA concludes that the qualitative sensitivity evidenced in the fetuses in the rabbit developmental study does not require retention of the 10X children's safety factor.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for boscalid is adequate for risk assessment, however an immunotoxicity study (OPPTS Guideline 870.7800) in rats and/or mice is required under the new 40 CFR part 158 data regulations. No indication of immunotoxicity was observed in the toxicity database; therefore, an additional 10X database uncertainty factor (UF) is not warranted.

ii. There is no indication that boscalid is a neurotoxic chemical and there is no need for additional UFs to account for neurotoxicity. There is no evidence of neurotoxicity in the acute subchronic, or developmental neurotoxicity studies. The toxicity studies for boscalid demonstrate that, in general, the chemical has low mammalian toxicity, and the database reveals no reproductive, developmental, or developmental neurotoxicity concerns.

iii. Data involving the testing of young animals did show increased quantitative sensitivity in the young with regard to body weight effects, and qualitative sensitivity was seen in one developmental study. However, clear NOAELs were identified for all of these effects. Moreover, the body weight effects at the LOAELs in these studies were either transient or inconsistent, and qualitative sensitivity occurred at the limit dose in the presence of maternal toxicity. Additionally, EPA is regulating based on a POD below where these effects are seen. EPA concludes that there are no residual uncertainties for pre- and/or post-natal toxicity.

iv. There are no residual uncertainties identified in the exposure databases. EPA has conservatively estimated human exposure to boscalid, relying on worst case exposures in food (assuming all registered crops contain residues at the tolerance level), and conservative models, as well as pesticide-specific data, in estimating exposure from residues in drinking water, and from residential uses. These assessments will not underestimate the exposure and risks posed by boscalid.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. No adverse effect resulting from a single-oral exposure was identified and no acute dietary endpoint was selected. Therefore, boscalid is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to boscalid from food and water will utilize 33% of the cPAD for children 1 to 2 years of age, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of boscalid is not expected.

3. *Short-term risk*. Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Boscalid is currently registered for use(s) that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to boscalid.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures aggregated result in aggregate MOEs of 950 for the U.S. population, 1,200 for females 13–49 years old, and 1,300 for youth 13–19 years old.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water

(considered to be a background exposure level). Because no intermediate term, non-occupational exposures are anticipated from the use of boscalid, an intermediate-term aggregate risk assessment is not required for boscalid.

5. *Aggregate cancer risk for U.S. population.* Boscalid is classified as exhibiting ''suggestive evidence of carcinogenicity.'' Evidence of carcinogenicity was seen in males (significant trend, and pair-wise at the high dose) and in females (trend only); however, in both sexes no malignancies were seen. Only benign tumors were observed, and these occurred at dose levels above the dose level used to establish the cPAD. Additionally, there is no concern for mutagencity. Quantification of human cancer risk is not required. Aggregate cancer exposure and risk are not of concern. Therefore, an aggregate risk assessment was not conducted.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to boscalid residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodologies high performance liquid chromatography/ultra violet (HPLC/UV), and liquid chromatography/mass spectrometry/tandem mass spectrometry (LC/MS/MS) are available to enforce the tolerance expressions. The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

The Codex Alimentarius Commission has established a MRL for residues of boscalid in or on banana at 0.2 ppm, which is equivalent to the current U.S. tolerance. However, the recommended U.S. tolerance is higher than the Codex MRL. In the submitted field trials, residues above the Codex MRL were observed. As a result, it is not possible to harmonize the banana tolerance with the Codex MRL. There is a Codex Maximum Residue for the residues of boscalid in/on coffee beans at 0.05 ppm.

C. Response to Comments

One anonymous public comment was received on November 5, 2008. The commenter claimed that there was suggestive evidence of carcinogenic effects from boscalid but that EPA had not assessed these effects. In response, EPA notes that, for the reasons set forth in Unit II.A., EPA has concluded that boscalid cPAD provides an adequate margin of safety with regard to the benign tumors seen in cancer studies with boscalid.

D. Revisions to Petitioned-For Tolerances

The petition requested that 40 CFR 180.589 be amended by increasing the tolerance for residues of boscalid in or on banana from 0.2 ppm to 0.5 ppm. Based on the output from the tolerance spreadsheet, the Agency recommends in favor of the establishment of an import tolerance of 0.40 ppm.

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the Agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's technical correction final without prior proposal and opportunity for comment, because EPA is correcting an error in a prior tolerance rulemaking for boscalid (73 FR 16553) (March 28, 2008). In that action, EPA amended the boscalid tolerances for cucumber and vegetable, root, subgroup 1A , except sugar beet, garden beet, radish, and turnip by increasing the level of each of those tolerances. Inadvertently, however, the revised tolerance levels were added to the CFR without removing the prior tolerances. This action removes the prior tolerances. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

V. Conclusion

Therefore, tolerances are amended for residues of boscalid, in or on banana, imported at 0.40 ppm, and established for coffee, green bean, imported at 0.05 ppm. Additionally, the duplicate boscalid tolerances for cucumber at 0.20 ppm, and vegetable, root, subgroup 1A, except sugar beet, garden beet, radish, and turnip at 0.7 ppm are removed correcting the error in which these superceded tolerances were not deleted despite their amendment.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology

Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 25, 2009.

Lois A. Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.589, the table to paragraph (a)(1) is amended by alphabetically adding an entry for ''coffee, green bean, imported'', by revising the entry for ''banana, import'' and by removing the entry for ''cucumber'' with the limit of 0.20 ppm and the entry for ''vegetable, root, subgroup 1A, except sugar beet, garden beet, radish, and turnip'' with the limit of 0.7 ppm. The added and revised entries read as follows:

§ 180.589 Boscalid; tolerances for residues.

(a)* * *(1) * * *

Commodity	Parts per million
* * * *	*
Banana, import \1\	0.40
* * * *	*
Coffee, green bean, import \1\ ..	0.05
* * * *	*

[1]No US registrations as of September 16, 2009.

* * * * *

[FR Doc. E9–22163 Filed 9–15–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0002; FRL–8434–1]

Acetochlor; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of acetochlor, including its metabolites and degradates, in or on cotton, gin byproducts; cotton, undelinted seed; soybean, meal; and soybean, seed. Monsanto Company requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). This regulation also removes the existing tolerance for indirect or inadvertent residues of acetochlor on soybean, seed.

DATES: This regulation is effective September 16, 2009. Objections and requests for hearings must be received on or before November 16, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0002. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Susan Stanton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5218; e-mail address: *stanton.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure

proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0002 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before November 16, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2009–0002, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of April 8, 2009 (74 FR 15971) (FRL–8407–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 8F7443 and PP 8F7448) by Monsanto Company, 1300 I St., NW., Suite 450 East, Washington DC 20052. The petitions requested that 40 CFR 180.470 be amended by establishing tolerances for combined residues of the herbicide acetochlor, 2-chloro-2'-methyl-6'-ethyl-*N*-ethoxymethylacetanilide, and its metabolites containing either the 2-ethyl-6-methyl-aniline (EMA) or the 2-(1-hydroxyethyl)-6-methyl-aniline (HEMA) moiety, to be expressed as acetochlor equivalents, in or on cotton, gin byproducts; and cotton, undelinted seed at 4.0 parts per million (ppm) and 0.6 ppm, respectively (PP 8F7443); and soybean, seed at 1.0 ppm (PP 8F7448). That notice referenced a summary of the petition prepared by Monsanto Company, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has determined that a tolerance for residues of acetochlor and its metabolites is also required on soybean, meal at 1.2 ppm. EPA has also revised the tolerance expression for acetochlor to clarify the chemical moieties that are covered by the tolerances and specify how compliance with the tolerances is to be measured. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of acetochlor, including its metabolites and degradates, on cotton, gin byproducts at 4.0 ppm; cotton, undelinted seed at 0.6 ppm; soybean, meal at 1.2 ppm; and soybean, seed at 1.0 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Acetochlor has low acute toxicity by the oral, dermal, and inhalation routes of exposure and is mildly irritating to the eyes. The results of two dermal irritation studies indicate that it is a mild to strong skin irritant. Acetochlor is also a strong dermal sensitizer.

Evidence of neurotoxicity was observed in acute and subchronic neurotoxicity screening studies in rats, developmental toxicity studies in rats, and subchronic and chronic studies in dogs. In addition to the nervous system, the major target organs affected in subchronic and chronic studies in rats, dogs and mice exposed to acetochlor are the liver, thyroid (secondary to liver), kidney, testes, and erythrocytes. Species-specific target organs include the nasal olfactory epithelium in rats and the lungs in mice.

There is no evidence of increased qualitative or quantitative susceptibility of fetuses or offspring to acetochlor exposure in the developmental and reproduction toxicity studies in rats and rabbits. In two developmental toxicity studies in rats, fetal effects (increased early resorptions, postimplantation loss, and decreased fetal weight) occurred at doses that also resulted in maternal toxicity (mortality, clinical signs of toxicity, and decreased maternal body weight gain). In two rabbit developmental toxicity studies there were no adverse fetal effects at the highest doses tested (HDT) (190 milligrams/kilogram/day (mg/kg/day) and 300 mg/kg/day); whereas maternal toxicity (body weight loss) was seen at 50 mg/kg/day in one study. In three reproduction toxicity studies in rats, offspring effects (decreased pup weights in the first two studies; decreased pup weights, decreased F2 litter size at birth, and focal hyperplasia and polypoid adenomata in nasal epithelium of adult F1 offspring at study termination in the third study) occurred at the same or higher doses than those resulting in parental toxicity (decreased body weight or weight gain in the first two studies; focal hyperplasia and polypoid adenomata in nasal epithelium of adult F1 offspring at study termination in the third study). There was no evidence of reproductive toxicity observed at any dose tested in two of the three reproductive toxicity studies in rats. The third reproduction study in rats showed a decreased number of implantations at the HDT of 1,750 ppm.

There was evidence of carcinogenicity in studies conducted with acetochlor in rats and mice. A 23–month mouse carcinogenicity study showed weak evidence for increased benign lung tumors in females, and a 78–week study showed weak evidence for increased benign lung tumors in males. The increases were considered equivocal, based on increases in benign tumors only, inconsistent dose-responses between the two studies, inconsistencies in the responses of males and females between the two studies, lack of pre-neoplastic lung lesions in the 23–month study (while the 78–week study showed an increase in bronchiolar hyperplasia), and the variable incidence of lung tumors known to occur in older mice.

Two carcinogenicity studies in rats showed an increase in nasal epithelial tumors and thyroid follicular cell tumors. Thyroid tumor incidence was relatively low, and there was evidence that the tumors were due to disruption of thyroid-pituitary homeostasis. There are acceptable mode of action data for the rat tumors (nasal olfactory epithelial tumors and thyroid follicular cell tumors) which are adequate to support a non-linear, margin of exposure (MOE), approach for assessment of cancer risk. The data show that, like the related compounds, alachlor and butachlor, tumor formation is dependent upon local cytotoxicity secondary to oxidative damage by a reactive quinone imine intermediate. The mechanistic data on nasal tumorigenesis of acetochlor in the rat, when considered together with the mutagenicity data on acetochlor and consistent findings in mechanistic and mutagenicity studies on the closely related compound alachlor, are considered adequate to demonstrate a cytotoxic, non-mutagenic mode of tumor induction.

Because a clear mode of action was demonstrated for the rat tumors, EPA based the cancer classification on the data from the mouse. Given the weakness of these data (benign lung tumors in male and female mice and histiocytic sarcomas in female mice), EPA has classified acetochlor as having ''Suggestive Evidence of Carcinogenic Potential'' and determined that linear quantification of carcinogenic potential would not be appropriate for the mouse tumors. The rat nasal tumors, with a point of departure (POD) of 10 mg/kg/day, are the most sensitive effect for cancer risk. The chronic population adjusted dose (cPAD), based on the no-observed-adverse-effect level (NOAEL) of 2.0 mg/kg/day from the chronic dog study, will be protective of both non-cancer and cancer effects, including rat nasal tumors, thyroid tumors, and mouse tumors.

Specific information on the studies received and the nature of the adverse effects caused by acetochlor as well as the NOAEL and the lowest-observed-adverse-effect level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document *Acetochlor Human Health Risk Assessment for Proposed New Use of Acetochlor on Cotton and Soybeans,* page 41 in docket ID number EPA–HQ–OPP–2009–0002.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological POD is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and cPAD. The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-term, intermediate-term, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the level of concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for acetochlor used for human risk assessment can be found at *http://www.regulations.gov* in the document *Acetochlor Human Health Risk Assessment for Proposed New Use of Acetochlor on Cotton and Soybeans* page 25 in docket ID number EPA–HQ–OPP–2009–0002.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to acetochlor, EPA considered exposure under the petitioned-for tolerances as well as all existing acetochlor tolerances in 40 CFR 180.470. EPA assessed dietary exposures from acetochlor in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intakes by Individuals (CSFII). As to residue levels in food, EPA assumed that residues are present in all commodities at the tolerance level and that 100% of commodities are treated with acetochlor. Dietary Exposure Evaluation Model 7.81 (DEEM™ 7.81) default concentration factors were used to estimate residues of acetochlor in processed commodities.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA assumed that residues are present in soybeans and cotton at the tolerance level and that 100% of cotton and soybeans are treated with acetochlor. For existing uses of acetochlor, EPA assumed average field trial levels and 100 percent crop treated (PCT). DEEM™ 7.81 default concentration factors were used to estimate residues of acetochlor in processed commodities.

iii. *Cancer*. Based on the results of carcinogenicity studies in rats and mice, EPA classified acetochlor as having ''Suggestive Evidence of Carcinogenic Potential'' but determined that the chronic risk assessment will be protective of both non-cancer and cancer effects. Therefore, a separate exposure assessment to evaluate cancer risk is unnecessary.

iv. *Anticipated residue and PCT information*. EPA used anticipated residues derived from the results of field trials in the chronic dietary exposure assessment. EPA did not use PCT

information in the acute or chronic exposure assessments.

Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such Data Call-Ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for acetochlor in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of acetochlor. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), the estimated drinking water concentration (EDWC) of acetochlor for acute exposures is estimated to be 75 parts per billion (ppb) for surface water. The EDWC for chronic exposures for non-cancer assessments is estimated to be 4.8 ppb for surface water. Residues of parent acetochlor in ground water are expected to be insignificant compared to residues in surface water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 75 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 9.5 ppb was used to assess the contribution to drinking water. This value is higher than the modeled EDWC for chronic exposures (4.8 ppm) and was derived from preliminary modeling that was subsequently refined. Since chronic exposure estimates using the higher value are below EPA's LOC, EPA did not revise the dietary exposure assessment to reflect the final modeled EDWC.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Acetochlor is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

The chloroacetanilides have been evaluated by the Agency and the FIFRA Scientific Advisory Panel (SAP) as a related group of chemicals for this purpose. Acetochlor is included in a Cumulative Assessment Group (CAG) of Chloroacetanilide pesticides. Structurally related chloroacetanilides include acetochlor, alachlor, butachlor, propachlor and metolachlor. For purposes of a cumulative risk assessment, it was determined that the common mechanism of toxicity group consists of alachlor, acetochlor and butachlor. Butachlor is excluded from the group for risk assessment purposes at present since there are no registered uses or tolerances for this chemical in the United States. The group was selected based on common endpoints of:

i. Nasal turbinate tumors in rats, and a known mechanism of toxicity for development of these tumors.

ii. Induction of hepatic UDP-Glucuronosyl Transferase (UDPGT), which results in increased incidence of thyroid follicular cell tumors secondary to disruption of pituitary-thyroid homeostasis. Thyroid effects were not included in the final cumulative assessment of the chloroacetanilide herbicides because they were determined to occur at excessively toxic dose levels, and therefore were not considered relevant to human risk assessment. Nasal tumors represent the most sensitive endpoint for both compounds.

An updated cumulative risk assessment of the Chloroacetanilide CAG pesticides, acetochlor and alachlor, was conducted in April 2007. The risk assessment ''*ACETOCHLOR/ALACHLOR*: Revised Cumulative Risk Assessment for the Chloroacetanilides to Support the Proposed New Uses on Alachlor and Acetochlor''. PP 8F05000 and 8F5025 (Alachlor), PP 6F4791, 1F6263 and 5F6918 (Acetochlor) is available in the docket established for this action (EPA–HQ–OPP–2009–0002). Based on the most recent Chloroacetanilide CAG cumulative risk assessment, cumulative risk is not of concern. A revised quantitative cumulative assessment was not conducted for the current assessment of proposed new uses for acetochlor, because the proposed new uses on cotton and soybeans would not affect the cumulative risk results. Acetochlor is a very minor contributor to cumulative risk when compared to alachlor, and the proposed new uses (cotton and soybeans) are minor contributors to acetochlor dietary risk.

For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional SF when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The prenatal and postnatal toxicity database for acetochlor includes two rat and two rabbit developmental toxicity studies and three reproduction toxicity studies in rats. As discussed in Unit III.A., there was no evidence of qualitative or quantitative susceptibility of fetuses or offspring to acetochlor exposure in any of these studies.

3. *Conclusion.* EPA has determined that the FQPA safety factor of 10X must be retained as a database UF for acetochlor acute risk assessment. This decision is based on the following findings:

i. The toxicity database for acetochlor is incomplete. Additional data pertaining to acetochlor's potential to cause developmental neurotoxicity (DNT) or immunotoxicity are outstanding.

ii. Evidence of neurotoxicity was observed in acute and subchronic neurotoxicity screening studies in rats,

developmental toxicity studies in rats, and subchronic and chronic studies in dogs. Frank neuropathology was seen in a chronic study in the dog. EPA has required a DNT study in rats to assess susceptibility of offspring to neurotoxic effects relative to adult animals. Results of the DNT study could impact the current dose selected for assessing acute oral exposure, since the NOAEL used for acute dietary risk assessment (150 mg/kg/day) is greater than the NOAEL from a reproductive toxicity study (21 mg/kg/day) for acetochlor, and the DNT study will likely be conducted at dose levels similar to those of the reproductive toxicity study. The results of the DNT study are not expected to impact the dose selected for chronic risk assessment, which is based on the lower NOAEL of 2.0 mg/kg/day from the chronic dog study.

iii. In accordance with 40 CFR part 158 Toxicology Data requirements, an immunotoxicity study (870.7800) is required for acetochlor. In the absence of specific immunotoxicity studies, EPA has evaluated the available acetochlor toxicity data to determine whether an additional database UF is needed to account for potential immunotoxicity. There are no indications in the available studies that organs associated with immune function, such as the thymus and spleen, are affected by acetochlor, and acetochlor does not belong to a class of chemicals (e.g., the organotins, heavy metals, or halogenated aromatic hydrocarbons) that would be expected to be immunotoxic.

iv. There is no evidence that acetochlor results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in offspring in the 2-generation reproduction studies.

v. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100% crop treated and tolerance-level residues or average residue levels derived from reliable field trials. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to acetochlor in drinking water. Residential exposure to acetochlor is not expected. These assessments will not underestimate the exposure and risks posed by acetochlor.

After weighing this evidence, EPA retains significant uncertainty regarding potential neurotoxic effects in infants and children but does not have such concerns for immunotoxicity. Given the findings of neurotoxicity and the uncertainty regarding the sensitivity of fetal and neonatal animals to neurotoxic effects, EPA has concluded that it lacks reliable data to remove the FQPA 10X safety factor for acute exposures. For chronic exposures, EPA concludes that reliable data show that removal of the FQPA 10X factor will be safe for infants and children. Three factors predominate here. First, given the expected dosing in the DNT study, that study is unlikely to affect the cPAD, even if effects were seen at the lowest dose tested. Second, there is no evidence of increased susceptibility in multiple studies in multiple species. Third, although neurotoxic effects have been observed in the database, at lower doses the more significant effects are not related to neurotoxicity.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-term, intermediate-term, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk.* An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to acetochlor will occupy 11% of the aPAD for infants less than 1 year old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to acetochlor from food and water will utilize 6% of the cPAD for infants less than 1 year old, the population group receiving the greatest exposure. There are no residential uses for acetochlor.

3. *Short-term/intermediate-term risk.* Short-term and intermediate-term aggregate exposure take into account short-term or intermediate-term residential exposure plus chronic exposure from food and water (considered to be a background exposure level). Acetochlor is not registered for any use patterns that would result in residential exposure. Therefore, the short-term or intermediate-term aggregate risk is the sum of the risk from exposure to acetochlor through food and water and will not be greater than the chronic aggregate risk.

4. *Aggregate cancer risk for U.S. population.* As explained in Unit III.A., risk assessments based on the endpoint selected for chronic risk assessment are considered to be protective of any potential carcinogenic risk from exposure to acetochlor. Based on the results of the chronic risk assessment discussed above in Unit E.2., EPA concludes that acetochlor is not expected to pose a cancer risk.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to acetochlor residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high performance liquid chromatography (HPLC) method with oxidative coulometric electrochemical detection (OCED)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no CODEX, Canadian or Mexican maximum residue limits established for residues of acetochlor on cotton or soybean commodities.

C. Revisions to Petitioned-For Tolerances

The registrant proposed a tolerance for residues of acetochlor and its metabolites on soybean, seed at 1.0 ppm. Based on processing data for soybean showing the potential for residues of acetochlor to concentrate in soybean meal (1.2X), EPA determined that a tolerance is also needed for soybean, meal at 1.2 ppm.

Tolerances for acetochlor are currently expressed in terms of ''residues of acetochlor; 2-chloro-2'-methyl-6-ethyl-*N*-ethoxymethylacetanilide, and its metabolites containing the ethyl methyl aniline (EMA) moiety and the hydroxyethyl methyl aniline (HEMA) moiety, to be analyzed as acetochlor and expressed as acetochlor equivalents.'' EPA is revising the tolerance expression

for existing tolerances and the new tolerances on cotton and soybeans to clarify the chemical moieties that are covered by the tolerances and specify how compliance with the tolerances is to be measured. The revised tolerance expression makes clear that the tolerance covers ''residues of acetochlor, including its metabolites and degradates,'' and that compliance with the tolerance levels will be determined by measuring only ''acetochlor, 2-chloro-2'-methyl-6-ethyl-*N*-ethoxymethylacetanilide, and its metabolites containing the EMA moiety and the HEMA moiety. Both parent and the named metabolites shall be determined as EMA and HEMA, and calculated as the stoichiometric equivalents of acetochlor.''

EPA has determined that it is reasonable to make this change final without prior proposal and opportunity for comment, because public comment is not necessary, in that the change has no substantive effect on the tolerance, but rather is merely intended to clarify the existing tolerance expression.

V. Conclusion

Therefore, tolerances are established for residues of acetochlor, including its metabolites and degradates, on cotton, gin byproducts at 4.0 ppm; cotton, undelinted seed at 0.6 ppm; soybean, meal at 1.2 ppm; and soybean, seed at 1.0 ppm. Compliance with these tolerance levels is to be determined by measuring only acetochlor, 2-chloro-2'-methyl-6-ethyl-*N*-ethoxymethylacetanilide, and its metabolites containing the EMA moiety and the HEMA moiety. Both parent and the named metabolites shall be determined as EMA and HEMA, and calculated as the stoichiometric equivalents of acetochlor.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 31, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.470 is amended by revising the introductory text in paragraphs (a) and (d); alphabetically adding the entries cotton, gin byproducts; cotton, undelinted seed; soybean, meal; and soybean, seed to the table in paragraph (a), and by removing the entry for ''soybean, seed'' from the table in paragraph (d) to read as follows.

§ 180.470 Acetochlor; tolerances for residues.

(a) *General.* Tolerances are established for residues of acetochlor, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only acetochlor, 2-chloro-2'-methyl-6-ethyl-*N*-ethoxymethylacetanilide, and its metabolites containing the ethyl methyl aniline (EMA) moiety and the hydroxyethyl methyl aniline (HEMA) moiety. Both parent and the named metabolites shall be determined as ethyl methyl aniline (EMA) and hydroxyethyl methyl aniline (HEMA), and calculated as the stoichiometric equivalents of acetochlor, in or on the following commodities:

Commodity	Parts per million
* * * * *	
Cotton, gin byproducts	4.0
Cotton, undelinted seed	0.6
* * * * *	
Soybean, meal	1.2
Soybean, seed	1.0

* * * * *

(d) *Indirect or inadvertent residues.* Tolerances are established for indirect or inadvertent residues of acetochlor, including its metabolites and degradates, in or on the raw agricultural commodities in the table to this paragraph when present therein as a result of application of acetochlor to the growing crops in the table to paragraph (a) of this section. Compliance with the tolerance levels specified below is to be determined by measuring only acetochlor, 2-chloro-2'-methyl-6-ethyl-*N*-ethoxymethylacetanilide, and its metabolites containing the ethyl methyl aniline (EMA) moiety and the hydroxyethyl methyl aniline (HEMA) moiety. Both parent and the named metabolites shall be determined as ethyl methyl aniline (EMA) and hydroxyethyl methyl aniline (HEMA), and calculated as the stoichiometric equivalents of acetochlor, in or on the following commodities.

* * * * *

[FR Doc. E9–21845 Filed 9–15–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0251; FRL–8431–7]

Ametryn, Amitraz, Ammonium Soap Salts of Higher Fatty Acids, Bitertanol, Coppers, et al.; Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking certain tolerances/tolerance exemptions for the fungicides pentachloronitrobenzene and triadimenol; the herbicides ametryn, fluazifop-p-butyl, and prometryn; the insecticides amitraz and mineral oil; the defoliant/desiccant sodium chlorate; and the fungicide/algicide/herbicide coppers. Also, EPA is modifying certain tolerances for the fungicide bitertanol and the insecticide malathion. In addition, EPA is establishing new tolerances/tolerance exemptions for the fungicides coppers and pentachloronitrobenzene; the herbicide prometryn; the insecticide malathion; and the defoliant/desiccant sodium chlorate; and revising the tolerance expression for the ammonium salts of higher fatty acids (ammonium soap salts). The regulatory actions finalized in this document are in follow-up to the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and tolerance reassessment program under the Federal Food, Drug, and Cosmetic Act (FFDCA), section 408(q).

DATES: This regulation is effective September 16, 2009. Objections and requests for hearings must be received on or before November 16, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0251. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Joseph Nevola, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308-8037; e-mail address: *nevola.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in

accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0251 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 16, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2009–0251, by one of the following methods.

•*Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

•*Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

•*Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background

A. What Action is the Agency Taking?

In the **Federal Register** of May 13, 2009 (74 FR 22478) (FRL–8412–3), EPA issued a proposal to revoke, modify, and establish specific tolerances/tolerance exemptions for residues of the fungicides bitertanol, coppers, pentachloronitrobenzene and triadimenol; the herbicides ametryn, fluazifop-p-butyl, and prometryn; the insecticides amitraz, malathion, and mineral oil; the defoliant/desiccant sodium chlorate; and the fungicide/algicide/herbicide coppers; and to revise the tolerance expression for the ammonium salts of higher fatty acids (ammonium soap salts). Also, the proposal of May 13, 2009 (74 FR 22478) provided a 60–day comment period which invited public comment for consideration and for support of tolerance retention under FFDCA standards.

In this final rule, EPA is revoking, modifying, and establishing specific tolerances/tolerance exemptions for residues of ametryn, amitraz, bitertanol, coppers, fluazifop-p-butyl, malathion, mineral oil, pentachloronitrobenzene, prometryn, sodium chlorate, and triadimenol in or on commodities listed in the regulatory text of this document, and revising the tolerance expression for the ammonium soap salts of higher fatty acids (C_8-C_{18} saturated; C_8-C_{12} unsaturated).

EPA is finalizing these tolerance actions in order to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standard of FFDCA. The safety finding determination of ''reasonable certainty of no harm'' is discussed in detail in each Reregistration Eligibility Decision (RED) and Report on FQPA Tolerance Reassessment Progress and Interim Risk Management Decision (TRED) for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications, to reflect current use patterns, to meet safety findings and change commodity names and groupings in accordance with new EPA policy. Printed copies of many REDs and TREDs may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242–2419; telephone number: 1–800–490–9198; fax number: 1–513–489–8695; Internet at *http://www.epa.gov/ncepihom* and from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161; telephone number: 1–800–553–6847 or (703) 605–6000; Internet at *http://www.ntis.gov*. Electronic copies of REDs and TREDs are available on the Internet at *http://www.regulations.gov* and *http:// www.epa.gov/pesticides/reregistration/status.htm*.

In this final rule, EPA is revoking certain tolerances and/or tolerance exemptions because either they are no longer needed or are associated with food uses that are no longer registered under FIFRA in the United States. Those instances where registrations were canceled were because the registrant failed to pay the required maintenance fee and/or the registrant voluntarily requested cancellation of one or more registered uses of the pesticide active ingredient. The tolerances revoked by this final rule are no longer necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. It is EPA's general practice to issue a final rule revoking those tolerances and tolerance exemptions for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance or tolerance exemption to cover residues in or on imported commodities or legally treated domestic commodities.

EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States.

Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed in Unit II.A. if one of the following conditions applies:

1. Prior to EPA's issuance of a FFDCA section 408(f) order requesting additional data or issuance of a FFDCA section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained.

2. EPA independently verifies that the tolerance is no longer needed.

3. The tolerance is not supported by data that demonstrate that the tolerance meets the requirements under FQPA.

In response to the proposal published in the **Federal Register** of May 13, 2009 (74 FR 22478), EPA received no comments during the 60–day public comment period.

EPA did not propose in a notice for comment to revise the tolerance nomenclature for malathion, in 40 CFR 180.111(a)(1) from alfalfa to alfalfa, forage and alfalfa, hay; bean to bean, dry seed and bean, succulent; corn, grain, postharvest to corn, field, grain, postharvest and corn, pop, grain, postharvest; salsify (including tops) to salsify, roots and salsify, tops; and turnip, tops to turnip, greens, as is current Agency practice. However, section 553(b)(3)(B) of the Administrative Procedure Act provides that notice and comment is not necessary ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' Consequently, for good cause, EPA is revising the tolerance terminology in 40 CFR 180.111(a)(1) from alfalfa to alfalfa,

forage and alfalfa, hay; bean to bean, dry seed and bean, succulent; corn, grain, postharvest to corn, field, grain, postharvest and corn, pop, grain, postharvest; salsify (including tops) to salsify, roots and salsify, tops; and turnip, tops to turnip, greens. Notice and comment are unnecessary because revising the terminology has no practical impact on the use of or exposure to malathion in or on that commodity and is made such that the tolerance terminology will conform to current Agency practice.

On June 3, 2009 (74 FR 26527) (FRL–8417–9), EPA published a final rule that made minor revisions to commodity terminologies throughout 40 CFR part 180, including revisions for exemptions from the requirement of a tolerance for sodium chlorate in 40 CFR 180.1020. Among these revisions in 40 CFR 180.1020, ''corn, forage'' was replaced by ''corn, field, forage''; ''corn, fodder'' was replaced by ''corn, field, stover'' and ''corn, pop, stover''; ''peas, southern'' was replaced by ''cowpea, forage''; ''cowpea, hay''; and ''cowpea, seed''; ''peppers, chili'' was replaced by ''pepper, chili.'' No revision had been made for ''sorghum, forage.'' However, ''peas, southern'' should have been replaced by ''pea, southern''; ''pepper, chili'' should have been replaced by ''pepper, nonbell''; and revisions of ''corn, forage'' and ''corn, fodder'' should have included ''corn, sweet, forage'' and ''corn, sweet, stover,'' respectively. In the **Federal Register** of May 13, 2009 (74 FR 22478), EPA proposed amendments to commodity terminology for sodium chlorate in 40 CFR 180.1020 and among them included ''corn, forage'' to ''corn, field, forage'' and ''corn, sweet, forage''; ''corn, fodder'' to ''corn, field, stover''; ''corn, pop, stover''; and ''corn, sweet, stover''; ''peas, southern'' to ''pea, southern''; ''pepper, chili'' to ''pepper, nonbell'' ''sorghum, forage'' to ''sorghum, grain, forage'' and ''sorghum, forage, forage''; ''soybeans'' to ''soybean, seed''; as well as other commodity terminology revisions. As a result of the final rule of June 3, 2009 (74 FR 26527), EPA is revising the current commodity terminologies for sodium chlorate in 40 CFR 180.1020 in this final rule by removing ''cowpea, forage''; ''cowpea, hay''; and ''cowpea, seed'' and replacing them with ''pea, southern''; replacing ''pepper, chili'' with ''pepper, nonbell''; establishing ''corn, sweet, forage'' and ''corn, sweet, stover''; and revising ''sorghum, forage'' to ''sorghum, grain, forage'' and ''sorghum, forage, forage''; as proposed in the rule of May 13, 2009 (74 FR 22478). Also, consistent with most of the commodity revisions for sodium chlorate proposed on May 13, 2009 (74 FR 22478), EPA is maintaining current commodity terminologies, finalized by the rule of June 3, 2009 (74 FR 26527), in 40 CFR 180.1020 for ''bean, dry, seed''; ''corn, field, forage''; ''corn, field, grain''; ''corn, field, stover''; ''corn, pop, grain''; ''corn, pop, stover''; ''cotton, undelinted seed''; ''flax, seed''; ''grain, aspirated fractions''; ''guar, seed''; ''potato''; ''rice, grain''; ''safflower, seed''; ''sorghum, grain, grain''; ''sorghum, grain, stover''; ''soybean, forage''; ''soybean, hay''; ''soybean, seed''; and ''sunflower, seed.''

The Agency did not receive any specific comments, during the 60–day comment period, on the following pesticide active ingredients: ametryn, amitraz, bitertanol, coppers, fluazifop-p-butyl, malathion, mineral oil, pentachloronitrobenzene, prometryn, sodium chlorate, triadimenol, and ammonium soap salts of higher fatty acids (C_8-C_{18} saturated; C_8-C_{12} unsaturated). Therefore, in addition to revising the tolerance nomenclature for specific tolerances for malathion as described in this final rule, and revising specific commodity terminologies for sodium chlorate as described in this final rule, EPA is finalizing the amendments proposed concerning the pesticide active ingredients in the **Federal Register** of May 13, 2009 (74 FR 22478). For a detailed discussion of the Agency's rationale for the establishments, revocations, and modifications to the tolerances, refer to the proposed rule of May 13, 2009 (74 FR 22478).

B. What is the Agency's Authority for Taking this Action?

EPA may issue a regulation establishing, modifying, or revoking a tolerance under FFDCA section 408(e). In this final rule, EPA is establishing, modifying, and revoking tolerances to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes, and as follow-up on canceled uses of pesticides. As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standards under FFDCA. The safety finding determination is found in detail in each post-FQPA RED and TRED for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, to meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed and electronic copies of the REDs and TREDs are available as provided in Unit II.A.

EPA has issued REDs for ametryn, coppers, malathion, aliphatic solvents (mineral oil), pentachloronitrobenzene, prometryn, inorganic chlorates (sodium chlorate), and soap salts (includes ammonium salts of higher fatty acids), and TREDs for amitraz, bitertanol, fluazifop-p-butyl, and triadimenol. REDs and TREDs contain the Agency's evaluation of the database for these pesticides, including statements regarding additional data on the active ingredients that may be needed to confirm the potential human health and environmental risk assessments associated with current product uses, and REDs state conditions under which these uses and products will be eligible for reregistration. The REDs and TREDs recommended the establishment, modification, and/or revocation of specific tolerances. RED and TRED recommendations such as establishing or modifying tolerances, and in some cases revoking tolerances, are the result of assessment under the FFDCA standard of ''reasonable certainty of no harm.'' However, tolerance revocations recommended in REDs and TREDs that are made final in this document do not need such assessment when the tolerances are no longer necessary.

EPA's general practice is to revoke tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

When EPA establishes tolerances for pesticide residues in or on raw agricultural commodities, the Agency gives consideration to possible pesticide residues in meat, milk, poultry, and/or eggs produced by animals that are fed agricultural products (for example, grain or hay) containing pesticides residues (40 CFR 180.6). If there is no reasonable expectation of finite pesticide residues

in or on meat, milk, poultry, or eggs, then tolerances do not need to be established for these commodities (40 CFR 180.6(b) and 180.6 (c)).

C. When Do These Actions Become Effective?

With the exception of certain tolerances for ametryn and triadimenol for which EPA is revoking with specific expiration/revocation dates, the Agency is revoking, modifying, and establishing specific tolerances/tolerance exemptions, and revising specific tolerance terminologies effective on the date of publication of this final rule in the **Federal Register**. With the exception of the specific tolerances regarding ametryn and triadimenol for which EPA is revoking with specific expiration/revocation dates, specific copper tolerances associated with treated pear wrappers and potable water for which EPA is revoking because they are no longer needed or applicable, and tolerances/tolerance exemptions that are considered by EPA to no longer be significant food/feed items or whose commodity use is covered by another tolerance/tolerance exemption (including conversion of interim tolerances for pentachloronitrobenzene to permanent tolerances), the Agency believes that existing stocks of pesticide products labeled for the uses associated with the revoked tolerances/tolerance exemptions have been completely exhausted and that treated commodities have had sufficient time for passage through the channels of trade. EPA is revoking ametryn tolerances on banana; corn, sweet, forage; corn, sweet, kernel plus cob with husks removed; and corn, sweet, stover with expiration/revocation dates of June 16, 2010; and triadimenol tolerances on sorghum, grain, forage; sorghum, grain, grain; and sorghum, grain, stover with expiration/revocation dates of September 11, 2010. The Agency believes that these revocation dates allow users to exhaust stocks and allow sufficient time for passage of treated commodities through the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this unit, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA.

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

III. Are There Any International Trade Issues Raised by this Final Action?

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international Maximum Residue Limits (MRLs) established by the Codex Alimentarius Commission, as required by section 408(b)(4) of FFDCA. The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level in a notice published for public comment. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs and TREDs, and in the Residue Chemistry document which supports the RED and TRED, as mentioned in the proposed rule cited in Unit II.A. Specific tolerance actions in this rule and how they compare to Codex MRLs (if any) is discussed in Unit II.A.

IV. Statutory and Executive Order Reviews

In this final rule, EPA establishes tolerances under FFDCA section 408(e), and also modifies and revokes specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions (i.e., establishment and modification of a tolerance and tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–13, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, or revocations might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and modifications, and for tolerance revocations were published on May 4, 1981 (46 FR 24950) and on December 17, 1997 (62 FR 66020) (FRL–5753–1), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to any particular revocation. (This Agency document is available in the docket of the proposed rule, as mentioned in Unit

II.A.). Furthermore, for the pesticides named in this final rule, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that 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.'' This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 2, 2009.

Debra Edwards,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.111 is amended by revising the table in paragraph (a)(1), redesignating paragraphs (a)(2) through (a)(5) as paragraphs (a)(4) through (a)(7), respectively, and adding new paragraphs (a)(2) and (a)(3), and by revising newly designated paragraph (a)(6) to read as follows:

§ 180.111 Malathion; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
Alfalfa, forage	135
Alfalfa, hay	135
Almond, hulls	50
Almond, postharvest	8
Apple	8
Apricot	8
Asparagus	8
Avocado	8
Barley, grain, postharvest	8
Bean, dry seed	8
Bean, succulent	8
Beet, garden, roots	8
Beet, garden, tops	8
Beet, sugar, roots	1
Beet, sugar, tops	8
Blackberry	8
Blueberry	8
Boysenberry	8
Carrot, roots	8
Chayote, fruit	8
Chayote, roots	8
Cherry	8
Chestnut	1
Clover, forage	135
Clover, hay	135
Corn, field, forage	8
Corn, field, grain, postharvest	8
Corn, pop, grain, postharvest	8
Corn, sweet, forage	8
Corn, sweet, kernel plus cob with husks removed	2
Cowpea, forage	135
Cowpea, hay	135
Cranberry	8
Cucumber	8
Currant	8
Date, dried fruit	8
Dewberry	8
Eggplant	8
Fig	8
Flax, seed	0.1
Garlic, bulb	8
Gooseberry	8
Grape	8
Grapefruit	8
Guava	8
Hazelnut	1
Hop, dried cones	1
Horseradish	8
Kumquat	8
Leek	8
Lemon	8
Lentil, seed	8
Lespedeza, hay	135
Lime	8
Loganberry	8
Lupin, seed	8
Mango	8
Melon	8
Mushroom	8
Nectarine	8
Nut, macadamia	1
Oat, grain, postharvest	8
Okra	8
Onion, bulb	8
Onion, green	8
Orange	8
Papaya	1
Parsnip	8
Passionfruit	8
Pea	8
Pea, field, hay	8
Pea, field, vines	8
Peach	8
Peanut, hay	135
Peanut, postharvest	8
Pear	8
Pecan	8
Pepper	8
Peppermint, tops	8
Pineapple	8
Plum	8
Plum, prune	8
Potato	8
Pumpkin	8
Quince	8
Radish	8

Commodity	Parts per million
Raspberry	8
Rice, grain, postharvest	8
Rice, wild	8
Rutabaga	8
Rye, grain, postharvest	8
Safflower, seed	0.2
Salsify, roots	8
Salsify, tops	8
Shallot, bulb	8
Sorghum, grain, forage	8
Sorghum, grain, grain, postharvest	8
Soybean, forage	135
Soybean, hay	135
Soybean, seed	8
Soybean, vegetable, succulent	8
Spearmint, tops	8
Squash, summer	8
Squash, winter	8
Strawberry	8
Sunflower, seed, postharvest	8
Sweet potato, roots	1
Tangerine	8
Tomato	8
Trefoil, forage	135
Trefoil, hay	135
Turnip, greens	8
Turnip, roots	8
Vegetable, brassica, leafy, group 5	8
Vegetable, leafy, except brassica, group 4	8
Vetch, hay	135
Walnut	8
Wheat, grain, postharvest	8

(2) Tolerances are established for the combined residues of the insecticide malathion (*O,O*-dimethyl dithiophosphate of diethyl mercaptosuccinate) and its metabolite, malaoxon (O,O-dimethyl thiophosphate of diethyl mercaptosuccinate), in or on the following food commodities:

Commodity	Parts per million
Barley, straw	50
Corn, field, stover	30.0
Cotton, undelinted seed	20.0
Grass, forage	200
Grass, hay	270
Oat, forage	4.0
Oat, straw	50
Rye, forage	4.0
Rye, straw	50
Watercress	0.2
Wheat, forage	4.0
Wheat, straw	50

(3) Tolerances are established for residues of the insecticide malathion (*O,O*-dimethyl dithiophosphate of diethyl mercaptosuccinate), in or on the following food commodities:

Commodity	Parts per million
Cattle, fat	4
Cattle, meat[1]	4
Cattle, meat byproducts[1]	4
Egg	0.1
Goat, fat	4
Goat, meat[1]	4
Goat, meat byproducts[1]	4
Hog, fat	4
Hog, meat[1]	4
Hog, meat byproducts[1]	4
Horse, fat	4
Horse, meat[1]	4
Horse, meat byproducts[1]	4
Milk, fat	0.5
Poultry, fat	4
Poultry, meat[1]	4
Poultry, meat byproducts[1]	4
Sheep, fat	4
Sheep, meat[1]	4
Sheep, meat byproducts[1]	4

[1] The tolerance level shall not be exceeded in any cut of meat or in any meat byproducts from cattle, goat, hog, horse, poultry, or sheep.

* * * * *

(6) Malathion may be safely used for the control of insects during the drying of grape (raisins) in compliance with paragraph (a)(4) of this section by incorporation into paper trays in amounts not exceeding 100 milligrams per square foot.

* * * * *

§ 180.136 [Removed]

■ 3. Section 180.136 is removed.

§ 180.149 [Removed]

■ 4. Section 180.149 is removed.

■ 5. Section 180.222 is amended by revising the table in paragraph (a), and by revising paragraph (d) to read as follows:

§ 180.222 Prometryn; tolerances for residues.

(a) * * *

Commodity	Parts per million
Carrot, roots[1]	0.1
Celery	0.5
Cotton, gin byproducts	1.0
Cotton, undelinted seed	0.25
Pea, pigeon, seed	0.25

[1] There are no U.S. registrations as of April 10, 1998 for use on carrots.

* * * * *

(d) *Indirect or inadvertent residues.* Tolerances are established for indirect or inadvertent residues of the herbicide prometryn, 2,4-bis(isopropylamino)-6-methylthio-s-triazine, in or on the following food commodities:

Commodity	Parts per million
Barley, forage	0.3
Barley, hay	1.0
Barley, straw	0.3
Oat, forage	0.3
Oat, hay	1.0
Oat, straw	0.3
Rye, forage	0.3
Rye, hay	1.0
Rye, straw	0.3
Triticale, forage	0.3
Triticale, hay	1.0
Triticale, straw	0.3
Wheat, forage	0.3
Wheat, hay	1.0
Wheat, straw	0.3

■ 6. Section 180.258 is amended by revising the table in paragraph (a) to read as follows:

§ 180.258 Ametryn; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/ Revocation Date
Banana	0.25	6/16/10
Corn, field, forage	0.1	None
Corn, field, grain	0.05	None
Corn, field, stover	0.05	None
Corn, pop, grain	0.05	None
Corn, pop, stover	0.05	None
Corn, sweet, forage	0.5	6/16/10
Corn, sweet, kernel plus cob with husks removed	0.25	6/16/10
Corn, sweet, stover	0.5	6/16/10
Pineapple	0.05	None
Sugarcane, cane	0.05	None

* * * * *

§ 180.287 [Amended]

■ 7. Section 180.287 is amended by removing the entry for ''pear'' from the table in paragraph (a).

■ 8. Section 180.291 is revised to read as follows:

§ 180.291 Pentachloronitrobenzene; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the fungicide pentachloronitrobenzene (PCNB) and its metabolites pentachloroaniline (PCA), and pentachlorothioanisole (PCTA), in or on the following food commodities:

Commodity	Parts per million
Bean	0.1

Commodity	Parts per million
Brassica, head and stem, subgroup 5A	0.1
Cotton, undelinted seed	0.1
Garlic, bulb	0.1
Peanut	1.0
Potato	0.1
Soybean, forage	0.02
Soybean, hay	0.02
Soybean, seed	0.02
Vegetable, fruiting, group 8	0.1

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* Tolerances with regional registrations, as defined in § 180.1(m), are established for the combined residues of the fungicide pentachloronitrobenzene (PCNB) and its metabolites pentachloroaniline (PCA), and pentachlorothioanisole (PCTA), in or on the following food commodities:

Commodity	Parts per million
Collards	0.2
Kale	0.2
Mustard, greens	0.2

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.319 [Amended]

■ 9. Section 180.319 is amended by removing the entire entry for ''pentachloronitrobenzene'' from the table.

§ 180.411 [Amended]

■ 10. Section 180.411 is amended by removing the entry for ''spinach'' from the table in paragraph (a).

■ 11. Section 180.450 is amended by revising the table in paragraph (a) to read as follows:

§ 180.450 Beta-(4-Chlorophenoxy)-α-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/ Revocation Date
Banana[1]	0.2	None
Barley, grain	0.05	None
Barley, straw	0.2	None
Corn, field, forage	0.05	None
Corn, field, grain	0.05	None
Corn, field, stover	0.05	None
Corn, pop, grain	0.05	None
Corn, pop, stover	0.05	None
Corn, sweet, forage	0.05	None
Corn, sweet, kernel plus cob with husks removed	0.05	None
Corn, sweet, stover	0.05	None
Cotton, undelinted seed	0.02	None
Oat, forage	2.5	None
Oat, grain	0.05	None
Oat, straw	0.2	None
Rye, forage	2.5	None
Rye, grain	0.05	None
Rye, straw	0.1	None
Sorghum, grain, forage	0.05	9/11/10
Sorghum, grain, grain	0.01	9/11/10
Sorghum, grain, stover	0.01	9/11/10
Wheat, forage	2.5	None
Wheat, grain	0.05	None
Wheat, straw	0.2	None

[1] There are no U.S. registrations for banana (whole) as of September 22, 1993.

* * * * *

■ 12. Section 180.457 is revised to read as follows:

§ 180.457 Bitertanol; tolerances for residues.

(a) *General.* A tolerance is established for the residues of the fungicide bitertanol, β-([1,1′-biphenyl]-4-yloxy)-α-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol, in or on the following raw agricultural commodity:

Commodity	Parts per million
Banana[1]	0.5

[1] There are no U.S. registrations as of April 1, 1992.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.538 [Removed]

■ 13. Section 180.538 is removed.

■ 14. Section 180.1020 is revised to read as follows:

§ 180.1020 Sodium chlorate; exemption from the requirement of a tolerance.

Sodium chlorate is exempted from the requirement of a tolerance for residues when used as a defoliant or desiccant in accordance with good agricultural practice on the following crops:

Bean, dry, seed
Corn, field, forage
Corn, field, grain
Corn, field, stover
Corn, pop, grain
Corn, pop, stover
Corn, sweet, forage
Corn, sweet, stover
Cotton, undelinted seed
Flax, seed
Grain, aspirated fractions
Guar, seed
Pea, southern
Pepper, nonbell
Potato
Rice, grain
Rice, straw
Safflower, seed
Sorghum, forage, forage
Sorghum, grain, forage
Sorghum, grain, grain
Sorghum, grain, stover
Soybean, forage
Soybean, hay
Soybean, seed
Sunflower, seed
Wheat, grain

■ 15. Section 180.1021 is amended by revising paragraph (b) to read as follows:

§ 180.1021 Copper; exemption from the requirement of a tolerance.

* * * * *

(b) The following copper compounds are exempt from the requirement of a tolerance when applied (primarily) as a fungicide to growing crops using good agricultural practices:

Copper compounds	CAS Reg. No.
Basic copper carbonate (malachite)	1184–64–1
Copper ammonia complex	16828–95–8
Copper ethylenediamine complex	13426–91–0
Copper hydroxide	20427–59–2
Copper octanoate	20543–04–8
Copper oxychloride	1332–65–6
Copper oxychloride sulfate	8012–69–9
Copper salts of fatty and rosin acids	9007–39–0
Copper sulfate basic	1344–73–6
Copper sulfate pentahydrate	7758–99–8
Cuprous oxide	1317–19–1

* * * * *

■ 16. Section 180.1284 is revised to read as follows:

§ 180.1284 Ammonium salts of higher fatty acids (C_8-C_{18} saturated; C_8-C_{12} unsaturated); exemption from the requirement of a tolerance.

Ammonium salts of C_8-C_{18} saturated and C_8-C_{12} unsaturated higher fatty acids are exempted from the requirement of a tolerance for residues in or on all food commodities when used in accordance with good agricultural practice.

[FR Doc. E9–22022 Filed 9–15–09; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 405

[CMS–6025–F]

RIN 0938–AN42

Medicare Program; Limitation on Recoupment of Provider and Supplier Overpayments

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule implements a provision of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) which prohibits recouping Medicare overpayments from a provider or supplier that seeks a reconsideration from a Qualified Independent Contractor (QIC). This provision changes how interest is to be paid to a provider or supplier whose overpayment is reversed at subsequent administrative or judicial levels of appeal. This final rule defines the overpayments to which the limitation applies, how the limitation works in concert with the appeals process, and the change in our obligation to pay interest to a provider or supplier whose appeal is successful at levels above the QIC.

DATES: *Effective Date:* These regulations are effective on November 16, 2009.

FOR FURTHER INFORMATION CONTACT: Debbie Miller (410) 786–1492.

SUPPLEMENTARY INFORMATION:

I. Background

Prior to passage of the MMA, CMS could recoup overpayments regardless of whether a provider or supplier had appealed. Section 935(f)(2) of the MMA, codified at section 1892(f) of the Social Security Act, prohibits the recoupment of Medicare overpayments during a provider or supplier appeal to a Qualified Independent Contractor (QIC). CMS will also stop recoupment during the first level of appeal, the redetermination, if the provider or supplier files a timely request for appeal, as explained in detail within the text of this regulation. However, the contractor may initiate or resume recoupment, whether or not the provider or supplier subsequently appeals the QIC determination to the Administrative Law Judge (ALJ), the Medicare Appeals Council, or Federal court.

This final rule defines the overpayments to which the limitation on recoupment applies, how the limitation works in concert with the appeals process, and sets time limits for recouping overpayments, specifically providing 41 days for a provider or supplier to file the first level of appeal before the contractor can begin recoupment and providing the provider or supplier 60 days to appeal at the second level before the contractor can begin recoupment.

This final rule also changes how interest is to be paid to a provider or supplier whose overpayment is subsequently reversed at the ALJ, Medicare Appeals Council, or Federal court levels of appeal. Before the MMA was passed, CMS was liable for interest charges if it did not pay within 30 days of an underpayment determination. This final rule requires that if an overpayment determination is overturned in administrative or judicial appeals, above the QIC level of appeal, CMS is liable for interest on recouped overpayments that has accrued since the original determination. This final rule implements this new requirement, while leaving all other interest calculation regulations intact. Therefore, if a provider or supplier takes advantage of the limitation on recoupment, and ultimately loses on appeal, it will still be liable for all accrued interest.

A. Legislation

Section 935 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) amended Title XVIII of the Social Security Act (the Act) to add a new paragraph (f) to section 1893 of the Act, the Medicare Integrity Program. This new sub-section contains eight substantive provisions addressing the recovery of overpayments. This final rule implements the second of these provisions—the limitation on recoupment.

The statute requires us to change the way we recoup certain overpayments. It also changes how interest is to be paid to a provider or supplier whose overpayment determination is reversed at administrative or judicial levels of appeal above the QIC. We note that the changes to recoupment and interest work in tandem with Medicare fee-for-service claims appeal process. We refer readers to the September 22, 2006 proposed rule (71 FR 55406) or to the applicable regulations at 42 CFR 405.900 for a further discussion of the claims appeal process. The September 22, 2006 proposed rule includes a brief discussion of the appeals process and a detailed chart which sets forth the levels of appeals as well as applicable time frames and amount in controversy requirements.

B. Appeals and Limitation on Recoupment

Recoupment is the recovery of a Medicare overpayment by reducing present or future Medicare payments and applying the amount withheld against the debt. Under our existing regulations, providers and suppliers can challenge an overpayment determination through both the rebuttal and appeals processes. The rebuttal process provides the debtor the opportunity to submit a statement and/or evidence stating why recoupment should not be initiated. The outcome of the rebuttal process could change how or if we recoup. Section 1893 of the Act as amended by Section 935 of the MMA and the provisions of this final rule do not alter the rebuttal process. The regulatory definition of ''recoupment'' is set forth at § 405.370. See § 405.374 for information on the rebuttal process.

An appeal is an examination of the validity of the overpayment determination. Before section 1893(f)(2) of the Act was enacted, if a provider or supplier elected to appeal, there was no effect on our ability to recover the debt. However, if the overpayment determination was reversed in whole or in part, at any stage of the administrative or judicial appeal process, appropriate adjustments would be made to the overpayment and the amount of interest assessed.

When section 1893(f)(2) of the Act was enacted, our recoupment process was changed. Section 1893 (f)(2) of the Act states:

> In the case of a provider of services or supplier that is determined to have received an overpayment under this title and that seeks a reconsideration by a qualified independent contractor on such determination under section 1869(b)(1), the Secretary may not take any action (or authorize any other person, including any Medicare contractor, as defined in subparagraph (C)) to recoup the overpayment until the date the decision on the reconsideration has been rendered.

C. Assessment of Interest

In addition to changing the recoupment process, section 1893(f)(2) of the Act also has the effect of changing how we pay interest to a provider or supplier who is successful in having an overpayment determination fully or partially reversed at the latter stages of the appeal process.

Previously, we paid interest on underpayments solely in accordance with sections 1815(d) and 1833(j) of the Act. (See also, § 405.378.) An

underpayment would usually result when we had recovered, through recoupment or otherwise, an overpayment; the decision was fully or partially reversed at some point in the appeal process; and after appropriate adjustments, we owed the balance to the provider or supplier. Interest would accrue from the date of the ''final determination'' and was owed if the underpayment was not paid within 30 days. Following an appeal decision favorable to a provider or supplier, the Medicare contractor would effectuate the decision. If the decision created an underpayment, the contractor would issue a written determination of the amount Medicare owed as an underpayment. The written determination was considered a new final determination; interest would accrue from the date of the final determination and would be owed/payable if the underpayment was not paid by the Medicare contractor within 30 days of the final determination of the underpayment.

The new interest provision found in section 1893(f)(2)(B) of the Act revises the way interest is to be paid to a provider or supplier whose overpayment determination is overturned in administrative or judicial appeals subsequent to the second level of appeal (the QIC reconsideration). Section 1893(f)(2)(B) of the Act states:

> Insofar as the determination on such appeal is against the provider of services or supplier, interest on the overpayment shall accrue on and after the date of the original notice of overpayment. Insofar as such determination against the provider of services or supplier is later reversed, the Secretary shall provide for repayment of the amount recouped plus interest at the same rate as would apply under the previous sentence for the period in which the amount was recouped.

Section 1893(f)(2)(B) of the Act does not specifically amend sections 1815(d) and 1833(j) of the Act. In addition, the MMA conference report does not reference these sections. The statute and the conference report are both silent on the relationship between paying or collecting interest: (1) Based on the final determination concept embodied in sections 1815(d) and 1833(j) of the Act; and (2) the concept of paying interest based on how long we held funds, ultimately determined through the latter stage of the appeal process to belong to the provider, as incorporated in section 1893(f)(2)(B) of the Act.

The statute does not change the obligation of the provider or supplier to pay interest if the overpayment determination is affirmed at any level of administrative or judicial appeal. In accordance with sections 1815(d) and 1833(j) of the Act, interest continues to accrue from the date of the final determination as defined in § 405.378(c). Section 1893(f)(2)(B) of the Act explains that if an appeal of an overpayment is upheld before the QIC, ''interest on the overpayment shall accrue on and after the date of the original notice of overpayment.'' For overpayments subject to the limitation on recoupment provision, the date of the final determination is the date of the original notice of overpayment (that is, the demand letter). Therefore, section 1893(f)(2)(B) of the Act is consistent with sections 1815(d) and 1833(j) of the Act and does not alter our ability to assess interest against the provider or supplier.

In addition, the statute does not change the obligation of Medicare to pay the provider or supplier interest if the overpayment determination is reversed at the first (redetermination) or second (reconsideration) level of the administrative appeal process and the appeal decision generates an underpayment. At these levels of appeal, interest would continue to be payable by Medicare if an underpayment is not paid to the provider or supplier within 30 days of the date of the final determination. The change in the method of paying interest resulting from section 1893(f)(2)(B) of the Act is applicable only where the reversal occurs at the Administrative Law Judge (ALJ) level or subsequent levels of administrative appeal or judicial review. At these higher levels of administrative appeal or judicial review, interest becomes payable by Medicare based on the period we recouped and retained the provider's or supplier's funds where the decision results in a full or partial reversal and Medicare previously recouped funds.

We determine the rate of interest in accordance with § 405.378 by comparing the private consumer rate with the current value of funds rate. Interest is assessed at the higher of these two rates that is in effect on the date of the final determination of the amount of the overpayment or underpayment. Since February 2001 to the present time, it has ranged from a low of 10.75 percent to a high of 14.125 percent. In accordance with § 411.24(m)(2), interest is calculated on Medicare Secondary Payer (MSP) debts in the same manner as for Medicare overpayments and underpayments. In addition, the same interest rate is used.

Interest accrues daily but is assessed and calculated in full 30 day periods. We charge simple rather than compound interest, and payments we receive are applied first to accrued interest and then to principal. Interest we collect on overpayments and MSP recoveries goes to the general fund of the U.S. Treasury. The principal amount we recover is used to reimburse the applicable Medicare Trust Fund the Hospital Insurance (Part A) or the Supplementary Medical Insurance (Part B and now D) trust funds, which are special accounts in the U.S. Treasury. Interest we pay on Medicare underpayments comes from the applicable Medicare Trust Fund.

D. Suspension

We note that this new MMA provision does not affect how we recover overpayments from providers or suppliers that have been placed on payment suspension. Under § 405.371, an intermediary, a carrier, or CMS may suspend the payment of claims if there is reliable information that an overpayment, fraud, or willful misrepresentation exists or that payments to be made may not be correct. Once an overpayment amount is determined, suspended payments must first be applied to eliminate any overpayment as specified in § 405.372(e). We do not interpret section 1893(f)(2) of the Act as amending our authority to apply suspended payments toward reducing or eliminating an overpayment. Furthermore, we do not interpret section 1893(f) of the Act to require that suspended payments be released to a provider or supplier once an overpayment amount is determined. If the suspended payments are insufficient to fully eliminate any overpayment, and the provider or supplier meets the requirements of this final rule, the limitation on recoupment provision under section 1893(f)(2) of the Act will be applicable to any remaining balance still owed to CMS.

We also note that section 1893(f)(2) of the Act does not alter the process for providers or suppliers to appeal overpayment determinations that follow suspension actions. Providers and suppliers may continue to appeal the overpayment determination as they could before the enactment of the MMA.

II. Provisions of the Proposed Regulations and Response to Comments

In the September 22, 2006 **Federal Register** (71 FR 55404), we published the proposed rule entitled, ''Limitation on Recoupment of Provider and Supplier Overpayments'' and provided for a 60-day comment period. The rule proposed to implement a provision of the MMA that prohibited recouping Medicare overpayments when a reconsideration appeal is received from

a provider or supplier until a decision is rendered by a QIC. The provision changes how interest is to be paid to a provider or supplier whose overpayment is reversed at subsequent administrative or judicial levels of appeal. The proposed rule defined the overpayments to which the limitation applies, how the limitation works in concert with the appeals process, and the change in our obligation to pay interest to a provider or supplier whose appeal is successful at levels above the QIC.

We received a total of 11 timely comments from physicians, hospital associations, home health facilities, medical equipment providers, and other individuals and health care associations.

Brief summaries of each proposed provision, a summary of the public comments we received, and our responses to the comments are set forth below.

A. General Comments

Most of the comments received ranged from general comments that supported or opposed the proposed provisions, to very specific questions or comments regarding the proposed changes.

Comment: We received two comments that supported CMS's decision to halt recoupment during the period that the provider seeks a first level of appeal (redetermination) as stated in proposed § 405.379(d)(1).

Response: We appreciate the commenters recognizing that CMS has attempted to fairly implement the requirements of section 1893(f)(2) of the Act while still fulfilling its fiduciary responsibility to collect overpayments aggressively.

Comment: One commenter expressed concern that CMS's limitation on recoupment provisions afford greater protections to overpaid providers than to providers who are merely suspected to have overpayments and for whom payments are suspended while an overpayment is being determined.

Response: Section 1893(f)(2) of the Act prevents the Secretary from taking any ''action * * * to recoup the overpayment''. The disposition of suspended funds as explained in § 405.372(e) is not a ''recoupment'' as that term is defined in § 405.370. The statute does not broaden or alter CMS's definition of recoupment to also apply to the application of suspended funds. Because CMS is only limited by section 1893 (f)(2) of the Act from recouping Medicare payments, we are not restricted in our ability to apply suspended funds to reduce or dispose of an overpayment.

B. Authority Citation for Subpart C of Part 405

Subpart C of part 405 implements several sections of the Act including sections authorizing the recovery of overpayments and assessment of interest. In the September 22, 2006 proposed rule, we proposed to revise the authority citation to explicitly add Section 1893 of the Act, amended by section 935 of the MMA, to add the limitation on recoupment as well as other provisions addressing the recovery of overpayments. We received no comments on this provision. Thus, in this final rule, we are adopting the authority citation provisions of the proposed rule without change.

C. Proposed Change to § 405.370 Definitions

Section § 405.370 defines key terms that apply to subpart C of part 405. In the September 22, 2006 proposed rule, we proposed to revise § 405.378 and add a new § 405.379. We added new definitions to § 405.370. We also proposed that selected terms used in § 405.378 and proposed § 405.379 be given the same meaning as in the appeals context.

Comment: Several commenters suggested that the definition of Medicare contractor be amended to include Recovery Audit Contractors (RACs).

Response: We agree with the commenter and have revised the definition of Medicare Contractor to include this change. We note that our intent was not to exclude RACs from being subject to the rule.

Accordingly, we are revising the definition of Medicare Contractor, and finalizing all other definitions in § 405.370 as proposed without change.

D. § 405.373 Proceeding for Offset or Recoupment

Section 405.373 establishes the general rules and procedures to be followed once CMS or a Medicare contractor determines that an offset or recoupment should be put into effect. Specifically, § 405.373(e) addresses the duration of a recoupment or offset that has been put into effect and identifies the three specific circumstances under which a recoupment or offset would stop. In the September 22, 2006 proposed rule, we proposed to revise the introductory text of paragraph (e) to explicitly refer to § 405.379, implementing the statutory limitation on recoupment, as a separate basis to stop recoupments that have been put into effect.

We received no comments on these provisions. Accordingly, we are finalizing § 405.373 as proposed without modification.

E. § 405.378 Interest charges on overpayment and underpayments to providers, suppliers and other entities

Section 405.378 implements sections 1815(d) and 1833(j) of the Act which requires us to charge interest on overpayments and pay interest on underpayments if payment is not made within 30 days of the date of the ''final determination''. Under sections 1815(d) and 1833(j) of the Act, the date of the final determination dictates when interest begins to accrue and determines whether we pay interest on an underpayment or collect interest on an overpayment.

In paragraph (c), we define what constitutes a final determination both for overpayments and underpayments arising from a cost report determination as well as those that are claims based.

In paragraph (d), we establish the basis for the interest rate used for Medicare overpayments and underpayments as well as for other Medicare program activities, for example Medicare Secondary Payer recoveries (§ 411.24(m) which references § 405.378(d)).

In the September 22, 2006 proposed rule, we proposed to revise § 405.378 to specify how interest is assessed for the subset of overpayments subject to the limitation on recoupment under section 1893(f)(2) of the Act. In § 405.378, we proposed to clarify that if a provider or supplier overpayment determination is affirmed at any level of administrative or judicial appeal, interest owed by the provider or supplier would continue to accrue from the final determination. If the overpayment determination is reversed in favor of the provider or supplier, interest may be payable by Medicare to the provider or supplier under one of two different methodologies depending upon the appeal level at which the reversal occurs. If a full or partial reversal in favor of the provider or supplier occurs at the first (redetermination) or second (reconsideration) level of the administrative appeal process, interest may be payable by Medicare to the provider or supplier if the underpayment is not paid within 30 days of the final determination as that term is defined in the proposed revisions to § 405.378(c).

It is only where the reversal occurs at the ALJ level or Departmental Appeals Board's Appeals Council level of

administrative appeal or judicial review that interest becomes payable by Medicare based on the period that we recouped and retained the provider's or supplier's funds.

In the September 22, 2006 proposed rule, we proposed to amend § 405.378(a) by adding the reference to 1893(f)(2)(B) of the Act, which is one of the enumerated provisions of the Act that this regulatory section is designed to implement.

We also proposed to revise paragraph (b)(2), which states the basic rule that interest accrues from the date of final determination, to clarify there is a new exception to this rule by referencing paragraph (j) of this section.

In addition, we proposed to amend paragraph (c)(1)(ii) which lists what constitutes a final determination in cases where a Notice of Amount of Program Reimbursement (NPR) is not issued.

First, we proposed to remove the existing final determination definition based on certain Administrative Law Judge (ALJ) decisions under paragraph(c)(1)(ii)(C). The change in how interest is assessed under section 1893(f)(2) of the Act applies at the third level of appeal (ALJ) and subsequent administrative and judicial review levels. Therefore, we proposed to make these changes at paragraph (j).

Second, we proposed to add an additional definition for a final determination, at paragraph (c)(1)(ii)(C), arising from a full or partial reversal at the redetermination level of appeal. This change was designed to clarify that if an overpayment is reversed in whole or in part at the first level of appeal, the redetermination level, interest accrues from the date of the ''final determination'' and is owed by Medicare if the underpayment is not paid within 30 days. Following a redetermination decision favorable to a provider or supplier, the contractor must effectuate the decision and make a written determination of the amount Medicare owes. Interest accrues from the date of the written determination.

Finally, we proposed to add paragraph (c)(1)(ii)(D) as an additional type of final determination. This is a written determination arising from a full or partial reversal of an overpayment determination at the QIC reconsideration level (the second level of appeal). This addition was designed to clarify that if an overpayment determination is reversed in whole or in part at the QIC reconsideration, the final determination for purposes of assessing interest is the date of the written determination to the provider or supplier of the amount Medicare owes. Interest accrues from the date of this written determination and is owed to the provider or supplier if the underpayment is not paid within 30 days.

These proposed changes to the final determination definitions are intended to work in conjunction with the limitation on recoupment requirements in § 405.379. Providers and suppliers can take advantage of the limitation on recoupment by not paying during the redetermination and reconsideration levels of appeal. However, interest will still continue to accrue during those periods. If a provider or supplier loses at either level of appeal, and they did not pay their overpayment during the appeal, they will owe both the overpayment amount and accrued interest.

We proposed to revise paragraph (c)(2) by adding the cross references to paragraphs (i) and (j) of this section which states the exceptions to assessing interest based on the date of final determination.

For purposes of clarity and to group the exceptions to the ''final determination'' rule in a logical sequence, we proposed to redesignate paragraph (h), respectively as paragraph (i) and paragraph (i) as paragraph (h). We note that the text of these redesignated paragraphs did not change.

In addition, we proposed to add a new paragraph (j) to establish the basis for paying interest to a provider or supplier whose overpayment determination is reversed in whole or in part at the third level of administrative appeal (ALJ) or above. This new interest provision is required by section 1893(f)(2)(B) of the Act which states, ''[i]nsofar as such determination against the provider of services or supplier is later reversed, the Secretary shall provide for repayment of the amount recouped plus interest at the same rate as would apply under the previous sentence for the period in which the amount was recouped.'' In paragraph (j), we explain how interest is assessed against the government at any administrative and judicial appeal level above the QIC reconsideration. This new method applies only to overpayments subject to the limitation on recoupment under § 405.379. It is predicated upon the recoupment and retention of funds by CMS or the Medicare contractor at the time the decision reversing the overpayment determination, in whole or in part, is rendered.

In paragraph (j)(1), we state that the rate of interest is the same rate that CMS charges on overpayments and pays on underpayments to providers, suppliers and other health care entities. This rate, as specified in paragraph (d) of this section, is the higher of the private consumer rate or the current value of funds rate. We note that the interest rate established in paragraph (d) changes periodically.

In paragraph (j)(2), we describe the point in time where the applicable interest rate is fixed. This is the date the decision reversing the overpayment is issued by the ALJ, Medicare Appeals Council, Federal District Court or other Federal reviewing court.

In paragraph (j)(3), we explain how interest would be calculated. Interest will be paid on the total principal amount recouped. We will pay simple rather than compound interest, and will not pay interest on interest; this mirrors the manner in which we assess interest against providers. Monies we recoup and apply to interest will be refunded and not included in the ''amount recouped'' for purposes of calculating any interest due the provider. The periods of recoupment will be calculated in full 30-day periods; and interest will not be payable for any periods of less than 30 days in which we had possession of the recouped funds.

In calculating the period in which the amount was recouped, we will deduct days in which either or both the ALJ's or the Medicare Appeals Council's adjudication time frames are tolled due to specific actions by the appellant over which the government has no control. Our rules on the procedures and time frames to request an ALJ hearing provide that if the appellant fails to copy the other parties or files the request with an entity other than that specified in the QIC's reconsideration, the ALJ's 90 day adjudication deadline is tolled.

Similarly, our rules on the procedures and time frames to request a Medicare Appeals Council review provide that if the appellant fails to copy the other parties or files the request with an entity other than that specified in the notice of the ALJ's action, the Medicare Appeals Council's adjudication period to conduct a review is tolled. Therefore, in paragraph (j)(3)(iv) and (v), we state that in calculating how much interest we owe a provider or supplier, we account for these potential delays by deducting days attributable to actions by the provider or supplier which have the effect of extending the time in which we had possession of the recouped funds.

We state in paragraph (j)(4) that, in the cases of a partial reversal of an overpayment determination, we would allocate the funds recouped first to that portion of the overpayment

determination affirmed by the ALJ, Medicare Appeals Council, or any Federal court. If after this allocation excess recouped funds remain, interest would be paid to the provider or supplier on this amount in accordance with the other provisions specified in paragraph (j).

All comments and CMS's responses related to the proposed revisions of § 405.378 are discussed below:

Comment: Two commenters suggested that § 405.378(j) be revised to state that Medicare must pay interest from the date of recoupment regardless of whether the reversal occurs at the redetermination, reconsideration, or ALJ level.

Response: Section 1893 (f)(2)(B) of the Act clearly states that CMS must pay interest to a provider or supplier only when a reconsideration is ''later reversed.'' Therefore, we are not authorized by statute to pay interest from the date of recoupment if a decision at the redetermination or reconsideration level of appeal reverses a prior determination or decision. The statute only requires the payment of interest back to the date of recoupment when a finding by an ALJ, or other higher administrative or judicial entity, reverses a QIC reconsideration decision. CMS only pays interest when specifically obligated by statute. We believe the commenter's suggestion is contrary to the plain meaning of the statute.

Comment: One commenter suggested that because interest charges continue to accrue against a provider or supplier even if they avail themselves of the limitation on recoupment, CMS will make itself whole by satisfying the overpayment through interest collections.

Response: CMS must forward to the (Department of Treasury) General Fund any interest collected. CMS neither retains, nor is made whole by interest collected on behalf of the Treasury.

Comment: One commenter stated that the proposed new definitions of when CMS pays interest on underpayments that result from a reversal, in whole or in part, at the redetermination level and at the reconsideration level (§ 405.378(c)(1)(ii)(C) and (c)(1)(ii)(D)), are not fair to providers or suppliers, and result in providers or suppliers giving interest-free loans to Medicare for the period of time between the decision and when Medicare effectuates the decision.

Response: Medicare's longstanding policy is that a final determination occurs when the determination sets forth a specific amount that is due. Further, as explained in § 405.378(e)(4), interest to a provider or supplier does not begin to accrue until the date of the written determination notifying the provider or supplier of the amount of the underpayment. Although it is possible that a decision at the QIC level could include the precise amount that is owed as an underpayment, more often, the decision requires that the Medicare contractor compute the amount due to the provider. For example, if the QIC decision is a partial reversal of an overpayment where extrapolation was used to determine the overpayment, it typically must be recalculated to account for the revisions made to the sample claims upon which the extrapolated overpayment is based. Only after the recalculation of the overpayment is completed will the contractor become aware of any potential underpayment. A written determination on appeal that Medicare owes an underpayment but without specific information as to what the amount is owed, does not permit sufficient information to determine the payment amount and subsequent interest. Interest is paid when a specific amount is known and is not paid within 30 days. Similarly, providers have 30 days to repay an overpayment where the amount has been determined before interest is assessed.

In considering the comment, we decided to remove § 405.378(c)(1)(ii)(C) and (c)(1)(ii)(D). These two provisions included in our proposed rule explained when a final determination of an underpayment occurred during the first two levels of administrative appeal. However, we believe the language in § 405.378(c)(1)(ii)(B), which states that a written determination of an underpayment constitutes a final determination, adequately covers these two levels of appeal. Thus, we believe paragraphs (c)(1)(ii)(C) and (c)(1)(ii)(D) are unnecessary. After all levels of appeal, an underpayment will be determined when a sum certain is calculated and the provider or supplier is notified of the underpayment, regardless of whether a QIC or a contractor performs the recalculation.

Comment: One commenter stated that interest should be prorated for periods less than 30 days.

Response: CMS will continue to pay interest on underpayments it owes the provider or supplier, the same way it assesses interest on overpayments owed by the provider or supplier. Periods of less than 30 days are not counted. Only full 30 day periods are used to calculate interest. This is based on § 405.378(b)(2) where interest accrues and is paid for each full 30 day period that payment is delayed.

Comment: Two commenters asked CMS to reconsider the proposal to deduct from the interest owed to the provider those days that are tolled during an ALJ or Appeals Council adjudication period.

Response: The appeals regulations in § 405.1014 and § 405.1106 provide extensions (or tolling) of the adjudication timeframe for issuance of ALJ decisions and Medicare Appeals Council review decisions when certain specific actions are taken by an appellant that are outside the government's control, (for example, the appellant fails to copy the other parties on their request for an ALJ hearing). We believe that our proposal to deduct the days that are associated with an appellant's actions aligns itself with the language in the appeals regulations. CMS should not be required to pay interest on days that the appellant is in control of, or is perfecting an appeal request, or takes action that delays the administrative proceedings.

Accordingly, we are finalizing § 405.378 as proposed with modifications, as noted above.

F. § 405.379 Limitation on Recoupment of Provider and Supplier Overpayments.

In the September 22, 2006 proposed rule, we proposed to add a new section § 405.379 to subpart C of Part 405 to implement the statutory limitation on recoupment under section 1893(f)(2) of the Act.

Specifically, in proposed paragraph (a) we explained that 1893(f)(2)(B) of the Act is the statutory basis for this section. In addition, we stated that the basis and purpose of this section is to impose a limit on our recoupment of Medicare overpayments, if a provider or supplier appeals until a decision by a QIC is made.

In paragraph (b), we delineated those types of overpayments that are expressly subject to the recoupment limitation: (1) those appealed by the provider or supplier under the Medicare claims appeal process; (2) post-pay denial of claims for benefits under Medicare Part A and Part B for which a demand for payment has been made; and (3) Medicare Secondary Payer (MSP) recoveries where the provider or supplier received a duplicate primary payment and MSP recoveries based on the provider's or supplier's failure to file a proper claim with the third party payer plan, program, or insurer for payment.

Section 935(b) of the MMA specified that section 1893(f)(2) of the Act shall apply to ''actions'' taken after the date of enactment of the MMA; that is actions taken after December 8, 2003.

For these purposes, we defined these actions to be the date the contractor could have instituted recoupment action based on Part A debts determined on or after November 24, 2003, Part B debts determined on or after October 29, 2003, and a small group of MSP debts determined on or after October 10, 2003.

In paragraph (b), we also provided the categories of overpayments to which the limitation does not apply, although this is not an exhaustive list of exclusions. The limitation would not apply to all MSP recoveries other than provider/supplier MSP duplicate primary payment recoveries or MSP recoveries attributable to the provider's or supplier's failure to file a proper claim. It would not apply to beneficiary overpayments nor overpayments that arise from a cost report determination and are appealed under the provider reimbursement process.

In paragraph (c), we specified how two key actions that trigger the limitation on recoupment are to be construed. A provider must act decidedly to stop recoupment. Recoupment of an overpayment once initiated will be stopped at the first two levels of the appeals process (the redetermination and the reconsideration) upon receipt of a timely and valid appeal request applicable to that level. The provider or supplier does not have to take any affirmative action to invoke the limitation on recoupment beyond the act of appealing. What constitutes a valid and timely request for a redetermination and, subsequently what constitutes a valid and timely request for a reconsideration is already described in established Medicare appeal regulations and implementing policies. (See 42 CFR part 405 subpart I).

In paragraph (d), we proposed the general framework for implementing the limitation on recoupment. Once an overpayment is determined and the substantive and procedural requirements to afford the provider or supplier an opportunity for rebuttal under § 405.374 and § 405.375 are satisfied, recoupment can proceed unless and until a valid request for a redetermination is received. This means we can recoup during the period when a provider's or supplier's right to request a redetermination has not expired. This places the obligation on the provider or supplier who wishes to capitalize on the benefit afforded by the recoupment limitation to request a redetermination.

Under the Benefits Improvement and Protection Act of 2000, the Medicare contractor is required to make a redetermination decision within 60 calendar days of the date the contractor receives a timely filed request for a redetermination. We proposed in paragraph (d)(2) that if the redetermination is an affirmation in whole or in part, we can proceed to recoup any outstanding principal and interest 30 days after notice unless a valid request for a reconsideration is received in the interim.

In paragraph (d)(3), we specified that the Medicare contractor shall cease recoupment upon receipt of a timely and valid request for a reconsideration. If recoupment has not gone into effect, the contractor shall not initiate it. The contractor may initiate or resume recoupment upon final action by the QIC in accordance with paragraph (f) which is explained in detail below.

The general rule we proposed in paragraphs (d)(4) and (d)(5) states that, unless the reconsideration results in a full reversal of the overpayment determination, recoupment of outstanding principal and interest may be initiated or resumed upon final action by the QIC whether or not the provider or supplier appeals to the ALJ, the Medicare Appeals Council, or Federal court. If the provider or supplier subsequently appeals, the contractor may continue recouping outstanding overpayments in accordance with § 405.373(e).

In paragraph (d)(6), we clarified that each overpayment determination and its appeal status is separate and distinct from other debts owed by the same provider or supplier. Therefore, we make explicit that if an overpayment determination is appealed and recoupment stopped, this would not preclude the Medicare contractor from recouping other overpayments owed by the provider or supplier.

In paragraph (d)(7), we stated that amounts properly recouped before the imposition of the recoupment limitation, at either or both the first and second levels of appeal, may be retained until and unless there is an administrative or judicial reversal of the overpayment determination.

In paragraph (d)(8), we stated that if an overpayment determination is reversed through the administrative or judicial process, appropriate adjustments in the debt and the amount of interest charged would be made to give effect to these decisions.

In paragraph (d)(9), we made explicit that interest is payable on overpayments, subject to the recoupment limitation, in accordance with the provisions of § 405.378.

In paragraph (e), we stated the specific rules for initiating or resuming recoupment after the redetermination decision. The necessary conditions are that the debt (remaining unpaid principal balance and interest) has not been liquidated and the substantive and procedural rebuttal requirements have been satisfied. We proposed that recoupment can resume: (1) Immediately upon receipt of a request to withdraw the redetermination request; (2) on the 30th calendar day after the date of the notice of redetermination affirming the overpayment determination in whole; or (3) on the 30th calendar day after a written notice to the provider or supplier of the revised overpayment amount if the redetermination results in an affirmation in part. We proposed in paragraph (e)(2), that recoupment would be stopped again upon receipt of a timely and valid request for a reconsideration by the QIC.

In paragraph (f), we set forth the specific rules for initiating or resuming recoupment after final action by the QIC. It also defines what constitutes final action by a QIC for purposes of this section. As is the case when recoupment is resumed after the redetermination decision, the conditions necessary for resumption are that the debt (remaining unpaid principal balance and interest) has not been liquidated and the substantive and procedural rebuttal requirements have been satisfied.

Under the statute, once a provider or supplier has sought a reconsideration by the QIC, we may not take any action to recoup the overpayment until the date the decision on the reconsideration has been rendered. We believe it is consistent with this provision to interpret ''the date the decision on the reconsideration is rendered'' as the date on which the QIC issues its final decision, dismissal order, or notice with respect to escalation.

There are three possible actions that a QIC may take with respect to a request for reconsideration. First, it may complete its review and issue a reconsideration. Second, in appropriate circumstances, it may dismiss the request for reconsideration. Third, if the QIC is unable to complete its reconsideration within the mandated 60 day time frame, it may issue a notice to the parties that it will not be able to complete its reconsideration in the allotted time and advise them of their right to escalate their appeal to the ALJ level. The parties may then notify the QIC of their intent to escalate the appeal. Following the receipt of this notice, the QIC must either issue its reconsideration within 5 days or issue a notice acknowledging the escalation

request and forward the case file to the ALJ hearing office.

We proposed that the earliest to occur of these three actions (a reconsideration, a dismissal, or the written notification to the parties that the reconsideration has been escalated) or the receipt of a withdrawal request from the provider or supplier would constitute the final QIC action that would permit the initiation, or resumption, of the recoupment of an overpayment. The provider or supplier who elects to escalate the appeal from the QIC to the ALJ would thereby lose the benefit of the limitation on recoupment (recoupment could begin). However, we do not view this as a disadvantage to the provider or supplier who retains the ability to seek escalation or not to seek escalation. We also clarified that where the final action is the notice of the reconsideration, in order to institute or resume recoupment, the reconsideration decision must affirm the overpayment determination in whole or in part.

In paragraph (g), we addressed a series of specific rules and situations on how recouped funds are to be applied. Funds recouped before receipt of a timely and valid redetermination request may be retained and applied first to accrued interest and then to the principal balance. If the overpayment in question is reversed at the first level of appeal, consistent with current policies, the amount held may be applied to any other debt owed by the provider or supplier; any excess would then be released to the provider or supplier.

In the case of a partial reversal at the redetermination level in which the decision reduces the debt below the amount already recouped, the same policies would be followed with respect to the application of the recouped funds. In the case of an affirmation where the provider or supplier appeals to the next level, the Medicare contractor would retain the monies and apply them first to interest and then to the principal balance pending final action by the QIC on the reconsideration request.

If funds are properly recouped between a redetermination decision and a provider's subsequent request for a reconsideration, these would be retained and applied first to interest, then to principal pending final action by the QIC. If the final QIC action is a dismissal, receipt of a withdrawal, notice of escalation, or a reconsideration decision affirming the overpayment in whole, funds recouped are applied to interest, then to principal; recoupment may be resumed as necessary to liquidate the debt. If the QIC reconsideration decision is a full reversal, the amount recouped may be applied to any other debt (including interest) owed by the provider or supplier before any excess is released. If the reconsideration decision is a partial reversal and reduces the debt below the amount already recouped, the same policies would be followed with respect to the application of the recouped funds.

In paragraph (h), we specified how we would insulate a provider or supplier, invoking the limitation on recoupment under this section, from the operation of § 401.607(c)(2)(iv). This latter rule provides that missing one payment under a 6-month extended repayment plan granted under the authority of § 401.607(c)(2) constitutes a default allowing CMS to accelerate the debt.

All comments and CMS's responses related to § 405.379 are discussed below:

Comment: Two commenters stated that in the proposed rule CMS explained that it would not recoup until after the requirement to afford the provider or supplier an opportunity for rebuttal was satisfied. In addition, the commenters asked if the rebuttal process conflicts with the proposed provisions.

Response: The rebuttal process is a separate and independent right that is not affected by this regulation, and occurs independently of the appeals process set forth in part 405 subpart I. The statement in the proposed regulation regarding the rebuttal process was simply an acknowledgement that this process remains available to providers and suppliers. Sections 405.373 through 405.375 explain the process by which CMS gives notice of an overpayment and offers an opportunity for rebuttal before it takes an action to offset or recoup that overpayment. The provider may submit a rebuttal statement within 15 days of the notice. The Medicare contractor has 15 days to review the statement and determine whether to proceed with the recoupment or not to proceed, based on the rebuttal statement. In contrast, the limitation on recoupment provision does not afford the contractor any discretion in proceeding or stopping recoupment of an overpayment. If a valid request for a first or second level appeal is filed, the contractor must stop recoupment. As a practical matter, providers who want to ensure that CMS stops recoupment will avail themselves of the limitation on recoupment process through a timely and valid appeal rather than the rebuttal process.

Comment: Several commenters recommended that CMS provide the full 120-day filing period for a redetermination and the 180-day period for a reconsideration before starting recoupment of the overpayment. The commenters indicated that the proposed rule forces providers to choose either to initiate a timely appeal to stop recoupment, or take full advantage of the timeframe for filing an appeal. In addition, the commenters stated that recouping before the filing periods have concluded was not in compliance with the statute.

Response: The comment that recoupment should be delayed 120 days after the receipt of an overpayment determination or 180 days after the notice of a redetermination is inconsistent with the applicable statute. In order to trigger the statutory limitation on recoupment, the provider must seek a reconsideration. The statute is clear that recoupment is either stopped, or may not begin, when a valid request for a reconsideration is filed. However, the statute is silent with regard to actions CMS may take after an initial demand is issued and before a request for reconsideration is filed. CMS has a fiduciary responsibility to timely and aggressively collect Medicare debt or refer the debt to Treasury for collection as mandated by the Debt Collection Improvement Act. Unless a provider or supplier purposely avails themselves of the limitation on recoupment, CMS has a statutory obligation to collect these outstanding debts. Based on the statutory language CMS could recoup during the period the provider is actively pursuing a first level of appeal (redetermination). This approach would reduce the complexity of implementing this new statutory provision. Also, it would shorten the period of deferred recoupment under the Act, thereby minimizing risk to the Medicare Trust Fund. However, as we noted earlier, this approach would result in many instances where CMS would have recouped the overpayment before the provider could request a reconsideration and thereby invoke the limitation on recoupment. We suggested in our September 2006 proposed rule that this view, while permissible, would unfairly impact many providers and suppliers. Using our discretionary rulemaking authority, CMS is also limiting recoupment when the provider requests a redetermination (that is, the first level of appeal). Based on this comment, CMS is revising § 405.379(a) to make clear that we are implementing the statutory requirement to limit recoupment during reconsideration, as well as limiting recoupment during redetermination, the first level of appeal.

In both cases, the provider or supplier must take some decided affirmative action, (that is, requesting a redetermination or a reconsideration). Moreover, to wait until the expiration of the appeals filing periods would adversely impact providers and suppliers who do not wish to appeal, because they would be subject to several months of interest. To avoid this, these providers and suppliers would have to take some affirmative action to indicate that they do not want to appeal which unfairly places a burden on these providers and suppliers who want to pay their overpayments and do not want to appeal.

Therefore, CMS has determined that the timeframes established for recoupment are both reasonable for allowing providers sufficient time to initiate a timely appeal and are also consistent with our fiduciary responsibility for collecting Medicare debt. Based on the foregoing discussion, CMS is in compliance with the statute. We are not adopting the commenters' suggestion.

Comment: One commenter suggested that if CMS does not halt recoupment until the first and second level appeals periods expire, CMS should require a provider or supplier to inform the contractor of its intent to initiate an appeal. In addition, the commenter indicated that providers expressing their intent to appeal would not be subject to recoupment.

Response: We believe the language of the statute that the provider must ''seek'' a reconsideration clearly intends for a process that actively engages both the provider or supplier and CMS. An intent to file has no time limits for a provider or supplier and has the effect of staying any collections indefinitely. Further, simply signaling an intent to file has no binding effect on a party, and does not necessarily mean that a provider or supplier will ultimately seek any appeal. Thus, we are not adopting the commenter's suggestion.

Comment: One commenter suggested that CMS should ensure that language in the overpayment notices clearly advise the provider or supplier that if it files a request for a redetermination by a specified date that recoupment would be stayed and that these notices should also specify the time period in which recoupment would be stayed. Additionally, language in the notices should state that interest continues to accrue from the date of the original overpayment determination.

Response: We agree with the commenter that language regarding when recoupment starts and stops and that interest continues to accrue from the date of the initial overpayment determination should be included in the overpayment determination letters. However, we view those procedures as part of the specific manual instructions to be issued to Medicare contractors. Manual instructions contain model letters and instructions to Medicare contractors on the preparation and content of demand letters. Thus, we do not believe it is necessary to revise the rule to include the commenter's suggestion.

Comment: Two commenters stated that the limitation of recoupment should apply to those Part B debts determined on or after October 29, 2003 and Part A debts determined on or after November 29, 2003. The commenters further explained that this means that CMS could begin recoupment on the 16th day or the 41st day after the notice of overpayment is issued and before a redetermination is filed depending on whether the notice came from the Medicare intermediary or the Medicare carrier. The commenter expressed that this is disparate treatment and asked CMS to explain the rationale for the policy.

Response: Medicare contractors' internal shared systems largely determined when those contractors instituted recoupment. Recoupment began approximately 16 days after the notice of overpayment, if the notice was issued by a Medicare intermediary, and 41 days after the notice of overpayment if the notice was issued by a Medicare carrier unless in both cases, the contractor received information from the provider about how it intended to repay the overpayment.

The limitation on recoupment provision required us to consider more consistent system rules for when recoupment could begin or resume. For consistent application of the limitation on recoupment and before a request for a redetermination is received, we modified our Part A systems to be consistent with our Part B systems and both will begin recoupment at day 41 following the notice of overpayment for those overpayments subject to the limitation on recoupment. This aligns itself with interest regulations at § 405.378, that states interest is not due if the debt is liquidated within 30 days. If a provider or supplier pays the overpayment or requests a redetermination by the 30th day following the notice of overpayment, Medicare contractors have an additional 10 days to ensure posting of payments or receipt of a valid request for a redetermination. Medicare overpayment demand letters will include clear language about when recoupment can begin. We are also amending the regulation at § 405.379(d)(1) to reflect the 41 day system modification.

Comment: Two commenters stated that providers who fail to introduce all relevant evidence before the QIC are precluded from presenting new evidence to an ALJ, absent good cause. Thus, an appellant may need more than 30 days to prepare a request for reconsideration that contains all relevant evidence.

Response: The requirement in § 405.966 for the early presentation of evidence by providers and suppliers is based on the statutory requirement contained in section 1869(b)(3) of the Act, as added by section 933(a) of the MMA, which states that a provider or supplier may not, in any subsequent level of appeal, introduce evidence that was not presented at the reconsideration conducted by the QIC, unless there is good cause that precluded the introduction of that evidence at or before the reconsideration. While it is in the interest of both the Medicare provider and supplier community and CMS that appellants have the opportunity to submit a complete appeal request with all relevant evidence, we believe it is necessary to strike a balance between the need to timely recoup Medicare overpayments and the need to give providers and suppliers a reasonable time to prepare an appeal.

Therefore, after carefully considering all comments received, we have decided to extend the period before contractors may initiate recoupment following a redetermination to the 60th calendar day rather than the 30th calendar day. Providers or suppliers may take the full 180 days to appeal. However, to avoid recoupment starting or resuming following a redetermination, a valid request for reconsideration must be filed with the appropriate QIC by the 60th day following the date of the redetermination. This change is reflected at § 405.379(e)(1)(ii) and (e)(1)(iii).

Comment: One commenter indicated that there is no provision to notify the provider or supplier that recoupment has stopped once the provider or supplier submits a request for reconsideration to the QIC. The commenter recommended that the QIC issue to the provider or supplier a written notification that recoupment efforts have ceased once they file a request for reconsideration to the QIC.

Response: As part of the QICs' current standard operating procedures, QICs send an acknowledgement notice within 14 days of receipt of a request for reconsideration to the provider or

supplier. However, the Medicare contractor, not the QIC, is responsible for all overpayment recoupment activities, including the cessation of recoupments. The provider or supplier is notified by the Medicare contractor via a payment remittance advice that claims are continuing to be paid and are not being recouped or offset. We will consider whether any additional notice is necessary and, if so, we will include additional guidance in our manual instructions rather than through a regulatory issuance.

Comment: One commenter stated that recoupment should cease upon a request for reconsideration and should not be initiated or resumed until after an ALJ or judicial decision was rendered.

Response: When a valid request for a reconsideration is received, recoupment ceases. Section 1893(f)(2) of the Act only requires CMS to stop recoupment when a valid request for reconsideration is received. It does not limit CMS' authority to resume recoupment following the reconsideration decision issued by the QIC. Thus, as stated in § 405.379(d)(4) and (d)(5), recoupment can resume following a decision by the QIC, whether or not the QIC decision is further appealed. Therefore, we are not adopting the commenter's suggestion, as we believe the suggestion is contrary to section 1893(f)(2) of the Act. However, we are making technical changes to § 405.379(d), (f), and (g) of this section to remove the word ''final'' preceding ''action.'' We believe that use of the word ''final'' in these provisions is confusing because ''final action'' could be incorrectly construed as meaning a final administrative action of the Secretary which can be appealed directly to Federal district court. The intent of this regulatory provision is to explain the types of actions by the QIC that are binding on the parties and would enable recoupment to be initiated or resumed. As was stated in the proposed rule and this final rule, these actions are a decision, dismissal order, or notice that it cannot complete its reconsideration in a timely manner. Because the underlying QIC actions that will allow CMS to initiate or resume recoupment have remained unchanged, we are making only a non-substantive, technical change to clarify the ambiguity discussed above by deleting the word ''final.''

We also note one further technical change we are making to § 405.379(c). In this paragraph, we revised incorrect cross-references to § 405.940 and § 405.958, and cross references to § 405.974 through § 405.978. Specifically, we revised the regulatory text of (c)(1) to refer to § 405.940 through § 405.958 and we revised the regulatory text of (c)(2) to refer to § 405.960 through § 405.978.

Comment: One commenter suggested that a provider's choice to escalate the appeal to the ALJ because of a delay at the QIC should toll recoupment.

Response: Notice by the QIC that it is unable to meet the mandated response timeframe for issuing a decision immediately gives the provider or supplier control to request an ALJ appeal. Practically, this result is no different than a decision issued by the QIC that affirms the prior decision and the provider or supplier requests an appeal. In both instances the appeal has passed out of the reconsideration level and the statutory requirement to limit recoupment no longer applies. We note that we are not adopting the commenter's suggestion.

Comment: One commenter stated that CMS has not addressed how extended repayment plans work in conjunction with the limitation on recoupment. The commenter stated that a provider might want to repay the overpayment by seeking an extended repayment plan at some point in the appeals process. For example, the provider might not have a favorable decision at the first level of appeal and chooses not to appeal to the second level. Also, the commenter recommended that CMS revise the rule to include language that recoupment may not occur for 30 days after the redetermination and/or reconsideration to give the provider time to request and CMS to review and approve an extended repayment plan.

Response: In paragraph (h) of § 405.379, we state that a provider or supplier who timely files a redetermination of an overpayment but such overpayment is under an extended repayment plan, a missed payment under the plan does not put the provider in default of the extended repayment plan. This permits the provider or supplier to invoke the limitation on recoupment provisions to stop recoupment when a valid request for redetermination is filed. We are revising paragraph (h) of § 405.379 to permit the provider or supplier to similarly invoke the limitation on recoupment if a timely and valid request for reconsideration is received. Additionally, in this final rule, we do not prohibit the provider or supplier from requesting a repayment plan at any time or at any stage of an appeal. Payments made by a provider or supplier who requested to repay in installments under an extended repayment plan are not recoupments for purposes of this rule. If a provider or supplier does not make timely payments under its schedule, the provider or supplier would be placed on recoupment but can invoke the benefit of the limitation as stated above.

Providers or suppliers who wish to make repayment arrangements following a redetermination can do so during the 60 days the provider or supplier is also deciding whether to appeal to a reconsideration. Providers or suppliers who wish to make repayment arrangements following a reconsideration have the opportunity to do that during the rebuttal period required under § 405.374.

We note that we have revised paragraph (h) of § 405.379 for clarity. Yet these revisions do not make substantive changes to the policy. Further we corrected an incorrect cross reference to § 401.607(c)(2)(iv). Specifically we revised the regulations text to refer to § 401.607(c)(2)(v).

Comment: One commenter suggested that CMS give the provider the option of repaying the overpayment immediately, even if the provider appeals the overpayment determination. The commenter also stated that paying the debt immediately allows the provider to exercise their appeal rights without incurring substantial interest charges. The commenter also stated that the statute does not preclude the provider from voluntarily returning funds during the administrative appeals process.

Response: We appreciate the observations and the suggestion submitted by the commenter. Currently, providers or suppliers have several options at the time of the notice of overpayment. For example, they may pay the overpayment and not pursue an appeal, pay the overpayment and proceed with an appeal, or not pay the overpayment and proceed with a timely appeal. Providers or suppliers who choose to pay immediately, as the commenter suggests, avoid paying interest. Also, as the commenter suggested, providers or suppliers can voluntarily repay any time during the appeal, thereby limiting their interest exposure. Because payments made as a lump sum or through an extended repayment plan are not recoupments subject to the limitation, no modifications are necessary.

Accordingly, we are finalizing § 405.379 with modifications as noted above.

III. Provisions of the Final Rule

- In this final rule, we are adopting the provisions as set forth in the September 22, 2006 proposed rule with the following revisions:

• In § 405.370(b), we revised the definition of Medicare contractor to include a recovery audit contractor.

• In § 405.378(c), we removed paragraphs (c)(1)(ii)(C) and (c)(1)(ii)(D) regarding the definition of a final determination.

• In § 405.379(a) we made revisions to make clear that we are implementing the statutory requirement to limit recoupment during reconsideration, as well as limiting recoupment during redetermination, and the first level of appeal.

• In § 405.379(c) we revised incorrect cross-references to § 405.940 and § 405.958, and cross references to § 405.974 through § 405.978. Specifically, we revised the regulatory text of (c)(1) to refer to § 405.940 through § 405.958 and we revised the regulatory text of (c)(2) to refer to § 405.960 through § 405.978.

• In § 405.379(d), we added language to paragraph (d)(1) to provide that recoupment may begin no earlier than 41 days following the date of the initial notice of overpayment.

• In § 405.379(d), we made a technical change to paragraph (d)(4) by removing the word ''final'' to clarify that actions of a QIC are not necessarily considered final administrative actions of the Secretary which can be appealed directly to Federal district court.

• In § 405.379(e), we revised paragraphs (e)(1)(ii) and (e)(1)(iii) to extend the timeframe for limiting recoupment before reconsideration is filed from 30 calendar days to 60 calendar days.

• In § 405.379(f) and (g), we made technical changes. Specifically, we revised the heading of paragraph (f) by removing the word ''final''. In paragraphs (f)(1) and (2), and (g)(1) and (2), we removed the word ''final''. We made these technical changes to clarify that actions of a QIC are not necessarily considered final actions of the Secretary which can be directly appealed to Federal district court.

• In § 405.379(h), we added language that permits the provider or supplier who might otherwise be found to be in default on their extended repayment schedule, but submits a valid and timely reconsideration not be deemed in default. We also revised paragraph (h) for clarity. These revisions do not make substantive changes to the policy. Further we corrected an incorrect cross reference to § 401.607(c)(2)(iv). Specifically we revised the regulatory text to refer to § 401.607(c)(2)(v).

IV. Collection of Information Requirements

This document does contain information collection requirements; however, the Paperwork Reduction Act of 1995 exempts the information collection activities referenced in this Final Rule. In particular, 5 CFR 1320.4 excludes collection activities during the conduct of administrative actions such as redeterminations, reconsiderations, and/or appeals. Specifically, these actions are taken after the initial determination or a denial of payment. See also, 44 USC 3518(c).

V. Regulatory Impact Statement

A. Overall Impact

We have examined the impacts of this final rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We do not expect this final rule to have a substantial financial impact on beneficiaries, providers, or suppliers. Additionally, we anticipate that Federal costs to implement this final rule will be approximately $1 to $10 million per year in additional interest payments, which is well under the threshold of $100 million in any 1 year.

The RFA requires agencies to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small businesses or other small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. The great majority of hospitals and most other providers and suppliers are small entities, either by being nonprofit organizations or by meeting the Small Business Administration definition of a small business (having revenues of less than 7 million to 34.5 million in any 1 year). For purposes of the RFA, all providers and suppliers affected by this regulation are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical Area and has fewer than 100 beds.

We are not preparing analyses for either the RFA or section 1102(b) of the Act. We are uncertain how many small entities would be affected by this final rule as this would depend in part upon voluntary actions on the part of the provider or supplier. The purpose of this rule is to limit our ability to recoup against providers or suppliers who appeal an overpayment determination. In order to impact a provider or supplier, the provider or supplier must have received an erroneous payment; an overpayment must be determined and demanded; the provider or supplier must elect to appeal; and the provider or supplier may not satisfy the overpayment by making either a lump sum payment or requesting to repay the debt in installments. The only possible adverse impact upon a provider or supplier is that by deferring repayment of the overpayment until final action by the QIC, the provider would owe additional interest. However, the provider or supplier can avoid the additional interest exposure by electing to satisfy the debt by a lump sum payment or an installment payment while still pursuing the appeal. In addition, should the overpayment determination be reversed at a level above the QIC, the provider or supplier potentially will receive additional interest beyond what CMS would be obligated to pay under current regulations. Therefore, we expect the impact of this final rule to be positive although the extent to which it would benefit any one provider or supplier would depend upon specific facts and circumstances and voluntary choices made by that provider or supplier. The impact on small rural hospitals is expected to be similarly positive but unpredictable. Therefore, we are certifying that this final rule will not have a significant impact on a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2009, that threshold is $133 million. This rule will not have this effect on State, local, or tribal governments, or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. This final rule will not have a substantial effect on State or local governments.

A comment and the CMS response to the impact analysis section are discussed below:

Comment: One commenter states that CMS should have performed an impact analysis because the commenter believes that the CMS proposal to recoup before the 120 day time period for filing a request for redetermination has expired may not afford protections from recoupment and may have an impact on small business. Additionally, the commenter believes CMS can determine negative impact by looking at overpayment data.

Response: As previously stated CMS plans to adopt a process that will give providers and suppliers an opportunity to stop recoupment if they act decidedly by submitting a request for redetermination within 30 days of the initial notice of overpayment. CMS will not begin recoupment until the 41st day allowing Medicare contractors time to act on information it receives from the provider. Also, after reviewing public comments concerning the timeframe to limit recoupment before reconsideration is filed; CMS is expanding the 30 day time limit to 60 days. We believe that these timeframes afford providers or suppliers ample protections to stop recoupment. Thus, we are not adopting the commenter's suggestion.

B. Conclusion

For these reasons, we did not prepare analyses for either the RFA or section 1102(b) of the Act because we have determined that this final rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure; Health facilities; Health professions; Kidney diseases; Medical devices; Medicare; Reporting and recordkeeping requirements; Rural areas; X-rays.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart C—Suspension of Payment, Recovery of Overpayments, and Repayment of Scholarships and Loans

■ 1. The authority citation for subpart C is revised to read as follows:

Authority: Secs. 1102, 1815, 1833, 1842, 1866, 1870, 1871, 1879, 1892 and 1893 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395l, 1395u, 1395cc, 1395gg, 1395hh, 1395pp, 1395ccc and 1395ddd) and 31 U.S.C. 3711.

■ 2. Section 405.370 is amended by designating the existing text as paragraph (a), and adding a new paragraph (b) to read as follows:

§ 405.370 Definitions.

* * * * *

(b) For purposes of §§ 405.378 and 405.379, the following terms apply:

Appellant means the beneficiary, assignee or other person or entity that has filed and pursued an appeal concerning a particular initial determination. Designation as an appellant does not in itself convey standing to appeal the determination in question.

Fiscal intermediary means an organization that has entered into a contract with CMS in accordance with section 1816 of the Act and is authorized to make determinations and payments for Part A of title XVIII of the Act, and Part B provider services as specified in § 421.5(c) of this chapter.

Medicare Appeals Council means the council within the Departmental Appeals Board of the U.S. Department of Health and Human Services.

Medicare contractor, unless the context otherwise requires, includes, but is not limited to, a fiscal intermediary, carrier, recovery audit contractor, and Medicare administrative contractor.

Party means an individual or entity listed in § 405.906 that has standing to appeal an initial determination and/or a subsequent administrative appeal determination.

Qualified Independent Contractor (QIC) Qualified Independent Contractor (QIC) means an entity which contracts with the Secretary in accordance with section 1869 of the Act to perform reconsiderations under § 405.960 through § 405.978.

Remand means to vacate a lower level appeal decision, or a portion of the decision, and return the case, or a portion of the case, to that level for a new decision.

Vacate means to set aside a previous action.

■ 3. In § 405.373, paragraph (e) introductory text is revised to read as follows:

§ 405.373 Proceeding for offset or recoupment.

* * * * *

(e) *Duration of recoupment or offset.* Except as provided in § 405.379, if a recoupment or offset is put into effect, it remains in effect until the earliest of the following:

* * * * *

■ 4. Section 405.378 is amended by—
■ A. Revising paragraph (a);
■ B. Revising paragraph (b)(2);
■ C. Republishing paragraph (c)(1) introductory text;
■ D. Revising paragraph (c)(1)(ii);
■ E. Revising paragraph (c)(2);
■ F. Redesignating paragraphs (h) and (i) as paragraphs (i) and (h) respectively;
■ G. Adding paragraph (j).

§ 405.378 Interest charges on overpayment and underpayments to providers, suppliers and other entities.

(a) *Basis and purpose.* This section, which implements sections 1815(d), 1833(j) and 1893(f)(2)(B) of the Act and common law, and authority granted under the Federal Claims Collection Act, provides for the charging and payment of interest on overpayments and underpayments to Medicare providers, suppliers, HMOs, competitive medical plans (CMPs), and health care prepayment plans (HCPPs).

(b) * * *

(2) Except as provided in paragraph (j) of this section, interest accrues from the date of the final determination as defined in paragraph (c) of this section, and either is charged on the overpayment balance or paid on the underpayment balance for each full 30-day period that payment is delayed.

(c) * * * (1) For purposes of this section, any of the following constitutes a final determination:

* * * * *

(ii) In cases in which an NPR is not used as a notice of determination (that

is, primarily under part B), one of the following constitutes a final determination –

(A) A written determination that an overpayment exists and a written demand for payment; or

(B) A written determination of an underpayment.

* * * * *

(2) Except as required by any subsequent administrative or judicial reversal and specifically as provided in paragraphs (i) and (j) of this section, interest accrues from the date of final determination as specified in this section.

* * * * *

(j) *Special rule for provider or supplier overpayments subject to § 405.379.* If an overpayment determination subject to the limitation on recoupment under § 405.379 is reversed in whole or in part by an Administrative Law Judge (ALJ) or at subsequent administrative or judicial levels of appeal and if funds have been recouped and retained by the Medicare contractor, interest will be paid to the provider or supplier as follows:

(1) The applicable rate of interest is that provided in paragraph (d) of this section.

(2) The interest rate in effect on the date the ALJ, the Medicare Appeals Council, the Federal district court or subsequent appellate court issues a decision reversing the overpayment determination in whole or in part is the rate used to calculate the interest due the provider or supplier.

(3) Interest will be calculated as follows:

(i) Interest will be paid on the principal amount recouped only.

(ii) Interest will be calculated on a simple rather than a compound basis.

(iii) Interest will be calculated in full 30-day periods and will not be payable on amounts recouped for any periods of less than 30 days in which the Medicare contractor had possession of the funds.

(iv) In calculating the period in which the amount was recouped, days in which the ALJ's adjudication period to conduct a hearing are tolled under 42 CFR 405.1014 shall not be counted.

(v) In calculating the period in which the amount was recouped, days in which the Medicare Appeals Council's adjudication period to conduct a review are tolled under 42 CFR 405.1106 shall not be counted.

(4) If the decision by the ALJ, Medicare Appeals Council, Federal district court or a subsequent Federal reviewing court, reverses the overpayment determination, as modified by prior levels of administrative or judicial review, in part, the Medicare contractor in effectuating the decision may allocate recouped monies to that part of the overpayment determination affirmed by the decision. Interest will be paid to the provider or supplier on recouped amounts that remain after this allocation in accordance with this paragraph (j) of this section.

■ 5. Section 405.379 is added to read as follows:

§ 405.379 Limitation on recoupment of provider and supplier overpayments.

(a) *Basis and purpose.* This section implements section 1893(f)(2)(A) of the Act which limits recoupment of Medicare overpayments if a provider of services or supplier seeks a reconsideration until a decision is rendered by a Qualified Independent Contractor (QIC). This section also limits recoupment of Medicare overpayments when a provider or supplier seeks a redetermination until a redetermination decision is rendered.

(b) *Overpayments subject to limitation.* (1) This section applies to overpayments that meet the following criteria:

(i) Is one of the following types of overpayments:

(A) Post-pay denial of claims for benefits under Medicare Part A which is determined and for which a written demand for payment has been made on or after November 24, 2003; or

(B) Post-pay denial of claims for benefits under Medicare Part B which is determined and for which a written demand for payment has been made on or after October 29, 2003; or

(C) Medicare Secondary Payer (MSP) recovery where the provider or supplier received a duplicate primary payment and for which a written demand for payment was issued on or after October 10, 2003; or

(D) Medicare Secondary Payer (MSP) recovery based on the provider's or supplier's failure to file a proper claim with the third party payer plan, program, or insurer for payment and, if Part A, demanded on or after November 24, 2003, or, if Part B, demanded on or after October 29, 2003; and

(ii) The provider or supplier can appeal the overpayment as a revised initial determination under the Medicare claims appeal process at 42 CFR parts 401 and 405 or as an initial determination for provider/supplier MSP duplicate primary payment recoveries.

(2) This section does not apply to all other overpayments including, but not limited to, the following:

(i) All Medicare Secondary Payer recoveries except those expressly identified in paragraphs (b)(1)(i)(C) and (D) of this section;

(ii) Beneficiary overpayments; and

(iii) Overpayments that arise from a cost report determination and are appealed under the provider reimbursement process of 42 CFR part 405 Subpart R—Provider Reimbursement Determinations and Appeals.

(c) *Rules of construction.* (1) For purposes of this section, what constitutes a valid and timely request for a redetermination is to be determined in accordance with § 405.940 through § 405.958.

(2) For purposes of this section, what constitutes a valid and timely request for a reconsideration is to be determined in accordance with § 405.960 through § 405.978.

(d) *General rules.* (1) Medicare contractors can begin recoupment no earlier than 41 days from the date of the initial overpayment demand but shall cease recoupment of the overpayment in question, upon receipt of a timely and valid request for a redetermination of an overpayment. If the recoupment has not yet gone into effect, the contractor shall not initiate recoupment.

(2) If the redetermination decision is an affirmation in whole or in part of the overpayment determination, recoupment may be initiated or resumed in accordance with paragraph (e) of this section.

(3) Upon receipt of a timely and valid request for a reconsideration of an overpayment, the Medicare contractor shall cease recoupment of the overpayment in question. If the recoupment has not yet gone into effect, the contractor must not initiate recoupment.

(4) The contractor may initiate or resume recoupment following action by the QIC in accordance with paragraph (f) of this section.

(5) If the provider or supplier subsequently appeals the overpayment to the ALJ, the Medicare Appeals Council, or Federal court, recoupment remains in effect as provided in § 405.373(e).

(6) If an overpayment determination is appealed and recoupment stopped, the contractor may continue to recoup other overpayments owed by the provider or supplier in accordance with this section.

(7) Amounts recouped prior to a reconsideration decision may be retained by the Medicare contractor in accordance with paragraph (g) of this section.

(8) If either the redetermination or reconsideration decision is a full reversal of the overpayment determination or if the overpayment determination is reversed in whole or in part at subsequent levels of administrative or judicial appeal, adjustments shall be made with respect to the overpayment and the amount of interest charged.

(9) Interest accrues and is payable in accordance with the provisions of § 405.378.

(e) *Initiating or resuming recoupment after redetermination decision.* (1) Recoupment that has been deferred or stopped may be initiated or resumed if the debt (remaining unpaid principal balance and interest) has not been satisfied in full and the provider or supplier has been afforded the opportunity for rebuttal in accordance with the requirements of § 405.373 through § 405.375. Recoupment may be resumed under any of the following circumstances:

(i) Immediately upon receipt by the Medicare contractor of the provider's or supplier's request for a withdrawal of a request for a redetermination in accordance with § 405.952(a).

(ii) On the 60th calendar day after the date of the notice of redetermination issued under § 405.956 if the redetermination decision is an affirmation in whole of the overpayment determination in question.

(iii) On the 60th calendar day after the date of the written notice to the provider or supplier of the revised overpayment amount, if the redetermination decision is an affirmation in part, which has the effect of reducing the amount of the overpayment.

(2) Notwithstanding paragraphs (e)(i), (ii) and (iii) of this section, recoupment must not be resumed, or if resumed, must cease upon receipt of a timely and valid request for a reconsideration by the QIC.

(f) *Initiating or resuming recoupment following action by the QIC on the reconsideration request.* (1) Recoupment may be initiated or resumed upon action by the QIC subject to the following limitations:

(i) The provider or supplier has been afforded the opportunity for rebuttal in accordance with the requirements of § 405.373 through § 405.375; and

(ii) The debt (remaining unpaid principal balance and interest) has not been satisfied in full; and

(iii) If the action by the QIC is the notice of the reconsideration, the reconsideration decision either affirms in whole or in part the overpayment determination, including the redetermination, in question.

(2) For purposes of this paragraph (f), the action by the QIC on the reconsideration request is the earliest to occur of the following:

(i) The QIC mails or otherwise transmits written notice of the dismissal of the reconsideration request in its entirety in accordance with § 405.972; or

(ii) The QIC receives a timely and valid request to withdraw the request for the reconsideration in accordance with § 405.972; or

(iii) The QIC transmits written notice of the reconsideration in accordance with § 405.976; or

(iv) The QIC notifies the parties in writing that the reconsideration is being escalated to an ALJ in accordance with § 405.970.

(g) *Disposition of funds recouped.* (1) If the Medicare contractor recouped funds before a timely and valid request for a redetermination was received, the amount recouped may be retained and applied first to accrued interest and then to reduce or eliminate the principal balance of the overpayment subject to the following:

(i) If the redetermination results in a reversal, the amount recouped may be applied to any other debt, including interest, owed by the provider or supplier before any excess is released to the provider.

(ii) If the redetermination results in a partial reversal and the decision reduces the overpayment plus assessed interest below the amount already recouped, the excess may be applied to any other debt, including interest, owed by the provider or supplier before any excess is released to the provider or supplier.

(iii) If the redetermination results in an affirmation and the provider or supplier subsequently requests a reconsideration, the Medicare contractor may retain the amount recouped and apply the funds first to accrued interest and then to outstanding principal pending action by the QIC on the reconsideration request.

(2) If the Medicare contractor also recouped funds in accordance with paragraph (e) of this section, the amount recouped may be retained by the Medicare contractor and applied first to accrued interest and then to reduce or eliminate the outstanding principal balance pending action by the QIC on the reconsideration request.

(3) If the action by the QIC is a dismissal, receipt of a withdrawal, a notice that the reconsideration is being escalated to an ALJ, or a reconsideration which affirms in whole the overpayment determination, including the redetermination, in question, the amount recouped is applied to interest first, then to reduce the outstanding principal balance and recoupment may be resumed as provided under paragraph (f) of this section.

(4) If the action by the QIC is a reconsideration, which reverses in whole the overpayment determination, including the redetermination, in question, the amount recouped may be applied to any other debt, including interest, owed by the provider or supplier to CMS or to HHS before any excess is released to the provider or supplier.

(5) If the action by the QIC is a reconsideration which results in a partial reversal and the decision reduces the overpayment plus assessed interest below the amount already recouped, the excess may be applied to any other debt, including interest, owed by the provider or supplier to CMS or to HHS before any excess is released to the provider or supplier.

(h) *Relationship to Extended Repayment Schedules.* Notwithstanding § 401.607 (c)(2)(v) of this chapter regarding an extended repayment schedule (ERS), a provider or supplier will not be deemed in default if recoupment of an overpayment is not effectuated or stopped in accordance with this section, and the following conditions are met:

(1) The provider or supplier has been granted an ERS under § 401.607(c) of this chapter.

(2) The ERS has been granted for an overpayment that is listed in paragraph (b) of this section.

(3) The provider or supplier has submitted a valid and timely request to the Medicare contractor for a redetermination of the overpayment in accordance with §§ 405.940 through 405.958 or reconsideration of the overpayment in accordance with §§ 405.960 through 405.978.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 29, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: June 17, 2009.

Kathleen Sebelius,

Secretary.

[FR Doc. E9–22166 Filed 9–15–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Parts 59, 61, 78, 79, 80, 201, and 206

[Docket ID FEMA–2006–0010]

RIN 1660–AA36

Flood Mitigation Grants and Hazard Mitigation Planning

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency finalizes the interim regulations that implemented the Severe Repetitive Loss program and clarified provisions of the existing Flood Mitigation Assistance program. In addition, this rule finalizes interim requirements for the acquisition of property for open space with mitigation funds and clarifies mitigation planning requirements for Indian Tribal governments. This rule is intended to encourage hazard mitigation, reduce the number of repetitive loss properties, and improve FEMA's mitigation programs.

DATES: This rule is effective October 16, 2009.

FOR FURTHER INFORMATION CONTACT: Cecelia Rosenberg, Mitigation Directorate, Federal Emergency Management Agency, 1800 South Bell Street, Arlington, VA 20598–3030, (phone) 202–646–3321, (facsimile) 202–646–2719, or (e-mail) *cecelia.rosenberg@dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 31, 2007 (72 FR 61720), the Federal Emergency Management Agency (FEMA) published an Interim Rule (IR). The IR implemented provisions of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108–264, 118 Stat. 714, found at 42 U.S.C. 4102a, which amended the National Flood Insurance Act of 1968 (NFIA) to provide new programs and incentives for States and communities to mitigate flood damage to severe repetitive loss properties. Using this new authority, the IR added a new 44 CFR part 79 that established the new Severe Repetitive Loss (SRL) program. The SRL program is intended to eliminate or reduce the risk of additional flood damage to the subset of properties that have the largest claims paid from the National Flood Insurance Program (NFIP). It is also intended to reduce losses to the National Flood Insurance Fund (NFIF). The SRL program provides mitigation offers for NFIP insured properties that have experienced four or more separate flood claims payments each exceeding $5,000 and cumulative payments exceeding $20,000; or at least two separate claims payments cumulatively exceeding the market value of the building. Claims made within 10 days of each other are counted as one claim, and at least two of the claims must be within 10 years of each other. If the offer of mitigation assistance is refused the property owners' insurance rates may be increased.

In addition, the IR amended the existing Flood Mitigation Assistance (FMA) program by updating the FMA regulations to reflect changes to the non-Federal cost share as a result of the amendments to the NFIA, changes to FEMA policy, and adding a new 44 CFR part 79. The IR also codified, at new 44 CFR part 80, procedures and requirements for the acquisition of property for open space. Although FEMA previously had procedures in place for open space acquisition, the new part expanded the scope of FEMA's prior regulations to address the use of all types of mitigation funds, including SRL and FMA, and consolidated them in one location. FEMA also modified the mitigation planning regulations at 44 CFR part 201 to reduce the non-Federal cost share for mitigation projects under the FMA and SRL programs for grantees with State mitigation plans that address repetitive loss strategies. This change is intended to minimize the burden on State, local, and Indian Tribal governments; to streamline the flood mitigation planning process; and to ensure consistency in the local planning requirements that apply to FEMA's mitigation grant programs. Recognizing the unique needs of Indian Tribal governments, who may act as grantees or subgrantees and may have different organizational structures than State or local governments, the IR also established the Tribal Mitigation Plan in 44 CFR 201.7.

The rule also implemented amendments to section 1308 of the NFIA to charge the full actuarial insurance premium rates for property leased from the Federal Government ''located on the river-facing side of any dike, levee, or other riverine flood control structure, or seaward of any seawall or other coastal flood control structure.'' (42 U.S.C. 4015(c)(2)) Finally, effective October 4, 2006, section 684 of the Post-Katrina Emergency Management Reform Act of 2006, Public Law 109–295, amended the amount of Hazard Mitigation Grant Program (HMGP) assistance available to States with an approved Standard State Mitigation Plan from 7.5 percent to 15 percent and established a sliding scale for HMGP assistance. The IR revised FEMA's regulations to align with this change. (44 CFR 206.432(b)(1).)

II. Discussion of Final Rule

This final rule adopts the regulations established by the October 31, 2007 IR. It addresses the comments received from the public in response to the IR, makes changes to correct errors identified in public comments, makes technical corrections, and finalizes the interim regulations contained in 44 CFR parts 59, 61, 78, 79, 80, 201, and 206. The following is a summary of these regulatory changes:

A. 44 CFR Part 79

FEMA revised ''Alaskan native village'' in paragraph 79.2(c)(1) to ''Alaska Native village'' so that the term is consistent with its use under the definition of ''local government'' in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended (42 U.S.C. 5122). FEMA also inserted a definition of ''Indian Tribal Government'' at new paragraph 79.2(e) so that 44 CFR part 79 is consistent with 44 CFR parts 201 and 206 where ''Indian Tribal government'' is currently defined. Throughout paragraph 79.4(c), FEMA removed the word ''State'' and revised the text to recognize that per 44 CFR 206.202(f)(1), Indian Tribal governments may also apply directly to FEMA for grant assistance. These changes are intended to correct an unintentional omission in the language of the IR. A technical correction has also been made to paragraph 79.6(b)(1) to add a more specific reference to Tribal mitigation planning requirements. Finally, paragraph 79.6(c)(2)(ii) of the IR inadvertently listed demolition or relocation of structures to areas outside of the floodplain as an eligible activity, rather than as a component of paragraph 79.6(c)(2)(i). To correct this error, paragraph 79.6(c)(2)(ii) has been removed and its substance has been incorporated into the language of paragraph 79.6(c)(2)(i).

Finally, on April 3, 2009, FEMA published a technical amendment that updated the agency's titles to reflect its current organization (74 FR 15328). Among other things, the technical amendment changed the terms ''Director'' to ''Administrator'' and ''Regional Director'' to ''Regional Administrator'' throughout Title 44 of the Code of Federal Regulations, and

removed the agency organization and delegations of authority from 44 CFR part 2. The IR had inserted definitions for ''Administrator'' and ''Regional Administrator'' at 44 CFR parts 79, 80, and 201 to reflect the agency organization; however, it did so in a way that referenced the old terms ''Director'' and ''Regional Director'' as defined in 44 CFR part 2. To ensure this final rule conforms to the changes made in the technical amendment, the definitions for ''Administrator'' and ''Regional Administrator'' are revised in newly designated paragraphs 79.2(l) and (m), paragraphs 80.3(l) and (m), and also revised in § 201.2.

B. 44 CFR Part 80

FEMA revised paragraph 80.11(d) to clarify that the subapplicant must acquire or retain fee title (full property interest), except for encumbrances FEMA determines are compatible with open space uses, consistent with paragraph 80.17(b). In response to a comment, FEMA reviewed the provisions for verifying that a property owner is a National of the United States or qualified alien and therefore eligible to be offered pre-event market value for the property in an acquisition instead of current market value. To correct an inconsistency confirmed in that review, FEMA revised paragraphs 80.13(a)(6) and 80.17(c)(4) to require the subapplicant to certify that the property owner is a U.S. National or qualified alien before the grant award.

C. 44 CFR Part 201

The final rule makes technical corrections throughout this part. In the definition of the term ''Indian Tribal government'' in § 201.2, the word ''Indian'' was inadvertently omitted in the reference to the Federally Recognized Indian Tribe List Act of 1994, but has been added in this final rule. The final rule removes paragraph 201.3(c)(7) to eliminate reference to a paragraph of the regulation that no longer exists, as it was transitional in nature. In paragraphs 201.3(e)(1), 201.7(a)(2) and 201.7(c)(3)(vi), FEMA inadvertently failed to reference that Indian Tribal governments, like States, must apply to FEMA as a grantee to receive the reduced cost share for the FMA and SRL programs when addressing severe repetitive loss properties in their plans. This requirement appeared in paragraph 201.3(e) before 44 CFR part 201 was changed by the IR; therefore, these changes are nonsubstantive.

FEMA has revised paragraph 201.7(a)(3) by replacing local with Tribal to reflect the appropriate mitigation plan required for Tribal governments. Additionally, FEMA added a sentence to the end of paragraph 201.7(a)(3) to reference the extraordinary circumstances in which a Regional Administrator may grant Tribal governments an exception to the plan requirement. This exception appeared in FEMA's regulations before the IR at paragraph 201.6(a)(3) and was unintentionally omitted from the new language specifically addressing Tribal governments in the IR.

Finally, in paragraph 201.6(c)(2)(ii)(B), an incorrect cross-reference has been revised from (c)(2)(i)(A) to (c)(2)(ii)(A). In paragraph 201.6(c)(3)(iii), an incorrect cross-reference has been revised from (c)(2)(ii) to (c)(3)(ii). In paragraph 201.7(c)(2)(ii)(B), an incorrect cross-reference has been revised from (c)(2)(i)(A) to (c)(2)(ii)(A) and in paragraph 201.7(c)(3)(iii), an incorrect cross-reference has been revised from (c)(2)(ii) to (c)(3)(ii).

D. 44 CFR Part 206

This final rule makes two technical corrections to § 206.432. The first technical correction is to paragraph 206.432(b) and removes the reference to 42 U.S.C. 5178 since 42 U.S.C. 5178, section 411 of the Stafford Act was repealed. The second technical correction is to paragraph 206.432(b)(2) to clarify that for States with an Enhanced State Mitigation Plan, the total amount of Federal contribution under the HMGP for a major disaster may not exceed 20 percent of $35.333 billion. This technical correction is non-discretionary and makes the paragraph consistent with the statute (sections 322 and 404 of the Stafford Act, as amended, 42 U.S.C. 5165 and 5170c).

This final rule also corrects inadvertent errors and omissions to reflect the Tribal Mitigation Plan established by the IR. The rule adds the word ''Indian'' to the definition of ''Indian Tribal government'' in § 206.431 and ''or Tribal'' to paragraphs 206.434(b)(1) and 206.434(c)(1), deletes the words ''or Indian Tribal'' from the definition of Local Mitigation Plan in § 206.431, and adds a definition of the term ''Tribal Mitigation Plan'' to § 206.431.

In paragraph 206.434(b)(1), the final rule expands the reference to 44 CFR 201.6 and revises it to include the entirety of 44 CFR part 201 so that it includes both Local and Tribal Mitigation Plans. In that paragraph, the final rule also removes the reference to disasters declared on or after November 1, 2004, and the requirements for plans approved before that date. This change is a conforming amendment because the provisions are no longer applicable. Additionally, the final rule revises the cross-reference in § 206.401 to correctly direct readers to paragraph 206.226(d). Paragraph 206.226(b) is revised to include the Tribal Mitigation Plan established by the IR. As FEMA treats Tribal Mitigation Plans in the same manner that it treats State Mitigation Plans, this section should have been amended in the IR to reflect the new form of planning document. These changes are intended to correct that omission and conform this section to the requirements and authorities contained in other sections.

Finally, the introductory text to paragraph 206.434(e) has been restated in this rule. As previously noted, on April 3, 2009, FEMA published a technical amendment that updated the agency's titles and organization (74 FR 15328). That rule changed ''Regional Director'' to ''Regional Administrator'' in this paragraph. To ensure this final rule does not undo that change, the language of the IR is repeated to incorporate the change from the technical amendment.

III. Discussion of Public Comments

FEMA received five public comments regarding the IR published on October 31, 2007. The comments on the IR were submitted by three State emergency management agencies, the Association of State Floodplain Managers, and an individual citizen. The comments received, together with FEMA's response, are set forth below. Many of the public comments contained general supportive statements or positive responses to specific regulatory changes. Although FEMA appreciates the public support for this rulemaking, and took those statements into consideration when drafting this final rule, FEMA has no specific response to those comments and they are not represented in this discussion. Additionally, the comments regarding river flow and impervious surfaces in New Jersey were outside the scope of this rulemaking. Therefore, FEMA has no specific response to those comments. All previously published rulemaking documents, as well as all comments received are available in the public docket for this rulemaking. The public docket for this rulemaking is available online at the Federal e-Rulemaking Portal at *http://www.regulations.gov* under Docket ID FEMA–2006–0010.

44 CFR Part 78

44 CFR part 78 provides information on the actions, procedures, and requirements for the administration of

the FMA program. The FMA program is designed to assist States and local governments in funding cost effective actions that result in the greatest cost savings to the NFIF. One commenter noted that paragraph 78.12(f), which allows for other activities that bring an insured structure into compliance with NFIP minimum standards, and paragraph 78.12(h), that allows for beach nourishment activities, are now excluded in the new rule at 44 CFR part 79. The commenter had no concerns with these changes. This change was incorporated into the IR to implement a policy change, and has not been modified in this final rule. Eligible projects that now can be funded under FMA are limited to acquisition/demolition, relocation, elevation, floodproofing, and minor localized flood reduction projects.

44 CFR Part 79

General

44 CFR part 79 implements certain amendments to the NFIA that provide incentives for States and communities to mitigate the effects of flood damage to severe repetitive loss properties by creating the SRL program and by reducing the cost share requirements in the existing FMA program for SRL properties. One commenter noted that §§ 79.8 and 79.9 replace § 78.13 and add language that is consistent with how the FMA program is currently being implemented. Another commenter indicated that this rulemaking illustrates how cumbersome the SRL program is as a result of complexity in the statute, and as a result the SRL program when implemented will be difficult.

FEMA acknowledges that the rule is consistent with the statutory language as required by the amendments to the NFIA and that many details of the SRL program reflect the statute. FEMA acknowledges that implementation of the program poses some challenges. As a result of carrying out the Fiscal Year 08 and 09 programs, FEMA is working to identify and address critical implementation issues in order to streamline, where possible, the delivery of assistance to mitigate SRL properties.

Section 79.3 (Responsibilities/Reallocation)

Section 79.3 outlines FEMA's, States', Tribes', and communities' roles and responsibilities in implementing the FMA and SRL programs. These responsibilities include administering and providing oversight to FEMA-related hazard mitigation programs and grants by issuing program guidance and procedures, allocating funds to States for the FMA and SRL programs, awarding all grants to the grantee, and providing technical assistance and training to State, local, and Indian Tribal governments.

One commenter noted that changes to the Federal responsibilities section of the IR eliminated FEMA regional office authority to award grants, and transferred that authority to FEMA headquarters. The commenter also acknowledged FEMA's recent procedural change that no longer allows for a regional reallocation of FMA funds; rather, all unallocated funds now must return to FEMA headquarters and be reallocated through a national competition. The commenter prefers FEMA's previous procedure that allows for a regional reallocation followed by a national reallocation.

Although the Region is no longer specified in the new § 79.3 (which replaces paragraph 78.3(a)) regarding responsibility for the administration of funds awarded under the FMA program, FEMA disagrees that this has the effect of transferring authority to award grants from the Region to FEMA Headquarters. Rather, the provision allows FEMA increased flexibility in determining how to implement allocation, award, and reallocation to more efficiently make grant assistance available to eligible applicants and to more equitably distribute the FMA funds nationally in the event that eligible applications exceed available dollars.

Section 79.4 (Availability of Funding)

Section 79.4 provides information regarding the availability of funding and provides guidelines regarding the allocation process. Two commenters noted that the allocation formula for the SRL program is reasonable, but one indicated that the IR eliminates the base amount of per State funding for FMA which had been $10,000 for planning and $100,000 for projects. The rule does remove the base amounts of funding. The FMA allocation formula as described at § 79.4 is based on the number of NFIP policies and repetitive loss structures in each State, in addition to criteria described at § 79.6, eligibility. This provides FEMA with increased flexibility, which ensures that as many eligible projects as possible are funded.

Management Costs

One commenter was opposed to the elimination of paragraph 78.8(c) which specifies that a maximum of 10 percent of FMA funds will be available for Technical Assistance grants because there is no equivalent language in the IR to provide for costs incurred by the State in administering this program. The commenter suggested that this change indicates that FEMA intends to reduce management costs by policy instead of a rule change.

FEMA does not intend for this rule to reduce the amount of assistance provided to administer the FMA and SRL programs. In the IR, paragraph 79.8(a)(1) contains language that allows for eligible management costs. For the purposes of clarity, the term management costs in the IR replaces the term Technical Assistance grants as used in 44 CFR part 78. Management costs as described in the IR provide for costs incurred by the State in administering the FMA and SRL programs with the same 10 percent cap. Thus, there is equivalent language in the IR to provide for such costs.

FMA Cap

One commenter noted that the community and State cap on FMA funding will pose an obstacle in some areas. Although this cap may limit the funding of potential FMA projects for some communities, it is a requirement imposed by the statute that authorized the FMA program (42 U.S.C. 4104c). Although FEMA has no discretionary authority to remove the cap, the statute gives FEMA the discretion to waive the caps for any 5-year period when a major disaster or emergency for flooding is declared under the Stafford Act in that community or State, respectively. This provision is implemented at § 79.4 of the rule.

In-Kind Match Limit

One comment notes that up to half of the local match to a FMA project can be an in-kind match and that FMA is the only FEMA mitigation program with the in-kind restriction. FEMA agrees that there is a restriction on the use of in-kind matching of FMA projects to meet the required non-Federal contribution. This is a requirement from the legislation that authorized the FMA program (42 U.S.C. 4104c(g)(1)) which requires that in-kind contributions by any State or community shall not exceed one-half of the amount of non-Federal funds contributed by the State or community.

Requirement of an SRL Non-Federal Match

One commenter noted that the SRL program requires a non-Federal match unlike the Repetitive Flood Claims (RFC) program. The commenter adds that many communities find it difficult to promote mitigation buyouts when the property will be deed restricted and there is a loss of tax base. With respect

to the SRL non-Federal match, the regulation mirrors the language of the authorizing statute. (42 U.S.C. 4102a(d)) The authorizing language for the RFC program does not contain a similar match requirement and FEMA has not implemented one. FEMA has interpreted that the intent of the RFC is to provide mitigation assistance for States and communities that cannot meet the requirements of the FMA program, including the ability to provide a non-Federal match.

Section 79.6 (Eligibility)

Section 79.6 provides information on eligible applicants, subapplicants, State mitigation plan requirements, eligible activities, and minimum project criteria. One commenter noted that elevation, flood-proofing, demolition, and rebuilding will occur at least to the Base Flood Elevation (BFE) level or higher, if required by FEMA or State or local ordinance. Another commenter added that its particular jurisdiction requires the lowest enclosed level to be the BFE plus 2 feet for both FMA and HMGP flood mitigation projects. The commenter noted that this requirement is pursuant to its grant administrative discretion and its responsibility to prepare and adopt its State Standard Mitigation Plan, not because of local ordinance or State statute. The commenter requested that FEMA change the IR by adding statements which recognize that State administrative provisions and mitigation plans may also require an elevation higher than the BFE.

FEMA has worked closely with its State and local partners to robustly implement mitigation planning as part of their decision-making. FEMA encourages, as part of an overall mitigation strategy, that States and local communities identify the particular hazard or hazards in their areas. Upon identification and prioritization of those hazards, State and local decision-makers are encouraged to develop prudent mitigation measures to address those risks and vulnerabilities. FEMA encourages States to establish more stringent requirements as part of their State administrative provisions or State mitigation plan. FEMA's guidelines for floodplain management under the NFIP are a minimum standard; however, States are afforded the flexibility to adopt and implement more restrictive requirements, which may include provisions specific to mitigation. The IR was not intended to limit States from implementing their own administrative requirements that can serve as a basis for State-level ordinance or local regulatory changes to go above and beyond FEMA's minimum standards.

SRL Benefit Cost Analysis Requirements

Two commenters noted that a benefit cost analysis for SRL projects is required, although mitigation of some structures may not be cost effective because they are not located in special flood hazard areas. One of those commenters requested that the SRL and repetitive loss properties automatically be considered cost effective.

FEMA determined that the intent of the legislation that authorized the SRL program is to fund projects that reduce flood damages to SRL properties and that reduce losses to the NFIF. The statutory text does not specify that the projects must be cost effective; however, FEMA recognizes that determining cost-effectiveness ensures compliance with these statutory program purposes, as well as provides a means of implementing the SRL program's legislative requirement of providing assistance that will result in the greatest amount of savings to the NFIF. FEMA continues to evaluate the various approaches to determining cost-effectiveness in terms of creating savings to the NFIF.

SRL Property Relocation

One commenter indicated that paragraph 79.6(c)(2)(ii) lists the demolition or relocation of structures to areas outside of the floodplain as an eligible project without placing limitations on the future use of the flood prone property. The commenter indicates that this change in the IR creates a potential for misuse as it would be possible to use mitigation funding to purchase a property under the SRL program, have it demolished or relocated, and then build a new structure on the same flood prone site. FEMA notes that paragraph 79.6(c)(2)(ii) is a component of the eligible activity identified in paragraph 79.6(c)(2)(i). To correct the error, paragraph 79.6(c)(2)(ii) has been removed and its substance has been incorporated into the language of paragraph 79.6(c)(2)(i), which contains a requirement that the property be converted to open space.

Section 79.7 (Offers and Appeals Under the SRL Program)

Section 79.7 provides information on mitigation offers and appeals under the SRL program. The section provides guidance on the consultation process, the voluntary mitigation offer, likely insurance increases due to refusal of a mitigation offer, and the appeals process for insurance rate increases. One commenter noted that there is no appeals process for the market value determination on an SRL property. The commenter indicated that the lack of an appeals process will likely cause problems in the implementation of the program.

Contrary to the commenter's claim, FEMA asserts that throughout the SRL process there are several opportunities for property owners to formally or informally consult with the State and local community regarding the purchase offer for their property. Under the SRL program, the purchase offer must be at least equal to the greatest amount offered through one of the three alternatives, specified in § 80.17. The local community is required, through a formal SRL consultation process, to take all necessary steps to ensure that the property owner is fully informed of the SRL program requirements, and that proper consultation and offer procedures were followed. In the event that the property owner does not accept a mitigation offer, the property owner may submit an appeal of the likely insurance premium rate increase (under certain circumstances). Specifically, with respect to an issue of property value, paragraph 79.7(d)(1)(ii)(A) allows the property owner to appeal an increase in insurance rate premium resulting from declining the offer of assistance (mitigation offer) if the purchase offer amount can be documented and verified as an inaccurate estimate of the property's market value. Also, pursuant to paragraph 79.7(d)(1)(i), the property owner may appeal if he or she cannot find a replacement property of comparable value that is functionally equivalent to the property being replaced. Finally, paragraph 80.5(c)(5) describes the responsibility of the subapplicant/subgrantee to include resolving property owner disputes regarding mitigation offers for the purchase of property.

Request for Statutory Amendments for SRL

A commenter posed several comments that focus on the authorizing statute with the intent to propose legislative changes to the SRL program. The commenter raised the following six issues: (1) There is no requirement for a State/community to participate in the SRL; (2) The offer process is unique and will be difficult to administer; (3) The entire appeals process is cumbersome and unnecessary; (4) SRL is the only mitigation program with consequences for refusal to mitigate; (5) SRL has a cost share that, compared to RFC for example, puts the program at a competitive disadvantage; and (6)

Benefit cost analysis is used to determine whether a project will be funded or not. These comments pertain directly to the authorizing statute and do not directly address FEMA's interpretation of that statute in this regulation. Although FEMA notes the commenter's concerns, FEMA must adhere to the statutory requirements.

44 CFR Part 80

44 CFR part 80 provides, in a single source, the requirements for the administration of FEMA mitigation assistance to acquire property for open space under all FEMA Hazard Mitigation Assistance (HMA) programs. 44 CFR part 80 also provides information on the eligibility and procedures for acquisition and relocation of vulnerable structures away from hazardous areas. Subsequently, the cleared property is to be maintained as open space in perpetuity.

Paragraph 80.5(b)(7)—Enforcement

Section 80.5 provides information on the roles and responsibilities of FEMA, the State, the subapplicant, and the participating property owners in the context of creating open space. Paragraph 80.5(b)(7) outlines the State's roles and responsibilities to enforce the open space deed restrictions to ensure that a property purchased with mitigation funds remains as open space in perpetuity.

One commenter noted that the term ''enforcing'' implies an assumption that States have a statutory and regulatory authority to force jurisdictions to uphold open space deed restrictions. The commenter added that various States may or may not have this authority to enforce the open space deed restrictions, depending upon which agency implements the various mitigation grant programs.

By virtue of receiving the HMA funds for open space projects, States and local communities are accountable for compliance with the terms of the grant agreement and its requirements for the use of those funds. Upon receiving FEMA funds for an open space acquisition project, the grantee and subgrantee assume stewardship, including ensuring that the deed restrictions are recorded, that there is a clear title to the property, that all incompatible easements or encumbrances are extinguished, that the vacant land is clean of hazardous materials, that the intended and future use of the property complies with the legally imposed use restrictions, and that the State and the local community jointly monitor and inspect the deed-restricted properties at regular intervals to ensure that the property continues to be used for open space purposes. All parties to the grant/subgrant award assume these responsibilities by receiving HMA funds. The authority to enforce these restrictions lies with the State in its role as grantee. Therefore, just as the grant condition continues in perpetuity pursuant to Federal law, the responsibility to ensure compliance with that condition continues in perpetuity. FEMA notes that these responsibilities have always applied to grantees and subgrantees for open space acquisition and relocation projects under all of FEMA hazard mitigation grant programs as necessary to ensure the long-term purpose of the Federal funds for this particular project type is met.

Section 80.9 (Eligible and Ineligible Costs)

One commenter indicated that the language in paragraph 80.9(c) allows for reducing a grant award for Duplication of Benefits (DOB) which could mean that a full DOB analysis would have to be completed before a project is approved by FEMA. The commenter indicated that the DOB should not be deducted until the local project manager has met with each owner during the offer presentation process and credited back temporary living expenses and/or receipted repairs using insurance or grant funds. Also, the commenter noted that the language appears to be confusing the concept of DOB and Duplication of Programs (DOP).

HMA funding must be reduced by the amounts reasonably available to a property owner (even if not sought or received) designated for the same purpose or loss. In this case, the purchase offer will be reduced by the duplicative amount. It is the subgrantee's responsibility to coordinate with the property owner and to disclose all potential deductions as a result of funds that were reasonably made available to the property owner. It is also the subgrantee's responsibility to make the appropriate deductions from the purchase offer before making a final mitigation offer to the property owner. Consequently, it is the property owner's responsibility to take all reasonable steps to recover funding he or she is eligible to receive. In developing a project budget, the subapplicant should take all reasonable steps to accurately identify all project costs. The information needed to determine a DOB is generally readily available and can impact the mitigation grant offer at any time. Therefore, it is preferable to identify all DOBs as early as possible in order to reduce the risk of having a cost overrun. However, amounts made available for the same purpose at any time, even after award or acquisition, constitute a DOB and will be treated as such. It should be noted that funds received by the property owner that were designated for the same purpose or loss will not be deducted from the final mitigation offer if the owner can document with receipts that those funds were expended on repairs or cleanup.

Finally, FEMA disagrees with the commenter's assertion that the language confuses the concept of DOB and DOP. DOP would occur when an activity is funded under one program, despite there being more specific authority to fund it under a different program. DOB occurs when HMA funds are used to fund a mitigation activity, but other funds for the same purpose, such as from insurance, are received by or available to the project participant.

Section 80.11 (Project Eligibility)

Section 80.11 provides information on project eligibility. This section includes a discussion of voluntary participation, acquisition of improved properties, subdivision restrictions, and open space restrictions. Paragraph 80.11(a) notes that a property owner who agrees to an acquisition must do so on a voluntary basis and that the grantee/subgrantee can not use their powers of eminent domain to acquire the property should negotiations fail.

One commenter notes that the term ''negotiations'' may be construed to mean that negotiations of offers are possible. The commenter suggests that the use of the term ''negotiations'' may be problematic in implementing an acquisition/demolition project regardless of the mitigation grant involved.

FEMA is required to implement the provisions of 49 CFR part 24, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs (URA). The term ''initiation of negotiations'' is defined as the delivery of the initial written offer of just compensation by the Agency to the owner or the owner's representative to purchase the real property for the project. (49 CFR 24.2(a)(15).) As such, the word ''negotiation'' is a term of art.

If the property owner can verify that the final mitigation offer is significantly below market value, or presents other convincing facts such that the offer should be adjusted, then there may be an increase of the purchase offer. Regardless, in all cases, FEMA, the State, and the local community will work to ensure that all property owners are treated fairly and are offered an equitable mitigation offer based on the

acceptable methods for determining purchase offers for acquisitions under FEMA HMA programs.

FEMA revised paragraph 80.11(d) to clarify that the subapplicant must acquire or retain fee title (full property interest), except for encumbrances FEMA determines are compatible with open space uses, consistent with paragraph 80.17(b). In response to a comment, FEMA reviewed the provisions for obtaining verification that a property owner is a National of the United States or qualified alien and therefore eligible to be offered pre-event market value for the property in an acquisition instead of current market value. To address any perceived inconsistency, FEMA revised paragraph 80.17(c)(4) to clarify that the subapplicant must certify that the property owner is a National of the United States or qualified alien during the application process.

Section 80.13 (Application Information)

Section 80.13 provides information on application requirements. Some of this required information includes: property information, deed restriction language consistent with FEMA's model deed restriction, a signed notice of voluntary interest, an assurance that there is no intention to use the acquired property for any public or private facility for a future use that is inconsistent with 44 CFR part 80, and certification that the property owner is a National of the United States or a qualified alien (if the owner is being offered pre-event market value).

One commenter indicated that the general requirements outlined in this section will significantly increase the paperwork burden on the subapplicants in the application process. In particular, the commenter indicates that prior to appraisal it is difficult to obtain signatures from property owners regarding the inclusion of their properties in the project, and notes that, as an applicant, the Voluntary Transaction Agreements signature is obtained after the grant is awarded to the local jurisdiction.

FEMA analyzed the anticipated paperwork burden associated with implementing these mitigation programs with respect to the Paperwork Reduction Act of 1995 (PRA) (5 CFR part 1320). As part of its PRA analysis in Section IV.E. of this rule, FEMA determined that the collection of information needed to develop a mitigation application package does not impose an additional undue burden on the States and local communities. Applicants and subapplicants have been submitting this information before FEMA published the IR. Regardless, FEMA reviewed 44 CFR 80.13 to ensure that the HMA application information requirements do not impose any additional undue burden in the development of HMA applications. Generally, 44 CFR part 80 reflects the information that has always been requested in program guidance as a condition for applying for assistance to enable FEMA to determine the project's eligibility and compliance with program requirements.

With respect to the comment about obtaining project participants' signatures, FEMA wants to clarify that the timing for obtaining from the property owner the Statement of Voluntary Participation (formerly called Voluntary Transaction Agreement), which indicates the market value of the property and the owner's acknowledgment that they are voluntarily participating in the project, continues to occur post award. This is distinct from the Notice of Voluntary Interest, which simply documents during project development that potentially interested owners have received general notice from the subapplicant of the voluntary nature of the potential acquisition project, including that the subapplicant will not use its eminent domain authority for the purpose of open space. The Notice of Voluntary Interest may be as simple as having a group sign-in sheet at a neighborhood meeting about the possible project that includes a statement to this effect. For FEMA to ensure compliance with basic program requirements, this less formal documentation is provided to FEMA during the application process.

Another commenter noted that it is unclear how States will be required to indicate that there is no intention to use the property for any public or private facility in the future. Paragraph 80.13(a)(5) requires that the State provide assurances that the subject property to be acquired, deed restricted, and converted to open space has no future, intended, or planned use that is inconsistent with the requirements delineated in § 80.19 (land use and oversight). Compliance with this regulation is accomplished through a written statement submitted as part of the application.

Two commenters indicated that it is unclear why offering the pre-event value to a property owner requires that the subapplicant provide certification that the property owner is a National of the United States or a qualified alien. One commenter also notes that § 80.13, which indicates that this certification must be done as part of the application process, conflicts with § 80.17 which indicates that this certification must be done before offering pre-event market value for a property.

As established by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (42 U.S.C. 1305 note), an alien who is not a qualified alien (as defined in 8 U.S.C. 1641) is not eligible for any Federal public benefit. In this instance, such a Federal public benefit results from an offer of pre-event market value, which has the effect of compensating for the disaster loss beyond the current market value of the property. This benefit is reserved for property owners who owned the property during the event and who are Nationals of the United States or qualified aliens. The property value for other individuals must be based on current market value. To ensure compliance with the PRWORA, local communities offering pre-event market value must verify that the property owners are either Nationals of the United States or qualified aliens.

The term ''National of the United States'' is defined at 8 U.S.C. 1101 and means a citizen of the United States or a person who is not a citizen but who owes permanent allegiance to the United States. The term ''qualified alien'', as delineated in the Immigration and Nationality Act (the Act) at 8 U.S.C. 1641, is an individual who meets certain criteria contained in the Act at the time they apply for, receive, or attempt to receive a Federal public benefit.

In response to the commenter's view that there is an inconsistency between §§ 80.13 and 80.17, FEMA notes that it intended the language in paragraph 80.17(c)(4) to describe a pre-condition of offering pre-event value, not to address the timing of obtaining the information. Such information is relevant to the eligible costs of the project and is provided to FEMA during the application process. FEMA revised § 80.17 to clarify that the pre-event value is only available to a property owner that has certified during the application process as to being a National of the United States or a qualified alien.

Section 80.17 (Project Implementation)

Paragraph 80.17(c)(1) provides that the amount of a purchase offer is either the current market value of the property or the market value of the property immediately before the relevant event affecting the property. One commenter requested clarification of the term ''relevant event'' for Pre-Disaster Mitigation (PDM). The commenter indicated that this clarification will

make implementation of the program easier. As it relates to PDM, the regulation states that the relevant event is the most recent major disaster that affected the subject property. In the case where multiple disasters have affected the same property, this section indicates that the ''grantee and subgrantee shall determine which is the relevant event.'' Alternatively, if the project is not occurring in association with or will be more than 12 months after a disaster event, for example, the grantee and subgrantee may want to consider whether current market value may be more appropriate, per paragraph 80.17(c)(3).

One commenter indicated that the flexibility built into the SRL program affords market value determination of the greatest amount (*i.e.* current market value, pre-event market value, original purchase price paid, or outstanding amount of the loan on the property). The commenter indicated that in some instances the offer of the greatest amount would render the property not cost effective.

Paragraph 80.17(c)(2) notes that for acquisition of properties under SRL, the purchase offer is to be not less than the greatest of the following amounts: the current market value of the property or the pre-event market value of the property; the original purchase amount paid by the property owner holding the flood insurance policy as demonstrated by property closing documents; or the outstanding amount of any loan to the property owner, secured by a recorded interest in the property at the time of the purchase offer. It is legislatively mandated at 42 U.S.C. 4102a(g)(3) that FEMA use these values to determine the greatest amount on which to base a purchase offer. The statute also requires that the purchase price be the greatest of those amounts. FEMA acknowledges that as a result of this method, there may be instances where the project costs outweigh the project benefits; however, FEMA must follow the legislatively mandated direction.

Section 80.19 (Land Use and Oversight)

Section 80.19 provides guidance on open space requirements and land uses compatible with open space. One commenter noted the correlation between the requirement in paragraph 80.17(b) that any incompatible easements or other encumbrances to the property be extinguished before acquisition, and the requirement in paragraph 80.19(a)(1)(i) identifying ''below ground pumping and switching stations'' as not being compatible with open space uses. The commenter added that this requirement restricts the ability of the local jurisdiction to purchase a property because a utility company may be unwilling to nullify an easement.

Above or below ground pumping stations or other uses that obstruct the natural and beneficial use of the floodplain are deemed as land uses that are incompatible with FEMA's open space requirements because they are detrimental to maintaining the beneficial functions of the floodplain. If, at the time of acquisition, a property is used for an incompatible open space use, then that property is no longer eligible for acquisition if the use cannot be discontinued. Similarly, if easements for the property allow for any incompatible use, such provisions must be nullified in order for the property to be acquired (provisions allowing for compatible uses may remain in effect). FEMA acknowledges that where incompatible uses will continue to be permitted on a property, the property is not eligible for FEMA HMA funds for an acquisition for open space purposes.

One commenter expressed concern with the monitoring and reporting requirements and the enforcement provisions of § 80.19. The commenter suggested a monitoring timeframe consistent with mitigation plans.

In an effort to ease the workload for monitoring, 44 CFR part 80 reduces the frequency of HMGP grant monitoring from once every 2 years to once every 3 years. This change makes all HMA programs consistent in their property acquisition land-use monitoring requirement. FEMA believes that further extending this timeframe would not provide sufficient monitoring to ensure ongoing compliance with the land use requirements. In addition, FEMA does not think it is appropriate to synchronize the open space monitoring timeframe with the completely unrelated timeframe for local mitigation plan updates, and notes that to do so could place additional distractions on local jurisdictions at a time when they need to focus instead on the mitigation planning process.

The same commenter also raised concerns about State responsibilities, including funds and authority to meet enforcement responsibilities, including taking legal action. Finally, the commenter identified concerns about improper consequences for State and subgrantee failure to enforce open space requirements, noting that it would be unfair for the State to lose HMA assistance if the subgrantee were non-compliant.

In response, it should be noted that 44 CFR part 80 does not substantially differ from previous open space project grant requirements, where the State has always played a vital role in the monitoring and enforcement of the open space restrictions. These provisions have been a requirement of FEMA property acquisition and relocation for open space projects almost since program inception. They have been reflected in the HMGP Desk Reference and the annual program guidance for the other HMA programs (*e.g.*, the PDM program), which also incorporated FEMA's model deed restriction language. The States, as grantees, and subgrantees agree to this language as a condition of receiving HMA funding, both by signing a statement of assurances acknowledging these conditions, and by accepting grant funds subject to the grant agreement. Unlike most NFIP-related programs and activities where the primary entity is the community, for HMA grant purposes the State is the grantee and is accountable for the use of funds and for assuring compliance with the terms of the grant award and the program. (*See, e.g.*, 44 CFR 206.433 and 13.3.) It also should be noted that FEMA is also accountable for ensuring that Federal awards are used for the intended purpose. The IR restated and codified previous HMA program requirements to ensure that States and FEMA carry out their fiscal responsibilities by taking appropriate actions to maintain consistency with Federal open space requirements. This action may or may not involve court action. The option of seeking specific performance in a court of law or equity is not ''a requirement,'' but is an available option when deemed appropriate.

Further, the options available to FEMA for enforcing the open space requirements are not new. FEMA has always retained the right to bring legal action against a State or local jurisdiction that fails to comply with the open space terms of the grant and deed restriction. In addition, as explained in the rule, the option of withholding HMA assistance is a reasonable response in the event that the State and subgrantee fail to make a good faith effort to enforce the deed restrictions they voluntarily agreed to enforce. These remedies for non-compliance are consistent with government-wide Federal grants management procedures. (*See, e.g.*, 44 CFR 13.43(a).) In the case of a State and/or local jurisdiction failing to comply with the grant terms and deed restrictions, taking such an action may be the most effective means of encouraging a continued commitment to the open space responsibilities. FEMA may withhold funds from a subgrantee for failure to demonstrate a

good faith effort to come into compliance with the terms of the grant. Because the grant relationship is between FEMA and the State as grantee, funds withheld from a subgrantee are also withheld from the grantee. This does not necessarily mean that FEMA will withhold all HMA funding from that State.

General Comment

One commenter expressed concern that FEMA's Flood Insurance Rate Map (FIRM) is antiquated and therefore does not provide the public with the most accurate and up-to-date risk mapping data. The commenter suggested that FEMA be proactive in stopping development in flood-prone areas.

While this comment is outside the scope of this rulemaking, FEMA notes that efforts have been made to update and digitize flood maps. Local communities and States work closely with FEMA to provide the most up-to-date data on flood risk. Any interested party may ask community officials to submit a map revision request to FEMA in accordance with 44 CFR part 65 of the NFIP regulations. Factors that influence when the maps are updated are: (1) When climatological or physical changes in watersheds occur, or (2) when mapping methodologies are improved.

IV. Regulatory Requirements

A. National Environmental Policy Act

FEMA has considered this rule in accordance with its implementing regulations for complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4365), which are found at 44 CFR part 10. The rulemaking addresses applicant planning requirements, as well as eligibility, funding increases, and cost sharing/funding incentives relating to certain disaster mitigation programs and does not change the type or nature of mitigation actions that may be funded. This rulemaking would neither individually nor cumulatively have a significant effect on the human environment and, therefore, neither an environmental assessment nor an environmental impact statement is required. This rulemaking is among the category of actions included in the Categorical Exclusions listed at paragraph 10.8(d)(2)(ii), which excludes 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. The related actions of the development of plans and administrative activities that are included in this rule are also categorically excluded under § 10.8 paragraphs (d)(2)(i) and (d)(2)(iii). FEMA received no public comments on the IR regarding its NEPA determination.

B. Executive Order 11988, Floodplain Management

FEMA has prepared and reviewed this rule under the provisions of Executive Order 11988, Floodplain Management. FEMA's policy, procedures, and responsibilities in implementing this Executive Order are set forth in 44 CFR part 9. FEMA's floodplain management regulations are intended to avoid long and short term adverse impacts associated with the occupancy and modification of floodplains; to avoid direct and indirect support of floodplain development whenever there is a practical alternative; to reduce the risk of flood loss; to promote the use of nonstructural flood protection methods to reduce the risk of flood loss; to minimize the impacts of floods on human health, safety and welfare; to restore and preserve the natural and beneficial values served by floodplains; and to adhere to the objectives of the Unified National Program for Floodplain Management. As stated in the rulemaking, the purpose of the SRL and FMA programs is to mitigate insured property losses from floods, thereby minimizing impacts to the NFIF, which is consistent with the intent of the Executive Order. In addition, for project activities funded through the SRL and FMA programs, each project will go through the environmental review process, which will include compliance with Executive Order 11988. FEMA received no public comments on the IR regarding its Executive Order 11988 determination.

C. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, a significant regulatory action is subject to the 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 or entitlements, grants, user fees, or loan programs or the right 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 final rule adopts the regulations established in the IR with a few nonsignificant changes that are a logical outgrowth from the IR. This final rule does not meet the criteria under paragraphs 2, 3, or 4 of the provision of the Executive Order. In addition, FEMA determined that it is not likely to have a significant economic impact of $100 million or more per year (under paragraph 1 of this provision). This rule has not been reviewed by OMB.

This final rule is intended to have a positive impact on State, local, and Indian Tribal governments. The new SRL program and the modified FMA program assist State, local, and Indian Tribal governments in reducing the loss of life and property from flooding events by providing additional grant resources and the ability to increase the Federal cost share for projects mitigating SRL properties. The FMA is an annual grant program created with the goal of reducing or eliminating claims under the NFIP. The SRL pilot program provides funding to assist States and communities in implementing measures to reduce or eliminate the long-term risk of flood damage to severe repetitive loss structures insured under the NFIP, therefore reducing payments from the NFIF. The SRL program differs from FEMA's other mitigation grant programs, as those property owners who decline offers of mitigation assistance will be subject to increases to their flood insurance premium rates. This final rule also implements changes to the FMA program by allowing for up to a 90 percent Federal cost share for the mitigation of severe repetitive loss properties (the standard Federal cost share is 75 percent). While the SRL and FMA programs will be implemented as separate programs with different funding accounts, they are similar in their goals and purpose. Therefore, FEMA has included both of these programs into one implementing regulation to ensure consistency between the programs.

The primary economic impact of the final rule is defined as the additional transfer of funding from FEMA to State, local, and Indian Tribal governments to implement measures to reduce or eliminate the long-term risk of flood

damage to severe repetitive loss structures. FEMA made conservative assumptions in order not to under estimate the economic impact of the final rule. Historically, the FMA program has provided $20 million in grants on an annual basis. The NFIA, as amended, authorizes the appropriations for the existing FMA program to be increased from $20 million to $40 million per year. Congressional appropriators have gradually increased the funding for this program, and the FMA program may eventually reach its total authorized $40 million cap per year.

In fiscal year 2008, FEMA awarded $38 million for the mitigation of 173 properties at an average of $220,000 per property under the SRL pilot program. In fiscal year 2009, FEMA expects to award $50 million for the mitigation of 227 properties also at an average of $220,000 per property. To date, no one has refused the offer of mitigation or appealed, therefore no premiums have increased.

The purpose of the SRL grant program is to reduce or eliminate claims through flood mitigation projects that would result in the greatest savings to the NFIF. The two most common types of flood mitigation projects are elevation of a flood prone structure, and acquisition and demolition or relocation of a flood prone structure. In 2006, the NFIP paid a total of $617.28 million for claims with an average claim payment of $25,545. Severe Repetitive Loss properties account for far less than 1 percent of the current NFIP policies, yet these properties account for over 7 percent of the total amount paid in claims. Approximately, 8,544 properties were identified as meeting the definition of severe repetitive loss, among which 1,067 SRL properties were damaged by flood and paid $46.21 million in 2006 (or $49.35 million in 2008, if adjusted to reflect inflation). Assuming that all 400 SRL properties (173 in FY08 + 227 in FY09) have accepted mitigation offers, 4.7 percent of the 8,544 SRL properties will lower or eliminate the risk of future flood damages by the end of fiscal year 2009. Therefore, the reduction in claims paid for SRL properties is estimated at up to $2.31 million per year (4.7 percent × $49.35 million).

Assuming that the FMA program reaches its $40 million cap per year, the net economic impact of the final rule is estimated to be up to $61.69 million per year. Table 1 details the annual impact of the final rule. The NFIA, as amended, authorizes the SRL program through the end of fiscal year 2009; therefore, the impact of this rule will be reduced by $44 million in fiscal year 2010 and beyond.

TABLE 1—NET ANNUAL IMPACT OF THE FINAL RULE

[in 2008 $]

FMA Program	$20,000,000
SRL Program	*44,000,000
National Flood Insurance Fund	(2,310,000)
Total	61,690,000

*Average of $38 million in FY 2008 and $50 million in FY 2009.

D. Executive Order 12898, Environmental Justice

In accordance with Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994, FEMA incorporates environmental justice into our 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.

This rule implements the SRL program, providing mitigation grants to severe repetitive loss properties, and improves the FMA program and the mitigation planning requirements. This rule also clarifies and simplifies the planning requirements for Indian Tribal governments. No action in this rule will have a disproportionately high or adverse human health and environmental effect on any segment of the population. FEMA received no comments during the IR comment period that disagreed with this determination.

E. Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520, OMB has approved use of OMB Numbers 1660–0025, FEMA Emergency Preparedness and Response Directorate Grants Administration Forms under 44 CFR parts 78, 79, and 206 in this rule; 1660–0062, State/Local/Tribal Hazard Mitigation Plans—Section 322 of the Disaster Mitigation Act of 2000 under 44 CFR part 201; 1660–0103, Property Acquisition and Relocation for Open Space under 44 CFR part 80; and 1660–0104, Severe Repetitive Loss (SRL) Appeals process under 44 CFR part 79. The approved collections have gone through the OMB's normal clearance procedures in accordance with the provisions of OMB regulation at 5 CFR 1320.10. Use of these collections, under this final rule, does not impose addition burden and are approved for use until August 31, 2011.

The information collection activity under the approved OMB information collection 1660–0072, Mitigation Grant Programs/e-Grants (previously named Flood Mitigation Assistance (e-Grants) and Grant Supplemental Information) have been combined with OMB No. 1660–0071, Pre-Disaster Mitigation (PDM) Grant Program/eGrants to streamline and simplify documentation of the same information collected for all mitigation e-Grants program under section 203 (Predisaster Hazard Mitigation) of the Stafford Act (42 U.S.C. 5133) and has been approved for use until February 28, 2011.

F. Executive Order 13132, Federalism

Executive Order 13132, Federalism, signed 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.

FEMA reviewed the IR under Executive Order 13132 and concluded that the IR, which implemented the statutory requirements for a new SRL program as well as a potential increase in the Federal share for the FMA program, simplified the planning requirements, and reflected a statutorily-mandated change to the HMGP allocation, does not have federalism implications as defined by the Executive Order. FEMA received no comments during the IR comment period that disagreed with this determination. FEMA also determined that this final rule does not significantly affect the rights, roles, and responsibilities of States, and involves no preemption of State law nor does it limit State policymaking discretion.

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

While this rule does have ''Tribal implications'' as defined in Executive Order 13175, 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. FEMA coordinates with Indian Tribal governments while implementing its programs, and has modified its procedures to accommodate some of the issues relating to the Tribal governments. This rule clarifies those procedures and streamlines the roles and responsibilities of Indian Tribal governments in mitigation planning.

Indian Tribal governments may apply for assistance directly to FEMA as a grantee, or through the State as a subgrantee. (*See* 44 CFR 201.3(e) and 206.202(f)(1).) Before the IR went into effect, Indian Tribes were permitted to prepare either a State-level Mitigation Plan, or a Local-level Mitigation Plan depending on whether they intend to apply as a grantee, or as a subgrantee. Before publishing the IR, FEMA discussed the existing planning requirements with many of the Indian Tribal governments as they were developing their plans, or while attending Tribal training courses, and were informed that neither of these options sufficiently met the needs of the Indian Tribal governments. To address this problem, the IR established a specific planning requirement for Indian Tribal governments in 44 CFR 201.7 that recognized some of the unique aspects of these governments and combined the appropriate aspects of State and local planning requirements into one section for Indian Tribal governments.

The substance of this rule is intended to have a positive impact on Indian Tribal governments and their relationship with the Federal Government. The rule does not impose substantial direct compliance costs on Indian Tribal governments, nor does it preempt Tribal law, impair treaty rights nor limit the self-governing powers of Indian Tribal governments. FEMA received no comments during the IR comment period that disagreed with this determination.

H. Congressional Review of Agency Rulemaking

FEMA has sent this final rule to the Congress and to the General Accountability Office under the Congressional Review of Agency Rulemaking Act, (Congressional Review Act), 5 U.S.C. 801–808. The final rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

I. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. When an agency invokes the good cause exception under the Administrative Procedure Act to make changes effective through an interim final or final rule, the RFA does not require an agency to prepare a regulatory flexibility analysis. FEMA determined in the IR that good cause exists under 5 U.S.C. 553(b)(B) to exempt this rule from the notice and comment requirements of 5 U.S.C. 553(b) (72 FR 61720, Oct. 31, 2007). Therefore, a regulatory flexibility analysis is not required for this rule.

J. Executive Order 12630, Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. In 44 CFR 80.11(a), this final rule explicitly states that a grantee/subgrantee cannot use its eminent domain authority to acquire the property for open space purposes; only such projects where the property owner participates voluntarily are eligible to receive a grant.

K. Executive Order 12988, 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.

L. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Public Law 104–4 on March 22, 1995 (2 U.S.C. 1531–1538), requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule 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 (adjusted annually for inflation) in any one year. UMRA exempts from its definition of ''Federal intergovernmental mandate'' regulations that establish conditions of Federal assistance or provide for emergency assistance or relief at the request of any State, local, or Tribal government. Therefore, this rule is not an unfunded Federal mandate under that Act.

List of Subjects

44 CFR Part 59

Flood insurance, Reporting and recordkeeping requirements.

44 CFR Part 61

Flood insurance, Reporting and recordkeeping requirements.

44 CFR Parts 78 and 79

Flood insurance, Grant programs.

44 CFR Part 80

Acquisition and Relocation for open space.

44 CFR Part 201

Administrative practice and procedure, Disaster assistance, Grant programs, Reporting and recordkeeping requirements.

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.

■ Accordingly, the Interim Rule amending 44 CFR Parts 59, 61, 78, 79, 80, 201, and 206 published on October 31, 2007 (72 FR 61720), is adopted as a final rule with the following changes:

PART 79—FLOOD MITIGATION GRANTS

■ 1. The authority citation for part 79 continues to read as follows:

Authority: 6 U.S.C. 101; 42 U.S.C. 4001 *et seq.*; 42 U.S.C. 4104c, 4104d; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

■ 2. Amend § 79.2 by redesignating paragraphs (e) through (l) as (f) through (m); by adding a new paragraph (e); and by revising paragraphs (c)(1), newly designated paragraph (l), and newly designated paragraph (m) to read as follows:

§ 79.2 Definitions.

* * * * *

(c) * * *

(1) A political subdivision, including any Indian Tribe, authorized Tribal organization, Alaska Native village or authorized native organization, that has zoning and building code jurisdiction over a particular area having special flood hazards, and is participating in the NFIP; or

* * * * *

(e) *Indian Tribal government* means any Federally recognized governing body of an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian Tribe under the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

* * * * *

(l) *Administrator* means the head of the Federal Emergency Management Agency, or his/her designated representative.

(m) *Regional Administrator* means the head of a Federal Emergency Management Agency regional office, or his/her designated representative.

■ 3. In § 79.4, revise paragraph (c) introductory text and paragraph (c)(2) to read as follows:

§ 79.4 Availability of funding.

* * * * *

(c) *Cost Share.* All mitigation activities approved under the grant will be subject to the following cost-share provisions:

* * * * *

(2) FEMA may contribute up to 90 percent of the cost of the eligible activities for each severe repetitive loss property for which grant amounts are provided if the applicant has an approved Mitigation Plan meeting the repetitive loss requirements identified in § 201.4(c)(3)(v) or § 201.7(c)(3)(vi) of this chapter, as applicable, at the time the project application is submitted;

* * * * *

■ 4. Amend § 79.6 by removing paragraph (c)(2)(ii), redesignating paragraphs (c)(2)(iii) through (c)(2)(vii) as (c)(2)(ii) through (c)(2)(vi), and revising paragraphs (b)(1) and (c)(2)(i) to read as follows:

§ 79.6 Eligibility.

* * * * *

(b) * * *

(1) States must have an approved State Mitigation Plan meeting the requirements of §§ 201.4 or 201.5 of this chapter in order to apply for grants through the FMA or SRL programs. Indian Tribal governments must have an approved plan meeting the requirements of § 201.7 of this chapter at the time of application.

* * * * *

(c) * * *

(2) * * *

(i) Acquisition of real property from property owners, and demolition or relocation of buildings and/or structures to areas outside of the floodplain to convert the property to open space use in perpetuity, in accordance with part 80 of this subchapter;

* * * * *

PART 80—PROPERTY ACQUISITION AND RELOCATION FOR OPEN SPACE

■ 5. The authority citation for part 80 is revised to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.*; 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; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

■ 6. In § 80.3, revise paragraphs (l) and (m) to read as follows:

§ 80.3 Definitions.

* * * * *

(l) *Administrator* means the head of the Federal Emergency Management Agency, or his/her designated representative.

(m) *Regional Administrator* means the head of a Federal Emergency Management Agency regional office, or his/her designated representative.

■ 7. Revise § 80.11(d) to read as follows:

§ 80.11 Project eligibility.

* * * * *

(d) *Subapplicant property interest.* To be eligible, the subapplicant must acquire or retain fee title (full property interest), except for encumbrances FEMA determines are compatible with open space uses, as part of the project implementation. A pass through of funds from an eligible entity to an ineligible entity must not occur.

* * * * *

■ 8. Revise § 80.13(a)(6) to read as follows:

§ 80.13 Application information.

(a) * * *

(6) If the subapplicant is offering pre-event value: the property owner's certification that the property owner is a National of the United States or qualified alien; and

* * * * *

■ 9. Revise § 80.17(c)(4) to read as follows:

§ 80.17 Project implementation.

* * * * *

(c) * * *

(4) A property owner who did not own the property at the time of the relevant event, or who is not a National of the United States or qualified alien, is not eligible for a purchase offer based on pre-event market value of the property. Subgrantees who offer pre-event market value to the property owner must have already obtained certification during the application process that the property owner is either a National of the United States or a qualified alien.

* * * * *

PART 201—MITIGATION PLANNING

■ 10. The authority citation for part 201 is revised 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; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

■ 11. In § 201.2, revise the definition of ''Administrator'', the first sentence of the definition of ''Indian Tribal government'', and the definition of ''Regional Administrator'' to read as follows:

§ 201.2 Definitions.

Administrator means the head of the Federal Emergency Management Agency, or his/her designated representative.

* * * * *

Indian Tribal government means any Federally recognized governing body of an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian Tribe under the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

* * *

* * * * *

Regional Administrator means the head of a Federal Emergency

Management Agency regional office, or his/her designated representative.

* * * * *

■ 12. Amend § 201.3 by removing paragraph (c)(7) and by revising the last sentence of paragraph (e)(1) to read as follows:

§ 201.3 Responsibilities.

* * * * *

(e) * * *

(1) * * * In addition, an Indian Tribal government applying to FEMA as a grantee may choose to address severe repetitive loss properties as identified in § 201.4(c)(3)(v) as a condition of receiving the reduced cost share for the FMA and SRL programs, pursuant to § 79.4(c)(2) of this chapter.

* * * * *

■ 13. In § 201.6 revise paragraphs (c)(2)(ii)(B) and (c)(3)(iii) to read as follows:

§ 201.6 Local Mitigation Plans.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(B) An estimate of the potential dollar losses to vulnerable structures identified in paragraph (c)(2)(ii)(A) of this section and a description of the methodology used to prepare the estimate;

* * * * *

(3) * * *

(iii) An action plan describing how the actions identified in paragraph (c)(3)(ii) of this section will be prioritized, implemented, and administered by the local jurisdiction. Prioritization shall include a special emphasis on the extent to which benefits are maximized according to a cost benefit review of the proposed projects and their associated costs.

* * * * *

■ 14. In § 201.7 revise paragraphs (a)(2), (a)(3), (c)(2)(ii)(B), (c)(3)(iii), and (c)(3)(vi) to read as follows:

§ 201.7 Tribal Mitigation Plans.

* * * * *

(a) * * *

(2) An Indian Tribal government applying to FEMA as a grantee may choose to address severe repetitive loss properties in their plan, as identified in § 201.4(c)(3)(v), to receive the reduced cost share for the FMA and SRL programs.

(3) Indian Tribal governments applying through the State as a subgrantee must have an approved Tribal Mitigation Plan meeting the requirements of this section in order to receive HMGP project grants and, the Administrator, at his discretion may require a Tribal Mitigation Plan for the Repetitive Flood Claims Program. A Tribe must have an approved Tribal Mitigation Plan in order to apply for and receive FEMA mitigation project grants, under all other mitigation grant programs. The provisions in § 201.6(a)(3) are available to Tribes applying as subgrantees.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(B) An estimate of the potential dollar losses to vulnerable structures identified in paragraph (c)(2)(ii)(A) of this section and a description of the methodology used to prepare the estimate;

* * * * *

(3) * * *

(iii) An action plan describing how the actions identified in paragraph (c)(3)(ii) of this section will be prioritized, implemented, and administered by the Indian Tribal government.

* * * * *

(vi) An Indian Tribal government applying to FEMA as a grantee may request the reduced cost share authorized under § 79.4(c)(2) of this chapter of the FMA and SRL programs if they have an approved Tribal Mitigation Plan meeting the requirements of this section that also identifies actions the Indian Tribal government has taken to reduce the number of repetitive loss properties (which must include severe repetitive loss properties), and specifies how the Indian Tribal government intends to reduce the number of such repetitive loss properties.

* * * * *

PART 206—FEDERAL DISASTER ASSISTANCE

■ 15. 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.

■ 16. In § 206.226 revise paragraph (b) to read as follows:

§ 206.226 Restoration of damaged facilities.

* * * * *

(b) *Mitigation planning.* In order to receive assistance under this section, the State or Indian Tribal government applying to FEMA as a grantee must have in place a FEMA approved State or Tribal Mitigation Plan, as applicable, in accordance with 44 CFR part 201.

* * * * *

■ 17. Revise § 206.401 to read as follows:

§ 206.401 Local standards.

The cost of repairing or constructing a facility in conformity with minimum codes, specifications and standards may be eligible for reimbursement under section 406 of the Stafford Act, as long as such codes, specifications, and standards meet the criteria that are listed at 44 CFR 206.226(d).

■ 18. Amend § 206.431 by revising the definitions of ''Indian Tribal government'' and ''Local Mitigation Plan'' and by adding, in alphabetical order, the definition of ''Tribal Mitigation Plan'' to read as follows:

§ 206.431 Definitions.

* * * * *

Indian Tribal government means any Federally recognized governing body of an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian Tribe under the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

Local Mitigation Plan is the hazard mitigation plan required of a local government acting as a subgrantee as a condition of receiving a project subgrant under the HMGP as outlined in 44 CFR 201.6.

* * * * *

Tribal Mitigation Plan is the hazard mitigation plan required of an Indian Tribal government acting as a grantee or subgrantee as a condition of receiving a project grant or subgrant under the HMGP as outlined in 44 CFR 201.7.

■ 19. In § 206.432 revise paragraphs (b) introductory text and (b)(2) to read as follows:

§ 206.432 Federal grant assistance.

* * * * *

(b) *Amounts of Assistance.* The total Federal contribution of funds is based on the estimated aggregate grant amount to be made under 42 U.S.C. 5170b, 5172, 5173, 5174, 5177, and 5183 of the Stafford Act for the major disaster (less associated administrative costs), and shall be as follows:

* * * * *

(2) *Twenty (20) percent.* A State with an approved Enhanced State Mitigation Plan, in effect before the disaster

declaration, which meets the requirements outlined in § 201.5 of this subchapter shall be eligible for assistance under the HMGP not to exceed 20 percent of such amounts, for amounts not more than $35.333 billion.

* * * * *

■ 20. In § 206.434 revise paragraphs (b)(1), (c)(1), and (e) introductory text to read as follows:

§ 206.434 Eligibility.

* * * * *

(b) * * *

(1) Local and Indian Tribal government applicants for project subgrants must have an approved local or Tribal Mitigation Plan in accordance with 44 CFR part 201 before receipt of HMGP subgrant funding for projects.

* * * * *

(c) * * *

(1) Be in conformance with the State Mitigation Plan and Local or Tribal Mitigation Plan approved under 44 CFR part 201; or for Indian Tribal governments acting as grantees, be in conformance with the Tribal Mitigation Plan approved under 44 CFR 201.7;

* * * * *

(e) *Property acquisitions and relocation requirements.* Property acquisitions and relocation projects for open space proposed for funding pursuant to a major disaster declared on or after December 3, 2007 must be implemented in accordance with part 80 of this chapter. For major disasters declared before December 3, 2007, a project involving property acquisition or the relocation of structures and individuals is eligible for assistance only if the applicant enters into an agreement with the FEMA Regional Administrator that provides assurances that:

* * * * *

Dated: September 8, 2009.

David Garratt,

Acting Deputy Administrator, Federal Emergency Management Agency.

[FR Doc. E9–22278 Filed 9–15–09; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–2016; MB Docket No. 09–125; RM–11548]

Television Broadcasting Services; Biloxi, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by WLOX License Subsidiary, LLC, the permittee of station WLOX(TV), channel 13, Biloxi, Mississippi, requesting the substitution of its pre-transition digital channel 39 for its allotted post-transition channel 13 at Biloxi.

DATES: This rule is effective September 16, 2009.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 09–125, adopted September 3, 2009, and released September 4, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC, 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Mississippi, is amended by adding DTV channel 39 and removing DTV channel 13 at Biloxi.

Federal Communications Commission.

James J. Brown,

Deputy Chief, Video Division, Media Bureau.

[FR Doc. E9–22315 Filed 9–15–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R3–ES–2009–0063; 92220–1113–0000; C6]

RIN 1018–AW80

Endangered and Threatened Wildlife and Plants; Reinstatement of Protections for the Gray Wolf in the Western Great Lakes in Compliance With Settlement Agreement and Court Order

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are issuing this final rule to comply with a court order that has the effect of reinstating the regulatory protections under the Endangered Species Act of 1973, as amended (ESA), for the gray wolf (*Canis lupus*) in the western Great Lakes. This rule corrects the gray wolf listing in our regulations which will reinstate the listing of gray wolves in all of Wisconsin and Michigan, the eastern half of North Dakota and South Dakota, the northern half of Iowa, the northern portions of Illinois and Indiana, and the northwestern portion of Ohio as endangered, and reinstate the listing of wolves in Minnesota as threatened. This rule also reinstates the former designated critical habitat for gray wolves in Minnesota and Michigan and special regulations for gray wolves in Minnesota.

DATES: This action is effective September 16, 2009.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov.* It will also be available for inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, 1 Federal Drive, Fort Snelling, Minnesota 55111. Call 612–713–5350 to make arrangements.

FOR FURTHER INFORMATION CONTACT: For information on wolves in the western Great Lakes, contact Laura Ragan, Regional Listing Coordinator, U.S. Fish and Wildlife Service, at our Fort Snelling, Minnesota, Regional Office (*see* **ADDRESSES**) or telephone 612–713–5350. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1–800–877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

Information about the life history of the gray wolf and previous Federal actions can be found in our February 8, 2007 (72 FR 6052), final rule for the Western Great Lakes Distinct Population Segment (WGL DPS) of the gray wolf.

On June 15, 2009, five parties filed a lawsuit against the U.S. Department of the Interior (Department) and the Service, challenging the Service's April 2, 2009 (74 FR 15070), final rule for the WGL DPS. On July 1, 2009, the U.S. District Court for the District of Columbia signed a stipulated settlement agreement and order (*Humane Society of the United States* v. *Salazar,* 1:09–CV–1092–PLF (D.D.C.)). In the settlement, the Service agrees to withdraw the 2009 final rule and, if we republish another rule, to open a minimum 60-day public comment period.

Administrative Procedure

This rulemaking is necessary to comply with the July 1, 2009, settlement agreement and order. Therefore, under these circumstances, the Director has determined, pursuant to 5 U.S.C. 553(b), that prior notice and opportunity for public comment are impractical and unnecessary. The Director has further determined, pursuant to 5 U.S.C. 553(d), that the agency has good cause to make this rule effective upon publication.

Effects of the Rule

As of the filing of the respective court orders, any and all gray wolves in the western Great Lakes, except in Minnesota, are listed as an endangered species under the ESA. Any and all wolves in Minnesota are listed as a threatened species under the ESA. The reinstated regulations found at 50 CFR 17.95 designate critical habitat for gray wolves in Minnesota and Michigan, and the reinstated special regulations in 50 CFR 17.40(d) govern the regulation of gray wolves in Minnesota. The provisions of these regulations are the same as those in the regulations that were removed per our February 8, 2007, final delisting rule (72 FR 6052).

This means that wolves in Wisconsin, Michigan, North Dakota, South Dakota, Iowa, Illinois, Indiana, and Ohio, are hereby listed as endangered (50 CFR 17.11(h)). Wolves in Minnesota are listed as threatened (50 CFR 17.11(h)).

This rule will not affect the status of the gray wolf in the western Great Lakes under State laws or suspend any other legal protections provided by State law. This rule will not affect the gray wolf's Appendix II status under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Additionally, pursuant to section 6 of the Act, we are able to grant available funds to the States for management actions promoting the protection of gray wolves in the western Great Lakes.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the CFR, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11 by revising the entry in the table at paragraph (h) for ''Wolf, gray'' as follows:

§ 17.11 [Amended]

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific Name						
MAMMALS							
*	*	*	*	*	*		
Wolf, gray	*Canis lupus*	Holarctic	U.S.A., conterminous (lower 48) States, except (1) Where listed as an experimental population below; (2) Minnesota; and (3) MT, ID, WY (however, *see* experimental population designation below), eastern WA (that portion of WA east of the centerline of Highway 97 and Highway 17 north of Mesa and that portion of WA east of the centerline of Highway 395 south of Mesa), eastern OR (that portion of OR east of the centerline of Highway 395 and Highway 78 north of Burns Junction and that portion of OR east of the centerline of Highway 95 south of Burns Junction), and north central UT (that portion of UT east of the centerline of Highway 84 and north of Highway 80). Mexico.	E	1, 6, 13, 15, 35	17.95(a)	N/A
Do	...do	...do	U.S.A. (MN)	T	35	17.95(a)	17.40(d)
Do	...do	...do	U.S.A. (portions of AZ, NM, and TX—*see* § 17.84(k))	XN	631	N/A	17.84(k)
Wolf, gray [Northern Rocky Mountain DPS].	*Canis lupus*	U.S.A. (MT, ID, WY, eastern WA, eastern OR, and north central UT).	U.S.A. (WY—*see* § 17.84(i) and § 17.84(n))	XN	561, 562	N/A	17.84(i) 17.84(n)
*	*	*	*	*	*		

■ 3. Amend § 17.40 by adding paragraph (d) as set forth below:

§ 17.40 Special rules—mammals.

* * * * *

(d) Gray wolf (*Canis lupus*) in Minnesota.

(1) *Zones.* For purposes of these regulations, the State of Minnesota is divided into the following five zones:

(i) *Zone 1—4,488 square miles.* Beginning at the point of intersection of United States and Canadian boundaries in Section 22, Township 71 North, Range 22 West, in Rainy Lake, then proceeding along the west side of Sections 22, 27, and 34 in said Township and Sections 3, 10, 15, 22, 27 and 34 in Township 70 North, Range 22 West and Sections 3 and 10 in Township 69 North, Range 22 West; then east along the south boundaries of Sections 10, 11, and 12 in said Township; then south along the Koochiching and St. Louis counties line to Highway 53; thence southeasterly along State Highway 53 to the junction with County Route 765; thence easterly along County Route 765 to the junction with Kabetogama Lake in Ash River Bay; thence along the south boundary of Section 33 in Township 69 North, Range 19 West, to the junction with the Moose River; thence southeasterly along the Moose River to Moose Lake; thence along the western shore of Moose Lake to the river between Moose Lake and Long Lake; thence along the said river to Long Lake; thence along the east shore of Long Lake to the drainage on the southeast side of Long Lake in NE\1/4\, Section 18, Township 67 North, Range 18 West; thence along the said drainage southeasterly and subsequently northeasterly to Marion Lake, the drainage being in Sections 17 and 18, Township 67 North, Range 18 West; thence along the west shoreline of Marion Lake proceeding southeasterly to the Moose Creek; thence along Moose Creek to Flap Creek; thence southeasterly along Flap Creek to the Vermilion River; thence southerly along the Vermilion River to Vermilion Lake; thence along the Superior National Forest boundary in a southeasterly direction through Vermilion Lake passing these points: Oak Narrows, Muskrat Channel, South of Pine Island, to Hoodo Point and the junction with County Route 697; thence southeasterly on County Route 697 to the junction with State Highway 169; thence easterly along State Highway 169 to the junction with State Highway 1; thence easterly along State Highway 1 to the junction with the Erie Railroad tracks at Murphy City; thence easterly along the Erie Railroad tracks to the junction with Lake Superior at Taconite Harbor; thence northeasterly along the North Shore of Lake Superior to the Canadian Border; thence westerly along the Canadian Border to the point of beginning in Rainy Lake.

(ii) *Zone 2—1,856 square miles.* Beginning at the intersection of the Erie Mining Co. Railroad and State Highway 1 (Murphy City); thence southeasterly on State Highway 1 to the junction with County Road 4; thence southwesterly on County Road 4 to the State Snowmobile Trail (formerly the Alger-Smith Railroad); thence southwesterly to the intersection of the Old Railroad Grade and Reserve Mining Co. Railroad in Section 33 of Township 56 North, Range 9 West; thence northwesterly along the Railroad to Forest Road 107; thence westerly along Forest Road 107 to Forest Road 203; thence westerly along Forest Road 203 to the junction with County Route 2; thence in a northerly direction on County Route 2 to the junction with Forest Road 122; thence in a westerly direction along Forest Road 122 to the junction with the Duluth, Missable and Iron Range Railroad; thence in a southwesterly direction along the said railroad tracks to the junction with County Route 14; thence in a northwesterly direction along County Route 14 to the junction with County Route 55; thence in a westerly direction along County Route 55 to the junction with County Route 44; thence in a southerly direction along County Route 44 to the junction with County Route 266; thence in a southeasterly direction along County Route 266 and subsequently in a westerly direction to the junction with County Road 44; thence in a northerly direction on County Road 44 to the junction with Township Road 2815; thence westerly along Township Road 2815 to Alden Lake; thence northwesterly across Alden Lake to the inlet of the Cloquet River; thence northerly along the Cloquet River to the junction with Carrol Trail-State Forestry Road; thence west along the Carrol Trail to the junction with County Route 4 and County Route 49; thence west along County Route 49 to the junction with the Duluth, Winnipeg and Pacific Railroad; thence in a northerly direction along said Railroad to the junction with the Whiteface River; thence in a northeasterly direction along the Whiteface River to the Whiteface Reservoir; thence along the western shore of the Whiteface Reservoir to the junction with County Route 340; thence north along County Route 340 to the junction with County Route 16; thence east along County Route 16 to the junction with County Route 346; thence in a northerly direction along County Route 346 to the junction with County Route 569; thence along County Route 569 to the junction with County Route 565; thence in a westerly direction along County Route 565 to the junction with County Route 110; thence in a westerly direction along County Route 110 to the junction with County Route 100; thence in a north and subsequent west direction along County Route 100 to the junction with State Highway 135; thence in a northerly direction along State Highway 135 to the junction with State Highway 169 at Tower; thence in an easterly direction along the southern boundary of Zone 1 to the point of beginning of Zone 2 at the junction of the Erie Railroad Tracks and State Highway 1.

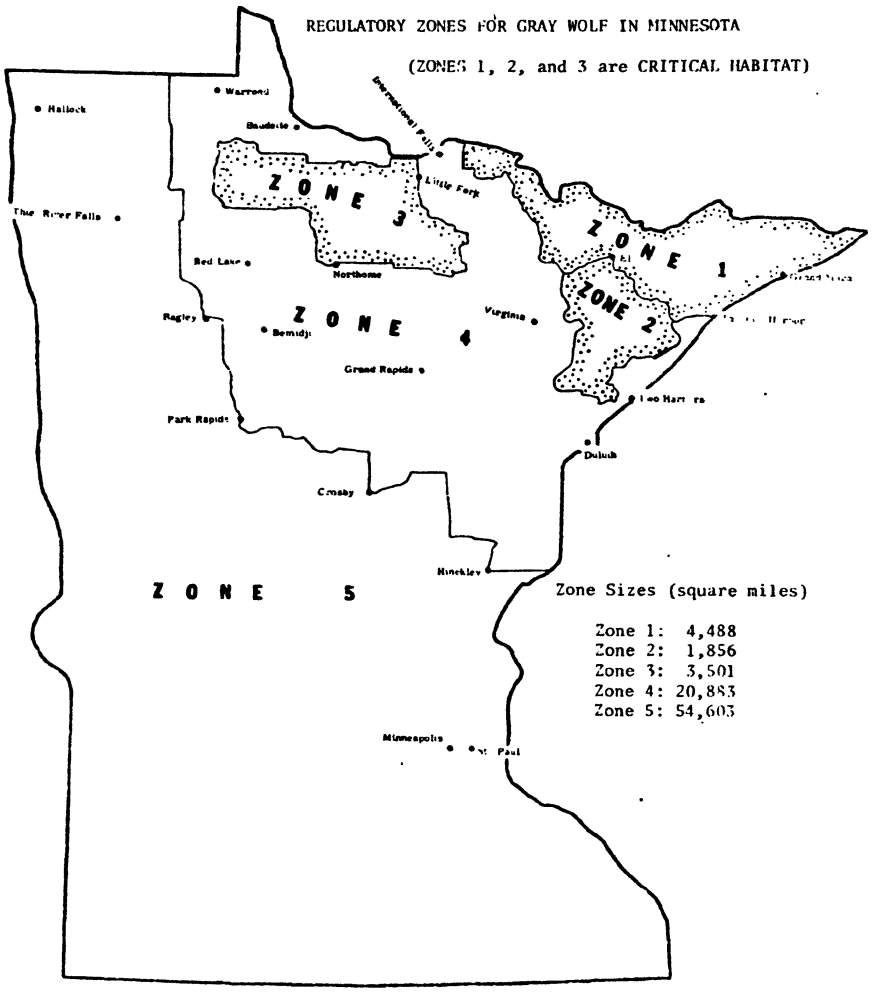
(iii) *Zone 3—3,501 square miles.* Beginning at the junction of State Highway 11 and State Highway 65; thence southeasterly along State Highway 65 to the junction with State Highway 1; thence westerly along State Highway 1 to the junction with State Highway 72; thence north along State Highway 72 to the junction with an un-numbered township road beginning in the northeast corner of Section 25, Township 155 North, Range 31 West; thence westerly along the said road for approximately seven (7) miles to the junction with SFR 95: thence westerly along SFR 95 and continuing west through the southern boundary of Sections 36 through 31, Township 155 North, Range 33 West, through Sections 36 through 31, Township 155 North, Range 34 West, through Sections 36 through 31, Township 155 North, Range 35 West, through Sections 36 and 35, Township 155 North, Range 36 West to the junction with State Highway 89, thence northwesterly along State Highway 89 to the junction with County Route 44; thence northerly along County Route 44 to the junction with County Route 704; thence northerly along County 704 to the junction with SFR 49; thence northerly along SFR 49 to the junction with SFR 57; thence easterly along SFR 57 to the junction with SFR 63: thence south along SFR 63 to the junction with SFR 70; thence easterly along SFR 70 to the junction with County Route 87; thence easterly along County Route 87 to the junction with County Route 1; thence south along County Route 1 to the junction with County Route 16; thence easterly along County Route 16 to the junction with State Highway 72; thence south on State Highway 72 to the junction with a gravel road (un-numbered County District Road) on the north side of Section 31, Township 158 North, Range

30 West; thence east on said District Road to the junction with SFR 62; thence easterly on SFR 62 to the junction with SFR 175; thence south on SFR 175 to the junction with County Route 101; thence easterly on County Route 101 to the junction with County Route 11; thence easterly on County Route 11 to the junction with State Highway 11; thence easterly on State Highway 11 to the junction with State Highway 65, the point of beginning.

(iv) *Zone 4—20,883 square miles.* Excluding Zones 1, 2 and 3, all that part of Minnesota north and east of a line beginning on State Trunk Highway 48 at the eastern boundary of the State; thence westerly along Highway 48 to Interstate Highway 35; thence northerly on I–35 to State Highway 23, thence west one-half mile on Highway 23 to State Trunk Highway 18; thence westerly along Highway 18 to State Trunk Highway 65, thence northerly on Highway 65 to State Trunk Highway 210; thence westerly along Highway 210 to State Trunk Highway 6; thence northerly on State Trunk Highway 6 to Emily; thence westerly along County State Aid Highway (CSAH) 1, Crow Wing County, to CSAH 2, Cass County; thence westerly along CSAH 2 to Pine River; thence northwesterly along State Trunk Highway 371 to Backus; thence westerly along State Trunk Highway 87 to U.S. Highway 71; thence northerly along U.S. 71 to State Trunk Highway 200; thence northwesterly along Highway 200, to County State Aid Highway (CSAH) 2, Clearwater County; thence northerly along CSAH 2 to Shevlin; thence along U.S. Highway 2 to Bagley; thence northerly along State Trunk Highway 92 to Gully; thence northerly along CSAH 2, Polk County, to CSAH 27, Pennington County; thence along CSAH 27 to State Trunk Highway 1; thence easterly on Highway 1 to CSAH 28, Pennington County; thence northerly along CSAH 28 to CSAH 54, Marshall County, thence northerly along CSAH 54 to Grygla; thence west and northerly along Highway 89 to Roseau; thence northerly along State Truck Highway 310 to the Canadian border.

(v) *Zone 5—54,603 square miles.* All that part of Minnesota south and west of the line described as the south and west border of Zone 4.

(vi) Map of regulatory zones follows:



(2) *Prohibitions.* The following prohibitions apply to the gray wolf in Minnesota.

(i) *Taking.* Except as provided in this paragraph (d)(2)(i) of this section, no person may take a gray wolf in Minnesota.

(A) Any person may take a gray wolf in Minnesota in defense of his own life or the lives of others.

(B) Any employee or agent of the Service, any other Federal land management agency, or the Minnesota Department of Natural Resources, who is designated by his/her agency for such purposes, may, when acting in the course of his or her official duties, take a gray wolf in Minnesota without a permit if such action is necessary to:

(1) Aid a sick, injured or orphaned specimen; or

(2) Dispose of a dead specimen; or

(3) Salvage a dead specimen that may be useful for scientific study.

(4) Designated employees or agents of the Service or the Minnesota Department of Natural Resources may take a gray wolf without a permit in Minnesota, in zones 2, 3, 4, and 5, as delineated in paragraph (d)(l) of this section, in response to depredations by a gray wolf on lawfully present domestic animals: Provided, that such taking must occur within one-half mile of the place where such depredation occurred and must be performed in a humane manner: And provided further, that any young of the year taken on or before August 1 of that year must be released.

(C) Any employee or agent of the Service or the Minnesota Department of Natural Resources, when operating under a Cooperative Agreement with the Service signed in accordance with section 6(c) of the Endangered Species Act of 1973, who is designated by the Service or the Minnesota Department of Natural Resources for such purposes, may, when acting in the course of his or her official duties, take a gray wolf in Minnesota to carry out scientific research or conservation programs.

(ii) *Export and commercial transactions.* Except as may be authorized by a permit issued under § 17.32, no person may sell or offer for sale in interstate commerce, import or export, or in the course of a commercial activity transport, ship, carry, deliver, or receive any Minnesota gray wolf.

(iii) *Unlawfully taken wolves.* No person may possess, sell, deliver, carry, transport, or ship, by any means whatsoever, a gray wolf taken unlawfully in Minnesota, except that an employee or agent of the Service, or any other Federal land management agency, or the Minnesota Department of Natural Resources, who is designated by his/her agency for such purposes, may, when acting in the course of his official duties, possess, deliver, carry, transport, or ship a gray wolf taken unlawfully in Minnesota.

(3) *Permits.* All permits available under § 17.32 (General Permits—Threatened Wildlife) are available with regard to the gray wolf in Minnesota. All the terms and provisions of § 17.32 apply to such permits issued under the authority of this paragraph (d)(3).

■ 4. Amend paragraph (a) of § 17.95 by adding an entry for ''Gray Wolf *(Canis lupus)''* in the same alphabetical order as this species appears in the table in § 17.11(h) to read as set forth below:

§ 17.95 Critical habitat—fish and wildlife.

(a) *Mammals.*

* * * * *

Gray Wolf (*Canis lupus*)

Michigan. Isle Royale National Park.

Minnesota. Areas of land, water, and airspace in Beltrami, Cook, Itasca, Koochiching, Lake, Lake of the Woods, Roseau, and St. Louis Counties, with boundaries (4th and 5th Principal meridians) identical to those of zones 1, 2, and 3, as delineated in 50 CFR 17.40(d)(l).

* * * * *

Dated: August 31, 2009.

Sam D. Hamilton,

Director, Fish and Wildlife Service.

[FR Doc. E9–22256 Filed 9–15–09; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 74, No. 178
Wednesday, September 16, 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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 370

RIN 3064–AD37

Expiration of the Issuance Period for the Debt Guarantee Program; Establishment of Emergency Guarantee Facility

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is issuing this Notice of Proposed Rulemaking to present two alternatives for phasing out the Debt Guarantee Program (DGP), a component of the Temporary Liquidity Guarantee Program (TLGP).

Under the first alternative, the DGP would conclude as provided in the current regulation. Thus, insured depository institutions (IDIs) and certain other participating entities would be permitted to issue FDIC-guaranteed debt no later than October 31, 2009, with the FDIC's guarantee for such debt expiring no later than December 31, 2012.

Under the second alternative, the DGP would expire as indicated above; however, the FDIC would establish a limited six-month emergency guarantee facility to be made available in emergency circumstances to insured depository institutions (IDIs) and certain other entities participating in the DGP upon application to and with the prior approval of the FDIC. Under the proposed emergency guarantee facility, the FDIC would guarantee senior unsecured debt issued on or before April 30, 2010. The emergency guarantee facility would be available on a limited, case-by-case basis to insured depository institutions (IDIs) participating in the DGP and to other entities participating in the DGP that have issued FDIC-guaranteed debt under the DGP by September 9, 2009. Entities seeking to participate in the emergency guarantee facility would be required to submit an application to the FDIC on or before April 30, 2010, and demonstrate an inability to issue non-guaranteed debt to replace maturing senior unsecured debt as a result of market disruptions or other circumstances beyond the entity's control. If approved by the FDIC, senior unsecured debt issued under the emergency guarantee facility would be guaranteed by the FDIC until a date no later than December 31, 2012, and would be subject to an annualized participation fee of at least 300 basis points.

DATES: Written comments must be received by the FDIC by October 1, 2009.

ADDRESSES: You may submit comments on the Notice of Proposed Rulemaking, by any of the following methods:

- *Agency Web Site: http://www.FDIC.gov/regulations/laws/federal/notices.html.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include RIN # 3064–AD37 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All comments received will be posted generally without change to *http://www.fdic.gov/regulations/laws/federal/final.html,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: (*for questions or comments related to applications*) Lisa D Arquette, Associate Director, Division of Supervision and Consumer Protection, (202) 898–8633 or *larquette@fdic.gov;* Serena L. Owens, Associate Director, Supervision and Applications Branch, Division of Supervision and Consumer Protection, (202) 898–8996 or *sowens@fdic.gov;* Gail Patelunas, Deputy Director, Division of Resolutions and Receiverships, (202) 898–6779 or *gpatelunas@fdic.gov;* Donna Saulnier, Manager, Assessment Policy Section, Division of Finance, (703) 562–6167 or *dsaulnier@fdic.gov;* Munsell St. Clair, Chief, Bank and Regulatory Policy Section, Division of Insurance and Research, (202) 898–8967 or *mstclair@fdic.gov;* Robert C. Fick, Counsel, Legal Division, (202) 898–8962 or *rfick@fdic.gov;* or A. Ann Johnson, Counsel, Legal Division, (202) 898–3573 or *aajohnson@fdic.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The FDIC adopted the TLGP in October, 2008 following a determination of systemic risk by the Secretary of the Treasury (after consultation with the President) that was supported by recommendations from the FDIC and the Board of Governors of the Federal Reserve System (Federal Reserve).[1] The TLGP is part of a coordinated effort by the FDIC, the U.S. Department of the Treasury (Treasury), and the Federal Reserve to address unprecedented disruptions in credit markets and the resultant difficulty of many financial institutions to obtain funds and to make loans to creditworthy borrowers.

On October 23, 2008, the FDIC's Board of Directors (Board) authorized the publication in the **Federal Register** of an interim rule that outlined the structure of the TLGP.[2] Designed to assist in the stabilization of the nation's financial system, the FDIC's TLGP is composed of two distinct components: the DGP and the Transaction Account Guarantee Program (TAG program). The DGP initially permitted participating entities to issue FDIC-guaranteed senior unsecured debt until June 30, 2009, with the FDIC's guarantee for such debt to expire on the earlier of the maturity of the debt (or the conversion date, for mandatory convertible debt) or June 30, 2012.

To reduce market disruption at the conclusion of the DGP and to facilitate the orderly phase-out of the program, the Board issued a final rule that generally extended for four months the period during which participating entities could issue FDIC-guaranteed debt.[3] Under this rule, all IDIs and those other participating entities that had issued FDIC-guaranteed debt on or

[1] See Section 13(c)(4)(G) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1823(c)(4)(G). The determination of systemic risk triggered the FDIC's authority—''in its sole discretion and upon such terms and conditions as the [FDIC's] Board of Directors may prescribe—to take actions to avoid or mitigate serious adverse effects on economic conditions or financial stability. See also Section 9(a)Tenth of the FDI Act, 12 U.S.C. 1819(a)Tenth. The FDIC implemented the TLGP in response.

[2] 73 FR 64179 (October 29, 2008). This interim rule was finalized and a final rule was published in the **Federal Register** on November 26, 2008. 73 FR 72244 (November 26, 2008).

[3] 74 FR 26521 (June 3, 2009).

before April 1, 2009 are permitted to participate in the extended DGP without application to the FDIC. Other participating entities that receive approval from the FDIC also may participate in the extended DGP. The rule also extended the expiration of the guarantee period from June 30, 2012 to December 31, 2012. As a result, participating entities may issue FDIC-guaranteed debt through and including October 31, 2009, where the FDIC's guarantee expires on the earliest of the debt's mandatory conversion date, the stated maturity date, or December 31, 2012.

On June 23, 2009, the Board proposed two alternatives for phasing out the TAG. The first proposed alternative provided that the TAG would expire on December 31, 2009, as required by the terms of the existing rule. The second proposed alternative provided for a limited six month extension to that program. Following consideration of the comments submitted in response to the two alternatives, on August 26, 2009, the Board adopted and approved for publication in the **Federal Register** a final rule providing for a six-month extension of the TAG program, through June 30, 2010.[4] The extended TAG program is available to any participating IDI that does not elect to opt-out of the extension, subject to an increased fee for the FDIC's guarantee of qualifying non-interest bearing transaction accounts during the extension period.

Recent data suggest that the TLGP and other federal efforts to restore liquidity to and confidence in the banking and financial services industries have had a positive impact. For example, only a few participating entities have issued FDIC-guaranteed debt under the extended DGP, and a number of banking organizations have conducted successful public offerings of non-FDIC-guaranteed debt and equity. A number of banking organizations also have repaid the preferred shares purchased by the U.S. Treasury through its Capital Purchase Program. Funding costs have eased as the three-month Libor rate has reached record lows and related credit spreads have moderated substantially.

Since there is evidence that the domestic credit and liquidity markets are beginning to normalize and since there has been a decrease in the number of entities that now are issuing debt under the DGP, the current regulation may provide an appropriate means for concluding the DGP. On the other hand, however, it may be prudent for the FDIC to allow the DGP to expire by its terms, while establishing an emergency guarantee facility to be accessed on a limited, case-by-case basis by IDIs and certain other entities participating in the DGP if emergency circumstances warrant. This limited emergency guarantee facility could afford protection to entities participating in the DGP that are unable to issue non-guaranteed debt to replace maturing debt because of market disruptions or other circumstances beyond their control.[5]

[4] 74 FR 45093 (September 1, 2009).

II. Proposed Alternatives for Concluding the Debt Guarantee Program

As it did when proposing alternatives for concluding the TAG, in this Notice of Proposed Rulemaking the FDIC presents two alternatives for concluding the FDIC's guarantee of senior unsecured debt under the DGP. In general, under Alternative A, IDIs and certain other participating entities would be permitted to issue FDIC-guaranteed debt under the DGP no later than October 31, 2009, with the FDIC's guarantee for such debt expiring no later than December 31, 2012, as provided for in the current regulation. Under Alternative B, although the DGP effectively would end as provided for in the current regulation, the FDIC would establish and make available on a limited, case-by-case basis, an emergency guarantee facility. The proposed emergency guarantee facility would be made available only following FDIC approval of an application submitted by an IDI or other entity that issued FDIC-guaranteed senior unsecured debt on or before September 9, 2009. If approved by the FDIC, an applicant would be permitted to issue FDIC-guaranteed senior unsecured debt during the period between November 1, 2009 and April 30, 2010, subject to any other restrictions and conditions deemed appropriate by the FDIC, including limiting executive compensation, bonuses, or the payment of dividends.

[5] Establishment of the emergency guarantee facility would be consistent with the rationale for establishing the existing TLGP and the determination of systemic risk made on October 14, 2008, pursuant to 12 U.S.C. section 1823(c)(4)(G), by the Secretary of the Treasury (after consultation with the President) following receipt of the written recommendation dated October 13, 2008, of the FDIC's Board of Directors (Board) and the similar written recommendation of the Board of Governors of the Federal Reserve System (Federal Reserve). In addition to the authority granted to the FDIC by the systemic risk determination, the FDIC is authorized under Section 9(a)(Tenth) of the FDI Act, 12 U.S.C. 1819(a)Tenth, to prescribe, by its Board, such rules and regulations as it may deem necessary to carry out the provisions of the FDI Act.

A. Alternative A

Alternative A would preserve the current regulation regarding the duration of the FDIC's guarantee of senior unsecured debt under the DGP. Thus, all IDIs participating in the DGP (and other participating entities that had either issued guaranteed debt before April 1, 2009, or had not issued guaranteed debt before April 1, 2009, but had otherwise received the FDIC's permission to issue non-guaranteed debt) would be permitted to issue FDIC-guaranteed senior unsecured debt until October 31, 2009. The FDIC's guarantee for such debt issuances would expire no later than December 31, 2012.

B. Alternative B

Under Alternative B, the DGP would expire as currently structured. In Alternative B, however, the FDIC proposes the establishment of a limited, six-month emergency guarantee facility upon expiration of the DGP on October 31, 2009, as currently structured.

This emergency guarantee facility would be designed to address an entity's inability to replace maturing debt through non-guaranteed sources as a result of a market disruption or other circumstance beyond the control of the participating entity. Under this emergency guarantee facility, the FDIC, after prior approval granted on a case-by-case basis, would guarantee senior unsecured debt (as defined in 12 CFR 370.2(e)) issued by certain entities participating in the DGP after October 31, 2009, through and including April 30, 2010, subject to restrictions and conditions deemed appropriate by the FDIC. The FDIC's guarantee of principal and interest payments for senior unsecured debt issuances approved under the emergency guarantee facility would extend through the earliest of the mandatory conversion date (for mandatory convertible debt), the stated maturity date, or December 31, 2012. If Alternative B were adopted, with the exception of the prior approval requirement and the increased participation fee, the terms of the FDIC guarantee would remain unchanged from the existing DGP. Further, should Alternative B be adopted, there would be no effect on any conditions that the FDIC may have placed on the issuance of debt by an IDI or other entity participating in the DGP.

Any IDI participating in the DGP and any other entity participating in the DGP that has issued FDIC-guaranteed debt by September 9, 2009, would be permitted to apply to use this emergency guarantee facility. Any use of the facility would require the prior

approval of the FDIC which is expected to be provided on a limited basis following case-by-case consideration.

Application Requirements for Participation in the Emergency Guarantee Facility

Applications to participate in the emergency guarantee facility would be required to be submitted to the Director of the Division of Supervision and Consumer Protection on or before April 30, 2010. The application would be expected to include a projection of the sources and uses of funds through December 31, 2012; a summary of the entity's contingency plans; a description of any collateral that an entity can make available to secure the entity's obligation to reimburse the FDIC for any payments made pursuant to the guarantee; a description of the plans for retirement of the FDIC-guaranteed debt; a description of the market disruptions or other circumstances beyond the entity's control that prevent the entity from replacing maturing debt with non-guaranteed debt; a description of management's efforts to mitigate the effects of such disruptions or circumstances; conclusive evidence that demonstrates an entity's inability to issue non-guaranteed debt; and any other relevant information that the FDIC deems appropriate.

Participation in the emergency guarantee facility would be limited only to those entities that demonstrated the inability to issue non-guaranteed debt to replace maturing debt as a result of market disruptions or other circumstances beyond the entities' control. In order for an application to be accepted and considered by the FDIC, applicants would be required to describe the circumstances that gave rise to the request to participate in the emergency guarantee facility and also must include an explanation of how and the extent to which such circumstances were unanticipated by the applicant and remain beyond its control. In addition, applicants would be expected to include an explanation of the actions taken by its management to mitigate such circumstances.

Participation Fee

Under Alternative B, the FDIC would assess an annualized participation fee of at least 300 basis points on any FDIC-guaranteed debt issued by entities that are permitted to use the emergency guarantee facility. The FDIC would reserve the right to increase the participation fee on a case-by-case basis, depending upon the risks present in the issuing entity's organization. The FDIC notes that the participation fee may provide an appropriate deterrent to applications based on other, less severe circumstances or concerns. Consistent with the existing DGP, a participating entity may be required to pledge sufficient collateral to ensure the repayment of any principal and interest payments made by the FDIC under the guarantee facility, and also may be subject to other conditions and restrictions that the FDIC deems appropriate, including, for example, limiting executive compensation, bonuses, or the payment of dividends.

IV. Request for Comments

The FDIC requests comments on all aspects of this notice. Specifically, the FDIC notes that, upon approval of application, the emergency guarantee facility proposed in Alternative B would be available to all participating IDIs and to those other entities that had issued FDIC-guaranteed debt by September 9, 2009. The FDIC requests comment as to whether, if Alternative B is adopted, eligibility should be limited in this manner. Finally, the FDIC asks commenters to indicate a preference for either Alternative A or Alternative B as a means of providing the most appropriate phase out of the FDIC's DGP.

V. Regulatory Analysis and Procedure

A. Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603(a), the FDIC must publish an initial regulatory flexibility analysis with this proposed rulemaking or certify that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA analysis or certification, financial institutions with total assets of $175 million or less are considered to be ''small entities.'' The FDIC hereby certifies pursuant to 5 U.S.C. 605(b) that the Alternative B of the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. (Alternative A, as described in the proposed rule, represents no change from the FDIC's existing regulation. As such, Alternative A is not likely to have a significant economic impact on a substantial number of small entities.)

Currently, 4,424 IDIs participate in the DGP, of which approximately 2,136 (or approximately 48 percent) are small entities. If Alternative B is adopted, all 2,136 IDIs that are considered small entities for purposes of this analysis would be eligible to apply to access the emergency guarantee facility. As a result, the FDIC asserts that Alternative B could have some impact on a substantial number of IDIs that are small entities that participate in the DGP.

Nevertheless, the FDIC has determined that, were Alternative B of the proposed rule to be adopted, the economic impact on small entities will not be significant for the following reasons. The emergency guarantee facility as contemplated in Alternative B is designed to be accessed on an emergency case-by-case basis by IDIs (and other entities that issued debt under the DGP) only if such entities are unable to replace maturing debt as a result of market disruptions or other circumstances beyond the entities' control. Eighty-one IDIs have issued FDIC-guaranteed debt through the DGP since the program's inception. It appears unlikely that a significant number of IDIs (or other qualifying entities) would satisfy the requirements to issue FDIC-guaranteed debt during such emergency circumstances. Accordingly, if adopted in final form, neither Alternate A nor Alternate B of the proposed rule would have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), 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. If Alternative B were adopted, the Proposed Rule would establish a new OMB-approved information collection, entitled the ''Temporary Liquidity Guarantee Program—Emergency Guarantee Facility'' (OMB No. 3064—NEW). (Should Alternative A be adopted, no change would occur in the existing regulation or the existing burden estimates.) Should Alternative B be adopted, the estimated burden for the proposed application process, described in Alternative B of the Proposed Rule, is as follows:

Title: ''Temporary Liquidity Guarantee Program—Emergency Guarantee Facility''.

OMB Number: 3064—NEW.

Estimated Number of Respondents:

Application to access emergency guarantee facility submitted by IDIs—8.

Application to access emergency guarantee facility submitted by non-IDIs that issued FDIC-guaranteed debt under the DGP—4.

Frequency of Response:

Application to access emergency guarantee facility submitted by IDIs—once.

Application to access emergency guarantee facility submitted by non-IDIs that issued FDIC-guaranteed debt under the DGP—once.

Affected Public: IDIs; thrift holding companies, bank and financial holding companies, and affiliates of IDIs that issued debt under the DGP.

Average Time per Response: Application to access emergency guarantee facility submitted by IDIs—4 hours.

Application to access emergency guarantee facility submitted by non-IDIs that issued FDIC-guaranteed debt under the DGP—4 hours.

Estimated Annual Burden:

Application to access emergency guarantee facility submitted by IDIs—32 hours.

Application to access emergency guarantee facility submitted by non-IDIs that issued FDIC-guaranteed debt under the DGP—16 hours.

Total Annual Burden—48 hours.

The FDIC is requesting comment on the new TLGP-related information collection proposed in Alternative B. The FDIC is also giving notice that the proposed collection of information has been submitted to OMB for review and approval. Comments are invited on: (1) Whether this collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (2) the accuracy of the estimates of the burden of the information collection, including the validity of the methodologies 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Interested parties are invited to submit written comments on the estimated burden by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- *E-mail: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Leneta Gregorie (202–898–3719), Counsel, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comment may also be submitted to the OMB Desk Officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503. All comments should refer to the name and number of the collection.

C. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC invites your comments on how to make this proposed regulation easier to understand. For example:

- Has the FDIC organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposed rule be more clearly stated?
- Does the proposed rule contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the proposed rule easier to understand? If so, what changes to the format would make the proposed rule easier to understand?
- What else could the FDIC do to make the proposed rule easier to understand?

D. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the proposed rule will not affect family well-being within the measure of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

List of Subjects in 12 CFR Part 370

Banks, Banking, Bank deposit insurance, Holding companies, National banks, Reporting and recordkeeping requirements, Savings associations.

For the reasons discussed in the preamble, the Federal Deposit Insurance Corporation proposes to amend 12 CFR Part 370 as follows:

PART 370—TEMPORARY LIQUIDITY GUARANTEE PROGRAM

1. The authority citation for part 370 continues to read as follows:

Authority: 12 U.S.C. 1813(l), 1813(m), 1817(i), 1818, 1819(a)(Tenth), 1820(f), 1821(a), 1821(c), 1821(d), 1823(c)(4).

2. Amend § 370.2 by revising paragraph (n) to read as follows:

§ 370.2 Definitions.

* * * * *

(n) *Issuance period.* Except as provided in paragraph (n)(2) of this section, the term ''issuance period'' means

(i) With respect to the issuance, by a participating entity that is either an insured depository institution, an entity that has issued FDIC-guaranteed debt before April 1, 2009, or an entity that has been approved pursuant to § 370.3(h) to issue FDIC-guaranteed debt after June 30, 2009 and on or before October 31, 2009, of:

(A) Mandatory convertible debt, the period from February 27, 2009 to and including October 31, 2009, and

(B) All other senior unsecured debt, the period from October 14, 2008 to and including October 31, 2009; and

(ii) With respect to the issuance, by any other participating entity, of

(A) Mandatory convertible debt, the period from February 27, 2009 to and including June 30, 2009, and

(B) All other senior unsecured debt, the period from October 14, 2008 to and including June 30, 2009.

(2) The ''issuance period'' for a participating entity that has been approved to issue FDIC-guaranteed debt pursuant to § 370.3(k) of this part is the period after October 31, 2009 and on or before April 30, 2010.

* * * * *

3. Amend section 370.3 as follows:

a. Revise paragraph (d)(2);

b. Revise paragraphs (h)(1) through (h)(3), (h)(5), and (h)(6); and

c. Add paragraph (k), to read as follows:

§ 370.3 Debt Guarantee Program.

* * * * *

(d) * * *

(2) With respect to debt that is issued on or after April 1, 2009 by a participating entity that is either an insured depository institution, a participating entity that has issued guaranteed debt before April 1, 2009, a participating entity that has been approved pursuant to § 370.3(h) to issue guaranteed debt after June 30, 2009 and on or before October 31, 2009, or a participating entity that has been approved pursuant to § 370.3(k) to issue guaranteed debt after October 31, 2009, the guarantee expires on the earliest of the mandatory conversion date for mandatory convertible debt, the

maturity date of the debt, or December 31, 2012.

* * * * *

(h) *Applications for exceptions, eligibility, and issuance of certain debt.* (1) The following requests require written application to the FDIC and the appropriate Federal banking agency of the entity or the entity's lead affiliated insured depository institution:

(i) A request by a participating entity to establish, increase, or decrease its debt guarantee limit,

(ii) A request by an entity that becomes an eligible entity after October 13, 2008, for an increase in its presumptive debt guarantee limit of zero,

(iii) A request by a non-participating surviving entity in a merger transaction to opt in to either the debt guarantee program or the transaction account guarantee program,

(iv) A request by an affiliate of an insured depository institution to participate in the debt guarantee program,

(v) A request by a participating entity to issue FDIC-guaranteed mandatory convertible debt,

(vi) A request by a participating entity that is neither an insured depository institution nor an entity that has issued FDIC-guaranteed debt before April 1, 2009, to issue FDIC-guaranteed debt after June 30, 2009 and on or before October 31, 2009,

(vii) A request by a participating entity to issue senior unsecured non-guaranteed debt after June 30, 2009, and

(viii) A request by a participating entity to issue FDIC-guaranteed debt after October 31, 2009 under the Emergency Guarantee Facility pursuant to paragraph (k) of this section.

(2) Each letter application must describe the details of the request, provide a summary of the applicant's strategic operating plan, describe the proposed use of the debt proceeds, and

(i) With respect to an application for approval of the issuance of mandatory convertible debt, must also include:

(A) The proposed date of issuance,

(B) The total amount of the mandatory convertible debt to be issued,

(C) The mandatory conversion date,

(D) The conversion rate (*i.e.,* the total number of shares of common stock that will result from the conversion divided by the total dollar amount of the mandatory convertible debt to be issued),

(E) Confirmation that all applications and all notices required under the Bank Holding Company Act of 1956, as amended, the Home Owners' Loan Act, as amended, or the Change in Bank Control Act, as amended, have been submitted to the applicant's appropriate Federal banking agency in connection with the proposed issuance, and

(F) Any other relevant information that the FDIC deems appropriate;

(ii) With respect to an application pursuant to paragraph (h)(1)(vi) of this section to extend the period for issuance of FDIC-guaranteed debt to and including October 31, 2009, the entity's plans for the retirement of the guaranteed debt, a description of the entity's financial history, current condition, and future prospects, and any other relevant information that the FDIC deems appropriate;

(iii) With respect to an application pursuant to paragraph (h)(1)(vii) of this section to issue senior unsecured non-guaranteed debt, a summary of the applicant's strategic operating plan and the entity's plans for the retirement of any guaranteed debt; and

(iv) With respect to an application pursuant to paragraph (h)(1)(viii) of this section to issue FDIC-guaranteed debt under the Emergency Guarantee Facility, a projection of the sources and uses of funds through December 31, 2012, a summary of the entity's contingency plans, a description of the collateral that an entity can make available to secure the entity's obligation to reimburse the FDIC for any payments made pursuant to the guarantee, a description of the plans for retirement of the FDIC-guaranteed debt, a description of the market disruptions or other circumstances beyond the entity's control that prevent the entity from replacing maturing debt with non-guaranteed debt, a description of management's efforts to mitigate the effects of such disruptions or circumstances, conclusive evidence that demonstrates an entity's inability to issue non-guarantee debt, and any other relevant information.

(3) In addition to any other relevant factors that the FDIC deems appropriate, the FDIC will consider the following factors in evaluating applications filed pursuant to paragraph (h) of this section:

(i) For applications pursuant to paragraphs (h)(1)(i), (h)(1)(ii), (h)(1)(iii), and (h)(1)(v) of this section: the proposed use of the proceeds; the financial condition and supervisory history of the eligible/surviving entity;

(ii) For applications pursuant to paragraph (h)(1)(iv) of this section: the proposed use of the proceeds; the extent of the financial activity of the entities within the holding company structure; the strength, from a ratings perspective of the issuer of the obligations that will be guaranteed; the size and extent of the activities of the organization;

(iii) For applications pursuant to paragraph (h)(1)(vi) of this section: the proposed use of the proceeds; the entity's plans for the retirement of the guaranteed debt, the entity's financial history, current condition, future prospects, capital, management, and the risk presented to the FDIC;

(iv) For applications pursuant to paragraph (h)(1)(vii) of this section: the entity's plans for the retirement of the guaranteed debt, and

(v) For applications pursuant to paragraph (h)(1)(viii) of this section, the applicant's strategic operating plan, the proposed use of the debt proceeds, the entity's plans for the retirement of the FDIC-guaranteed debt, the entity's contingency plans, the nature and extent of the market disruptions or other circumstances beyond the entity's control that prevent the entity from replacing maturing debt with non-guaranteed debt, the collateral that an entity can make available to secure the entity's obligation to reimburse the FDIC for any payments made pursuant to the guarantee, management's efforts to mitigate the effects of such conditions or circumstances, the evidence that demonstrates an entity's inability to issue non-guarantee debt, and the risk presented to the FDIC.

* * * * *

(5) The filing deadlines for certain applications are:

(i) At the same time the merger application is filed with the appropriate Federal banking agency, for an application pursuant to paragraph (h)(1)(iii) of this section (which must include a copy of the merger application);

(ii) October 31, 2009, for an application pursuant to paragraph (h)(1)(v) of this section that is filed by a participating entity that is either an insured depository institution, an entity that has issued FDIC-guaranteed debt before April 1, 2009, or an entity that has been approved pursuant to paragraph (h) of this section to issue FDIC-guaranteed debt after June 30, 2009 and on or before October 31, 2009;

(iii) June 30, 2009, for an application pursuant to paragraph (h)(1)(v) of this section that is filed by a participating entity other than an entity described in paragraph (h)(5)(ii) of this section;

(iv) June 30, 2009, for an application pursuant to paragraph (h)(1)(vi); and

(v) April 30, 2010, for applications pursuant to paragraph (h)(1)(viii).

(6) In granting its approval of an application filed pursuant to paragraph (h) of this section the FDIC may impose

any conditions it deems appropriate, including without limitation, requirements that the issuer

(i) Hedge any foreign currency risk, or

(ii) Pledge collateral to secure the issuer's obligation to reimburse the FDIC for any payments made pursuant to the guarantee.

(iii) Limit executive compensation and bonuses, and/or

(iv) Limit or refrain from the payment of dividends.

* * * * *

(k) Emergency Guarantee Facility. In the event that a participating entity that is either an insured depository institution or an entity that has issued FDIC-guaranteed debt on or before September 9, 2009 is unable, after October 31, 2009, to issue non-guaranteed debt to replace maturing senior unsecured debt as a result of market disruptions or other circumstances beyond the entity's control, the participating entity may, with the FDIC's prior approval under paragraph (h) of this section, issue FDIC-guaranteed debt after October 31, 2009 and on or before April 30, 2010. Any such issuance is subject to all of the terms and conditions imposed by the FDIC in its approval decision as well as all of the provisions of this part, including without limitation, the payment of the applicable assessment and compliance with the disclosure requirements.

4. Amend section 370.5 as follows:

a. Revise paragraph (f); and

b. Revise paragraph (h)(2), to read as follows:

§ 370.5 Participation.

* * * * *

(f) Except as provided in paragraphs (g), (j), and (k) of § 370.3, participating entities are not permitted to select which newly issued senior unsecured debt is guaranteed debt; all senior unsecured debt issued by a participating entity up to its debt guarantee limit must be issued and identified as FDIC-guaranteed debt as and when issued.

* * * * *

(h) * * *

(2) Each participating entity that is either an insured depository institution, an entity that has issued FDIC-guaranteed debt before April 1, 2009, an entity that has been approved pursuant to § 370.3(h) to issue FDIC-guaranteed debt after June 30, 2009 and on or before October 31, 2009, or a participating entity that has been approved pursuant to § 370.3(k) to issue FDIC-guaranteed debt after October 31, 2009, must include the following disclosure statement in all written materials provided to lenders or creditors regarding any senior unsecured debt that is issued by it during the applicable issuance period and that is guaranteed under the debt guarantee program:

This debt is guaranteed under the Federal Deposit Insurance Corporation's Temporary Liquidity Guarantee Program and is backed by the full faith and credit of the United States. The details of the FDIC guarantee are provided in the FDIC's regulations, 12 CFR Part 370, and at the FDIC's Web site, http://www.fdic.gov/tlgp. [If the debt being issued is mandatory convertible debt, add: *The expiration date of the FDIC's guarantee is the earlier of the mandatory conversion date or December 31, 2012*]. [If the debt being issued is any other senior unsecured debt, add: *The expiration date of the FDIC's guarantee is the earlier of the maturity date of the debt or December 31, 2012.*]

* * * * *

5. Amend section 370.6 as follows:

a. Revise paragraph (d)(1); and

b. Add paragraph (i), to read as follows:

§ 370.6 Assessments under the Debt Guarantee Program.

* * * * *

(d) *Amount of assessments for debt within the debt guarantee limit (1) Calculation of assessment.* Subject to paragraphs (d)(3) and (h) of this section, and except as provided in paragraph (i) of this section, the amount of assessment will be determined by multiplying the amount of FDIC-guaranteed debt times the term of the debt or, in the case of mandatory convertible debt, the time period from issuance to the mandatory conversion date, times an annualized assessment rate determined in accordance with the following table.

For debt with a maturity or time period to conversion date of	The annualized assessment rate (in basis points) is
180 days or less (excluding overnight debt)	50
181–364 days	75
365 days or greater	100

* * * * *

(i) *Assessment for Debt issued under the Emergency Guarantee Facility.* The amount of the assessment for FDIC-guaranteed debt issued pursuant to § 370.3(k) of this part is equal to the amount of the debt times the term of the debt (or in the case of mandatory convertible debt, the time period to conversion) times an annualized assessment rate of 300 basis points, or such greater rate as the FDIC may determine in its decision approving such issuance.

Dated at Washington DC, this 9th day of September 2009.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–22372 Filed 9–15–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2008–1292; Notice No. 09–05A]

RIN 2120–AJ35

Flightcrew Alerting; Reopening of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: On July 9, 2009, the FAA published an NPRM to amend the airworthiness standards for flightcrew alerting and invited comments for a 60-day period. The comment period closed on September 8, 2009; however, the FAA is reopening the comment period for an additional 15 days in response to requests from The Boeing Company; the Air Line Pilots Association, International; the General Aviation Manufacturers Association; and Airbus. All of the requestors stated that reopening the comment period is needed to permit them additional time to develop comments responsive to Notice No. 09–05. Reopening the comment period will allow the requestors and others additional time to review and comment on the proposal.

DATES: The comment period for the NPRM published on July 9, 2009 (74 FR 32810) closed September 8, 2009, and is reopened until October 1, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2008–1292 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.
- *Hand Delivery:* Bring 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. 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 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 or 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.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this proposed rule contact Loran Haworth, FAA, Airplane and Flightcrew Interface Branch (ANM–111), Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW, Renton, Washington 98057–3356; telephone (425) 227–1133; facsimile 425–227–1232; e-mail *Loran.Haworth@faa.gov.*

For legal questions concerning this proposed rule contact Doug Anderson, FAA, Office of the Regional Counsel (ANM–7), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2166; facsimile 425–227–1007; e-mail *Douglas.Anderson@faa.gov.*

SUPPLEMENTARY 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 only 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 the 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 it 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 at *http://www.regulations.gov*;

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm*; 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.

Background

On July 9, 2009, (74 FR 32810) Notice No. 09–05, ''Flightcrew Alerting'' that would amend the airworthiness standards for flightcrew alerting was published in the **Federal Register**. The comment period closed September 8.

By requests dated August 28, 2009, from The Boeing Company; September 2, 2009, from the Air Line Pilots Association, International (ALPA); September 3, 2009, from Airbus; and September 4, 2009, from the General Aviation Manufacturers Association (GAMA); the FAA was asked to extend the comment period by 60 days to permit a more careful review and consideration of the proposed rule.

The FAA considered the requests and has determined that reopening the comment period for an additional 15 days will allow The Boeing Company, ALPA, Airbus, GAMA and others, to complete their review and provide responsive comments on the NPRM. Reopening the comment period for the requested additional 60 days would adversely impact the FAA's harmonization efforts with the European Aviation Safety Agency.

The FAA finds it in the public interest to reopen the comment period for fifteen (15) days to give all interested persons additional time to complete their review and comments on the proposal.

Issued in Washington, DC, on September 11, 2009.

Brenda D. Courtney,

Acting Director, Office of Rulemaking.

[FR Doc. E9–22343 Filed 9–15–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 93

[Docket No. FAA–2009–0837; Airspace Docket No. 09–AWA–2; Notice No. 09–11]

RIN 2120–AJ59

Proposed Modification of the New York, NY, Class B Airspace Area; and Proposed Establishment of the New York Class B Airspace Hudson River and East River Exclusion Special Flight Rules Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to make a minor modification to the New York,

NY, Class B airspace area by adjusting the floor of Class B airspace above a portion of the Hudson River to 1,300 feet above mean sea level (MSL). Additionally, this action proposes to establish a Special Flight Rules Area (SFRA) over the Hudson River and East River to mandate certain pilot operating practices for flight within the Hudson River and East River Class B airspace Exclusions. The FAA is proposing this action to enhance the safety of flight operations in the New York Class B airspace Exclusion areas.

DATES: Comments must be received on or before October 16, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–0837 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, the 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.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this proposed rule, contact Paul Gallant, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

For legal questions concerning this proposed rule, contact Lorelei Peter, Office of the Chief Counsel, AGC–220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3134.

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 related rulemaking documents.

Authority for This Rulemaking

The FAA's authority to issue 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. 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, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace.

Background

On August 8, 2009, a midair collision occurred between a helicopter and a single-engine, fixed-wing aircraft operating in accordance with visual flight rules (VFR) over the Hudson River near Hoboken, New Jersey. This accident prompted the FAA and the National Transportation Safety Board (NTSB) to examine the airspace configuration and pilot procedures that apply in the vicinity of the incident.

There are three major airports in the New York City area: John F. Kennedy International Airport (JFK); Newark Liberty International Airport (EWR): and LaGuardia Airport (LGA). The FAA has designated the airspace surrounding the three airports as Class B airspace. Class B airspace is designated to enhance safety around airports with high density air traffic operations. An air traffic control (ATC) clearance is required to enter Class B airspace and, with limited exceptions, all aircraft operating in the area must be equipped with a two-way radio and an operational transponder. ATC provides separation to aircraft operating within the Class B airspace area.

The New York Class B airspace area originated in 1971 when the FAA issued a final rule establishing a terminal control area (TCA) around the above mentioned airports (36 FR 13376 July 21, 1971). In 1991, the term ''TCA'' was replaced with ''Class B airspace'' as part of the Airspace Reclassification rule (56 FR 65638, December 17, 1991) which harmonized United States airspace classifications with the terminology used by the International Civil Aviation Organization (ICAO). The original TCA airspace configuration for these airports was developed with considerable public input. Concerns were expressed to the FAA regarding the impact of the new airspace on operations by general aviation users, police, fire and Coast Guard rescue activities, helicopter operators and seaplane operators. A workgroup was formed to address these concerns and as a result, the FAA decided to raise the floor of certain subareas near EWR and LGA to 1,100 feet MSL over the Hudson River and the East River to provide more accessible airspace for the above-described operations. These areas are commonly referred to as the Hudson River Exclusion and the East River Exclusion. The configuration of the New York Class B airspace area has essentially remained the same since designated as a TCA in 1971. The volume of air traffic in the area, however, has grown significantly since that time.

The Hudson River Exclusion extends along the Hudson River between the vicinity of the George Washington Bridge, on the north, and the Verrazano-Narrows Bridge on the south. The exclusion extends from the surface of the Hudson River up to the base of the overlying New York Class B airspace area. Currently, the floor of Class B airspace along the Hudson River varies between an altitude above 1,100 feet MSL and 1,500 feet MSL. The exclusion effectively is a ''cutout'' from the New York Class B airspace area and permits pilots to fly through the area without an ATC clearance.

The East River Class B Exclusion extends between the east and west banks of the East River from Governors Island to the north tip of Roosevelt Island. The exclusion extends from the surface of the river up to the base of the overlying Class B airspace. This proposal would not alter or amend the

configuration of the East River Exclusion.

Aeronautical charts that depict the New York Class B airspace area carry a note advising pilots that a high density of uncontrolled helicopter and fixed wing traffic operate in the Hudson River and East River Class B Exclusions. The note also requests that all aircraft self-announce their positions on the appropriate radio frequency as noted on the charts. The charts alert pilots to the heavy concentration of air tour operations in the vicinity of the Statue of Liberty and Ellis Island. Additionally, the charts provide voluntary procedures that are in effect for aircraft operating in the Hudson and East River exclusions. These procedures request that aircraft operating in the area:

- Not exceed 140 knots indicated airspeed;
- Turn on anticollision, position, navigation and/or landing lights; and
- Self announce on frequency 123.075 for the East River and 123.05 for the Hudson River.

These recommended procedures do not relieve pilots of compliance with applicable Federal regulations, including regulations covering minimum safe altitudes.

As a result of the August 8, 2009 accident, the FAA issued Notice to Airmen (NOTAM) number 9/3952 encouraging pilots to follow the recommended procedures described above. The FAA also formed a task force to review current procedures for VFR flight operations in the New York City area. A goal of the review was to identify safety enhancements to flight operations in the Hudson River area. The proposals in this notice respond to recommendations of the FAA's task force, including recommendations to amend 14 CFR part 93 to establish an SFRA covering the Hudson River and East River Exclusions and to define operational procedures for use within the SFRA. Additionally, an NTSB investigation of the accident is currently ongoing. Based on preliminary findings, the NTSB issued a number of recommendations that are similar to those developed by the FAA task force. This notice also responds to those recommendations. A copy of the ''Review of New York Visual Flight Rules Airspace: Task Force Report,'' dated August 28, 2009, has been placed in this rulemaking docket.

Discussion of the Proposals

14 CFR Part 71

The FAA is proposing an amendment to title 14 Code of Federal Regulations (14 CFR) part 71 to modify portions of the New York, NY, Class B airspace area in order to establish a uniform Class B airspace floor of 1,300 feet MSL above the Hudson River Class B Exclusion. The Hudson River Exclusion consists of that airspace overlying the Hudson River beginning near the Alpine Tower (a visual reference point north of the George Washington Bridge), south to the Verrazano-Narrows Bridge, from the surface up to the overlying floor of the New York Class B airspace area. Currently, the floor of Class B airspace above the Hudson River Exclusion varies between the altitudes of ''above'' 1,100 feet MSL and 1,500 feet MSL, at different points along the river. In order to change the Class B airspace floor to 1,300 feet MSL in that area, the FAA proposes to modify the legal description of Area D to remove two segments where the floor of Class B airspace extends from above 1,100 feet MSL over the Hudson River. The two segments to be removed from Area D are that airspace within a 6-mile radius circle of the LGA VOR/DME west of the east bank of the Hudson River; and that airspace within the 6.5-mile radius circle centered at lat. 40°41′30″ N., long. 74°09′59″ W. The modified Area D would only describe that airspace above 1,100 feet above that lies above the East River. A new Area K would be added to describe that Class B airspace extending upward from 1,300 feet MSL above the Hudson River. The Area E description would be modified to exclude that airspace contained in Area K. The purpose of this proposed change is to provide separate altitudes for aircraft conducting local operations within the Hudson River Exclusion and those overflight aircraft that are transiting through the area predominantly in level flight.

14 CFR Part 93

The FAA is also proposing to establish an SFRA in part 93 covering the New York Class B airspace Hudson River and East River Exclusions. The SFRA would mandate that pilots follow certain operating practices that at present are voluntary. In addition, pilots would need to comply with mandatory charted reporting points that would be established for position reporting in the Hudson River Exclusion. Lastly, the SFRA would incorporate restrictions for fixed wing aircraft operations in the East River Exclusion that are currently published in Flight Data Center NOTAM number 6/3495 and were imposed following an October 11, 2006 accident. This accident occurred when a fixed wing aircraft, attempting a 180° turn in the East River Exclusion, crashed into an apartment building in Manhattan, New York City.

The following voluntary practices, applicable in both the Hudson River and East River Exclusions, would become mandatory for all pilots:

- Maintain an indicated airspeed not to exceed 140 knots.
- Turn on anti-collision, position/navigation, and/or landing lights.
- Self announce position on the appropriate radio frequency for the East River or Hudson as depicted on the New York VFR Terminal Area Chart (TAC) and/or New York Helicopter Route Chart.

In addition, the following new procedures would be adopted:

For Operations in Both the East River and Hudson River Exclusions

- Pilots must have a current New York TAC chart and/or New York Helicopter Route Chart in the aircraft and familiarize themselves with the information contained therein.

For Hudson River Exclusion Operations

- Pilots must self announce at the charted mandatory reporting points, the following information: aircraft type and color, current position, direction of flight and altitude.
- Pilots must fly along the West shoreline of the Hudson River when southbound, and along the East shoreline of the Hudson River when northbound.
- Aircraft overflying the area within the Hudson River Exclusion, but not landing or departing any of the Manhattan heliports, or landing facilities, or conducting any local area operations, must transit the Hudson River Exclusion at or above an altitude of 1,000 feet MSL up to, but not including the floor of the overlying Class B airspace.

For East River Exclusion Operations

- VFR flight operations by fixed wing aircraft (excluding amphibious fixed wing aircraft landing or departing the New York Skyports, Inc., Seaplane Base) in the East River Class B Exclusion (from the southwestern tip of Governors Island to the northern tip of Roosevelt Island) are prohibited unless authorized and being controlled by ATC. To obtain authorization, pilots must contact LaGuardia Airport Traffic Control Tower prior to Governors Island.

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, the 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.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this proposed rule. The reasoning for this determination follows.

This rule merely sets a uniform ceiling in the Hudson River Exclusion to facilitate segregation of overflights from local traffic. Pilots would self-announce at the reporting points while in the Exclusion area. Pilot training regarding this change is voluntary. We are incorporating the existing NOTAM restricting certain fixed-wing operations in the East River Exclusion Area. Therefore, this rule does not change the quantity of flights, nor training requirements, and continues the existing safety restriction in the East River Exclusion Area. Pilots will be required to carry current charts, at a cost of $5.25 each. As a result, the expected cost is minimal. In addition, these changes are expected to improve airspace safety. We request comments with supporting justification regarding the FAA determination of minimal impact.

FAA has, therefore, determined that this proposed rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' 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 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 RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 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. We agree the rule may well affect a substantial number of small entities. However, the FAA expects this rule to impose only minimal cost; therefore there is not a significant economic 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 Assessment

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 has determined that it would have only a domestic impact and therefore no effect on international trade.

Unfunded Mandates Assessment

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 (in 1995 dollars) 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 of the Act do not apply.

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 that this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances. The FAA has further determined that the modification of the New York, NY Class B airspace area qualifies for the categorical exclusion identified in paragraph 311a and involves no extraordinary circumstances. Finally, the FAA determined the proposed SFAR and corresponding operational and pilot procedures qualify for the categorical exclusion identified in paragraph 311j and involve no extraordinary circumstances.

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 only 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 the 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.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents 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 71

Airspace, Incorporation by reference, Navigation (air).

14 CFR Part 93

Aircraft flight, Airspace, Aviation safety, Air traffic control, Aircraft, Airmen, Airports.

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 and 14 CFR part 93 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9T, Airspace Designations and Reporting Points, dated and effective September 15, 2009, is amended as follows:

Paragraph 3000 Class B Airspace

* * * * *

AEA NY B New York, NY [Amended]

* * * * *

Boundaries

By removing the description of Area D and Area E and substituting the following; and by adding a new Area K as follows:

Area D. That airspace extending upward from above 1,100 feet MSL to and including 7,000 feet MSL within the area between the east and west banks of the East River southwest of the north end of Roosevelt Island.

Area E. That airspace extending upward from 1,500 feet MSL to and including 7,000 feet MSL within the area bounded by a line beginning at the intersection of the 20-mile radius circle of JFK VORTAC and the JFK VORTAC 208° radial, thence counterclockwise along the 20-mile arc to its intersection with the Long Island shoreline, thence southwest along the Long Island shoreline to and counterclockwise along the 13-mile radius circle of JFK VORTAC to and counterclockwise along the 11-mile radius circle of LGA VOR/DME to the LGA VOR/DME 351° radial, thence direct to the LGA VOR/DME 283° radial at the LGA VOR/DME 17-mile DME fix, thence counterclockwise along a 10-mile radius circle centered at lat. 40°41′30″ N., long. 74°09′59″ W., to its intersection with the Colts Neck VORTAC 005° radial, thence direct to the intersection of the Colts Neck VORTAC 034° radial and the New Jersey shoreline at Sandy Hook, thence south along the New Jersey shoreline to the point of beginning; and that airspace within 2 miles each side of the Newark ILS Runway 4L localizer course, extending from the CHESA outer marker to 6 miles southwest of the outer marker, excluding that airspace within and below Areas A, B, C, and D previously described; and excluding the airspace within and below Areas F, J and K hereinafter described.

Area K. That airspace extending upward from 1,300 feet MSL, to and including 7,000 feet MSL north of LaGuardia Airport within the area beginning at the intersection of the LGA VOR/DME 11-mile DME arc and the west bank of the Hudson River (near Alpine Tower) thence south along the west bank of the Hudson River to intersect the Colts Neck VOR/DME 012° (T)/023° (M) radial, thence southwest along the Colts Neck 012° (T)/023° (M) radial to the Hudson River shoreline, thence south along the shoreline to the Verrazano-Narrows Bridge, thence east along the Bridge to the east bank of the Hudson River, thence north along the east bank of the Hudson River to lat. 40°38′39″ N., long. 74°02′03″ W., thence north along a line drawn direct to the southwesternmost point of Governors Island, thence north along a line drawn direct to the southwest tip of Manhattan Island, thence north along the east bank of the Hudson River to the LGA VOR/DME 11–DME arc, north of LaGuardia Airport, thence counterclockwise along the 11-mile arc to the point of beginning.

* * * * *

PART 93—SPECIAL AIR TRAFFIC RULES

3. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

4. Add subpart W, consisting of §§ 93.350 through 93.353, to read as follows:

Subpart W—New York Class B Airspace Hudson River and East River Exclusion Special Flight Rules Area

Sec.

93.350 Definitions.
93.351 General requirements for operating in the East River and/or Hudson River Exclusions.
93.352 Hudson River Exclusion specific procedures.
93.353 East River Exclusion specific procedures.

Subpart W—New York Class B Airspace Hudson River and East River Exclusion Special Flight Rules Area

§ 93.350 Definitions.

For the purposes of this subpart:

New York Class B airspace East River Exclusion is an area between the east and west banks of, and overlying, the East River from the southwestern tip of Governors Island to the north tip of Roosevelt Island, from the surface up to 1,100 feet MSL.

New York Class B airspace Hudson River Exclusion is an area from the surface up to but not including the overlying floor of the New York Class B airspace area, between the east and west banks of, and overlying, the Hudson River within the area beginning north of LaGuardia Airport at the intersection of the LGA VOR/DME 11-mile DME arc and the west bank of the Hudson River (near Alpine Tower) thence south along the west bank of the Hudson River to intersect the Colts Neck VOR/DME 012° (T)/023° (M) radial, thence southwest along the Colts Neck 012° (T)/023° (M) radial to the Hudson River shoreline,

thence south along the shoreline to the Verrazano-Narrows Bridge, thence east along the Bridge to the east bank of the Hudson River, thence north along the east bank of the Hudson River to lat. 40°38′39″ N., long. 74°02′03″ W., thence north along a line drawn direct to the southwesternmost point of Governors Island, thence north along a line drawn direct to the southwest tip of Manhattan Island, thence north along the east bank of the Hudson River to the LGA VOR/DME 11–DME arc, north of LaGuardia Airport, thence counterclockwise along the 11-mile arc to the point of beginning.

§ 93.351 General requirements for operating in the East River and/or Hudson River Exclusions.

Pilots must adhere to the following requirements:

(a) Maintain an indicated airspeed not to exceed 140 knots.

(b) Turn on anticollision, position/navigation, and/or landing lights.

(c) Self announce position on the appropriate radio frequency for the East River or Hudson River as depicted on the New York VFR Terminal Area Chart (TAC) and/or New York Helicopter Route Chart.

(d) Have a current New York TAC chart and/or New York Helicopter Route Chart in the aircraft and be familiar with the information contained therein.

§ 93.352 Hudson River Exclusion specific procedures.

In addition to the requirements in § 93.351, the following procedures apply:

(a) Pilots must self announce at the charted mandatory reporting points, the following information: Aircraft type and color, current position, direction of flight and altitude.

(b) Pilots must fly along the West shoreline of the Hudson River when southbound, and along the East shoreline of the Hudson River when northbound.

(c) Aircraft overflying the area within the Hudson River Exclusion, but not landing or departing any of the Manhattan heliports, or conducting any local area operations, must transit the Hudson River Exclusion at or above an altitude of 1,000 feet MSL up to, but not including the floor of the overlying Class B airspace.

§ 93.353 East River Exclusion specific procedures.

In addition to the requirements in § 93.351, VFR flight operations by fixed wing aircraft (excluding seaplane fixed wing aircraft landing or departing the New York Skyports, Inc. seaplane base) in the East River Class B Exclusion extending from the southwestern tip of Governors Island to the north tip of Roosevelt Island are prohibited unless authorized and being controlled by ATC. To obtain authorization, pilots must contact LaGuardia Airport Traffic Control Tower prior to Governors Island.

Issued in Washington, DC, on September 11, 2009.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E9–22344 Filed 9–15–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 17

[REG–140492–02]

RIN 1545–BDO4

Definition of Solid Waste Disposal Facilities for Tax-Exempt Bond Purposes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking; Notice of proposed rulemaking; Notice of public hearing on proposed rulemaking.

SUMMARY: This document contains proposed regulations on the definition of solid waste disposal facilities for purposes of the rules applicable to tax-exempt bonds issued by State and local governments. These proposed regulations provide guidance to State and local governments that issue tax-exempt bonds to finance solid waste disposal facilities and to taxpayers that use those facilities. This document also withdraws the notice of proposed rulemaking that was published in the **Federal Register** on May 10, 2004, proposes to remove certain existing regulations that provide rules for determining whether a facility is a solid waste disposal facility, and contains a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by December 15, 2009. Outlines of topics to be discussed at the public hearing scheduled for January 5, 2010 must be received by December 17, 2009.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–140492–02), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered to: CC:PA:LPD:PR Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–140492–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–140492–02). The public hearing will be held in room 2615 at the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Aviva Roth at (202) 622–3980; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, e-mail *Richard.A.Hurst@irscousel.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

This document proposes to amend the Income Tax Regulations (26 CFR part 1) under section 142 of the Internal Revenue Code (Code) to provide rules for determining whether a facility is a solid waste disposal facility under section 142(a)(6). This document also proposes to remove certain existing regulations that provide rules for determining whether a facility is a solid waste disposal facility and contains a notice of public hearing on these proposed regulations. On May 10, 2004, the IRS published a notice of proposed rulemaking (REG–140492–02) in the **Federal Register** (69 FR 25856) regarding when a facility qualifies as a solid waste disposal facility under section 142 (2004 Proposed Regulations). The 2004 Proposed Regulations proposed a new § 1.142(a)(6)–1 of the Income Tax Regulations and would have removed existing § 1.103–8(f)(2) and § 17.1 of the temporary Income Tax Regulations on this subject (together, the Existing Regulations). Comments on the 2004 Proposed Regulations were received and a hearing was held on August 11, 2004. After consideration of the public comments, the IRS and the Treasury Department propose extensive changes to the 2004 Proposed Regulations. In order to allow the public an opportunity to comment with respect to these extensive changes, we are issuing these proposed regulations and holding a public hearing on these proposed regulations.

Explanation of Provisions

1. Introduction and Existing Regulations

In general, interest on State or local bonds is excludable from gross income

under section 103(a). Under section 103(b), however, interest on private activity bond is excludable from gross income under section 103 only if the bond meets the requirements for a qualified bond under section 141(e) and other applicable requirements under section 103. Section 141(e) defines a qualified bond to include an exempt facility bond that meets certain requirements. Section 142(a) defines an exempt facility bond to mean any bond that is issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide an exempt facility specified in section 142(a). Section 142(a)(6) includes a solid waste disposal facility as one specified type of qualified exempt facility.

Section 1.103–8(f)(2)(ii)(a) of the Existing Regulations generally defines solid waste disposal facilities to mean any property or portion thereof used for the collection, storage, treatment, utilization, processing, or final disposal of solid waste. Section 1.103–8(f)(2)(ii)(b) of the Existing Regulations provides that the term solid waste has the same meaning as in former section 203(4) of the Solid Waste Disposal Act (42 U.S.C. 3252(4)), as quoted in § 1.103–8(f)(2)(ii)(b), except that material will not qualify as solid waste unless, on the date of issue of the obligations issued to provide the facility to dispose of the waste material, it is property that is useless, unused, unwanted, or discarded solid material that has no market or other value at the place where the property is located (No-Value Test). Thus, under the Existing Regulations, if any person is willing to purchase property at any price, the property fails to constitute waste. By contrast, under § 1.103–8(f)(ii)(B) of the Existing Regulations, if any person is willing to remove the property at his own expense but is unwilling to purchase it at any price, the material is waste.

Former section 203(4) of the Solid Waste Disposal Act, as quoted in § 1.103–8(f)(2)(ii)(b) of the Existing Regulations, provides that the term solid waste means:

> [g]arbage, refuse, and other discarded solid materials, including solid-waste materials resulting from industrial, commercial, and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows or other common water pollutants.

Section 1.103–8(f)(2)(ii)(c) of the Existing Regulations provides that a facility that disposes of solid waste by reconstituting, converting, or otherwise recycling it into material that is not waste also qualifies as a solid waste disposal facility if solid waste constitutes at least 65 percent, by weight or volume, of the total materials introduced into the recycling process. Such a recycling facility does not fail to qualify as a solid waste disposal facility under the Existing Regulations solely because it operates at a profit.

Section 17.1(a) of the Existing Regulations generally provides that, for mixed-use facilities that serve a solid waste disposal function and other functions, only the portion of the cost of the property allocable to the function of solid waste disposal qualifies as an eligible cost of a solid waste disposal facility. Section 17.1(a) of the Existing Regulations further provides that a facility that otherwise qualifies as a solid waste disposal facility will not be treated as having a function other than solid waste disposal merely because material or heat that has utility or value is recovered or results from the disposal process. Section 17.1(a) of the Existing Regulations provides that, when materials or heat are recovered, the waste disposal function includes the processing of those materials or heat that occurs in order to put them into the form in which the materials or heat are in fact sold or used, but does not include further processing that converts the materials or heat into other products.

Section 17.1(b) of the Existing Regulations provides that the portion of the cost of property allocable to solid waste disposal is determined by allocating the cost of the property between the property's solid waste disposal function and any other functions by any method that reasonably reflects a separation of costs for each function of the property, based on the facts and circumstances.

2. The 2004 Proposed Regulations

In light of the changes that have occurred in the waste recycling industry since the Existing Regulations were issued in the 1970s, the IRS and the Treasury Department issued Notice 2002–51 (2002–2 CB 131), which invited comments on issues concerning the application of section 142 to solid waste disposal facilities, including recycling facilities. After consideration of the public comments on the Notice, the IRS and the Treasury Department issued the 2004 Proposed Regulations. *See* § 601.601(d)(2)(ii)(b).

The 2004 Proposed Regulations proposed to eliminate the No-Value Test for determining whether material is solid waste. Instead, the 2004 Proposed Regulations, retaining the definition of solid waste under former section 203(4) of the Solid Waste Disposal Act, provided that ''garbage, refuse and other discarded solid materials'' meant material that is solid and that is introduced into a final disposal process, conversion process, recovery process, or transformation process (as those terms were defined in the 2004 Proposed Regulations) unless such material fell within one of several categories of specifically excluded items. Included within the categories of specifically excluded items under the 2004 Proposed Regulations were: (1) Fossil fuels or other materials created for the principal purpose of converting the materials to heat, hot water, steam, or other useful energy, introduced into a conversion process; (2) precious metals introduced into a recovery process; (3) hazardous materials subject to final permit requirements under subtitle C of title II of the Solid Waste Disposal Act (as in effect on October, 22, 1986, the date of enactment of the Tax Reform Act of 1986); and (4) radioactive materials.

The 2004 Proposed Regulations provided that a facility is a solid waste disposal facility to the extent that the facility is: (1) Used to perform a solid waste disposal function, (2) used to perform a preliminary function, or (3) functionally related and subordinate (within the meaning of § 1.103–8(a)(3)) to a facility that is used to perform a solid waste disposal function or a preliminary function.

The 2004 Proposed Regulations further defined a solid waste disposal function as the processing of solid waste in (1) a final disposal process, (2) a conversion process, (3) a recovery process, or (4) a transformation process. A final disposal process was defined as the placement of material in a landfill or the incineration of material without any useful energy being captured. A conversion process was defined as a process in which material is incinerated and heat, hot water, or steam is created and captured as useful energy beginning with the incineration of material and ending at the point at which the latest of heat, hot water, or steam is created. A recovery process was defined as a process that starts with the melting or re-pulping of material to return the material to a form in which the material previously existed for use in the fabrication of an end product and ends immediately before the material is processed in the same or substantially the same way that virgin material is

processed to fabricate the end product. With respect to such definition of recovery process, the 2004 Proposed Regulations further provided that if an end product is fabricated entirely from non-virgin material, the recovery process ends immediately before the non-virgin material is processed in the same or substantially the same way that virgin material is processed in a comparable fabrication process that uses only virgin material or a combination of virgin and non-virgin material. According to the 2004 Proposed Regulations, refurbishing, repair, or similar activities are not recovery processes. The IRS and Treasury Department reserved on the definition of transformation process.

The 2004 Proposed Regulations provided that a preliminary function is the collection, separation, sorting, storage, treatment, processing, disassembly, or handling of solid material that is preliminary and directly related to a solid waste disposal function unless for each year while the issue is outstanding, more than 50 percent, by weight or volume, of the total materials that result from the entire activity (both the part that is preliminary and directly related to a solid waste disposal function and the part that is not preliminary and directly related to a solid waste disposal function) is solid waste.

The 2004 Proposed Regulations further provided that if a facility is used to perform both (1) a solid waste disposal function or a preliminary function, and (2) another function, then the costs of the facility allocable to the solid waste disposal function or the preliminary function are determined using any reasonable method, based on all the facts and circumstances. This rule applies, for example, if a facility is used (1) to process solid waste in a recovery process, and (2) to perform another function that is neither a solid waste disposal function (because it does not process solid waste in a final disposal process, conversion process, recovery process, or transformation process) nor a preliminary function (because it is not preliminary and directly related to a solid waste disposal function). The 2004 Proposed Regulations also contained a special rule to determine the portion of the costs of property that are allocable to a solid waste disposal function if the property is used to perform a final disposal process, conversion process, recovery process, or transformation process and the inputs to the process consist of solid waste and material that is not solid waste. Under this special rule, the portion of the costs of property used to perform such a process that are allocable to a solid waste disposal function equals the lowest percentage of solid waste processed in the process in any year while the issue is outstanding. The percentage of solid waste processed in such a process for any year is the percentage, by weight or volume, of the total materials processed in the process that constitute solid waste for that year. If, however, for each year while the issue is outstanding, solid waste constitutes at least 80 percent, by weight or volume, of the total materials processed in the process, all of the costs of the property used to perform the process are allocable to a solid waste disposal function.

3. Comments on the 2004 Proposed Regulations

In response to the 2004 Proposed Regulation, comments were received with respect to the definition of solid waste. Some commentators criticized the elimination of the No-Value Test from the definition of solid waste in the 2004 Proposed Regulations, while other commentators agreed with the deletion of the No-Value Test. Commentators suggested various changes to the proposed definition of solid waste. Other commentators suggested clarification that community waste qualifies as solid waste.

Comments also were received with respect to categories of items specifically excluded from the definition of solid waste under the 2004 Proposed Regulations. Some commentators suggested that the exclusion from solid waste for fossil fuels that are introduced into an energy conversion process is too broad because it excludes fossil fuels that are low-grade, such as waste coal that is not grown, harvested, produced, mined, or otherwise created for the principal purpose of converting material to useful energy. Other commentators suggested that solid waste introduced into an energy conversion process should include certain byproducts of typical agricultural operations that are not engaged in with the principal purpose of growing, harvesting, producing, or otherwise creating products to convert such products into useful energy. Commentators further suggested clarification of the exclusion from the definition of solid waste for precious metals introduced to a recycling process. Still other commentators further suggested the inclusion of hazardous waste and radioactive waste as solid waste.

Comments were received with respect to the various solid waste disposal processes. With respect to the final disposal process, some commentators suggested the inclusion of indefinite confinement of material within a final disposal process. With respect to the energy conversion process, commentators suggested including methods of creating energy besides combustion within an energy conversion process and expanding the scope of an eligible energy conversion process to include certain related processes. Another comment suggested disregarding small amounts of otherwise-ineligible fossil fuels and chemical and other additives.

Comments also were received with respect to mixed-input facilities that receive both solid waste material and other types of input. Commentators suggested an expansion of the scope of permitted mixed-input facilities to include an allowable amount of 35 percent or less of material that is not solid waste to be introduced to an energy conversion process or a recycling process without disqualifying those processes. Commentators also suggested measuring the allowable amount of non-solid waste input into a mixed-input facility based on the average percentage of inputs that are not solid waste over the life of the issue.

The IRS and Treasury Department have considered these comments, and the proposed regulations contained in this document implement a number of these recommendations.

4. Regulations Proposed in This Document

A. Solid Waste Disposal Facility

The proposed regulations define a solid waste disposal facility as any facility to the extent that it (1) processes solid waste in a qualified solid waste disposal process, (2) performs a preliminary function, or (3) is functionally related and subordinate (within the meaning of § 1.103–8(a)(3)) to a facility which either processes solid waste in a qualified solid waste disposal process or performs a preliminary function.

B. Definition of Solid Waste

The proposed regulations eliminate the No-Value Test, as did the 2004 Regulations. The IRS and the Treasury Department have determined that whether material has value, or value apart from recycling as one commentator suggested, is unadministrable. However, in response to the comments received with respect to the 2004 Proposed Regulations, the IRS and the Treasury Department have determined that a definition of solid waste is needed that takes into account

the material itself and not only the process by which such material is to be disposed or recycled. Accordingly, the proposed regulations define solid waste as garbage, refuse, and other solid material, derived from any agricultural, commercial, consumer, or industrial operation or activity that is either used material or residual material and that is reasonably expected by the person who purchases or otherwise acquires such material to be introduced within a reasonable time after such purchase or acquisition in a qualified solid waste disposal process. While the type of disposal or recycling process does not affect the treatment of material as solid waste, the person acquiring such material must intend to place such materials into a qualified solid waste disposal process within a reasonable time after acquisition. Material that the acquiring party intends to store or resell to the general public is not solid waste under the proposed regulations.

Used material is defined in the proposed regulations as any material that has been used previously as an agricultural, commercial, consumer, or industrial product or as a component of any such product. It is the intention of the IRS and Treasury Department that this definition be interpreted broadly to encompass popularly understood uses of materials but that such definition should not apply to smaller products purchased by manufacturers and incorporated by such manufacturer into a larger product.

Residual material is defined in the proposed regulations as any residual byproduct or excess unused raw material that remains from the production of any agricultural, commercial, consumer, or industrial product, provided that material qualifies as residual material only to the extent that it constitutes less than five percent of the total material introduced into the production process and it has a fair market value that is reasonably expected to be lower than that of any product made in that production process. This definition is intended to encompass a wide range of products from waste coal to byproducts of typical agricultural operations, and is intended to further encourage innovation in the full use of all resources.

C. Specific Exclusions From the Definition of Solid Waste

The proposed regulations exclude from the definition of solid waste the following items: (1) Virgin material; (2) solids within liquids and liquid waste; (3) precious metals; (4) hazardous material; and (5) radioactive material. The definition of virgin material in the proposed regulations encompasses all raw materials except to the extent such material becomes remainder material. The proposed regulations further clarify that a material does not cease to be virgin material until it has been processed to a point where no further processing is expected.

The proposed regulations specifically exclude certain commonly-recognized precious metals from the definition of solid waste because recovery of these metals generally would take place with or without a recycling industry.

With respect to hazardous and radioactive waste, the statute and legislative history suggest that Congress intended to exclude hazardous waste and radioactive waste from solid waste. The statute treats qualified hazardous waste facilities separately as eligible exempt facilities under section 142(a)(10) in addition to solid waste disposal facilities under section 142(a)(6). In addition, the legislative history provides, in relevant part, that ''the conferees wish to clarify that solid waste does not include most hazardous waste (including radioactive waste).'' H. Rep. No. 99–841, 99th Cong. 2d. Sess (September 18, 1986), 1986–3 C.B. Vol. 4, at II–704. Accordingly, such items are specifically excluded from the definition of solid waste.

D. Qualified Solid Waste Disposal Process

The proposed regulations provide for three eligible types of solid waste disposal processes, including a final disposal process, an energy conversion process, and a recycling process. In order to provide flexibility for future innovation, absent an express restriction in the proposed regulations, a solid waste disposal function may employ any biological, engineering, industrial, or technological method.

Under the proposed regulations, a final disposal process includes the placement of solid waste in a landfill, the incineration of solid waste without capturing any useful energy, and the containment of solid waste with the reasonable expectation that the containment will continue indefinitely and that the solid waste has no current or future beneficial use.

To accommodate existing and new technologies, the description of an energy conversion process in the proposed regulations includes thermal, chemical, and other processes used to create and capture useful energy. The proposed regulations also permit 35 percent or less of the material introduced to an energy conversion process to be material other than solid waste to accommodate disposal processes that require the introduction of materials other than solid waste. In general, under the proposed regulations, an energy conversion process begins at the point of the first application of a process to create and capture useful energy and ends at the point at which the useful energy is first created or captured in the form of a first useful product (for example, the conversion of solid waste into useful steam energy). The proposed regulations generally do not include related processes in an energy conversion process because these processes are appropriately included in preliminary facilities and functionally related and subordinate functions.

In response to public comment and in further consideration of policy in support of recycling, the proposed regulations combine the concepts of recovery process and transformation process introduced in the 2004 Proposed Regulations into an eligible recycling process, which means a process for disposing of solid waste that reconstitutes, transforms, or otherwise processes the solid waste into a useful product. The recycling process begins at the point of the first application of a process to reconstitute or transform the solid waste into a useful product, such as decontamination, melting, re-pulping, shredding, or other processing of the solid waste to accomplish this purpose. The recycling process ends at the point of completion of production of the first useful product from the solid waste.

E. First Useful Product Principle

The proposed regulations provide guidance on the standard for determining the first useful product for purposes of the end point of an eligible energy conversion process and recycling process. For this purpose, the proposed regulations provide that the term useful product means a product that is useful for consumption in individual, commercial, industrial, or agricultural use and that could be sold for such use, whether or not actually sold. For this purpose, a useful product includes both a product useful to an individual or commercial consumer as an ultimate end-use product and a product useful to an industrial user as a material or input for processing in some stage of a manufacturing or production process to produce a different end-use product. Further, for this purpose, in the case of a continuous or integrated production process, the determination of when a useful product may result from such an integrated process may take into account operational constraints that affect the point in production when a useful product reasonably can be

extracted or isolated and sold independently.

F. Mixed-Input Facilities

The proposed regulations expand the scope of permitted mixed-input facilities to include an allowable amount of 35 percent or less of material that is not solid waste to be introduced each year into an energy conversion process or a recycling process without disqualifying those processes.

Proposed Effective Dates

In general, the proposed regulations will apply to bonds to which section 142 applies that are sold on or after the date that is 60 days after the date of publication of final regulations under section 142(a)(6) in the **Federal Register**. Issuers may apply this section to bonds sold before the date that is 60 days after publication of final regulations in the **Federal Register**.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for January 5, 2010 beginning at 10 a.m. in room 2615 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, *see* the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by December 17, 2009. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these proposed regulations are Aviva M. Roth and Timothy L. Jones, Office of the Associate Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, personnel from other offices of the Treasury Department and the IRS participated in their development.

Withdrawal of Previous Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG–140492–02) that was published in the **Federal Register** on May 10, 2004 (69 FR 25856), is withdrawn as of September 16, 2009.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 17

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.103–8 [Amended]

Par. 2. Section 1.103–8 is amended by removing paragraph (f)(2)(ii) and redesignating paragraph (f)(2)(iii) as (f)(2)(ii).

Par. 3. Section 1.142(a)(6)–1 is added to read as follows:

§ 1.142(a)(6)–1 Exempt facility bonds: solid waste disposal facilities.

(a) *In general.* This section defines the term solid waste disposal facility for purposes of section 142(a)(6).

(b) *Solid waste disposal facility.* The term *solid waste disposal facility* means a facility to the extent that the facility—

(1) Processes solid waste (as defined in paragraph (c) of this section) in a qualified solid waste disposal process (as defined in paragraph (d) of this section);

(2) Performs a preliminary function (as defined in paragraph (f) of this section); or

(3) Is functionally related and subordinate (within the meaning of § 1.103–8(a)(3)) to a facility described in paragraph (1) or (2) of this section.

(c) *Solid waste*—(1) *In general.* Except to the extent excluded under paragraph (c)(2) of this section, for purposes of section 142(a)(6), the term *solid waste* means garbage, refuse, and other solid material derived from any agricultural, commercial, consumer, or industrial operation or activity if the material meets the requirements of both paragraph (c)(1)(i) and paragraph (c)(1)(ii) of this section.

(i) *Used material or residual material.* Material meets the requirements of this paragraph (c)(1) if it is either used material (as defined in paragraph (c)(1)(i)(A)) or residual material (as defined in paragraph(c)(1)(i)(B)).

(A) *Used material.* The term *used material* means any material that has been used previously as an agricultural, commercial, consumer or industrial product or as a component of any such product.

(B) *Residual material.* The term *residual material* means any residual byproduct or excess unused raw material that remains from the production of any agricultural, commercial, consumer, or industrial product, provided that material qualifies as residual material only to the extent that it constitutes less than five percent of the total material introduced into the production process and it has a fair market value that is reasonably expected to be lower than that of any product made in that production process.

(ii) *Reasonably expected introduction into a qualified solid waste disposal process.* Material meets the requirements of this paragraph (c)(1)(ii) if it is reasonably expected by the person who purchases or otherwise acquires it to be introduced within a

reasonable time after such purchase or acquisition into a qualified solid waste disposal process described in paragraph (d) of this section.

(2) *Exclusions from solid waste.* The following materials do not constitute solid waste:

(i) *Virgin material.* Solid waste excludes any virgin material except to the extent that it is a residual material. The term *virgin material* means material that has not been processed into an agricultural, commercial, consumer, or industrial product or a component of any such product. Further, for this purpose, material continues to be virgin material after it has been grown, harvested, mined, or otherwise extracted from its naturally occurring location and cleaned, divided into component elements, modified, or enhanced as long as further processing is required before it becomes an agricultural, commercial, consumer, or industrial product or a component of any such product.

(ii) *Solids within liquids and liquid waste.* Solid waste excludes any solid or dissolved material in domestic sewage or other significant pollutant in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows or other common water pollutants, and liquid or gaseous waste.

(iii) *Precious metals.* Solid waste excludes gold, silver, ruthenium, rhodium, palladium, osmium, iridium, platinum, gallium, and rhenium.

(iv) *Hazardous material.* Solid waste excludes any hazardous material that is disposed of at a facility that is subject to final permit requirements under subtitle C of title II of the Solid Waste Disposal Act as in effect on the date of the enactment of the Tax Reform Act of 1986 (which is October 22, 1986). *See* section 142(h)(1) of the Internal Revenue Code.

(v) *Radioactive material.* Solid waste excludes any radioactive material.

(d) *Qualified solid waste disposal process.* The term *qualified solid waste disposal process* means the processing of solid waste in a final disposal process (as defined in paragraph (d)(1) of this section), an energy conversion process (as defined in paragraph (d)(2) of this section), or a recycling process (as defined in paragraph (d)(3) of this section). Absent an express restriction to the contrary in this section, a qualified solid waste disposal process may employ any biological, engineering, industrial, or technological method.

(1) *Final disposal process.* The term *final disposal process* means either the placement of solid waste in a landfill, the incineration of solid waste without capturing any useful energy, or the containment of solid waste with a reasonable expectation that the containment will continue indefinitely and that the solid waste has no current or future beneficial use.

(2) *Energy conversion process.* The term *energy conversion process* means a thermal, chemical, or other process that is applied to solid waste to create and capture synthesis gas, heat, hot water, steam, or other useful energy. The energy conversion process begins at the point of the first application of such process. The energy conversion process ends at the point at which the useful energy is first created or captured in the form of a first useful product (as defined in paragraph (e) of this section), provided that, in all events, the energy conversion process ends before any transfer or distribution of synthesis gas, heat, hot water, steam, or other useful energy.

(3) *Recycling process*—(i) *In general.* The term *recycling process* means reconstituting, transforming, or otherwise processing solid waste into a useful product. The recycling process begins at the point of the first application of a process to reconstitute or transform the solid waste into a useful product, such as decontamination, melting, re-pulping, shredding, or other processing of the solid waste to accomplish this purpose. The recycling process ends at the point of completion of production of the first useful product from the solid waste.

(ii) *Refurbishment, repair, or similar activities.* The term recycling process does not include refurbishment, repair, or similar activities. The term *refurbishment* means the breakdown and reassembly of a product if such activity is done on a product by product basis and if the finished product contains more than 30 percent of its original materials or components.

(e) *First useful product.* The term *first useful product* means the first product produced from solid waste that is useful for consumption in agricultural, consumer, commercial, or industrial operation or activity and that could be sold for such use, whether or not actually sold. A useful product includes both a product useful to an individual consumer as an ultimate end-use consumer product and a product useful to an industrial user as a material or input for processing in some stage of a manufacturing or production process to produce a different end-use consumer product. In the case of a continuous or integrated production process, the determination of when a useful product may result from such an integrated process may take into account operational constraints that affect the point in production when a useful product reasonably can be extracted or isolated and sold independently.

(f) *Preliminary function.* A preliminary function is a function to collect, separate, sort, store, treat, process, disassemble, or handle solid waste that is preliminary to and directly related to a qualified solid waste disposal process. A function qualifies as a preliminary function only if more than 50 percent of the total materials that result from the function is solid waste in each year that the issue is outstanding.

(g) *Mixed-use facilities*—(1) *In general.* Except as otherwise provided in paragraph (g)(2) of this section, if a facility is used for both a qualified solid waste disposal function (including a qualified solid waste disposal process or a preliminary function) and a nonqualified function, then the costs of the facility allocable to the qualified solid waste disposal function are determined using any reasonable method, based on all the facts and circumstances. *See* § 1.103–8(a)(1) for allocation rules on amounts properly allocable to an exempt facility.

(2) *Mixed inputs*—(i) *In general.* Except as provided in paragraph (g)(2)(ii) of this section, for each qualified solid waste disposal process, the percentage of the costs of the property used for such process that are allocable to a qualified solid waste disposal process equals the average annual percentage of solid waste processed in that process while the issue is outstanding. The average percentage of solid waste processed in such process for any year is the average percentage, by weight or volume, of the total materials processed in that process that constitute solid waste for that year.

(ii) *Special rule for mixed-input processes if at least 65 percent of the materials processed are solid waste.* For each qualified solid waste disposal process, if the annual percentage of solid waste used in that process for each year that the issue is outstanding equals at least 65 percent of the materials used in that process, then all of the costs of the property used for such process are treated as allocable to a qualified solid waste disposal process. The percentage of solid waste used in such process for any year is the percentage, by weight or volume, of the total materials used in that process that constitute solid waste for that year.

(h) *Examples.* The following examples illustrate the application of this section:

Example 1. Nonqualified unused material—cloth. Company A takes wool and

weaves it into cloth and then sells the cloth to a manufacturer to manufacture clothing. The cloth is material that has not been used previously as an agricultural, commercial, consumer, or industrial product or as a component of any such product. Accordingly, the cloth is not solid waste.

Example 2. Residual material from refining of crude oil. Company B takes crude oil and refines it into various products, including finished motor gasoline, distillate fuel oil, and jet fuel. The balance of the crude oil remaining after this production process is in the form of a nonhazardous material which subsequently is used to make asphalt. This nonhazardous material constitutes less than 5 percent of the total crude oil that was introduced into the production process and it has a fair market value that is reasonably expected to be lower than that of any product produced in that oil refining process. The portion of the crude oil that remains after the refining process as the nonhazardous material is residual material within the meaning of paragraph (c)(1)(i)(B) of this section that qualifies as solid waste. The portion of the facility directly related to the production of asphalt from such residual material may be treated as a qualified solid waste disposal facility up to the point of the production of a first useful product (here asphalt) within the meaning of paragraph (e) of this section from the residual material.

Example 3. Residual material—waste coal. Company C mines coal. Less than 5 percent of ore mined is low quality byproduct of coal mining known as waste coal, which cannot be converted to energy under a normal energy-production process because the BTU content is too low. Waste coal has a lower fair market value than any product produced in the coal mining operation. Waste coal is solid waste because it is residual material within the meaning of paragraph (c)(1)(i)(B) of this section and Company C reasonably expects to introduce the waste coal into a solid waste disposal process. A facility that converts this waste coal into energy may be treated as a solid waste disposal facility.

Example 4. Virgin material—logs. Company D cuts down trees and sells the lumber to another company, which further processes the lumber into paper. In order to facilitate shipping, Company D cuts the trees into uniform logs. The trees are not solid waste because they are virgin materials within the meaning of paragraph (c)(2)(i) of this section. The division of such trees into uniform logs does not change the status of the trees as virgin material.

Example 5. Qualified solid waste disposal process—landfill. Company E plans to construct a landfill. The landfill will not be subject to the final permit requirements under subtitle C of title II of the Solid Waste Disposal Act (as in effect on the date of enactment of the Tax Reform Act of 1986). Company E expects that the landfill will be filled entirely with material that will qualify as solid waste within the meaning of paragraph (c) of this section. Company E does not expect that a significant portion of the material placed in the landfill will be virgin materials or precious metals. Placing solid waste into a landfill is a qualified solid waste disposal process. The landfill is a qualified solid waste disposal facility.

Example 6. Qualified solid waste disposal process—recycling tires. Company F owns a facility that converts old, previously used tires into roadbed material. The used tires are used material within the meaning of paragraph (c)(1)(i)(A) of this section that qualifies as solid waste. Between the introduction of the old tires into the roadbed manufacturing process and the completion of the roadbed material, the facility does not create any interim useful products. The process for the manufacturing of the roadbed material from the old tires is a qualified solid waste disposal process as a recycling process and the facility that converts the tires into roadbed material is a qualified solid waste disposal facility. This conclusion would be the same if the recycling process took place at more than one plant.

Example 7. Nonqualified refurbishment. Company G purchases used cars and restores them. This restoration process includes disassembly, cleaning, and repairing of the cars. Parts that cannot be repaired are replaced. The restored cars contain at least 30 percent of the original pieces. While the cars are solid waste, the refurbishing process is not a qualified solid waste disposal process. Accordingly, Company G's facility is not a qualified solid waste disposal facility.

Example 8. Qualified solid waste disposal facility—first useful product rule—paper recycling. Company H employs an integrated process to re-pulp discarded magazines, clean the pulp, and produce retail paper towel products. Operational constraints on Company H's process do not allow for reasonable extraction, isolation, and sale of the cleaned paper pulp independently without degradation of the pulp. Company H further processes the paper pulp into large industrial-sized rolls of paper which are about 12 feet in diameter. At this point in the process, Company H could either sell such industrial-sized rolls of paper to another company for further processing to produce retail paper products or it could produce those retail products itself. In general, paper pulp is a useful product that is bought and sold on the market as a material for input into manufacturing or production processes. The discarded magazines are solid waste because they are used material within the meaning of paragraph (c)(1)(i)(A) of this section. Company H's facility is engaged in a recycling process within the meaning of paragraph (d)(3) of this section to the extent that it repulps and cleans the discarded magazines generally and further to the extent that it produces industrial-sized rolls of paper under the particular circumstances here. Specifically, taking into account the operational constraints on Company H's facility that limit its ability reasonably to extract, isolate, and sell the paper pulp independently, the first useful products within the meaning of paragraph (e) of this section from Company H's recycling process are the industrial-sized rolls of paper. The portion of Company H's facility that produces industrial-sized rolls of paper is a qualified solid waste disposal facility, and the portion of Company H's facility that further processes the industrial-sized rolls of paper into retail paper towels is not a qualified solid waste facility. Further, if the operational characteristics of Company H's facility allowed for reasonable extraction, isolation, and sale of the paper pulp independently, the first useful product would be the paper pulp and the portion of Company H's facility that cleans and re-pulps the magazines before processing in the paper machine to produce industrial-sized rolls of paper would be a qualified solid waste disposal facility.

Example 9. First useful product rule—energy conversion process. Company I receives solid waste from a municipal garbage collector. Company I burns that solid waste in an incinerator to remove exhaust gas and to produce heat. Company I further processes the heat in a heat exchanger to produce steam. Company I further processes the steam to generate electricity. The first useful product in this process is the useful energy in the form of steam. The facilities used to burn the solid waste and then capture the steam as useful energy are qualified solid waste disposal facilities because they process solid waste in an energy conversion process. The generating facilities used for further processing of the steam to create electricity do not engage in the energy conversion process and are not qualified solid waste disposal facilities.

Example 10. Preliminary function. Company J owns a paper mill. At the mill, logs from nearby timber operations are processed through a machine that removes bark. The stripped logs are used to manufacture paper. The stripped bark represents less than 5 percent of the logs processed into paper and has a lower fair market value than any product produced from the paper mill. The stripped bark falls onto a conveyor belt that transports the bark to a storage bin that is used to store the bark briefly until Company J feeds the bark into a boiler. The conveyor belt and storage bin are used only for these purposes. The boiler is used only to create steam by burning the bark, and the steam is used to generate electricity. The stripped bark is solid waste because it is residual material within the meaning of paragraph (c)(1)(i)(B) of this section and because Company J expects to introduce the bark into a conversion process within a reasonable period of time. The creation of steam from the stripped bark is an energy conversion process that starts with the incineration of the stripped bark. The energy conversion process is a qualified solid waste disposal process. The conveyor belt performs a collection activity that is preliminary and that is directly related to the solid waste disposal function. The storage bin performs a storage function that is preliminary and that is directly related to the solid waste disposal function. Thus, the conveyor belt and storage bin are solid waste disposal facilities. The bark removal process is not a preliminary function because it is not directly related to the energy conversion process and it does not become so related merely because it results in material that is solid waste.

Example 11. Mixed-input facility. Company K owns an incinerator financed by an issue and uses the incinerator exclusively to burn coal and solid material to create steam that is used to generate electricity.

Each year while the issue is outstanding, 40 percent by volume and 45 percent by weight of the solid material that Company K processes in the conversion process is coal. The remainder of the solid material is either used material or residual material within the meaning of paragraph (c)(1)(i) of this section. Sixty percent of the costs of the property used to perform the energy conversion process are allocable to a solid waste disposal function.

Example 12. Mixed-function facility. Company L owns and operates a facility financed by an issue and uses the facility exclusively to sort damaged bottles from undamaged bottles that may be re-used. The damaged bottles are directly introduced into a process that melts them for use in the fabrication of an end product. The damaged bottles are solid waste within the meaning of paragraph (b)(1) of this section, and the melting process is a qualified solid waste disposal process as a recycling process within the meaning of paragraph (c)(3) of this section. Refilling the bottles is not a qualified solid waste disposal process. Each year while the issue is outstanding, more than 50 percent, by weight or volume, of all of the bottles that pass out of the sorting process are damaged bottles that are processed in a recycling process. The sorting facility performs a preliminary function, but it also performs another function. The costs of the sorting facility allocable to the preliminary function are determined using any reasonable method, based on all the facts and circumstances.

(i) *Effective Dates*—(1) *In general.* This section applies to bonds to which section 142 applies that are sold on or after the date that is 60 days after publication of final regulations in the **Federal Register**.

(2) *Elective retroactive application.* Issuers may apply this section to bonds sold before the date that is 60 days after publication of final regulations in the **Federal Register**.

PART 17—TEMPORARY INCOME TAX REGULATIONS UNDER 26 U.S.C. 103C

Par. 4. The authority citation for part 17 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 17.1 [Removed]

Par. 5. Section 17.1 is removed.

Linda M. Kroening,

(Acting) Deputy Commissioner for Services And Enforcement.

[FR Doc. E9–22258 Filed 9–15–09; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0431; FRL–8431–4]

Mancozeb, Maneb, Metiram, and Thiram; Proposed Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke certain tolerances for the fungicides mancozeb and maneb. Also, EPA is proposing to modify certain tolerances for the fungicides mancozeb, maneb, metiram, and thiram. In addition, EPA is proposing to establish new tolerances for the fungicides mancozeb, maneb, and metiram. The regulatory actions proposed in this document are in follow-up to the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and tolerance reassessment program under the Federal Food, Drug, and Cosmetic Act (FFDCA), section 408(q).

DATES: Comments must be received on or before November 16, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0431, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0431. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. 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 material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Joseph Nevola, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; e-mail address: *nevola.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially

affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II.A. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

C. What Can I do if I Wish the Agency to Maintain a Tolerance that the Agency Proposes to Revoke?

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance proposed for revocation. If EPA receives a comment within the 60–day period to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f), if needed. The order would specify data needed and the timeframes for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA.

EPA issues a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposed rule, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

II. Background

A. What Action is the Agency Taking?

EPA is proposing to revoke, modify, and establish specific tolerances for residues of the fungicides mancozeb, maneb, metiram, and thiram in or on commodities listed in the regulatory text.

EPA is proposing these tolerance actions to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standard of FFDCA. The safety finding determination of ''reasonable certainty of no harm'' is discussed in detail in each Reregistration Eligibility Decision (RED) and Report of the Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision (TRED) for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed copies of many REDs and TREDs may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242–2419; telephone number: 1–800–490–9198; fax number: 1–513–489–8695; Internet at *http://www.epa.gov/ncepihom* and from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161; telephone number: 1–800–553–6847 or (703) 605–6000; Internet at *http://www.ntis.gov*. Electronic copies of REDs and TREDs are available on the Internet in public dockets; REDs for mancozeb (EPA–HQ–OPP–2005–0176), maneb (EPA–HQ–OPP–2005–0178), metiram (EPA–HQ–OPP–2005–0177), and thiram (EPA–HQ–OPP–2004–0183), at *http://www.regulations.gov* and also at *http://www.epa.gov/pesticides/reregistration/status.htm*.

The selection of an individual tolerance level is based on crop field residue studies designed to produce the maximum residues under the existing or proposed product label. Generally, the level selected for a tolerance is a value slightly above the maximum residue found in such studies, provided that the tolerance is safe. The evaluation of whether a tolerance is safe is a separate inquiry. EPA recommends the raising of a tolerance when data show that:

1. Lawful use (sometimes through a label change) may result in a higher residue level on the commodity.

2. The tolerance remains safe, notwithstanding increased residue level allowed under the tolerance.

In REDs, Chapter IV on ''Risk management, Reregistration, and Tolerance reassessment'' typically describes the regulatory position, FQPA assessment, cumulative safety determination, determination of safety for U.S. general population, and safety for infants and children. In particular,

the human health risk assessment document which supports the RED describes risk exposure estimates and whether the Agency has concerns. In TREDs, the Agency discusses its evaluation of the dietary risk associated with the active ingredient and whether it can determine that there is a reasonable certainty (with appropriate mitigation) that no harm to any population subgroup will result from aggregate exposure. EPA also seeks to harmonize tolerances with international standards set by the Codex Alimentarius Commission, as described in Unit III.

Explanations for proposed modifications in tolerances and exemptions and/or establishments of tolerances and exemptions for mancozeb, maneb, metiram, and thiram can be found in the RED and TRED document and in more detail in the Residue Chemistry Chapter document which supports the RED and TRED. Copies of the Residue Chemistry Chapter documents are found in the Administrative Record and electronic copies for mancozeb, maneb, and metiram can be found under their respective public docket ID numbers, identified in Unit II.A. Electronic copies of support documents for thiram are available in public docket EPA–HQ–OPP–2004–0183. An electronic copy of the Residue Chemistry Chapter for thiram is available in the public docket for this proposed rule. Electronic copies are available through EPA's electronic public docket and comment system, regulations.gov at *http://www.regulations.gov*. You may search for this proposed rule under docket ID number EPA–HQ–OPP–2009–0431, then click on that docket ID number to view its contents.

EPA has determined that the aggregate exposures and risks are not of concern for the above-mentioned pesticide active ingredients based upon the data identified in the RED or TRED which lists the submitted studies that the Agency found acceptable.

EPA has found that the tolerances that are proposed in this document to be modified, are safe; i.e., that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residues, in accordance with FFDCA section 408(b)(2)(C). (Note that changes to tolerance nomenclature do not constitute modifications of tolerances). These findings are discussed in detail in each RED or TRED. The references are available for inspection as described in this document under **SUPPLEMENTARY INFORMATION**.

In addition, EPA is proposing to revoke certain specific tolerances because either they are no longer needed or are associated with food uses that are no longer registered under FIFRA. Those instances where registrations were canceled were because the registrant failed to pay the required maintenance fee and/or the registrant voluntarily requested cancellation of one or more registered uses of the pesticide. It is EPA's general practice to propose revocation of those tolerances for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance to cover residues in or on imported commodities or legally treated domestic commodities.

1. *Mancozeb*. Currently, tolerances for mancozeb are established in 40 CFR 180.176(a) for residues of the fungicide mancozeb, a coordination product of zinc ion and maneb (manganese ethylenebisdithiocarbamate) and calculated as zinc ethylenebisdithiocarbamate (zineb). Mancozeb is a member of the class of dithiocarbamates, whose decomposition releases carbon disulfide (CS2). In order to allow harmonization of U.S. tolerances with Codex Maximum Residue Limits (MRLs), the Agency determined that for the purpose of tolerance enforcement, residues of mancozeb should be calculated as carbon disulfide. Therefore, EPA is proposing to revise the introductory text containing the tolerance expression in 40 CFR 180.176(a) to read as follows:

> Tolerances are established for residues of mancozeb (a coordination product of zinc ion and maneb (manganese ethylenebisdithiocarbamate)), including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only those mancozeb residues convertible to and expressed in terms of the degradate carbon disulfide.

Also, the Agency determined that the change in tolerance expression should also apply to the other dithiocarbamates that are determined by the carbon disulfide common moiety and have current tolerances. (That document is available in the docket for this proposed rule). Currently, according to 40 CFR 180.3(d)(5), total dithiocarbamate residue on the same raw agricultural commodity shall not exceed that permitted by the highest tolerance for any one member of the class, calculated as zinc ethylenebisdithiocarbamate (zineb). Therefore, in the interim, until all tolerance expressions can be changed for dithiocarbamates with the carbon disulfide moiety and current tolerances, EPA is proposing to revise the text in 40 CFR 180.3(d)(5) by adding carbon disulfide as part of the calculated residues, to read as follows:

> Where tolerances are established for more than one member of the class of dithiocarbamates listed in paragraph (e)(3) of this section on the same raw agricultural commodity, the total residue of such pesticides shall not exceed that permitted by the highest tolerance established for any one member of the class, calculated as zinc ethylenebisdithiocarbamate and carbon disulfide.

Oat bran is no longer considered to be a significant food/feed item by the Agency, and therefore is no longer regulated as a commodity in accordance with ''Table 1. Raw Agricultural and Processed Commodities and Feedstuffs Derived from Crops,'' which is found in Residue Chemistry Test Guidelines OPPTS 860.1000 dated August 1996, available at *http://www.epa.gov/opptsfrs/home/guidelin.htm*; consequently, the Agency has determined that the tolerance for mancozeb on oat, bran at 20 ppm is no longer needed. Therefore, EPA is proposing to revoke the tolerance in 40 CFR 180.176(a) on oat, bran.

Based on available field trial data that showed mancozeb residues on apples as high as 0.55 parts per million (ppm) and on pears as high as 0.13 ppm (for a pre-bloom treatment schedule), and 0.65 ppm (for an extended treatment schedule), EPA determined that the tolerances should be decreased from 7.0 ppm and 10.0 ppm, respectively, to 1 ppm, which when converted to carbon disulfide equivalents using a rounded conversion factor of 0.6X (based on relative molecular weights) is calculated as 0.6 ppm. The Agency determined that data for apple should be translated to crabapple because the registered use patterns (application method, maximal single application rate, maximal seasonal rate, and preharvest interval) associated with given formulations for mancozeb are identical for crabapple and apple, and data for pear should be translated to quince because the registered use patterns associated with given formulations for mancozeb are identical for quince and pear, and therefore the tolerances on crabapple and quince should each be decreased from 10.0 ppm to 0.6 ppm. Consequently, EPA is proposing to decrease the tolerances in 40 CFR 180.176(a) on apple, crabapple, pear, and quince, each to 0.6 ppm.

Based on available field trial data that showed mancozeb residues as high as

1.0 ppm in or on bananas harvested 0 days following the last foliar application at 1.3X the maximum single application rate and for bagged and unbagged bananas as high as 0.13 ppm and 1.18 ppm, respectively, on whole banana fruit including peel harvested 0 days following the last foliar application at 1X the maximum single application rate, and to harmonize with a Codex MRL of 2 expressed as milligrams (mg) carbon disulfide/kilogram (kg) for dithiocarbamates, EPA determined that the tolerance should be decreased from 4.0 ppm to 2 ppm. Therefore, EPA is proposing to decrease the tolerance in 40 CFR 180.176(a) on banana to 2 ppm. In addition, because banana pulp is covered by the tolerance for banana at the proposed level, a separate tolerance for the obsolete commodity term banana, pulp is no longer needed and should be revoked. Consequently, EPA is proposing to revoke the tolerance in 40 CFR 180.176(a) on banana, pulp.

Based on available field trial data that showed mancozeb residues as high as 1.5 ppm and 99.5 ppm for sugar beet roots and tops, respectively, EPA determined that tolerances should be set at 2 ppm and 100 ppm, respectively, which when converted to carbon disulfide equivalents using a rounded conversion factor of 0.6X are calculated as 1.2 ppm and 60 ppm, respectively. Also, based on available processing data that showed mancozeb residues concentrated 3X in sugar beet dried pulp and a highest average field trial (HAFT) of <1.529 ppm, the Agency expected residues as high as 4.59 ppm, the Agency determined that a tolerance should be established at 5.0 ppm, which when converted to carbon disulfide is calculated at 3.0 ppm. Therefore, EPA is proposing to decrease the tolerances in 40 CFR 180.176(a) on beet, sugar, roots to 1.2 ppm and beet, sugar, tops to 60 ppm, and establish a tolerance on beet, sugar, dried pulp at 3.0 ppm.

Based on available field trial data that showed mancozeb residues as high as 6.72 ppm on cranberry, the Agency determined that the tolerance should be set at 7 ppm, which when converted to carbon disulfide equivalents using a rounded conversion factor of 0.6X, and to harmonize with a Codex MRL of 5 expressed as mg carbon disulfide/kg for dithiocarbamates, is calculated as 5 ppm. Therefore, EPA is proposing to decrease the tolerance in 40 CFR 180.176(a) on cranberry to 5 ppm.

Based on available field trial data that showed mancozeb residues as high as 2.1 ppm on cucumber, 4.7 ppm on melons treated at 1.3X (expect 3.6 ppm at 1X), and 1.75 ppm on summer squash, the Agency determined that individual tolerances should be set at 3.0 ppm, 4.0 ppm, and 2 ppm, respectively, which when converted to carbon disulfide equivalents using a rounded conversion factor of 0.6X is calculated as 1.8 ppm, 2.2 ppm and 1.2 ppm, respectively. Because the representatives for crop group 9 include cucumber, muskmelon, and summer squash, EPA believes that these tolerances should be combined into a single crop group tolerance and decreased from their current individual tolerance levels of 4 ppm to 2 ppm. Consequently, EPA is proposing to decrease the tolerances in 40 CFR 180.176(a) on cucumber, melon, and squash, summer to 2 ppm and combine them into the group tolerance termed vegetable, cucurbit, group 9.

Based on available field trial data that showed mancozeb residues as high as 57.4 ppm for field corn forage, 15.2 ppm for field corn stover, 87.5 ppm for sweet corn forage, 59.3 ppm for sweet corn stover, and translation of sweet corn stover data to pop corn stover, EPA determined that tolerances should be increased from 5 ppm each to 65 ppm, 20 ppm, 120 ppm, 70 ppm, and 70 ppm, respectively, which when converted to carbon disulfide equivalents using a rounded conversion factor of 0.6X is calculated as 40 ppm, 15 ppm, 70 ppm, 40 ppm, and 40 ppm, respectively. (The Agency also determined that mancozeb registrations for corn use should remove existing feeding/grazing restrictions for all types of corn). Therefore, EPA is proposing to revise the terminology of tolerances in 40 CFR 180.176(a) for corn, forage to corn, field, forage and corn, sweet, forage; and corn, stover to corn, field, stover; corn, pop, stover; and corn, sweet, stover; and to increase corn, field, forage to 40 ppm, corn, field, stover to 15 ppm, corn, sweet, forage to 70 ppm; corn, pop, stover to 40 ppm; and corn, sweet, stover to 40 ppm. The Agency determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on available field trial data that showed mancozeb residues at <0.05 ppm on sweet corn (kernel plus cob with husks removed), the Agency determined that the tolerance should be decreased from 0.5 ppm to 0.1 ppm in order to harmonize with a Codex MRL of 0.1 expressed as mg carbon disulfide/kg for dithiocarbamates. Also, the Agency determined that the data for sweet corn can be translated to popcorn grain, and therefore the tolerance for popcorn grain should be decreased from 0.5 ppm to 0.1 ppm, which after conversion is calculated as 0.06 ppm. Therefore, EPA is proposing to decrease the tolerances in 40 CFR 180.176(a) on corn, pop, grain to 0.06 ppm and corn, sweet, kernel plus cob with husks removed to 0.1 ppm.

Based on available field trial data that showed mancozeb residues as high as 1.79 ppm for dry bulb onions, EPA determined that the tolerance should be increased from 0.5 ppm to 2.0 ppm, which when converted to carbon disulfide equivalents using a rounded conversion factor of 0.6X is calculated as 1.5 ppm. Therefore, EPA is proposing to increase the tolerance in 40 CFR 180.176(a) on onion, bulb to 1.5 ppm. The Agency determined that the increased tolerance is safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on available field trial data for sorghum seed treatment at 1.1–1.2X the maximum rate that showed mancozeb residues as high as 0.32 ppm in or on grain and 0.12 ppm in or on straw, EPA determined that tolerances should be established at 0.4 ppm for grain, 0.2 ppm for stover, and because the data on straw could be translated to forage, 0.2 ppm for forage, which when converted to carbon disulfide equivalents using a rounded conversion factor of 0.6X are calculated as 0.25 ppm, 0.15 ppm, and 0.15 ppm, respectively. Therefore, EPA is proposing to establish tolerances in 40 CFR 180.176(a) on sorghum, grain, grain at 0.25 ppm, sorghum, grain, forage at 0.15 ppm, and sorghum, grain, stover at 0.15 ppm.

Based on available field trial data for flax seed treatment at 0.7–0.8X the maximum rate that showed mancozeb residues as high as 0.13 ppm in or on flax grain, EPA determined that a tolerance should be established at 0.2 ppm for flax seed, which when converted to carbon disulfide equivalents using a rounded conversion factor of 0.6X is calculated as 0.15 ppm. Therefore, EPA is proposing to establish a tolerance in 40 CFR 180.176(a) on flax, seed at 0.15 ppm.

Based on available field trial data for rice seed treatment at 1.2–1.3X the maximum rate that showed mancozeb residues as high as <0.05 ppm (non-detectable) in or on rice grain and 0.15 ppm in or on rice straw, EPA determined that tolerances should be established at 0.1 ppm for rice grain and 0.2 ppm for rice straw, which when converted to carbon disulfide equivalents using a rounded conversion factor of 0.6X are calculated as 0.06 ppm and 0.15 ppm, respectively. Therefore, EPA is proposing to establish tolerances in 40 CFR 180.176(a) on rice, grain at 0.06 ppm and rice, straw at 0.15 ppm.

Based on available field trial data at 1X the maximum rate that showed mancozeb residues as high as 0.017 ppm in or on peanut nutmeat and 1.5X the maximum rate that showed mancozeb residues as high as 5.1 ppm in or on tomatoes, EPA determined that the tolerance on peanut should be decreased from 0.5 ppm to 0.1 ppm and the tolerance on tomato should remain at 4 ppm, which when converted to carbon disulfide equivalents using a rounded conversion factor of 0.6X are calculated as 0.1 ppm (unchanged, but in harmony with Codex MRL of 0.1 expressed as mg carbon disulfide/kg for dithiocarbamates) and 2.5 ppm, respectively. Therefore, EPA is proposing to decrease the tolerances in 40 CFR 180.176(a) on peanut to 0.1 ppm and tomato to 2.5 ppm.

On March 2, 1992 (57 FR 7484) (FRL–4045–8), EPA published a Conclusion of the Special Review for Ethylene bisdithiocarbamates (EBDCs PD4), and among its actions, the Agency disallowed mancozeb use on carrots and celery. However, the Mancozeb Task Force requested the reinstatement of mancozeb use on carrots grown in FL, MI, and WI, and celery grown in FL. The available data showed mancozeb residues applied at 1X the maximum proposed single and seasonal rate were as high as 0.709 ppm on carrots. EPA determined that the data for carrots are sufficient to support a regional tolerance and the tolerance should be redesignated from 180.176(a) to 180.176(c), and after conversion to carbon disulfide equivalents, should be decreased from 2 ppm to 1 ppm. Also, the available data showed mancozeb residues applied at 2X the maximum proposed seasonal rate were as high as 2.19 ppm on celery. The Agency concluded that the submitted data are not fully adequate because the field trials were conducted at 2X the maximum proposed seasonal rate, and as a condition for full registration recommended the submission of additional field trials at 1X and 2X rates in each FL trial location. However, there have been no active registrations in the United States for mancozeb use on celery since 1992, and therefore, the celery tolerance is no longer needed and should be revoked. Consequently, EPA is proposing to revoke the mancozeb tolerance on celery in 40 CFR 180.176(a) and redesignate the tolerance on carrot, roots from 40 CFR 180.176(a) to (c), and decrease it to 1 ppm. In addition, because that section is currently reserved, EPA is proposing to add introductory text for the tolerance expression in 40 CFR 180.176(c) to read as follows:

A tolerance with regional registrations is established for residues of the fungicide mancozeb, (a coordination product of zinc ion and maneb (manganese ethylenebisdithiocarbamate)), including its metabolites and degradates, in or on the commodity in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only those mancozeb residues convertible to and expressed in terms of the degradate carbon disulfide.

Because data for celery treated with 7 to 17 foliar applications of mancozeb at 1X the maximum single application rate harvested at 14 days following the last application are available, EPA determined that the data can be translated to fennel, and no additional residue data for fennel, a very minor crop use, are required. Based on the data translated from celery, the Agency determined that the tolerance for fennel should be decreased from 10 ppm to 4 ppm, which when converted to carbon disulfide equivalents, is calculated as 2.5 ppm. Therefore, EPA is proposing to decrease the tolerance in 40 CFR 180.176(a) on fennel to 2.5 ppm.

Based on available field trial data at 1X the maximum single and 0.8X the maximum seasonal application rate that showed mancozeb residues as high as 1.83 ppm in or on grapes, EPA determined that the tolerance on grape should be decreased from 7 ppm to 2 ppm, which when converted to carbon disulfide equivalents using a rounded conversion factor of 0.6X are calculated as 1.5 ppm. Therefore, EPA is proposing to decrease the tolerance in 40 CFR 180.176(a) on grape to 1.5 ppm.

Based on available field trial data that showed mancozeb residues as high as 0.2 ppm in or on potatoes, EPA determined that there are now sufficient data to reassign the tolerance on potato from interim to permanent and that it should be decreased from 1.0 ppm to 0.2 ppm when converted to carbon disulfide equivalents. Therefore, EPA is proposing to revoke the interim tolerance in 40 CFR 180.319 for residues of the coordination product of zinc ion and maneb (mancozeb) in or on potato at 1.0 ppm (calculated as zinc ethylenebisdithiocarbamate) and establish a tolerance in 40 CFR 180.176(a) for residues of mancozeb (calculated as carbon disulfide) on potato at 0.2 ppm.

In addition, EPA is proposing to revise commodity terminology to conform to current Agency practice in 40 CFR 180.176(a) as follows: ''asparagus (negligible residue)'' to ''asparagus''; ''barley, milled feed fractions'' to ''barley, bran,'' ''barley, flour,'' and ''barley, pearled barley''; ''kidney'' to ''cattle, kidney,'' ''goat, kidney,'' ''hog, kidney,'' ''horse, kidney,'' ''poultry, kidney,'' and ''sheep, kidney''; ''liver'' to ''cattle, liver,'' ''goat, liver,'' ''hog, liver,'' ''horse, liver,'' ''poultry, liver,'' and ''sheep, liver''; ''papaya (whole fruit with no residue present in the edible pulp after the peel is removed and discarded)'' to ''papaya''; ''oat, milled feed fractions'' to ''oat, flour'' and ''oat, groats/rolled oats''; ''wheat, milled byproducts'' to ''wheat, bran,'' ''wheat, flour,'' ''wheat, germ,'' ''wheat, middlings,'' and ''wheat, shorts.''

In the mancozeb RED, certain plant commodity tolerances are recommended to be decreased concomitant with product label changes to their use patterns. No mitigation is required to address either acute or chronic dietary risks from food alone. Acute dietary exposure from food alone are below the Agency's level of concern at the 99.9th percentile of exposure; i.e., exposure is <1% of the Acute Population Adjusted Dose (aPAD) for females 13–49 years old, the most highly exposed population subgroup. Chronic dietary exposure from food alone are below the Agency's level of concern; i.e., exposure is <1% of the Chronic Population Adjusted Dose (cPAD) for the U.S. population and all population subgroups, including children 1–2 years old, the most highly exposed population subgroup. However, because the Agency is still in the process of obtaining the needed amended mancozeb product labels, their associated plant tolerances will not be proposed to be decreased at this time. The RED for mancozeb recommended a decrease in the tolerance for field corn grain (from 0.1 ppm to 0.06 ppm) contingent upon limiting use of mancozeb on hybrid seed corn type only. However, the Agency has not yet verified that all active mancozeb registrations for field corn grain are limited to hybrid seed corn type only. Therefore, EPA will not propose action on the tolerance in 40 CFR 180.176(a) for corn, field, grain at this time. In addition, except for the tolerance on oat bran which was recommended for revocation, the RED for mancozeb recommended tolerance reassessment actions for papaya and the grains, milled feed fractions, and straw of barley, oat, rye, and wheat that are contingent upon label revisions. However, the Agency has not yet verified that all mancozeb registrations for them have been revised. Therefore, EPA will not propose action on the

tolerances in 40 CFR 180.176(a) for barley, grain; barley, straw; oat, grain; oat, straw; rye, grain; rye, straw; and wheat, grain at this time. With the exception of proposing to revise the tolerance nomenclatures for papaya (whole fruit with no residue present in the edible pulp after the peel is removed and discarded) and the milling feed fractions of barley, oat, and wheat, as described herein, no other action will be taken on them in 40 CFR 180.176(a) at this time. Also, although the Agency determined that the available processing data for wheat bran and flour may be translated to barley bran and flour, bridging processing data on pearled barley are still required. When appropriate mancozeb product label changes for specific plant commodity uses are provided to and approved by the Agency, EPA expects to follow up and propose the recommended tolerance decreases in a future publication in the **Federal Register**. Also, the Mancozeb Task Force requested removal of the foliar use on cotton and EPA has determined that use of mancozeb as a seed treatment on cottonseed is a non-food use (document available in the docket for this proposed rule). However, the Agency has not yet verified that all active mancozeb registrations for cotton do not have a foliar use on cotton. Therefore, EPA will not propose action on the tolerance in 40 CFR 180.176(a) for cotton, undelinted seed at this time.

There are MRLs for dithiocarbamates which are determined as carbon disulfide mg/kg. The tolerance definition for mancozeb proposed herein would be harmonized with that for Codex MRLs with respect to residue determination as carbon disulfide. However, the Codex limits are listed for total dithiocarbamates, which also include dithiocarbamates other than mancozeb.

2. *Maneb*. Currently, tolerances for maneb are established in 40 CFR 180.110(a) for residues of the fungicide maneb (manganese ethylenebisdithiocarbamate), calculated as zinc ethylenebisdithiocarbamate. Maneb is a member of the class of dithiocarbamates, whose decomposition releases a common moiety, carbon disulfide (CS2). In order to allow harmonization of U.S. tolerances with Codex MRLs, the Agency determined that for the purpose of tolerance enforcement, residues of maneb should be calculated as carbon disulfide. Therefore, EPA is proposing to revise the introductory text containing the tolerance expression in 40 CFR 180.110(a) to read as follows:

> Tolerances are established for residues of maneb (manganese ethylenebisdithiocarbamate), including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only those maneb residues convertible to and expressed in terms of the degradate carbon disulfide.

Maneb use on certain crops were disallowed for reregistration by EPA, as announced in a notice published in the **Federal Register** of March 2, 1992 (57 FR 7484) (FRL–4045–8). In that notice, the Agency announced its conclusion of Special Review (PD4) regarding ethylene bisdithiocarbamates (EBDCs), including maneb, and its intent to cancel any EBDC product registrations bearing food uses that included, among others, apricots, succulent beans, carrots, celery, nectarines, and peaches. There have been no U.S. registrations for maneb use associated with apricots, succulent beans, nectarines, and peaches since 1992, and carrots and celery since 1994. Therefore, the maneb tolerances on these commodities are no longer needed and should be revoked. Consequently, EPA is proposing to revoke the tolerances in 40 CFR 180.110(a) for maneb residues of concern in or on apricot; bean, succulent; carrot, roots; celery; nectarine; and peach.

Based on available field trial data that showed maneb residues as high as <4.0 ppm for dry beans, 10.0 ppm for broccoli, <4.0 ppm for cucumber, <4.0 ppm for tomato, and calculation of 2.93 ppm for melon at 1X (based on maneb residues as high as of 4.39 ppm for melon treated at 1.5X), EPA determined that the tolerances should be decreased for dry beans from 7 ppm to 4 ppm, maintained for broccoli at 10 ppm, maintained for both cucumber and tomato at 4 ppm, and maintained for melon at 4 ppm, which when converted to carbon disulfide equivalents using a rounded conversion factor of 0.6X are calculated as 2.5 ppm, 6 ppm, 2 ppm, 2.5 ppm, and 3 ppm, respectively. In addition, the Agency determined that the broccoli data could be translated to Brussels sprouts, cauliflower, and kohlrabi, and that the tolerances on Brussels sprouts, cauliflower, and kohlrabi should, after conversion, be decreased from 10 ppm to 6 ppm. Also, the Agency determined that the melon data could be translated to pumpkin and winter squash, and that the tolerances on pumpkin and winter squash should, after conversion, be decreased from 7 ppm to 3 ppm and 4 ppm to 3 ppm, respectively. Moreover, the Agency determined that the cucumber data could be translated to summer squash, and that the tolerance on summer squash, after conversion, be decreased from 4 to 2 ppm. Furthermore, the Agency determined that the tomato data could be translated to eggplant, and that the tolerance on eggplant, after conversion, be decreased from 7 ppm to 2.5 ppm. Therefore, EPA is proposing to decrease the tolerances in 40 CFR 180.110(a) on bean, dry, seed to 2.5 ppm, broccoli to 6 ppm, Brussels sprouts to 6 ppm, cauliflower to 6 ppm, cucumber to 2 ppm, eggplant to 2.5 ppm, kohlrabi to 6 ppm, melon to 3 ppm, pumpkin to 3 ppm, squash, summer to 2 ppm, squash, winter to 3 ppm, and tomato to 2.5 ppm.

Geographic representation of data for green onion was incomplete and not conducted according to the maximum registered use pattern. However, based on available field trial data for dry bulb onion that showed maneb residues of concern as high as 10.1 ppm (in or on one sample harvested 7 days following treatments at 0.5–0.8X the maximal seasonal rate), the Agency determined that the current tolerance for onion should be separated into onion, bulb and onion, green, and that the tolerance on onion, bulb should be increased from 7 ppm to approximately 10.1 ppm, but which after the 0.6X conversion to carbon disulfide, should be decreased to 6 ppm. Therefore, EPA is revising the tolerance in 40 CFR 180.110(a) on onion into onion, green and onion, bulb, and decreasing the tolerance on onion, bulb to 6 ppm, maintaining the tolerance on onion, green at 7 ppm at this time, while reiterating that additional data are required for green onions.

Based on available field trial data that showed maneb residues of concern as high as 36.8 ppm on untrimmed cabbage at 1.2X the seasonal rate allowed by PD4, the Agency determined that the tolerance for cabbage should be increased from the current level of 10 ppm, which after a 0.6X conversion to carbon disulfide is 21 ppm. Therefore, EPA is proposing to increase the tolerance in 40 CFR 180.110(a) for cabbage to 21 ppm. The Agency determined that the increased tolerance is safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on available field trial data that showed maneb residues of concern as high as 154 ppm, the Agency determined that the tolerance for sugar beet tops should be increased from 45 to 200 ppm, which after a 0.6X conversion to carbon disulfide is 120 ppm. Also, based on available field trial data that showed maneb residues of concern as high as 1.72 ppm, the

Agency determined that a tolerance should be established on sugar beet roots at 2 ppm, which after a 0.6X conversion to carbon disulfide is 1.2 ppm. In addition, based on available processing data that showed a concentration factor of 2X for dried pulp, and a HAFT of 1.72 ppm for sugar beet roots, EPA determined that the expected maneb residues of concern in dried sugar beet pulp are 3.44 ppm, which is greater than the reassessed tolerance for sugar beet roots of 2.0 ppm, and therefore a tolerance should be established for dried sugar beet pulp at 4 ppm, which after a 0.6X conversion to carbon disulfide is 2.5 ppm. Consequently, EPA is proposing to establish tolerances in 40 CFR 180.110(a) for beet, sugar, roots at 1.2 ppm and beet, sugar, dried pulp at 2.5 ppm, and increase the tolerance in 40 CFR 180.110(a) for beet, sugar, tops to 120 ppm. The Agency determined that the increased tolerance is safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on available poultry and ruminant metabolism data, the Agency determined that tolerances should be established on livestock commodities at the limit of quantitation of the analytical method. Therefore, EPA is proposing to establish tolerances in 40 CFR 180.110(a) on cattle, fat; cattle, meat; cattle, meat byproducts; goat, fat; goat, meat; goat, meat byproducts; hog, fat; hog, meat; hog, meat byproducts; horse, fat; horse, meat; horse, meat byproducts; poultry, fat; poultry, meat; poultry, meat byproducts; sheep, fat; sheep, meat; sheep, meat byproducts; egg; and milk; each at 0.02 ppm.

In addition, EPA is proposing to revise commodity terminology to conform to current Agency practice in 40 CFR 180.110(a) as follows: ''banana (not more than 0.5 parts per million) shall be in the pulp after peel is removed and discarded (preharvest application only)'' to ''banana, preharvest''; and ''cabbage, chinese'' to ''cabbage, chinese, bok choy'' and ''cabbage, chinese, napa.''

Although the RED for maneb recommended tolerance revocation based on requests for voluntary cancellation of registrations associated with certain commodities, EPA is still in the process of verifying whether active registrations currently exist for them and therefore will not propose action on tolerances for apple; fig; grape; corn, sweet, kernel plus cob with husks removed; or turnip, roots at this time.

There are Codex MRLs for dithiocarbamates which are determined as carbon disulfide mg/kg. The tolerance definition for maneb proposed herein would be harmonized with that for Codex MRLs with respect to residue determination as carbon disulfide. However, the Codex limits are listed for total dithiocarbamates, which also include dithiocarbamates other than maneb.

3. *Metiram*. Currently, tolerances for metiram are established in 40 CFR 180.217(a) for residues of the fungicide metiram, a mixture of 5.2 parts by weight of ammoniates of (ethylenebis (dithiocarbamato)) zinc with 1 part by weight ethylenebis (dithiocarbamic acid) bimolecular and trimolecular cyclic anhydrosulfides and disulfides, calculated as zinc ethylenebisdithiocarbamate. Metiram is a member of the class of dithiocarbamates, whose decomposition releases a common moiety, carbon disulfide (CS2). In order to allow harmonization of U.S. tolerances with Codex MRLs, the Agency determined that for the purpose of tolerance enforcement, residues of metiram should be calculated as carbon disulfide. Therefore, EPA is proposing to revise the section heading from its chemical name to metiram and also revise the introductory text containing the tolerance expression in 40 CFR 180.217(a) to read as follows:

> Tolerances are established for residues of metiram (a mixture of 5.2 parts by weight of ammoniates of (ethylenebis (dithiocarbamato)) zinc with 1 part by weight ethylenebis (dithiocarbamic acid) bimolecular and trimolecular cyclic anhydrosulfides and disulfides), including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only those metiram residues convertible to and expressed in terms of the degradate carbon disulfide.

Also, EPA is proposing in 40 CFR 180.217 to revise the section heading from the chemical name ''ammoniates of [ethylenebis (dithiocarbamato)] zinc and ethylenebis [dithiocarbamic acid] bimolecular and trimolecular cyclic anhydrosulfides and disulfides'' to ''metiram.''

Based on available field trial data that showed combined metiram residues of concern as high as <0.53 ppm in or on apples, and <0.03 ppm in or on potatoes, the Agency determined that tolerances should be decreased, which when converted to carbon disulfide equivalents using a rounded conversion factor of 0.6X, should be decreased from 2.0 ppm to 0.5 ppm for apple and from 0.5 ppm to 0.2 ppm for potato. Therefore, EPA is proposing to decrease tolerances in 40 CFR 180.217(a) on apple to 0.5 ppm and on potato to 0.2 ppm.

Based on available processing data that showed metiram residues of concern concentrated 5X in wet apple pomace and a HAFT of 0.53 ppm, the Agency expected residues as high as 2.65 ppm, and the Agency determined that a tolerance should be established, which when converted to carbon disulfide is calculated at 2 ppm. Therefore, EPA is proposing to establish a tolerance in 40 CFR 180.217(a) on apple, wet pomace at 2 ppm.

There are Codex MRLs for dithiocarbamates which are determined as carbon disulfide mg/kg. The tolerance definition for metiram proposed herein would be harmonized with that for Codex MRLs with respect to residue determination as carbon disulfide. However, the Codex limits are listed for total dithiocarbamates, which also include dithiocarbamates other than metiram.

4. *Thiram*. Currently, tolerances for thiram are established in 40 CFR 180.132(a) for residues of the fungicide thiram (tetramethyl thiuram disulfide). Thiram is a member of the class of dithiocarbamates, whose decomposition releases a common moiety, carbon disulfide (CS2). In order to allow harmonization of U.S. tolerances with Codex MRLs, the Agency determined that for the purpose of tolerance enforcement, residues of thiram should be calculated as carbon disulfide. Therefore, EPA is proposing to revise the introductory text containing the tolerance expression in 40 CFR 180.132(a) to read as follows:

> Tolerances are established for residues of thiram, tetramethyl thiuram disulfide, including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only those thiram residues convertible to and expressed in terms of the degradate carbon disulfide.

In the **Federal Register** of September 12, 2008 (73 FR 53007) (FRL–8380–7), EPA issued a notice regarding EPA's announcement of the receipt of requests from registrants to voluntarily cancel certain pesticide registrations, including cancellation of the last apple use from thiram registrations. EPA approved the cancellation for the thiram registration with the last apple use and made it effective on March 11, 2009, and permitted the registrant to sell and distribute product under the previously approved labeling until September 11, 2009. The Agency believes that end users will have had sufficient time to exhaust existing stocks and for thiram-treated apple commodities to have

cleared the channels of trade by September 11, 2010. Also, based on available field trial data that showed thiram residues of concern as high as 8.65 ppm on apples, the Agency determined that the tolerance for apple should be 9 ppm, but which after a 0.6X conversion to carbon disulfide is determined by the Agency to be appropriate at 6.0 ppm. Therefore, during the interim period prior to its expiration, the tolerance should be decreased from 7.0 ppm to 6.0 ppm. Consequently, EPA is proposing to revoke the tolerance in 40 CFR 180.132(a) for apple with an expiration/revocation date of September 11, 2010, and decrease the tolerance level to 6.0 ppm.

Based on available field trial data that showed thiram residues of concern at <9 ppm on strawberries, the Agency determined that the tolerance for strawberry should be 9 ppm, but which after a 0.6X conversion to carbon disulfide is determined by the Agency to be appropriate at 6.0 ppm. Therefore, EPA is proposing to decrease the tolerance in 40 CFR 180.132(a) on strawberry to 6.0 ppm.

There are Codex MRLs for dithiocarbamates which are determined as carbon disulfide mg/kg. The tolerance definition for thiram proposed herein would be harmonized with that for Codex MRLs with respect to residue determination as carbon disulfide. However, the Codex limits are listed for total dithiocarbamates, which also include dithiocarbamates other than thiram.

B. What is the Agency's Authority for Taking this Action?

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of FFDCA, 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce (21 U.S.C. 331(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. 136 *et seq.*). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

EPA is proposing these tolerance actions to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standard of FQPA. The safety finding determination is discussed in detail in each post-FQPA RED and TRED for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, to meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed and electronic copies of the REDs and TREDs are available as provided in Unit II.A.

EPA has issued REDs for mancozeb, maneb, metiram, and thiram. REDs and TREDs contain the Agency's evaluation of the database for these pesticides, including requirements for additional data on the active ingredients to confirm the potential human health and environmental risk assessments associated with current product uses, and in REDs state conditions under which these uses and products will be eligible for reregistration. The REDs and TREDs recommended the establishment, modification, and/or revocation of specific tolerances. RED and TRED recommendations such as establishing or modifying tolerances, and in some cases revoking tolerances, are the result of assessment under the FFDCA standard of ''reasonable certainty of no harm.'' However, tolerance revocations recommended in REDs and TREDs that are proposed in this document do not need such assessment when the tolerances are no longer necessary.

EPA's general practice is to propose revocation of tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances for residues on crops uses for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances should be aware that additional data may be needed to support retention. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerances provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerance at issue.

When EPA establishes tolerances for pesticide residues in or on raw agricultural commodities, consideration must be given to the possible residues of those chemicals in meat, milk, poultry, and/or eggs produced by animals that are fed agricultural

products (for example, grain or hay) containing pesticide residues (40 CFR 180.6). When considering this possibility, EPA can conclude that:

1. Finite residues will exist in meat, milk, poultry, and/or eggs.

2. There is a reasonable expectation that finite residues will exist.

3. There is a reasonable expectation that finite residues will not exist. If there is no reasonable expectation of finite pesticide residues in or on meat, milk, poultry, or eggs, tolerances do not need to be established for these commodities (40 CFR 180.6(b) and (c)).

C. When Do These Actions Become Effective?

With the exception of the thiram tolerance for apple for which EPA is proposing a specific expiration/revocation date, the Agency is proposing that the actions herein become effective on the date of publication of the final rule in the **Federal Register**. With the exception of the proposed revocation of the thiram tolerance for apple, tolerances that are considered by EPA to no longer be significant food/feed items, and tolerances whose commodity use is covered by another tolerance, the Agency believes that existing stocks of pesticide products labeled for the uses associated with the tolerances proposed for revocation in this document have been completely exhausted and that treated commodities have cleared the channels of trade. EPA is proposing an expiration/revocation date of September 11, 2010, for the thiram tolerance for apple. The Agency believes that this revocation date allows users to exhaust stocks and allows sufficient time for passage of treated commodities through the channels of trade. However, if EPA is presented with information that existing stocks would still be available and that information is verified, the Agency will consider extending the expiration date of the tolerance. If you have comments regarding existing stocks and whether the effective date allows sufficient time for treated commodities to clear the channels of trade, please submit comments as described under Unit I.B.

Any commodities listed in this proposed rule treated with the pesticides subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this unit, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates when the pesticide was applied to such food.

III. Are the Proposed Actions Consistent with International Obligations?

The tolerance actions in this proposed rule are not discriminatory and are designed to ensure that both domestically produced and imported foods meet the food safety standards established by FFDCA. The same food safety standards apply to domestically produced and imported foods.

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international MRLs established by the Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level in a notice published for public comment. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs and TREDs, and in the Residue Chemistry document which supports the RED and TRED, as mentioned in Unit II.A. Specific tolerance actions in this proposed rule and how they compare to Codex MRLs (if any) are discussed in Unit II.A.

IV. Statutory and Executive Order Reviews

In this proposed rule, EPA is proposing to establish tolerances under FFDCA section 408(e), and also modify and revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions (e.g., establishment and modification of a tolerance and tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, or revocations might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and modifications, and for tolerance revocations were published on May 4, 1981 (46 FR 24950) and on December 17, 1997 (62 FR 66020) (FRL–5753–1), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this proposed rule, the Agency hereby certifies that this proposed rule will not have a significant negative economic impact on a substantial number of small entities. In a memorandum dated May 25, 2001, EPA determined that eight conditions must

all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to any particular revocation. (This Agency document is available in the docket of this proposed rule). Furthermore, for the pesticide named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposal that would change the EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that 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.'' This proposed rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 4, 2009.

Debra Edwards,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. Section 180.3 is amended by revising paragraph (d)(5), to read as follows:

§180.3 Tolerances for related pesticide chemicals.

(d)(5) Where tolerances are established for more than one member of the class of dithiocarbamates listed in paragraph (e)(3) of this section on the same raw agricultural commodity, the total residue of such pesticides shall not exceed that permitted by the highest tolerance established for any one member of the class, calculated as zinc ethylenebisdithiocarbamate and carbon disulfide.

3. Section 180.110 is amended by revising paragraph (a) to read as follows:

§180.110 Maneb; tolerances for residues.

(a) *General.* Tolerances are established for residues of maneb (manganese ethylenebisdithiocarbamate), including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only those maneb residues convertible to and expressed in terms of the degradate carbon disulfide.

Commodity	Parts per million
Almond	0.1
Apple	2
Banana, preharvest	4
Bean, dry, seed	2.5
Beet, sugar, dried pulp	2.5
Beet, sugar, roots	1.2
Beet, sugar, tops	120
Broccoli	6
Brussels sprouts	6
Cabbage	21
Cabbage, chinese, bok choy	10
Cabbage, chinese, napa	10
Cattle, fat	0.02
Cattle, meat	0.02
Cattle, meat byproducts	0.02
Cauliflower	6
Collards	10
Corn, sweet, kernel plus cob with husks removed	5
Cranberry	7
Cucumber	2
Egg	0.02
Eggplant	2.5
Endive	10
Fig	7
Goat, fat	0.02
Goat, meat	0.02
Goat, meat byproducts	0.02
Grape	7
Hog, fat	0.02
Hog, meat	0.02
Hog, meat byproducts	0.02
Horse, fat	0.02
Horse, meat	0.02
Horse, meat byproducts	0.02
Kale	10
Kohlrabi	6
Lettuce	10
Melon	3
Milk	0.02
Mustard greens	10
Onion, bulb	6
Onion, green	7
Papaya	10
Pepper	7
Potato	0.1
Poultry, fat	0.02
Poultry, meat	0.02
Poultry, meat byproducts	0.02
Pumpkin	3
Sheep, fat	0.02
Sheep, meat	0.02
Sheep, meat byproducts	0.02
Squash, summer	2
Squash, winter	3
Tomato	2.5
Turnip, greens	10
Turnip, roots	7

* * * * *

4. Section 180.132 is amended by revising paragraph (a) to read as follows:

§180.132 Thiram; tolerances for residues.

(a) *General.* Tolerances are established for residues of thiram, tetramethyl thiuram disulfide, including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by

measuring only those thiram residues convertible to and expressed in terms of the degradate carbon disulfide.

Commodity	Parts per million	Expiration/ Revocation Date
Apple	6.0	9/11/10
Peach	7.0	None
Strawberry	6.0	None

* * * * *

5. Section 180.176 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§180.176 Mancozeb; tolerances for residues.

(a) *General.* Tolerances are established for residues of mancozeb (a coordination product of zinc ion and maneb (manganese ethylenebisdithiocarbamate)), including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only those mancozeb residues convertible to and expressed in terms of the degradate carbon disulfide.

Commodity	Parts per million
Apple	0.6
Asparagus	0.1
Banana	2
Barley, bran	20
Barley, flour	20
Barley, grain	5
Barley, pearled barley	20
Barley, straw	25
Beet, sugar, dried pulp	3.0
Beet, sugar, roots	1.2
Beet, sugar, tops	60
Cattle, kidney	0.5
Cattle, liver	0.5
Corn, field, forage	40
Corn, field, grain	0.1
Corn, field, stover	15
Corn, pop, grain	0.06
Corn, pop, stover	40
Corn, sweet, forage	70
Corn, sweet, kernel plus cob with husks removed	0.1
Corn, sweet, stover	40
Cotton, undelinted seed	0.5
Crabapple	0.6
Cranberry	5
Fennel	2.5
Flax, seed	0.15
Goat, kidney	0.5
Goat, liver	0.5
Grape	1.5
Hog, kidney	0.5
Hog, liver	0.5
Horse, kidney	0.5
Horse, liver	0.5
Oat, flour	20
Oat, grain	5
Oat, groats/rolled oats	20
Oat, straw	25
Onion, bulb	1.5
Papaya	10
Peanut	0.1
Peanut, hay	65
Pear	0.6
Potato	0.2
Poultry, kidney	0.5
Poultry, liver	0.5
Quince	0.6
Rice, grain	0.06
Rice, straw	0.15
Rye, bran	20
Rye, grain	5
Rye, straw	25
Sheep, kidney	0.5
Sheep, liver	0.5
Sorghum, grain, forage	0.15
Sorghum, grain, grain	0.25
Sorghum, grain, stover	0.15
Tomato	2.5
Vegetable, cucurbit, group 9	2
Wheat, bran	20
Wheat, flour	20
Wheat, germ	20
Wheat, grain	5
Wheat, middlings	20
Wheat, shorts	20
Wheat, straw	25

* * * * *

(c) *Tolerances with regional registrations.* A tolerance with regional registrations is established for residues of the fungicide mancozeb, (a coordination product of zinc ion and maneb (manganese ethylenebisdithiocarbamate)), including its metabolites and degradates, in or on the commodity in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only those mancozeb residues convertible to and expressed in terms of the degradate carbon disulfide.

Commodity	Parts per million
Carrot, roots	1

* * * * *

6. Section 180.217 is amended by revising the section heading and paragraph (a) to read as follows:

§180.217 Metiram; tolerances for residues.

(a) *General.* Tolerances are established for residues of metiram (a mixture of 5.2 parts by weight of ammoniates of (ethylenebis (dithiocarbamato)) zinc with 1 part by weight ethylenebis (dithiocarbamic acid) bimolecular and trimolecular cyclic anhydrosulfides and disulfides], including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only those metiram residues convertible to and expressed in terms of the degradate carbon disulfide.

Commodity	Parts per million
Apple	0.5
Apple, wet pomace	2
Potato	0.2

* * * * *

§ 180.319 [Amended]

7. Section 180.319 is amended by removing the entry for the substance ''Coordination product of zinc ion and maneb'' from the table.

[FR Doc. E9–22302 Filed 9–15–09; 8:45 am]
BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 457

[CMS–2291–P]

RIN 0938–AP53

Children's Health Insurance Program (CHIP); Allotment Methodology and States' Fiscal Year 2009 CHIP Allotments

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule describes the implementation of certain funding provisions under title XXI of the Social Security Act (the Act), the Children's Health Insurance Program (CHIP), as amended by the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), by the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA), and by other related CHIP legislation. Specifically, this proposed rule addresses methodologies and procedures for determining States' FY 2009 through FY 2013 allotments and payments in accordance with sections 2104 and 2105 of the Act, as amended by CHIPRA.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. eastern standard time (e.s.t.) on November 16, 2009.

ADDRESSES: In commenting, please refer to file code CMS–2291–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the ''More Search Options'' tab.

2. *By regular mail.* You may mail written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–2291–P, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–2291–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—

Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by following the instructions at the end of the ''Collection of Information Requirements'' section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

A. Availability and Redistribution of Children's Health Insurance Program (CHIP) Fiscal Year Allotments Prior to CHIPRA

Title XXI of the Social Security Act (the Act) sets forth the Children's Health Insurance Program (CHIP) to enable States, the District of Columbia, and specified Commonwealths and Territories to initiate and expand health insurance coverage to uninsured, low-income children. The 50 States, the District of Columbia, and the Commonwealths and Territories may implement the CHIP through a separate child health program under title XXI of the Act, an expanded Medicaid program under title XIX of the Act, or a combination of both.

Federal funds appropriated for title XXI are limited, and the law specifies a formula and methodology to divide the total annual appropriation into individual allotments available for each State, the District of Columbia, and each U.S. Territory and Commonwealth with an approved child health plan.

Section 2104(b) of the Act requires States, the District of Columbia, and U.S. Territories and Commonwealths to have an approved child health plan for the fiscal year in order for the Secretary to provide an allotment for that fiscal year.

Before the enactment of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA, Pub. L. 111–3, enacted on February 4, 2009), section 2104(e) of the Act specified that in general the CHIP allotments for a Federal fiscal year were available for payment to States for their expenditures under an approved State child health plan for an initial 3-fiscal year period of availability, including the fiscal year for which the allotment was provided.

In general, before the enactment of CHIPRA, section 2104(f) of the Act specified that the amounts of States' allotments which were not expended during the initial 3-year period of availability were to be redistributed to those States that had fully spent these fiscal year allotments during this period of availability in accordance with an appropriate procedure determined by the Secretary. Furthermore, section 2104(e) of the Act specified that the amounts of the redistributed allotments continued to be available for expenditure by the States receiving these redistributions to the end of the fiscal year in which these funds were redistributed.

B. Funding of CHIP Allotments Before the Enactment of CHIPRA

Section 4901 of the Balanced Budget Act of 1997 (BBA, Pub. L. 105–33, enacted on August 5, 1997) established title XXI of the Social Security Act (the Act). In conjunction with further amendments of title XXI of the Act described later, appropriations for CHIP were made available to provide allotments to States for their CHIPs and related Medicaid program expenditures through March 31, 2009. With the enactment of the CHIPRA, title XXI was amended to provide funding for the CHIP through FY 2013.

Under the initial BBA, sections 2104(a)(1) through (10) of the Act appropriated funding for States' CHIPs for each fiscal year over a ten fiscal year period from 1998 through 2007. The funding for each fiscal year varied from $4.295 billion for FY 1998 up to $5.0 billion for FY 2007. Furthermore, under section 2104(c)(4) of the Act, additional appropriations were provided for each of fiscal years 1999 through 2007 to provide additional allotment amounts

particularly for the Commonwealths and Territories.

C. Enactment of Continuing Appropriations and Medicare, Medicaid, and SCHIP Extension Act of 2007

Continuing appropriation legislation (Pub. L. 110–92 enacted on September 29, 2007), contained provisions to extend funding under the CHIP through November 16, 2007. In particular, section 136(a) of Public Law 110–92 appropriated $5 billion for the purposes of providing FY 2008 allotments to the 50 States, the District of Columbia, and the Commonwealths and Territories. Additionally, $40 million was appropriated by this section to provide additional allotments to the Commonwealths and Territories in FY 2008.

Section 136(b) of Public Law 110–92 provided that the FY 2008 allotments be determined in accordance with the same methodology as previous CHIP fiscal year allotments were determined. Section 136(c) of Public Law 110–92 amended the CHIP statute to add a new section 2104(i) of the Act to provide for the redistribution in FY 2008 of the unexpended FY 2005 allotments remaining at the end of FY 2007 to those 50 States or the District of Columbia that had estimated shortfalls in FY 2008. Finally, section 106 of Public Law 110–92 provided that the FY 2008 allotment funds were only available for States' CHIP expenditures for assistance provided through November 16, 2007.

Subsequent to the enactment of Public Law 110–92, further continuing appropriation legislation was enacted which extended the dates through which the FY 2008 allotment funds were available as provided in section 106 of Public Law 110–92; in particular, Public Law 110–116 (enacted on November 13, 2007), Public Law 110–137 (enacted on December 14, 2007), and Public Law 110–149 (enacted on December 21, 2007) extended the dates to December 14, 2007, December 21, 2007, and December 31, 2007, respectively.

Section 201 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA, Pub. L. 110–173, enacted on December 29, 2007) amended section 2104(a) of the CHIP statute to explicitly provide funding for CHIP allotments in the amount of $5 billion for each of FYs 2008 and 2009 for the 50 States and the District of Columbia and the Commonwealths and Territories, and for $40 million for the Commonwealths and Territories for each of FY 2008 and FY 2009. These allotments would be determined in accordance with the existing methodology in CHIP statute for fiscal years before FY 2008. The funding provided for FY 2008 under the continuing appropriation legislation discussed above and enacted before MMSEA would no longer be available (and thus expenditures for FY 2008 would be paid from the allotments as provided under MMSEA). MMSEA provided that the FY 2008 and FY 2009 allotment funds were only available for States' expenditures through March 31, 2009.

Section 201 of MMSEA amended the CHIP statute to add section 2104(j) of the Act which appropriated $1.6 billion for the purpose of providing additional allotments to eliminate States' CHIP shortfalls in FY 2008.

The provisions of MMSEA were implemented and described in the **Federal Register** dated May 23, 2008 (30112, Vol. 73, No. 101).

D. Enactment of CHIPRA

Section 101 of the CHIPRA amended section 2104(a) of the Act to appropriate funding for each fiscal year FY 2009 through FY 2012, and for two semi-annual periods in FY 2013, October 1, 2012 through March 31, 2013 and April 1, 2013 through September 30, 2013, for the purpose of providing allotments to States for each of those fiscal years or fiscal year periods. Furthermore, section 108 of CHIPRA provided additional funding for State allotments for the period October 1, 2012 through March 31, 2013 (the first half of FY 2013). Finally, section 3(c) of CHIPRA provides for the coordination of funding for the CHIP in FY 2009 as previously provided under section 201 of MMSEA.

In particular, section 3(c) of CHIPRA requires the Federal government to rescind any of the following previously appropriated amounts that were not allotted or obligated before April 1, 2009:

- Section 2104(a)(11) of the Act for purposes of providing State CHIP allotments for FY 2009 for States' expenditures through March 31, 2009.
- Section 2104(k) of the Act for purposes of the redistribution of unexpended FY 2006 allotments in FY 2009 to address States' funding shortfalls in FY 2009.
- Section 2104(l) of the Act for purposes of providing additional allotments for States' expenditures in FY 2009 to fund States' shortfalls for their expenditures through March 31, 2009.

Furthermore, any amounts provided for FY 2009 CHIP allotments under section 2104(a)(12) as appropriated through the amendments made by CHIPRA must be reduced by the amounts that were obligated before April 1, 2009 under sections 2104(a)(11), 2104(k), or 2104(l) of the Act, as amended by section 201 of MMSEA (which refer to States' FY 2009 CHIP allotments, amounts of unexpended FY 2006 allotments redistributed in FY 2009, and the amounts of additional FY 2009 allotments to address States' CHIP funding shortfalls through March 31, 2009, respectively).

The rescission of these unobligated amounts as well as the reduction in the FY 2009 allotment for the amounts that were obligated before April 1, 2009 ensure that States do not receive FY 2009 allotments as determined under the CHIPRA in excess of the total amount provided under section 2104(a)(12) of the Act for FY 2009, as amended by CHIPRA.

E. Expenditures, Authority for Qualifying States To Use Available CHIP Allotments for Medicaid Expenditures

Under section 2105(a)(1)(A) through (D) and (a)(2) of the Act, and before enactment of Public Law 108–74 (Extension of Availability of CHIP Allotment Act, enacted on August 15, 2003), only Federal payments for the following Medicaid and CHIP expenditures were applied against States' available CHIP allotments: (1) Medical assistance provided under title XIX (Medicaid) to targeted low-income children in a CHIP-related Medicaid expansion, for which the CHIP enhanced Federal medical assistance percentage (CHIP EFMAP) rate is available; (2) medical assistance provided on behalf of a child during a period of presumptive eligibility under section 1920A of the Act (these funds are matched at the regular Medicaid Federal medical assistance percentage (FMAP) rate); (3) child health assistance to targeted low-income children that meets minimum benefit requirements under CHIP; and (4) certain other types of expenditures in CHIP that are subject to the 10-percent limit on non-primary expenditures (including other child health assistance for targeted low-income children, health services initiatives, outreach, and administrative costs).

Section 1(b) of Public Law 108–74, as amended by Public Law 108–127 (Social Security Act, Technical corrections, enacted November 17, 2003), added new section 2105(g) to the Act under which certain ''qualifying States'' that met prescribed criteria could elect to use up to 20 percent of any of the States' available CHIP allotments for FY 1998,

1999, 2000, or 2001 to increase the FMAP rate for certain regular Medicaid expenditures to the EFMAP rate available under CHIP. These expenditures were for children under 19 years of age whose family income exceeds 150 percent of the Federal poverty line and who are eligible under the States' Medicaid program. As described in the **Federal Register** published on July 23, 2004 (69 FR 44013), if a qualified State submitted both 20 percent allowance expenditures and other ''regular'' CHIP expenditures at the same time in a quarter, the 20 percent allowance expenditures would be applied first against the available fiscal year reallotments. However, the 20 percent allowance expenditures could be applied only against the specified fiscal year allotment funds (upon which the 20 percent allowances were based) and which would remain available. Under section 2104(g)(1)(B)(iii) of the Act, the amounts of States' FY 2001 reallotments would only be available through the end of FY 2005; therefore, the FY 2001 20 percent allowances for the qualifying States are only available through the end of FY 2005.

Section 6103 of the Deficit Reduction Act of 2005 (Pub. L. 109–171, enacted on February 8, 2006) amended section 2105(g) of the Act to provide for continued authority for qualifying States to use a portion of their available FY 2004 and FY 2005 CHIP allotments for payments to supplement the Medicaid FMAP that result in total Federal participation at the EFMAP rate (as determined under section 2105(b) of the Act) for certain expenditures made under the Medicaid program.

Section 201(b) of the National Institutes of Health Reform Act of 2006 and section 201(b) of MMSEA amended section 2105(g) of the Act to provide for continued authority for such payments to qualifying States for FYs 2006 through 2009.

Finally, section 107 of CHIPRA amended title XXI of the Act to add a new paragraph (4) of section 2105(g) of the Act; under this new provision, qualifying states at their option may use up to their entire fiscal year allotments for each of fiscal years 2009 through 2013, to the extent such allotments remain available to the State under the Act, in an amount equal to the additional amount that would have been paid to the State if the EFMAP as determined under section 2104(b) of the Act was substituted for the FMAP defined in section 1905(b) of the Act. The CHIPRA amendments to the qualifying State provision provide that the indicated amounts of such allotments are available for certain expenditures of the qualifying States as described in section 2105(g)(4)(B) of the Act, as amended by CHIPRA. In particular, these are expenditures made by such States on or after February 5, 2009 for children whose family income equals or exceeds 133 percent of the Federal poverty line but does not exceed the Medicaid applicable income level. As indicated above, this is a change from what was in effect previously; that is, before CHIPRA, the income level was 150 percent of the Federal poverty line.

II. Provisions of This Proposed Rule

For the reasons described in section I of this preamble, the purpose of this proposed rule would:

- Set forth the methodology and procedures for determining the CHIP allotments for FY 2009 through FY 2013 for the 50 States and the District of Columbia, and the U.S. Commonwealths and Territories as provided under section 2104(m) of the Act.
- Describe the methodology and process used to coordinate the funding provided previously to States under MMSEA, as described in the May 23, 2008 **Federal Register** (page 30112, Vol. 73, No. 101), under the provisions of section 2104(a)(11) of the Act related to States' FY 2009 allotments provided to States before CHIPRA, section 2104(k) of the Act related to the redistribution of States' unexpended FY 2006 allotments to address States' shortfalls in FY 2009, and section 2104(l) of the Act related to funding States' shortfalls in FY 2009 for their expenditures through March 31, 2009.
- Set forth the FY 2009 allotments as determined in accordance with such methodologies and procedures.
- Describe the implementation of the continued authority under section 2104(g)(4) of the Act as amended by CHIPRA for ''qualifying States'' to elect to receive their available CHIP allotments for FY 2009 through FY 2013 CHIP as increased Federal matching funds for certain expenditures in their Medicaid programs.
- Describe the retrospective adjustment for the FY 2008 shortfall funding as provided under section 2104(j) of the Act.

To incorporate the policies and implement the statutory provisions as described above, we are proposing the following revisions:

- In 42 CFR § 457.600(a), we are proposing to remove the date ''2007'' and add in its place ''2013'' of this regulation.
- In § 457.608, we are proposing to revise the heading ''Process and calculation of State allotments for a fiscal year'' to read ''Process and calculation of State allotments prior to FY 2009'' of this regulation.
- In part 457 subpart F, we are proposing to add § 457.609, ''Process and calculation of State allotments for a fiscal year after FY 2008'', which would implement the new funding amounts available for States' CHIP allotments for FY 2009 through FY 2013.
- In § 457.610, we are proposing to revise the heading ''Period of availability for State allotments for a fiscal year'' to read ''Period of availability for State allotments prior to FY 2009'' of this regulation. In the first line of the paragraph for this section, we are also proposing to remove the words ''for a fiscal year'' and add in its place ''prior to FY 2009'' of this regulation.
- In part 457 subpart F, we are proposing to add § 457.611, ''Period of availability for State allotments for a fiscal year after FY 2008'', which would reflect the 3 fiscal year and 2 fiscal year periods of availability, as applicable to fiscal years before FY 2009 and effective for FY 2009 and subsequent fiscal years, respectively.

A. Methodology and Procedures for Determining the CHIP Allotments for FY 2009 Through FY 2013 for the 50 States and the District of Columbia, and the U.S. Commonwealths and Territories

1. Reauthorization Funding for the CHIP

Section 101 of CHIPRA provides the reauthorization funding for providing States' allotments for FY 2009 through FY 2013. In particular, section 101 of CHIPRA amended section 2104(a) of the Act to revise paragraph (11) for FY 2008, and adds new paragraphs (12) through (16) to provide appropriations for FY 2009 through FY 2013, respectively. In particular, under the amendments made by CHIPRA the appropriated amounts available for allotments for these fiscal years, respectively are: $10,562,000,000 for FY 2009 (before CHIPRA the amount for FY 2009 was $5,000,000,000); $12,520,000,000 for FY 2010; $13,459,000,000 for FY 2011; $14,982,000,000 for FY 2012, and $2,850,000,000 for each of the first and second half of FY 2013. Also, section 108 of CHIPRA provided for a one-time appropriation of $11,706,000,000 for allotments for the first half of FY 2013. Therefore, the total appropriation for providing allotments during FY 2013 is $17,406,000,000.

2. Methodology for Determining State's Fiscal Year Allotments

a. *CHIPRA provision of 2009.* Section 102 of CHIPRA adds a new section 2104(m) of the Act which sets forth the

methodology for determining States' CHIP allotments for each of FY 2009 through FY 2013. In general, the States' fiscal year allotments are provided from the appropriation for the respective fiscal year allotment, subject to a proration adjustment, described in section II.A.2.g. of this proposed rule.

b. *FY 2009 Allotments.* The FY 2009 allotments for the 50 States and the District of Columbia, and the Commonwealths and Territories, are provided from the FY 2009 appropriation of $10,562,000,000, and are subject to a proration adjustment described in II.A.2.g. of this proposed rule, if necessary. The FY 2009 CHIP allotments for the 50 States and the District of Columbia are determined under a different methodology than is used for the determining the FY 2009 allotments for the Commonwealths and Territories.

The FY 2009 allotment for the 50 States and the District of Columbia is determined as 110 percent of the highest of the following three amounts:

- The total Federal payments to the State from the States' available CHIP allotments in FY 2008 as reported by the State and certified to the Secretary through the November 2008 submission of the quarterly expenditure reports, Forms CMS–21 and CMS–64, multiplied by the allotment increase factor described in section II. A. 2.h. of this proposed rule;
- The amount allotted to the State for FY 2008, multiplied by the allotment increase factor described in section II.A.2.h. of this proposed rule.
- The projected total Federal payments to the State under title XXI of the Act for FY 2009, determined based on the February submission of projections of expenditures as certified by the State to CMS no later than March 31, 2009. These projections may include certain amounts of Medicaid expenditures for certain ''qualifying states'' described in section 2105(g) of the Act.

With respect to the last item related to projected total Federal payments for FY 2009 under title XXI, section 107 of CHIPRA added a new paragraph section 2105(g)(4) of the Act to allow States to use up to 100 percent of their FY 2009 allotments for these expenditures. This provision is further described in section II.E. of this proposed rule.

The FY 2009 allotment for the Commonwealths and Territories is determined as the highest amount of the Federal payments made to the Commonwealth or Territory under title XXI of the Act in any of the fiscal years for the period of FY 1999 through FY 2008, multiplied by the allotment increase factor described in section II.A.2.h. of this proposed rule, plus an additional amount. The additional amount is equal to $40,000,000, as appropriated under section 2104(c)(4)(B) of the Act, multiplied by the following percentage provided under section 2104(c)(2) of the Act for the indicated jurisdiction: 91.6 percent for Puerto Rico; 3.5 percent for Guam; 2.6 percent for the Virgin Islands; 1.2 percent for American Samoa; and 1.1 percent for the Northern Mariana Islands.

c. *FY 2010 Allotments.* The FY 2010 allotments for the 50 States and the District of Columbia, and the Commonwealths and Territories, are provided from the FY 2010 appropriation of $12,520,000,000, and are subject to a proration adjustment if necessary, described in section II.A.2.g. of this proposed rule. Under the CHIPRA, the FY 2010 allotment for each State will be determined by multiplying the allotment increase factor for FY 2010 for the State, by the sum of: The State's FY 2009 allotment; the amount of the final FY 2006 redistributed allotments paid to the State as determined under section 2104(k) of the Act, and subject to any final retrospective adjustment to such amount determined under section 2104(k)(5) of the Act; the amount of the final additional FY 2009 allotments paid to the State as determined under section 2104(l) of the Act, and subject to any final retrospective adjustment to such amount determined under section 2104(l)(5) of the Act; and the amount of any contingency fund payment made to the State for FY 2010, as determined under section 2104(n) of the Act.

For the 50 States and the District of Columbia, under section 2104(m)(6) of the Act, the FY 2010 allotment may include additional amounts in situations where such States have submitted an expansion allotment adjustment request before August 31, 2009.

For the Commonwealths and Territories, in accounting for the amounts of the FY 2009 allotments for purposes of determining the FY 2010 allotments, the component of the FY 2009 allotment for such jurisdictions relating to the additional $40 million referenced in section 2104(c)(4) of the Act, is not included. This is because section 2104(m)(2)(A)(i)(I) of the Act, as amended by CHIPRA, references the FY 2009 allotment as determined in section 2104(m)(1) of the Act; that section in turn provides for determining the FY 2009 allotments from the amounts appropriated in section 2104(a)(12) of the Act. That is, such section 2104(m)(1) of the Act does not include the additional $40 million which is separately appropriated and available only for the jurisdictions in determining their FY 2009 allotments. Therefore, the component of the jurisdictions' FY 2009 allotment related to the additional $40 million would not be included in determining the amount of the jurisdictions' FY 2010 allotments.

d. *FY 2011 Allotments.* The FY 2011 allotments for the 50 States and the District of Columbia, and the Commonwealths and Territories, are provided from the FY 2011 appropriation ($13,459,000,000). The amounts of these allotments are subject to a proration adjustment described in section II.A.2.g of this proposed rule, if necessary. Section 2104(m)(2)(A)(ii) of the CHIPRA amendments refers to a ''rebasing'' process for determining the FY 2011 allotments; this requirement means that the States' payments rather than their allotments for FY 2010 must be considered in calculating the FY 2011 allotments. In particular the FY 2011 allotments are determined by multiplying the increase factor for FY 2011 by the sum of: Any Federal payments made from the States' available allotments in FY 2010; any amounts provided as redistributed allotments in FY 2010 to the State; and any Federal payments attributable to any contingency fund payments made to the State for FY 2010 determined under Section 2104(n) of the Act.

e. *FY 2012 Allotments.* The FY 2012 allotments for the 50 States and the District of Columbia, and the Commonwealths and Territories, are provided from the FY 2012 appropriation of $14,982,000,000, and are subject to a proration adjustment described in II.A.2.g.of this proposed rule, if necessary. Under the CHIPRA, the FY 2012 allotment for each State will be determined by multiplying the allotment increase factor for FY 2012 for the State, by the sum of: the State's FY 2011 allotment and any contingency fund payment made to the State for FY 2011, as determined under section 2104(n) of the Act.

For the 50 States and the District of Columbia, under section 2104(m)(6) of the Act, the FY 2012 allotment may include additional amounts in situations where such States have submitted an expansion allotment adjustment request before August 31, 2011.

f. *FY 2013 Allotments.* The FY 2013 allotments for the 50 States and the District of Columbia, and the Commonwealths and Territories, are comprised of two components related to the first half of FY 2013 (that is, the

period of October 1, 2012 through March 31, 2013) and second half of FY 2013 (that is, April 1, 2012 through September 30, 2013). The FY 2013 allotments for the first and second half of FY 2013 are subject to a proration adjustment described in section II.A.2.g of this proposed rule, as applicable.

The allotments for the first half of FY 2013 are provided from a total available appropriation of $14,556,000,000, comprised of $2,850,000,000 appropriated under section 2104(a)(16)(A) of the Act, and $11,706,000,000 appropriated under section 108 of CHIPRA. The allotments for the first half of FY 2013 is equal to the ''first half ratio'' multiplied by: the allotment increase factor for FY 2013 multiplied by the sum of: any Federal payments made from the States' available allotments in FY 2012; any amounts provided as redistributed allotments in FY 2012 to the State; and any Federal payments attributable to any contingency fund payments made to the State for FY 2012 as determined under Section 2104(n) of the Act. For this purpose, the first half ratio is the percentage determined by dividing $14,556,000,000 (calculated as the sum of $2,850,000,000 (the appropriation for the first half of FY 2013) and $11,706,000,000 (the one-time appropriation for the first half of the FY 2013)) by $17,406,000,000 (calculated as $2,850,000,000, the appropriation for the second half of FY 2013) plus the $14,556,000,000 amount).

The allotments for the second half of FY 2013 are provided from a total available appropriation of $2,850,000,000, appropriated under section 2104(a)(16)(B) of the Act. The allotments for the second half of FY 2013 is equal to $2,850,000,000 multiplied by a percentage equal to the amount of the allotment for the State for the first half of FY 2013 divided by the sum of all such first half of FY 2013 allotments for all States.

(g) *Proration Rule.* Under section 2104(m)(4) of the Act, as amended by CHIPRA, if the amount of States' allotments for a fiscal year (as determined in accordance with the provisions described of this proposed rule, or in the case of FY 2013, the amount of an allotment for each half of the fiscal year) exceeds the total appropriations available for such periods, the total allotments for each of these periods will be reduced on a proportional basis. The total amount available nationally for the period is multiplied by a proration percentage determined by dividing the amount determined for the period by the sum of such amounts.

h. *The allotment increase factor for a fiscal year.* Under Section 2104(m)(5) of the Act, the allotment increase factor for a fiscal year is equal to the product of two amounts for the fiscal year: the per capita health care growth factor and the Child Population growth factor.

For this purpose, in general, the per capita health care growth factor for a fiscal year is equal to 1 plus the percentage increase in the projected per capita amount of the National Health Expenditures from the calendar year in which the previous fiscal year ends to the calendar year in which the fiscal year involved ends, as most recently published by CMS before the beginning of the fiscal year involved.

In general, for the 50 States and the District of Columbia, the child population growth factor for a fiscal year is equal to 1 plus the percentage increase (if any) in the population of children in the State from July 1 in the previous fiscal year to July 1 in the fiscal year involved, as determined by CMS based on the most recent published estimates of the Census Bureau available before the beginning of the fiscal year involved plus 1 percentage point. In the determination of the child population growth factor, the CHIP legislation refers to ''the percentage increase (if any)'' of the population of children in the State. In this regard, child population growth factor refers only to increases in the population of children. Thus, if there was a decrease in the population of children over the indicated period, the child population growth factor for such state would be 0.0 percent plus one percentage point; that is, negative growth in the children population would not result in the growth factor being less than 101 percent.

Because of concerns about availability of data to determine the child population growth factor for the Commonwealths and the Territories, section 2104(m)(1)(B) of the Act explicitly required that the term ''United States'' be substituted for the term ''the State''. For fiscal years *after* FY 2009, that exception does not apply, and we will determine the child population growth factor for the Commonwealths and the Territories, based on the most recent published estimates of the Census Bureau. In accordance with section 602(b) of the CHIPRA, which added a new section 2109(b)(2)(B) of the Act, we will be working with the Secretary of the Commerce Department on appropriate adjustments to improve the Current Population Survey (CPS), or develop other data, to determine the child population growth factor.

i. *CHIP Fiscal Year Allotment Process.* As described above, the determination of the allotments for each fiscal year potentially involves the collection of relevant data, such as related to the allotment increase factor, or the consideration of additional information later or after the end of the fiscal year; for example, the determination of the FY 2010 and FY 2012 allotments allows States to receive increases in their CHIP allotments to reflect the submission of certain expansions to their CHIP programs. In that regard, we are incorporating into the CHIP regulation a process, under which the Secretary may elect to publish preliminary fiscal year allotments. Consequently, under this process at the time the updated allotment amounts became available the Secretary would publish a final notice. For example, under the CHIPRA legislation, in the determination of the FY 2010 and FY 2012 allotments, States can amend their CHIP programs to provide for expansions; the increase in expenditures for such expansions would serve to increase the amount of the State fiscal year allotments associated with the year of such expansions. As determined by the Secretary, the CHIP allotments for a fiscal year may need to be published first as Preliminary Allotments and then later as Final Allotments in the **Federal Register**. The proposed rule provides for the potential for a preliminary and final allotment to be determined.

B. Coordination of CHIP Funding for FY 2009

Before the enactment of CHIPRA, section 2104(a)(11) of the Act, as amended by MMSEA, appropriated $5 billion for purposes of providing FY 2009 allotments for States. Under the CHIP statute as amended by MMSEA and before the enactment of CHIPRA, such funds were potentially available for allotment and obligation to States for their CHIP related expenditures in FY 2009 through March 31, 2009. Furthermore, section 2104(k) of the Act and section 2104(l) of the Act, as amended by MMSEA, provided for redistribution of the unexpended FY 2006 allotments in FY 2009, and for additional FY 2009 shortfall allotments in FY 2009, respectively. However, section 3(c)(1) of CHIPRA provides for a rescission of amounts of these funds that were not obligated before April 1, 2009. Furthermore, section 3(c)(2) of CHIPRA requires that the FY 2009 allotments, as determined under section 2104(m)(1) of the Act (as amended by CHIPRA), be reduced by the following amounts that were appropriated and obligated before April 1, 2009. Amounts

appropriated and obligated before April 1, 2009 include the amounts of the FY 2009 allotments appropriated under section 2104(a)(11) of the Act, as amended by MMSEA and before the enactment of CHIPRA; amounts of FY 2006 redistributed allotments, provided under section 2104(k) of the Act; and, the amounts of the FY 2009 shortfall allotments, provided under section 2104(l) of the Act. This coordination ensures that States' FY 2009 CHIP funding does not exceed the final FY 2009 CHIP allotments as determined under the CHIPRA.

C. FY 2009 Allotments Determined in Accordance With Such Methodologies and Procedures

In accordance with the methodology described in section II.A. of this proposed rule relating to the calculation of the fiscal year CHIP allotments, and in section II.B. of this proposed rule relating to the coordination of CHIP funding, we have calculated the FY 2009 allotments for the States. That calculation is contained in three tables described in section III. of this proposed rule; Table 1 provides the calculation of the allotment increase factor for FY 2009, Table 2 provides the calculation of the FY 2009 allotment, and Table 3 provides the coordination of funds in FY 2009.

D. Period of Availability for CHIP Allotments

Section 105 of CHIPRA amended section 2105(e) of the Act to revise the period of availability for expenditure by States of their CHIP fiscal year allotments. Before the enactment of CHIPRA, States' CHIP fiscal year allotments were available for expenditure by the State for 3 fiscal years, the fiscal year and the subsequent 2 fiscal years. With the enactment of CHIPRA, section 2105(e) of the Act now provides that each of the States' fiscal year allotments for *FY 1998 through FY 2008,* are available for the expenditure by the State for *3 fiscal years.* Finally, section 2104(e) of the Act as amended by CHIPRA now indicates that States' fiscal year allotments for *FY 2009 and each succeeding fiscal year* are available for expenditure by the States for *2 fiscal years,* the current fiscal year and the immediately subsequent fiscal year. In this proposed rule, we have amended the CHIP regulations at § 457.611 to reflect the 3 fiscal year and 2 fiscal year periods of availability, as applicable to fiscal years before FY 2009 and effective for FY 2009 and subsequent fiscal years, respectively.

E. Continuing Authority for Qualifying States To Use FY 2009 Through FY 2013 Allotments for Certain Medicaid Expenditures

Section 107 of CHIPRA amended the CHIP statute to add a new section 2105(g)(4) of the Act to allow certain ''qualifying states'' described in section 2105(g) of the Act to elect to use up to 100 percent of their available CHIP fiscal year allotments for FY 2009 and following fiscal years for certain expenditures in Medicaid. Before the enactment of CHIPRA, States were only able to use up to 20 percent of their available fiscal year CHIP allotments for the applicable Medicaid expenditures. With the enactment of CHIPRA, beginning with the FY 2009 allotment, States can use up to 100 percent of their FY 2009 and following fiscal year allotments for the States' qualifying expenditures. In that case, only the Federal share portion of the expenditures which is above the amount that the State would have received under Medicaid would be applied against the CHIP allotment.

Note, under section 5001 of the American Recovery and Reinvestment Act of 2009 (ARRA, Pub. L. 111–5, enacted on February 17, 2009) the FMAP under the Medicaid program has been increased during the 9-quarter period October 1, 2009 through December 31, 2010. Because of this increase, the amount of the Federal share funds that will be applied against the CHIP qualifying States' FY 2009 (and following) allotments will be reduced. For example, a qualifying State's regular Medicaid FMAP rate in FY 2009 is 50 percent, its increased FMAP under ARRA in Medicaid is 60.00 percent, and its CHIP EFMAP is 65.00 percent. This qualifying State would be able to claim the ''qualifying'' expenditures in FY 2009 at the 65.00 percent EFMAP rate in CHIP, and only 5 percent of such expenditures would apply against the State's FY 2009 allotment, calculated as 65.00 percent (CHIP EFMAP) minus 60.00 percent (increased FMAP under ARRA) claimable under the Medicaid program. In the same example (and assuming the same FMAP for Medicaid and enhanced FMAP in CHIP), after December 31, 2010 15.00 percent of the qualifying expenditure in FY 2011 would apply against the State's FY 2011 CHIP allotment, calculated as 65.00 percent (CHIP EFMAP) minus 50.00 percent (regular FMAP) claimable under the Medicaid program. We have amended the CHIP regulations to reflect this provision.

F. Retrospective Adjustment of FY 2008 Shortfall Allotments

Section 2104(j)(5) of the Act, as amended by MMSEA provides for a potential retrospective adjustment with respect to the amounts of States' FY 2008 shortfall allotments provided to them in FY 2008 and based on expenditure reports for FY 2008 submitted and certified by States to CMS no later than November 30, 2008.

Under section 2104(j)(2) and (3)(A) of the Act, additional FY 2008 shortfall allotments were made available only to those 50 States and the District of Columbia that were initially determined to have a shortfall in CHIP funding in FY 2008 based on their FY 2008 expenditure projections as submitted and certified by the States by November 30, 2007. For those States, under section 2104(j)(5) of the Act, the retrospective adjustment to the amounts of their additional FY 2008 shortfall allotments is based on the FY 2008 expenditure projections submitted and certified by such States by November 30, 2008.

Through the end of FY 2008 and based on States' estimated FY 2008 CHIP expenditures, we had provided approximately $1,201 million in total additional FY 2008 shortfall allotments to States to address their projected shortfalls in FY 2008. However, based on the States' actual FY 2008 expenditures, as submitted through November 30, 2008, the final States' shortfalls in FY 2008 were only approximately $995 million. That is, of those States who overestimated their projected shortfalls, final shortfalls for FY 2008 were about $232 million less than were previously estimated, and for States that underestimated their shortfalls, their actual shortfalls were about $26 million higher. Thus, the final net shortfall for States was about $995 million ($1,201 million minus $232 million plus $26 million). Table 4 in this notice presents the final FY 2008 shortfall allotments after applying the retrospective adjustment under section 2104(j)(5) of the Act.

G. Retrospective Adjustment of FY 2009 Shortfall Allotments

Section 2104(l)(5) of the Act, as amended by MMSEA provides for a potential retrospective adjustment with respect to the amounts of States' FY 2009 shortfall allotments provided to them in FY 2009 prior to April 1, 2009 based on expenditure reports for the first two quarters of FY 2009 as submitted and certified by States to CMS no later than May 31, 2009.

Under section 2104(l)(2) and (3)(A) of the Act, additional FY 2009 shortfall

allotments were made available to those States that were initially determined to have a shortfall in CHIP funding in FY 2009 based on their expenditure projections for the first two quarters of FY 2009 as submitted and certified by the States by November 30, 2008. For those States, under section 2104(l)(5) of the Act, the retrospective adjustment to the amounts of their additional FY 2009 shortfall allotments is based on the FY 2009 expenditures for the first two quarters of FY 2009 as submitted and certified by such States by May 31, 2009.

Prior to April 1, 2009, and based on States' estimated FY 2009 CHIP expenditures through the end of the second quarter of FY 2009, we had provided approximately $267 million in total additional FY 2009 shortfall allotments to States to address their projected shortfalls in FY 2009 through the end of the second quarter FY 2009 in that amount. However, based on the States' actual FY 2009 expenditures for the first two quarters of FY 2009, as submitted through May 31, 2009, the final States' shortfalls in FY 2009 through the second quarter of FY 2009 for the shortfall States were only approximately $210 million. That is, for the shortfall States initially receiving the additional FY 2009 shortfall allotments, based on their actual FY 2009 reported expenditures for the first two quarters of FY 2009, their final shortfalls for the first two quarters of FY 2009 were about $58 million less than was previously estimated. Table 5 in this notice presents the final FY 2009 shortfall allotments after applying the retrospective adjustment under section 2104(l)(5) of the Act. Also, Column D in Table 3 reflects these final retrospective adjustment FY 2009 shortfall allotments.

III. Tables

Following are the keys and associated tables for the CHIP funding provisions as discussed in previous sections:

Table 1—Allotment Increase Factor for 2009

Table 2—FY 2009 Children's Health Insurance Program Allotments under the Children's Health Insurance Program Reauthorization Act Of 2009

Table 3—Coordination of CHIP Funding for Fiscal Year 2009

Table 4—Retrospective Adjustment for the FY 2008 Shortfall Funding

A. TABLE 1—ALLOTMENT INCREASE FACTOR FOR 2009

Key to Table 1

Column/Description

Column A = *State.* Column A contains the name of the State, District of Columbia, U.S. Commonwealth or Territory.

Column B = *PCNHE 2008, PCNHE 2009, PCHCG Factor.* Column B contains the calculation of the Per Capita Health Care Growth (PCHCG) Factor for FY 2009, determined as 1 plus the percentage increase in the Per Capita National Health Expenditures (PCNHE) from calendar year 2008 to calendar year 2009.

Columns C through F = *Calculation of the Child Population Growth Factor (CPGF) for FY 2009:*

Column C = *July 1, 2008 Child Population.* Column C contains the population of children in each State or the United States as of July 1, 2008, as provided by the most recent published data of the Census Bureau before the beginning of FY 2009.

Column D = *July 1, 2009 Child Population.* Column D contains the population of children in each State or the United States as of July 1, 2009, as provided by the most recent published data of the Census Bureau before the beginning of FY 2009.

Column E = *Percent Increase 2008–2009.* Column E contains the percentage increase, if any, of the population of children in each State, or the United States, from July 1, 2008 to July 1, 2009, calculated as the difference between the number in Column D minus the number in Column C divided by the number in Column C.

Column F = *Child Population Growth Factor.* Column F contains the CPGF for the 50 States and the District of Columbia, determined as the 1.01 plus the percent in Column E for the State. For the Commonwealths and Territories the CPGF is determined as 1.01 plus the percentage in Column E for the United States.

Column G = *FY 2009 Allotment Increase Factor.* Column G contains the FY 2009 Allotment Increase Factor, calculated as the PCHCG factor in Column B multiplied by the CPGF percent in Column F.

TABLE 1 - ALLOTMENT INCREASE FACTOR FOR FY 2009						
STATE	PCNHE 2008 $7,868 PCNHE 2009 $8,329 PCHCG Factor* 1.0586	Child Population Growth Factor (CPGF) /2				FY 2009 Allotment Increase Factor
		July 1, 2008 Population	July 1, 2009 Population	Percent Increase 2008 - 2009 (D-C)/C	FY 2009 Child Population Growth Factor Col E + 1.01	Col B x F
A	B	C	D	E	F	G
Alabama	1.0586	1,194,074	1,197,948	0.32%	101.32%	1.0726
Alaska	1.0586	191,769	190,713	0.00%	101.00%	1.0692
Arizona	1.0586	1,789,418	1,821,692	1.80%	102.80%	1.0883
Arkansas	1.0586	743,263	746,633	0.45%	101.45%	1.0740
California	1.0586	9,938,932	9,935,774	0.00%	101.00%	1.0692
Colorado	1.0586	1,271,502	1,286,546	1.18%	102.18%	1.0817
Connecticut	1.0586	864,030	856,402	0.00%	101.00%	1.0692
Delaware	1.0586	220,313	221,645	0.60%	101.60%	1.0756
District of Columbia	1.0586	121,458	120,186	0.00%	101.00%	1.0692
Florida	1.0586	4,291,630	4,306,762	0.35%	101.35%	1.0729
Georgia	1.0586	2,709,394	2,748,436	1.44%	102.44%	1.0844
Hawaii	1.0586	305,075	307,837	0.91%	101.91%	1.0788
Idaho	1.0586	438,123	445,531	1.69%	102.69%	1.0871
Illinois	1.0586	3,390,211	3,391,475	0.04%	101.04%	1.0696
Indiana	1.0586	1,676,824	1,678,650	0.11%	101.11%	1.0703
Iowa	1.0586	753,549	753,479	0.00%	101.00%	1.0692
Kansas	1.0586	737,760	740,184	0.33%	101.33%	1.0727
Kentucky	1.0586	1,061,760	1,063,280	0.14%	101.14%	1.0707
Louisiana	1.0586	1,156,754	1,166,252	0.82%	101.82%	1.0779
Maine	1.0586	292,995	288,981	0.00%	101.00%	1.0692
Maryland	1.0586	1,437,569	1,430,751	0.00%	101.00%	1.0692
Massachusetts	1.0586	1,511,361	1,496,915	0.00%	101.00%	1.0692
Michigan	1.0586	2,556,032	2,516,262	0.00%	101.00%	1.0692
Minnesota	1.0586	1,331,231	1,330,605	0.00%	101.00%	1.0692
Mississippi	1.0586	817,433	822,163	0.58%	101.58%	1.0753
Missouri	1.0586	1,505,712	1,505,402	0.00%	101.00%	1.0692
Montana	1.0586	232,599	232,607	0.00%	101.00%	1.0692
Nebraska	1.0586	472,686	473,928	0.26%	101.26%	1.0720
Nevada	1.0586	709,054	724,930	2.24%	103.24%	1.0929
New Hampshire	1.0586	312,384	307,998	0.00%	101.00%	1.0692
New Jersey	1.0586	2,170,636	2,158,178	0.00%	101.00%	1.0692
New Mexico	1.0586	535,555	541,613	1.13%	102.13%	1.0812
New York	1.0586	4,657,653	4,611,979	0.00%	101.00%	1.0692
North Carolina	1.0586	2,383,127	2,419,399	1.52%	102.52%	1.0853
North Dakota	1.0586	152,453	152,365	0.00%	101.00%	1.0692
Ohio	1.0586	2,888,859	2,868,259	0.00%	101.00%	1.0692
Oklahoma	1.0586	959,163	969,003	1.03%	102.03%	1.0800
Oregon	1.0586	914,553	916,631	0.23%	101.23%	1.0716
Pennsylvania	1.0586	2,951,121	2,933,155	0.00%	101.00%	1.0692
Rhode Island	1.0586	246,826	243,282	0.00%	101.00%	1.0692
South Carolina	1.0586	1,136,530	1,144,940	0.74%	101.74%	1.0770
South Dakota	1.0586	208,937	209,943	0.48%	101.48%	1.0743
Tennessee	1.0586	1,563,470	1,573,014	0.61%	101.61%	1.0756
Texas	1.0586	7,103,539	7,241,881	1.95%	102.95%	1.0898
Utah	1.0586	881,555	902,837	2.41%	103.41%	1.0947
Vermont	1.0586	138,297	136,041	0.00%	101.00%	1.0692
Virginia	1.0586	1,943,500	1,950,136	0.34%	101.34%	1.0728
Washington	1.0586	1,629,098	1,634,960	0.36%	101.36%	1.0730
West Virginia	1.0586	409,423	408,037	0.00%	101.00%	1.0692
Wisconsin	1.0586	1,394,328	1,389,784	0.00%	101.00%	1.0692
Wyoming	1.0586	135,105	137,471	1.75%	102.75%	1.0877
NATIONAL	1.0586	78,438,623	78,652,875	0.27%	101.27%	1.0721
American Samoa	1.0586				101.27%	1.0721
Guam	1.0586				101.27%	1.0721
N. Mariana Islands	1.0586				101.27%	1.0721
Puerto Rico	1.0586				101.27%	1.0721
Virgin Islands	1.0586				101.27%	1.0721

Footnotes
/1 Per Capita Health Care Care Growth Factor (PCHCGF) for 2009 determined as 1 plus percentage increase in National Health Expenditures (NHE) from calendar year (CY) 2008 to CY 2009
/2 Child population growth factor data from Population Estimates Program, Vintage 2007, U.S. Census Bureau

B. Table 2—FY 2009 Children's Health Insurance Program Allotments Under the Children's Health Insurance Program Reauthorization Act of 2009

Key to Table 2

Column/Description

Column A = *State.* Column A contains the name of the State, District of Columbia, U.S. Commonwealth or Territory.

Column B = *FY 2008 Total Federal CHIP Payments.* Column B contains, for the 50 States and the District of Columbia only, the total Federal payments applied to the States' available CHIP allotment funds in FY 2008, based on the States' expenditure reports submitted through November 30, 2008. For the Commonwealths and Territories, the entry in this Column is ''na.''

Column C = *FY 2008 CHIP Allotments.* Column C contains for the 50 States and the District of Columbia only, the States' final FY 2008 CHIP Allotments, as published in the May 23, 2008 **Federal Register** (30112, Vol. 73, No. 101). For the Commonwealths and Territories, Column C contains the maximum amount of the Federal payments for each of the jurisdictions as was applied against the jurisdiction's available CHIP funds in each of the fiscal years FY 1999 through 2008.

Column D = *FY 2009 Allotment Increase Factor.* Column D contains the Allotment Increase Factor for each State as contained in Column G of Table 1.

Column E = *FY 2008 Tot. Fed Pmts × Incr. Factor.* Column E contains, for the 50 States and the District of Columbia only, the product of the FY 2008 total Federal CHIP payments in Column B multiplied by the amount of the FY 2009 Allotment Increase Factor in Column D. Column E contains, for the Territories and Commonwealths, the product of the amount in Column C (containing the maximum amount of

Federal Payments in the FY 1999 through FY 2008) multiplied by the amount in Column D (the allotment increase period).

Column F = *FY 2008 Allotments × Incr. Factor.* Column F contains, for the 50 States and the District of Columbia only, the product of the FY 2008 CHIP allotments in Column C multiplied by the amount of the FY 2009 Allotment Increase Factor in Column D. Column F contains, for each of the Commonwealths and Territories, the percentage for each jurisdiction, respectively, from section 2104(a)(3) the percent allocation.

Column G = *FY 2009 Projected Expenditures.* Column G contains, for the 50 States and the District of Columbia only; the amounts of each State's projected CHIP Federal payments as submitted by the States on their February 2009 quarterly expenditure reports no later than March 31, 2009. Column G contains, for each of the Commonwealths and Territories, the portion of the additional $40 million in allotment funds available to such jurisdiction for FY 2009, determined as the product of the percentage in Column F for the Jurisdiction multiplied by $40 million.

Column H = *Maximum of Col. E, F, G.* Column H contains, for the 50 States and the District of Columbia only, the maximum of the amounts in Columns E, F, and G.

Column I = *FY 2009 Allotments.* Column I contains, for the 50 States and the District of Columbia, the FY 2009 CHIP allotment, determined as 110 percent multiplied by the amount in Column H. Column I contains for the Commonwealths and Territories, the FY 2009 CHIP allotment, determined as the sum of the amount in Column E and the amount in Column G, for each jurisdiction.

TABLE 2 - FY 2009 CHILDREN'S HEALTH INSURANCE PROGRAM ALLOTMENTS UNDER THE CHILDREN'S HEALTH INSURANCE PROGRAM REAUTHORIZATION ACT OF 2009

STATE	FY 2008 Total Federal CHIP Payments	FY 2008 CHIP Allotments	FY 2009 Allotment Increase Factor	FY 2008 Tot. Fed. Pmts x Incr. Factor Col B x D	FY 2008 Allotments x Incr. Factor Col C x D	FY 2009 Projected Expenditures /1	Maximum of Col E, F, G /3	FY 2009 Allotments Col H x 1.1
A	B	C	D	E	F	G	H	I
Alabama	$108,802,989	$72,328,116	1.0726	$116,703,406	$77,580,015	$127,546,000	$127,546,000	$140,300,600
Alaska	$14,387,020	$11,186,515	1.0692	$15,382,281	$11,960,372	$22,332,000	$22,332,000	$24,565,200
Arizona	$119,364,458	$142,956,789	1.0883	$129,900,816	$155,575,653	$115,364,000	$155,575,653	$171,133,218
Arkansas	$113,217,801	$47,543,965	1.0740	$121,593,360	$51,061,144	$86,577,000	$121,593,360	$133,752,696
California	$1,259,347,793	$789,164,316	1.0692	$1,346,466,554	$843,756,874	$1,411,736,000	$1,411,736,000	$1,552,909,600
Colorado	$82,481,275	$71,544,798	1.0817	$89,220,209	$77,390,194	$91,542,000	$91,542,000	$100,696,200
Connecticut	$26,290,673	$38,810,205	1.0692	$28,109,401	$41,495,005	$39,112,000	$41,495,005	$45,644,506
Delaware	$9,664,288	$12,759,650	1.0756	$10,394,694	$13,723,997	$10,816,000	$13,723,997	$15,096,397
District of Columbia	$10,138,224	$12,057,061	1.0692	$10,839,563	$12,891,141	$10,006,000	$12,891,141	$14,180,255
Florida	$272,305,390	$301,724,376	1.0729	$292,159,232	$323,723,162	$263,903,000	$323,723,162	$356,095,478
Georgia	$224,990,230	$167,923,820	1.0844	$243,986,570	$182,101,938	$274,595,000	$274,595,000	$302,054,500
Hawaii	$17,603,151	$15,242,690	1.0788	$18,989,604	$16,443,229	$18,945,000	$18,989,604	$20,888,564
Idaho	$35,351,472	$23,803,069	1.0871	$38,429,768	$25,875,766	$40,468,000	$40,468,000	$44,514,800
Illinois	$292,862,843	$208,343,771	1.0696	$313,236,004	$222,838,740	$309,564,000	$313,238,004	$344,561,804
Indiana	$102,383,574	$97,384,888	1.0703	$109,584,257	$104,234,011	$125,077,000	$125,077,000	$137,584,700
Iowa	$55,307,598	$33,177,409	1.0692	$59,133,649	$35,472,545	$59,323,000	$59,323,000	$65,255,300
Kansas	$47,850,684	$36,635,060	1.0727	$51,327,314	$39,296,810	$51,967,000	$51,967,000	$57,163,700
Kentucky	$90,295,307	$68,236,560	1.0707	$96,678,566	$73,060,417	$114,558,000	$114,558,000	$126,013,800
Louisiana	$159,214,074	$84,083,019	1.0779	$171,612,023	$90,630,537	$188,548,000	$188,548,000	$207,402,800
Maine	$33,391,598	$15,449,944	1.0692	$35,701,551	$16,518,735	$33,427,000	$35,701,551	$39,271,706
Maryland	$156,230,248	$72,403,254	1.0692	$167,037,894	$77,411,943	$177,067,000	$177,067,000	$194,773,700
Massachusetts	$259,309,763	$73,334,995	1.0692	$277,248,211	$78,408,140	$292,417,000	$292,417,000	$321,658,700
Michigan	$172,932,643	$147,082,132	1.0692	$184,895,722	$157,256,933	$201,022,000	$201,022,000	$221,124,200
Minnesota	$71,388,962	$48,613,498	1.0692	$76,327,485	$51,976,467	$34,380,000	$76,327,485	$83,960,234
Mississippi	$142,912,495	$60,988,699	1.0753	$153,674,252	$65,581,339	$175,399,000	$175,399,000	$192,938,900
Missouri	$79,645,045	$77,617,870	1.0692	$85,154,705	$82,987,294	$144,390,000	$144,390,000	$158,829,000
Montana	$24,945,517	$15,921,821	1.0692	$26,672,098	$17,023,835	$29,990,000	$29,990,000	$32,989,000
Nebraska	$35,562,811	$21,376,574	1.0720	$38,121,881	$22,914,815	$38,141,000	$38,141,000	$41,955,100
Nevada	$28,766,219	$51,071,928	1.0929	$31,438,025	$55,815,487	$26,786,000	$55,815,487	$61,397,036
New Hampshire	$11,248,518	$10,656,681	1.0692	$12,026,664	$11,393,885	$13,495,000	$13,495,000	$14,844,500
New Jersey	$323,057,000	$105,519,251	1.0692	$345,405,334	$112,818,828	$459,450,000	$459,450,000	$505,395,000
New Mexico	$124,318,151	$52,045,406	1.0812	$134,406,828	$56,268,999	$255,200,000	$255,200,000	$280,720,000
New York	$326,890,431	$328,679,791	1.0692	$349,503,953	$351,417,097	$394,066,000	$394,066,000	$433,472,600
North Carolina	$193,685,712	$136,117,313	1.0853	$210,205,129	$147,726,732	$219,691,000	$219,691,000	$241,660,100
North Dakota	$13,452,611	$7,888,996	1.0692	$14,383,231	$8,434,738	$13,212,000	$14,383,231	$15,821,554
Ohio	$227,466,032	$157,858,294	1.0692	$243,201,605	$168,778,565	$259,341,000	$259,341,000	$285,275,100
Oklahoma	$99,351,936	$70,828,185	1.0800	$107,303,838	$76,497,111	$137,636,000	$137,636,000	$151,399,600
Oregon	$66,339,195	$60,115,810	1.0716	$71,087,951	$64,419,078	$91,089,000	$91,089,000	$100,197,900
Pennsylvania	$204,468,133	$168,758,145	1.0692	$218,612,764	$180,432,442	$282,099,000	$282,099,000	$310,308,900
Rhode Island	$59,115,228	$13,957,969	1.0692	$63,204,682	$14,923,570	$30,823,000	$63,204,682	$69,525,150
South Carolina	$57,786,536	$71,016,874	1.0770	$62,236,733	$76,485,952	$97,148,000	$97,148,000	$106,862,800
South Dakota	$15,628,267	$10,504,473	1.0743	$16,789,051	$11,284,689	$18,778,000	$18,778,000	$20,655,800
Tennessee	$77,517,851	$99,841,627	1.0756	$83,381,279	$107,393,620	$142,390,000	$142,390,000	$156,629,000
Texas	$697,962,599	$556,190,553	1.0898	$760,635,343	$606,133,040	$788,500,000	$788,500,000	$867,350,000
Utah	$50,253,013	$41,291,966	1.0947	$55,013,662	$45,203,703	$59,331,000	$59,331,000	$65,264,100
Vermont	$5,660,421	$5,636,822	1.0692	$6,051,996	$6,026,764	$8,627,000	$8,627,000	$9,489,700
Virginia	$131,264,569	$90,338,630	1.0728	$140,819,606	$96,914,578	$159,873,000	$159,873,000	$175,860,300
Washington	$43,367,730	$79,883,308	1.0730	$46,533,003	$85,713,737	$36,754,000	$85,713,737	$94,285,111
West Virginia	$36,785,678	$25,666,451	1.0692	$39,330,426	$27,441,997	$37,764,000	$39,330,426	$43,263,469
Wisconsin	$75,282,751	$69,563,162	1.0692	$80,490,637	$74,375,380	$185,705,000	$185,705,000	$204,275,500
Wyoming	$8,740,819	$6,373,481	1.0877	$9,507,529	$6,932,538	$10,297,000	$10,297,000	$11,326,700
States/DC Total	$6,896,587,326	$4,987,500,000		$7,410,152,339	$5,362,023,581	$8,216,267,000	$8,520,540,525	$9,372,594,578

Commonwealths and Territories		MAX SCHIP PMT FY 1999-2008	Increase Factor	Col C x D	Sec. 2104(c)(3) Percent Alloc.	$40,000,000 x Col F /2		Tot. FY 09 Allot Col E + G
American Samoa	na	$794,872	1.0721	$852,152	1.2%	$480,000		$1,332,152
Guam	na	$3,523,345	1.0721	$3,777,242	3.5%	$1,400,000		$5,177,242
N. Mariana Islands	na	$728,633	1.0721	$781,139	1.1%	$440,000		$1,221,139
Puerto Rico	na	$104,474,207	1.0721	$112,002,755	91.6%	$36,640,000		$148,642,755
Virgin Islands	na	$2,135,295	1.0721	$2,289,167	2.6%	$1,040,000		$3,329,167
Total		$111,656,352		$119,702,455	100.0%	$40,000,000		$159,702,455

NATIONAL TOTAL	$9,532,297,033

Footnotes
/1 Final FY 2009 Allotments based on February 2009 budget submissions
/2 Under 2104(c)(4)(B) of the Act, Commonwealths and Territories receive an additional $40,000,000 for FY 2009
/3 Shaded entries in Columns E, F, and G represent the maximum value shown in Column H

C. Table 3—Coordination of CHIP Funding for Fiscal Year 2009

Table 3 contains the amounts of each States' FY 2009 CHIP allotment, as contained in Column I on Table 2, reduced by certain amounts of CHIP allotment funds already available to the State in FY 2009, as required under section 3(c) of CHIPRA.

Key to Table 3

Column/Description

Column A = *State.* Column A contains the name of the State.

Column B = *FY 2009 Pre-CHIPRA Allotment Grants Issued Before April 1, 2009.* Column B contains the amount if any of the State's FY 2009 allotment that was actually provided to the State in a grant award from such allotment before April 1, 2009, as determined under section 2104(a) of the Act before the enactment of CHIPRA, as published in the **Federal Register** on May 23, 2008 (30112, Vol. 73, No. 101).

Column C = *FY 2006 Unexpended Allotments Redistributed in FY 2009 Before April 1, 2009.* Column C contains the total amount, if any, that the State received from the amounts of States' unexpended FY 2006 allotments remaining at the end of FY 2008, and redistributed in FY 2009 before April 1, 2009, determined in accordance with the provisions of section 2104(k) of the Act.

Column D = *FY 2009 Shortfall Allotments After Retrospective Adjustment.* Column D contains the final amount if any, that the State received as an additional shortfall allotment for the first two quarters of FY 2009, as determined under the retrospective adjustment provision of

section 2104(l)(5) of the Act. Refer to Table 5 for further information regarding the determination of the amounts of the FY 2009 shortfall allotments under the retrospective adjustment.

Column E = *Total FY 2009 Pre-CHIPRA Allotment Funds.* Column E contains the total amount if any, that the State received as CHIP allotment funds in FY 2009 before April 1, 2009, determined as the sum of the amounts, if any, in Columns B, C, and D, for each State.

Column F = *FY 2009 Total Allotments Determined Under CHIPRA.* Column F contains the total FY 2009 CHIP allotment determined under CHIPRA, as contained in Column I in Table 2.

Column G = *FY 2009 Allotments Under CHIPRA Balance Effective April 1, 2009.* Column G contains the balance of the FY 2009 CHIP allotment after the reduction by the amounts of the FY 2009 allotment funds provided in FY 2009, determined as the amount in Column F minus the amount in Column E.

TABLE 3 - COORDINATION OF CHIP FUNDING FOR FISCAL YEAR 2009

STATE	FY 2009 Pre-CHIPRA Allotment Grants Issued Prior to April 1, 2009	FY 2006 Unexpended Allotments Redistributed in FY 2009 Prior to April 1, 2009	FY 2009 Shortfall Allotments After Retrospective Adjustment**	Total FY 2009 Pre-CHIPRA Allotment Funds B + C + D	FY 2009 Total Allotments Determined Under CHIPRA	FY 2009 Allotments Under CHIPRA Balance Effective April 1, 2009* F - E
A	B	C	D	E	F	G
Alabama	$71,056,418	$0	$0	$71,056,418	$140,300,600	$69,244,182
Alaska	$10,419,103	$0	$0	$10,419,103	$24,565,200	$14,146,097
Arizona	$149,074,041	$0	$0	$149,074,041	$171,133,218	$22,059,177
Arkansas	$50,409,786	$0	$0	$50,409,786	$133,752,696	$83,342,910
California	$799,172,168	$0	$0	$799,172,168	$1,552,909,600	$753,737,432
Colorado	$0	$0	$0	$0	$100,696,200	$100,696,200
Connecticut	$0	$0	$0	$0	$45,644,506	$45,644,506
Delaware	$0	$0	$0	$0	$15,096,397	$15,096,397
District of Columbia	$0	$0	$0	$0	$14,180,255	$14,180,255
Florida	$0	$0	$0	$0	$356,095,478	$356,095,478
Georgia	$175,553,509	$0	$0	$175,553,509	$302,054,500	$126,500,991
Hawaii	$0	$0	$0	$0	$20,888,564	$20,888,564
Idaho	$0	$0	$0	$0	$44,514,800	$44,514,800
Illinois	$198,658,964	$0	$0	$198,658,964	$344,561,804	$145,902,840
Indiana	$0	$0	$0	$0	$137,584,700	$137,584,700
Iowa	$34,057,616	$0	$0	$34,057,616	$65,255,300	$31,197,684
Kansas	$37,854,500	$0	$0	$37,854,500	$57,163,700	$19,309,200
Kentucky	$67,371,232	$0	$0	$67,371,232	$126,013,800	$58,642,568
Louisiana	$84,083,019	$0	$9,861,967	$93,944,986	$207,402,800	$113,457,814
Maine	$14,748,335	$0	$1,102,937	$15,851,272	$39,271,706	$23,420,434
Maryland	$70,223,851	$0	$11,630,784	$81,854,635	$194,773,700	$112,919,065
Massachusetts	$72,449,046	$11,182,289	$52,237,721	$135,869,056	$321,658,700	$185,789,644
Michigan	$146,173,055	$0	$0	$146,173,055	$221,124,200	$74,951,145
Minnesota	$48,613,498	$0	$0	$48,613,498	$83,960,234	$35,346,736
Mississippi	$64,120,566	$0	$11,001,844	$75,122,410	$192,938,900	$117,816,490
Missouri	$81,870,388	$0	$0	$81,870,388	$158,829,000	$76,958,612
Montana	$14,489,345	$0	$0	$14,489,345	$32,989,000	$18,499,655
Nebraska	$22,516,181	$0	$0	$22,516,181	$41,955,100	$19,438,919
Nevada	$0	$0	$0	$0	$61,397,036	$61,397,036
New Hampshire	$0	$0	$0	$0	$14,844,500	$14,844,500
New Jersey	$102,154,736	$20,993,064	$79,929,758	$203,077,558	$505,395,000	$302,317,442
New Mexico	$52,045,406	$3,591,754	$43,893,031	$99,530,191	$280,720,000	$181,189,809
New York	$0	$0	$0	$0	$433,472,600	$433,472,600
North Carolina	$136,117,313	$0	$0	$136,117,313	$241,660,100	$105,542,787
North Dakota	$7,885,338	$0	$0	$7,885,338	$15,821,554	$7,936,216
Ohio	$157,285,194	$0	$0	$157,285,194	$285,275,100	$127,989,906
Oklahoma	$70,828,185	$0	$0	$70,828,185	$151,399,600	$80,571,415
Oregon	$0	$0	$0	$0	$100,197,900	$100,197,900
Pennsylvania	$167,008,303	$0	$0	$167,008,303	$310,308,900	$143,300,597
Rhode Island	$13,209,840	$2,532,441	$0	$15,742,281	$69,525,150	$53,782,869
South Carolina	$0	$0	$0	$0	$106,862,800	$106,862,800
South Dakota	$10,862,735	$0	$0	$10,862,735	$20,655,800	$9,793,065
Tennessee	$0	$0	$0	$0	$156,629,000	$156,629,000
Texas	$0	$0	$0	$0	$867,350,000	$867,350,000
Utah	$0	$0	$0	$0	$65,264,100	$65,264,100
Vermont	$0	$0	$0	$0	$9,489,700	$9,489,700
Virginia	$96,877,519	$0	$0	$96,877,519	$175,860,300	$78,982,781
Washington	$0	$0	$0	$0	$94,285,111	$94,285,111
West Virginia	$25,009,711	$0	$0	$25,009,711	$43,263,469	$18,253,758
Wisconsin	$69,563,162	$0	$0	$69,563,162	$204,275,500	$134,712,338
Wyoming	$0	$0	$0	$0	$11,326,700	$11,326,700
States/DC Total	$3,121,762,063	$38,299,548	$209,658,042	$3,369,719,653	$9,372,594,578	$6,002,874,925
Commonwealths and Territories						
American Samoa	$0	$0	$0	$0	$1,332,152	$1,332,152
Guam	$1,837,500	$0	$0	$1,837,500	$5,177,242	$3,339,742
N. Mariana Islands	$0	$0	$0	$0	$1,221,139	$1,221,139
Puerto Rico	$48,090,000	$0	$0	$48,090,000	$148,642,755	$100,552,755
Virgin Islands	$0	$0	$0	$0	$3,329,167	$3,329,167
Total	$49,927,500	$0	$0	$49,927,500	$159,702,455	$109,774,955
NATIONAL TOTAL	$3,171,689,563	$38,299,548	$209,658,042	$3,419,647,153	$9,532,297,033	$6,112,649,880

Footnotes

*Under section 3(c) of CHIPRA, funding from the FY 2009 allotments determined under CHIPRA is coordinated with certain CHIP funds issued prior to April 1, 2009: grants from the FY 2009 allotments determined under Pre-CHIPRA title XXI (Column B); unexpended FY 2006 allotments redistributed in FY 2009 (Column C); and the FY 2009 additional/shortfall allotments (Column D). These amounts (totaled in Column E), are applied to reduce the the total FY 2009 allotments determined under CHIPRA (in Column F).

**From Column H Table 5

D. Table 4—Retrospective Adjustment for the FY 2008 Shortfall Allotments

Table 4 contains the final retrospective adjustment determination with respect to the amounts of the additional shortfall allotments provided to States to eliminate their CHIP funding shortfalls in FY 2008, in accordance with the provisions of section 2104(j)(5) of the Act. Under section 2104(j)(2) and (3)(A) of the Act, additional FY 2008 shortfall allotments were made available only to those 50 States and the District of Columbia that were determined to have a shortfall in CHIP funding in FY 2008 based on their FY 2008 expenditure projections as submitted and certified by the States by November 30, 2007. For those States, under section 2104(j)(5) of the Act, the retrospective adjustment to the amounts of their additional FY 2008 shortfall allotments is based on the FY 2008 expenditure projections submitted and certified by such States by November 30, 2008.

Key to Table 4

Column/Description

Column A = *State.* Column A contains the name of the State.

Column B = *FY 2008 Actual Expenditures 11/30/08.* Column B contains the total Federal share amount of the CHIP expenditures reported by the States for FY 2008, as contained on the States' expenditure reports submitted and certified by the States by November 30, 2008.

Column C = *FY 2006 Carryover Allotments into FY 08.* Column C contains the amounts of the States' unused FY 2006 allotments remaining at the end of FY 2007, if any, and carried over into FY 2008.

Column D = *FY 2007 Carryover Allotments into FY 08.* Column D contains the amounts of the States' unused FY 2007 allotments remaining at the end of FY 2007, if any, and carried over into FY 2008.

Column E = *FY 2008 Allotments.* Column E contains the amounts of the States' FY 2008 allotments, as published in the May 23, 2008 **Federal Register** (30112, Vol. 73, No. 101).

Column F = *FY 2005 Redistribution Based on November 30, 2007 Estimates.* Column F contains the amounts of the FY 2005 redistributed allotments issued to the State in FY 2008, if any, as based on the States' estimates of CHIP funding needed for FY 2008 submitted and certified by the State by November 30, 2007.

Column G = *Total Avail. Allotments in FY 2008.* Column G contains the total amount of CHIP funds available to the State in FY 2008 without consideration of the issuance of any additional FY 2008 shortfall allotments, determined as the sum of the amounts, if any, in Columns C, D, E, and F.

Column H = *Retro. Adjusted Shortfall in FY 2008.* Column H contains the retrospective adjustment amount of States' shortfall in CHIP funding for FY 2008. This amount is based on the States' actual FY 2008 CHIP expenditures as submitted and certified by the State by November 30, 2008 and the actually available CHIP funds without any additional FY 2008 shortfall allotments. The retrospective adjustment is applicable only for States that were determined to have a shortfall in CHIP funding in FY 2008 based on their FY 2008 expenditure projections submitted and certified by November 30, 2007; such States are those with an FY 2008 shortfall amount shown in Column I. For such States, the amount of the retrospective adjustment shortfall amount in Column H is calculated as the difference between the amounts of the States' projected Federal share CHIP expenditures for FY 2008 in Column B and the amounts of the States' available allotments funds in FY 2008 Column G.

Column I = *Total FY 2008 SF Allotment Grants Issued in FY 2008.* Column I contains the total amounts of the additional FY 2008 shortfall allotments actually issued to the State in FY 2008 to address States' CHIP funding shortfalls in FY 2008.

Column J = *FY 2008 Excess SF Allotments Provided In FY 2008.* Column J contains the amounts of the States' excess additional FY 2008 shortfall allotments provided in FY 2008, as determined under the retrospective adjustment provision. For States that received additional FY 2008 shortfall allotments, the amounts in Column J represent the amount of the FY 2008 shortfall allotments provided in FY 2008 that were greater than were needed to address such States' CHIP funding shortfalls in FY 2008. The amounts in Column J are calculated as the difference between the actual additional FY 2008 shortfall allotments in Column I and the amounts of the States' retrospectively adjusted FY 2008 shortfall in Column H.

Column K = *Additional FY 2008 SF Allotments Needed for FY 2008.* Column K contains the amounts of the additional FY 2008 shortfall allotments needed by FY 2008 shortfall States as determined under the retrospective adjustment provision. For States that received such shortfall allotments in FY 2008, the amounts in Column K represent the amount of the additional FY 2008 shortfall allotments needed in FY 2008 that were greater than were provided to address such States' CHIP funding shortfalls in FY 2008. The amounts in Column K are calculated as the difference between the amounts of the States' retrospectively adjusted FY 2008 shortfall in Column H and the actual FY 2008 shortfall allotments provided to the States in Column I.

TABLE 4 - RETROSPECTIVE ADJUSTMENT FOR THE ADDITIONAL FY 2008 SHORTFALL ALLOTMENTS										
STATE	FY 2008 Actual Expenditures 11/30/08	FY 2006 Carryover Allotments into FY 08	FY 2007 Carryover Allotments into FY 08	FY 2008 Allotments	FY 2005 Redist. Based on 11/30/07 Estimates	Total Avail. Allotments in FY 2008 C+D+E+F	Retro Adjusted Shortfall in FY 2008* $0, or B - G	Total FY 2008 SF Allotments Issued in FY 2008	FY 2008 Excess SF Allotments Provided in FY 2008 I - H	Additional FY 2008 SF Allotments Needed for FY 2008* H - I
A	B	C	D	E	F	G	H	I	J	K
Alabama	$108,802,989	$0	$46,797,588	$72,328,116	$0	$118,125,704	$0	$0	$0	$0
Alaska	$14,387,020	$0	$587,849	$11,186,515	$0	$11,774,364	$2,612,656	$11,006,636	$8,392,980	$0
Arizona	$119,364,458	$0	$33,217,428	$142,956,789	$0	$176,174,217	$0	$0	$0	$0
Arkansas	$113,217,801	$7,180,217	$49,307,483	$47,543,965	$0	$104,031,665	$9,186,136	$13,945,335	$4,759,199	$0
California	$1,259,347,793	$0	$296,072,645	$789,164,316	$0	$1,085,236,961	$174,110,832	$205,193,039	$31,082,207	$0
Colorado	$82,481,275	$28,146,022	$71,544,798	$71,544,798	$0	$171,235,618	$0	$0	$0	$0
Connecticut	$26,290,673	$28,917,116	$39,890,581	$38,810,205	$0	$107,617,902	$0	$0	$0	$0
Delaware	$9,664,288	$6,882,772	$11,057,552	$12,759,650	$0	$30,699,974	$0	$0	$0	$0
District of Columbia	$10,138,224	$8,706,500	$11,708,552	$12,067,061	$0	$32,472,113	$0	$0	$0	$0
Florida	$272,305,390	$157,036,667	$296,066,768	$301,724,376	$0	$754,828,011	$0	$0	$0	$0
Georgia	$224,990,230	$0	$0	$167,923,820	$0	$167,923,820	$57,066,410	$157,577,180	$100,510,770	$0
Hawaii	$17,603,151	$0	$13,959,537	$15,242,690	$0	$29,202,227	$0	$0	$0	$0
Idaho	$35,351,472	$12,424,618	$24,316,412	$23,803,069	$0	$60,544,099	$0	$0	$0	$0
Illinois	$292,962,843	$0	$0	$208,343,771	$0	$208,343,771	$84,519,072	$60,478,562	$0	$24,040,510
Indiana	$102,383,574	$21,735,080	$93,469,355	$97,384,888	$0	$212,589,323	$0	$0	$0	$0
Iowa	$55,307,598	$0	$0	$33,177,409	$0	$33,177,409	$22,130,189	$29,196,591	$7,066,402	$0
Kansas	$47,850,684	$0	$19,417,884	$36,535,060	$0	$56,052,944	$0	$0	$0	$0
Kentucky	$90,295,307	$0	$62,854,053	$68,236,560	$0	$131,090,613	$0	$0	$0	$0
Louisiana	$159,214,074	$0	$36,969,662	$84,083,019	$0	$121,052,671	$38,161,403	$42,964,115	$4,802,712	$0
Maine	$33,391,598	$0	$0	$15,449,944	$338,174	$15,788,118	$17,603,480	$16,622,882	$0	$980,598
Maryland	$156,230,248	$0	$0	$72,403,254	$3,274,469	$75,677,723	$80,552,525	$87,518,277	$6,965,752	$0
Massachusetts	$259,309,763	$0	$0	$73,334,996	$46,902,941	$120,237,936	$139,071,827	$155,399,064	$16,327,237	$0
Michigan	$172,932,643	$0	$43,723,615	$147,082,132	$0	$190,806,747	$0	$0	$0	$0
Minnesota	$71,388,962	$0	$0	$48,613,498	$0	$48,613,498	$22,775,464	$35,445,502	$12,670,038	$0
Mississippi	$142,912,495	$0	$0	$60,988,699	$698,349	$61,687,048	$81,225,447	$83,718,841	$2,493,394	$0
Missouri	$79,645,045	$0	$16,027,960	$77,617,870	$0	$93,645,830	$0	$15,036,170	$15,036,170	$0
Montana	$24,945,517	$0	$14,006,755	$15,921,821	$0	$29,928,576	$0	$0	$0	$0
Nebraska	$35,562,811	$0	$444,038	$21,376,574	$0	$21,820,612	$13,742,199	$13,636,388	$0	$105,811
Nevada	$28,766,219	$38,330,640	$52,056,449	$51,071,928	$0	$141,459,017	$0	$0	$0	$0
New Hampshire	$11,248,518	$3,968,246	$10,779,193	$10,656,681	$0	$25,404,120	$0	$0	$0	$0
New Jersey	$323,057,000	$0	$0	$105,519,251	$42,807,025	$148,326,276	$174,730,724	$174,730,724	$0	$0
New Mexico	$124,318,151	$22,528,957	$52,045,406	$52,045,406	$0	$126,619,769	$0	$0	$0	$0
New York	$326,890,431	$106,152,058	$340,906,655	$328,679,791	$0	$775,738,504	$0	$0	$0	$0
North Carolina	$193,685,712	$0	$15,734,147	$136,117,313	$0	$151,851,460	$41,834,252	$42,802,540	$968,288	$0
North Dakota	$13,452,611	$0	$1,885,320	$7,889,996	$0	$9,774,316	$3,678,295	$3,128,684	$0	$549,611
Ohio	$227,466,032	$0	$62,396,823	$157,858,294	$0	$220,254,117	$0	$0	$0	$0
Oklahoma	$99,351,936	$0	$33,779,717	$70,828,185	$0	$104,607,902	$0	$19,753,098	$19,753,098	$0
Oregon	$66,339,196	$7,200,743	$55,734,200	$60,115,810	$0	$124,050,753	$0	$0	$0	$0
Pennsylvania	$204,468,133	$0	$149,194,869	$168,758,145	$0	$317,953,014	$0	$0	$0	$0
Rhode Island	$59,115,228	$0	$0	$13,957,989	$12,954,362	$26,912,351	$32,202,877	$32,820,649	$617,772	$0
South Carolina	$57,786,536	$51,797,690	$70,651,421	$71,016,874	$0	$193,465,985	$0	$0	$0	$0
South Dakota	$15,628,267	$0	$5,829,703	$10,504,473	$0	$16,334,176	$0	$0	$0	$0
Tennessee	$77,517,851	$80,406,910	$97,459,570	$99,841,627	$0	$277,708,107	$0	$0	$0	$0
Texas	$697,962,599	$454,741,626	$557,980,188	$556,190,553	$0	$1,568,912,367	$0	$0	$0	$0
Utah	$50,253,013	$0	$40,381,700	$41,291,966	$0	$81,673,666	$0	$0	$0	$0
Vermont	$5,560,421	$1,724,022	$5,753,333	$4,509,457	$0	$11,986,812	$0	$0	$0	$0
Virginia	$131,264,569	$0	$65,363,316	$90,338,630	$0	$155,701,946	$0	$0	$0	$0
Washington	$43,367,730	$64,705,479	$79,883,308	$79,883,308	$0	$224,472,095	$0	$0	$0	$0
West Virginia	$36,785,678	$0	$23,305,943	$25,666,451	$0	$49,972,394	$0	$0	$0	$0
Wisconsin	$75,282,751	$0	$11,728,098	$69,563,162	$0	$81,291,260	$0	$0	$0	$0
Wyoming	$8,740,819	$2,771,961	$6,942,463	$6,373,481	$0	$16,087,905	$0	$0	$0	$0
TOTAL	$6,896,587,326	$1,105,357,824	$2,921,131,327	$4,986,372,635	$106,976,320	$9,119,836,806	$995,203,788	$1,200,973,277	$231,446,019	$25,676,530

* FY 2008 Shortfall allotment retrospective adjustment is only applicable for States that were detemined to have an FY 2008 shortfall based on their November 2007 budget estimates for FY 2008 submitted by November 30, 2007

E. Table 5—Retrospective Adjustment for the FY 2009 Shortfall Funding

Table 5 contains the final retrospective adjustment determination with respect to the amounts of the additional shortfall allotments provided to States to eliminate their CHIP funding shortfalls for the first two quarters of FY 2009, in accordance with the provisions of section 2104(l)(5) of the Act. Under section 2104(l)(2) and (3)(A) of the Act, additional FY 2009 shortfall allotments were initially made available only to those States that were projected to have a shortfall in CHIP funding for the first two quarters of FY 2009 based on their FY 2009 expenditure projections as submitted and certified by the States by November 30, 2008. For those States, under section 2104(l)(5) of the Act, the retrospective adjustment to the amounts of their additional FY 2009 shortfall allotments are based on the FY 2009 expenditures for the first two quarters of FY 2009 as submitted and certified by such States by May 31, 2009.

Key to Table 5

Column/Description

Column A = *State.* Column A contains the name of the State.

Column B = *FY 09 Actual Expends. Thru 3/31/09 Reported By 5/31/09.* Column B contains the total Federal share amount of the CHIP expenditures reported by the States for the first two quarters of FY 2009 (the period ending March 31, 2009), as contained on the States' expenditure reports submitted and certified by the States by May 31, 2009.

Column C = *FY 07 Carryover Allotments into FY 09.* Column C contains the amounts of the States' unused FY 2007 allotments remaining at the end of FY 2008, if any, and carried over into FY 2009.

Column D = *FY 08 Carryover Allotments into FY 09.* Column D contains the amounts of the States' unused FY 2008 allotments remaining at the end of FY 2008, if any, and carried over into FY 2009.

Column E = *FY 09 Pre-CHIPRA Allot. Grants.* Column E contains the amounts of the States' FY 2009 allotment grants as issued to States prior to April 1, 2009 from the FY 2009 allotments as determined under the CHIP statute in effect prior to the enactment of CHIPRA, as published in the May 23, 2008 **Federal Register** (30112, Vol. 73, No. 101).

Column F = *FY 2006 Redistribution Based on 11/30/08 Estimates.* Column F contains the amounts of the FY 2006 redistributed allotments issued to the State in FY 2009, if any, as based on the States' estimates of CHIP funding needed for FY 2009 submitted and certified by the State by November 30, 2008.

Column G = *Total Avail. Allotments in FY 2009.* Column G contains the total amount of CHIP funds available to the State in FY 2009 without consideration of the issuance of any additional FY 2009 shortfall allotments, determined as the sum of the amounts, if any, in Columns C, D, E, and F.

Column H = *Retro. Adjusted Shortfall FY 2009 Thru 3/31/09.* Column H contains the retrospective adjustment amount of States' shortfalls in CHIP funding through the end of March 31, 2009, based on the States' actual FY 2009 CHIP expenditures for the first two quarters of FY 2009 as submitted and certified by the State by May 31, 2009 and the actually available CHIP funds not including any additional FY 2009 shortfall allotments. The amount of the retrospective adjustment shortfall amount in Column H is calculated as the difference between the amounts of the States' projected Federal share CHIP expenditures for the first two quarters of FY 2009 in Column B and the amounts of the States' available allotments funds in FY 2009 Column G.

Column I = *Total FY 2009 SF Allotments Issued in FY 2009.* Column I contains the total amounts of the additional FY 2009 shortfall allotments actually issued to the State in the first two quarters of FY 2009 prior to April 1, 2009 to address States' CHIP funding shortfalls for the first two quarters of FY 2009.

Column J = *FY 2009 Excess SF Allotments Provided In FY 2009.* Column J contains the amounts of the States' excess additional FY 2009 shortfall allotments provided in FY 2009, as determined under the retrospective adjustment provision. For States that received additional FY 2009 shortfall allotments, the amounts in Column J represent the amount of the FY 2009 shortfall allotments provided in FY 2009 that were greater than were needed to address such States' CHIP funding shortfalls in FY 2009. The amounts in Column J are calculated as the difference between the actual additional FY 2009 shortfall allotments in Column I and the amounts of the States' retrospectively adjusted FY 2009 shortfall in Column H.

TABLE 5 - RETROSPECTIVE ADJUSTMENT FOR THE FY 2009 SHORTFALL FUNDING

STATE	FY 09 Actual Expends. Thru 3/31/09 Reported By 5/31/09	FY 07 Carryover Allotments Into FY 09	FY 08 Carryover Allotments Into FY 09	FY 09 Pre-CHIPRA Allot. Grants	FY 2006 Redist. Based on 11/30/08 Estimates	Total Avail. Allotments In FY 2009 C + D + E + F	Retro Adjusted Shortfall FY 2009 Thru 3/31/09 $0, or B - G	Total FY 2009 SF Allotments Issued In FY 2009	FY 2009 Excess SF Allotments Provided In FY 2009 I - H
A	B	C	D	E	F	G	H	I	J
Alabama	$60,559,462	$0	$9,322,715	$71,065,418	$0	$80,379,133	$0	$0	$0
Alaska	$7,942,457	$0	$0	$10,419,103	$0	$10,419,103	$0	$0	$0
Arizona	$56,066,050	$0	$56,809,759	$149,074,041	$0	$205,883,800	$0	$0	$0
Arkansas	$40,146,026	$0	$0	$50,409,786	$0	$50,409,786	$0	$0	$0
California	$527,752,666	$0	$0	$799,172,168	$0	$799,172,168	$0	$0	$0
Colorado	$40,178,173	$17,209,545	$71,544,798	$0	$0	$88,754,343	$0	$0	$0
Connecticut	$12,862,610	$39,890,581	$38,810,205	$0	$0	$78,700,786	$0	$0	$0
Delaware	$5,614,224	$8,276,036	$12,759,650	$0	$0	$21,035,686	$0	$0	$0
District of Columbia	$5,372,541	$10,276,828	$12,057,061	$0	$0	$22,333,889	$0	$0	$0
Florida	$129,829,818	$180,798,245	$301,724,376	$0	$0	$482,522,621	$0	$0	$0
Georgia	$114,457,150	$0	$0	$175,553,509	$0	$175,553,509	$0	$0	$0
Hawaii	$9,779,877	$0	$11,599,076	$0	$0	$11,599,076	$0	$0	$0
Idaho	$19,484,356	$1,389,558	$23,803,069	$0	$0	$25,192,627	$0	$0	$0
Illinois	$100,745,600	$0	$0	$198,658,964	$0	$198,658,964	$0	$0	$0
Indiana	$40,099,346	$12,820,861	$97,384,888	$0	$0	$110,205,749	$0	$0	$0
Iowa	$28,143,349	$0	$0	$34,057,616	$0	$34,057,616	$0	$0	$0
Kansas	$24,967,653	$0	$8,202,250	$37,854,500	$0	$46,056,750	$0	$0	$0
Kentucky	$54,603,413	$0	$40,795,306	$67,371,232	$0	$108,166,538	$0	$0	$0
Louisiana	$93,944,986	$0	$0	$84,083,019	$0	$84,083,019	$9,861,967	$10,302,981	$441,014
Maine	$15,851,272	$0	$0	$14,748,335	$0	$14,748,335	$1,102,937	$2,146,665	$1,043,728
Maryland	$81,854,635	$0	$0	$70,223,851	$0	$70,223,851	$11,630,784	$15,977,149	$4,346,365
Massachusetts	$135,869,056	$0	$0	$72,449,046	$11,182,289	$83,631,335	$52,237,721	$63,920,665	$11,682,944
Michigan	$78,256,918	$0	$17,873,104	$146,173,055	$0	$164,046,159	$0	$0	$0
Minnesota	$21,847,680	$0	$0	$48,613,498	$0	$48,613,498	$0	$0	$0
Mississippi	$75,122,410	$0	$0	$64,120,566	$0	$64,120,566	$11,001,844	$17,307,434	$6,305,590
Missouri	$47,735,376	$0	$14,000,785	$81,870,388	$0	$95,871,173	$0	$0	$0
Montana	$14,384,481	$0	$4,983,059	$14,489,345	$0	$19,472,404	$0	$0	$0
Nebraska	$19,192,924	$0	$0	$22,516,181	$0	$22,516,181	$0	$0	$0
Nevada	$12,717,326	$52,056,449	$51,071,928	$0	$0	$103,128,377	$0	$0	$0
New Hampshire	$7,385,491	$3,498,921	$10,656,681	$0	$0	$14,155,602	$0	$0	$0
New Jersey	$203,077,558	$0	$0	$102,154,736	$20,993,064	$123,147,800	$79,929,758	$96,422,200	$16,492,442
New Mexico	$101,831,809	$0	$2,301,618	$52,045,406	$3,591,754	$57,938,778	$43,893,031	$49,180,222	$5,287,191
New York	$178,311,385	$120,068,282	$328,679,791	$0	$0	$448,748,073	$0	$0	$0
North Carolina	$100,347,305	$0	$0	$136,117,313	$0	$136,117,313	$0	$0	$0
North Dakota	$6,360,000	$0	$0	$7,885,338	$0	$7,885,338	$0	$0	$0
Ohio	$123,193,237	$0	$0	$157,285,194	$0	$157,285,194	$0	$0	$0
Oklahoma	$57,718,738	$0	$5,255,966	$70,828,185	$0	$76,084,151	$0	$0	$0
Oregon	$35,447,075	$0	$57,711,558	$0	$0	$57,711,558	$0	$0	$0
Pennsylvania	$141,662,006	$0	$113,484,881	$167,008,303	$0	$280,493,184	$0	$0	$0
Rhode Island	$8,057,438	$0	$0	$13,209,840	$2,532,441	$15,742,281	$0	$12,452,719	$12,452,719
South Carolina	$41,125,685	$64,662,575	$71,016,874	$0	$0	$135,679,449	$0	$0	$0
South Dakota	$8,249,656	$0	$705,909	$10,862,735	$0	$11,568,644	$0	$0	$0
Tennessee	$55,886,039	$97,459,570	$98,841,627	$0	$0	$197,301,197	$0	$0	$0
Texas	$349,609,266	$314,759,215	$556,190,553	$0	$0	$870,949,768	$0	$0	$0
Utah	$20,651,964	$0	$31,420,653	$0	$0	$31,420,653	$0	$0	$0
Vermont	$2,804,074	$2,944,298	$4,509,458	$0	$0	$7,453,756	$0	$0	$0
Virginia	$75,327,449	$0	$24,437,377	$96,677,519	$0	$121,314,896	$0	$0	$0
Washington	$14,988,602	$78,001,432	$79,883,308	$0	$0	$157,884,740	$0	$0	$0
West Virginia	$18,357,987	$0	$12,186,716	$25,009,711	$0	$37,196,427	$0	$0	$0
Wisconsin	$9,817,907	$0	$6,009,509	$69,563,162	$0	$75,571,671	$0	$0	$0
Wyoming	$4,685,914	$973,605	$6,373,481	$0	$0	$7,347,086	$0	$0	$0
TOTAL	$3,439,278,420	$1,005,086,001	$2,183,406,999	$3,121,762,053	$38,299,548	$6,348,554,611	$209,658,042	$267,710,035	$58,051,993

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Collection of Information Requirements

This document does not impose any information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

VI. Regulatory Impact Analysis

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We have determined that this proposed rule is economically significant, since it provides the methodologies under which State allotments for FY 2009 through FY 2013 were calculated and will be in the future. In particular, this rule implements the CHIP statute as amended by CHIPRA, under which approximately up to $44 billion in additional Federal funds may be made available for fiscal years FY 2009 through FY 2013 in addition to the amount of funds previously appropriated for States' CHIPs in accordance with the methodology established in the CHIP statute. This proposed rule also includes the actual State fiscal year CHIP allotments for FY 2009 determined in accordance with the methodology set out in this proposed rule. The methodologies for determining the States' CHIP allotments was established in accordance with the methodologies specified in statute and does not put forward any discretionary administrative policies for determining such allotments. Therefore, we have determined that there are no policy options that require an analysis beyond that which is presented in section II of this proposed rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a rule has a significant economic impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $7 million to $34.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Core-Based Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the UMRA also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $133 million. This proposed rule would not create an unfunded mandate on States, tribal, or local governments in the aggregate, or by the private sector in the amount of $133 million in any one year. Therefore, we are not required to perform an assessment of the costs and benefits of this rule.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that this proposed rule would not significantly affect States' rights, roles, and responsibilities.

Low-income children would benefit from payments under this program through increased opportunities for health insurance coverage. We believe this proposed rule would have an overall positive impact by informing States, the District of Columbia, and Commonwealths and Territories of the extent to which they are permitted to expend funds under their child health plans using the additional funds provided by the FY 2009 allotment amounts.

Accounting Statement: As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table 6, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this rule. This table provides our best impact estimate of the rule, as it implements the CHIP statute as amended by CHIPRA, under which approximately up to $44 billion in additional Federal funds may be made available for fiscal years FY 2009 through FY 2013, in addition to the amount of funds previously appropriated for States' CHIPs. All expenditures are classified as transfers from the Federal Government to States.

Table 6: Accounting Statement: Classification of Estimated Expenditures, from FY 2009 to FY 2013 (in $Millions)

Category	TRANSFERS			
Annualized Monetized Transfers	Year Dollar	Units Discount Rate		Period Covered
		7%	3%	
	2009	$13,568.36	$13,690.49	FYs 2009-2013
From Whom To Whom?	Federal Government to States			

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 457

Administrative practice and procedure, Grant programs—health, Health insurance, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 457—ALLOTMENTS AND GRANTS TO STATES

1. The authority citation for part 457 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart F—Payments to States

§ 457.600 [Amended]

2. Amend § 457.600(a) by removing the date ''2007'' and adding in its place ''2013''.

§ 457.608 [Amended]

3. Amend the section heading in § 457.608 by removing the words ''for a fiscal year'' and adding in its place ''prior to FY 2009''.

4. Add a new § 457.609 to subpart F to read as follows:

§ 457.609 Process and calculation of State allotments for a fiscal year after FY 2008.

(a) *General.* For each of the 50 States and the District of Columbia and for each Commonwealth and Territory with an approved State child health plan, the State allotments for FY 2009 through FY 2013 are determined by CMS as described in paragraphs (b) through (g) of this section. Unless otherwise indicated in this section, the reference to ''State'' refers to the 50 States and the District of Columbia and the Commonwealths and Territories (American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands).

(b) *Amounts available for allotment.* The total amounts available for allotment for each fiscal year are as follows:

(1) FY 2009, $10,562,000,000.

(2) FY 2010, $12,520,000,000.

(3) FY 2011, $13,459,000,000.

(4) FY 2012, $14,982,000,000.

(5) FY 2013, for the period beginning October 1, 2012 and ending March 31, 2013, the following amounts are as follows:

(i) $2,850,000,000.

(ii) $11,706,000,000.

(6) FY 2013, for the period beginning April 1, 2013 and ending on September 30, 2013, $2,850,000,000.

(c) *Determination of a State allotment for FY 2009.* (1) *For the 50 States and the District of Columbia.* From the amount in paragraph (b)(1) of this section as appropriated for the fiscal year under section 2104(a) of the Act, subject to paragraph (e) of this section related to proration, and paragraph (b)(3) of this section relating to coordination of funding, the allotment for FY 2009 is equal to 110 percent of the highest of the following amounts for each State and the District of Columbia:

(i) The total Federal payments to the State under title XXI of the Act for FY 2008 as reported by the State and certified to the Secretary through the November 2008 submission of the quarterly expenditure reports, Forms CMS–21 and CMS–64, multiplied by the allotment increase factor determined under paragraph (f) of this section.

(ii) The amount allotted to the State for FY 2008, multiplied by the allotment increase factor determined under paragraph (f) of this section.

(iii) The projected total Federal payments to the State under title XXI of the Act for FY 2009, subject to paragraph (c)(1)(iv) of this section, as determined based on the February 2009 projections certified by the State to CMS by no later than March 31, 2009.

(iv) In the case of a State described in section 2105(g) of the Act and electing the option under paragraph (4) of such section, for purposes of the projections described in paragraph (c)(1)(iii) of this section, such projections would include an amount equal to the difference between the following amounts:

(A) The amount of Federal payments for the expenditures described in section 2104(g)(4)(B) of the Act made after February 4, 2009 that would have been paid to the State if claimed at the enhanced Federal medical assistance percentage determined under section 2105(b) of the Act.

(B) The amount of Federal payments for the expenditures described in section 2104(g)(4)(B) of the Act made after February 4, 2009 that would have been paid to the State if claimed at the Federal medical assistance percentage defined in section 1905(b) of the Act; during the recession adjustment period described in section 5001(h) of the American Recovery and Reinvestment Act of 2009 (ARRA), the Federal medical assistance percentage is as determined for the State under section 5001 of ARRA.

(2) *For the Commonwealths or Territories.*

(i) From the amount in paragraph (b)(1) of this section, as appropriated for the FY 2009 under section 2104(a) of the

Act, subject to paragraph (e) of this section related to proration, and paragraph (c)(3) of this section relating to coordination of funding, an amount equal to the highest amount of Federal payments made to the Commonwealth or Territory under title XXI of the Social Security Act for any fiscal year occurring during the period for FY 1999 through FY 2008, multiplied by the allotment increase factor determined under paragraph (f) of this section, plus the additional amount for the fiscal year specified in paragraph (c)(2)(ii) of this section

(ii) *Additional Amounts for FY 2009.* From the amount appropriated for the fiscal year under section 2104(c)(4)(B) of the Act, the additional amount for each Commonwealth or Territory is equal to $40,000,000 multiplied by the following percentage as specified in section 2104(c)(2) of the Act:

(A) For Puerto Rico, 91.6 percent.

(B) For Guam, 3.5 percent.

(C) For the Virgin Islands, 2.6 percent.

(D) For American Samoa, 1.2 percent.

(E) For the Northern Mariana Islands, 1.1 percent.

(3) *Coordination of CHIP Funding for FY 2009.* The amount of the CHIP allotment for FY 2009 available for payment for a States' expenditures may be reduced by the amounts appropriated and obligated before April 1, 2009 for States' FY 2009 allotments, FY 2006 allotments redistributed to the State in FY 2009 determined under section 2104(k) of the Act, and the amounts of additional FY 2009 shortfall allotments determined under section 2104(l) of the Act.

(d) *Determination of a State allotment for FY 2010 through FY 2013.* (1) *General.* Subject to the provisions of paragraph (e) of this section relating to proration and paragraph (g) of the section relating to increases in a fiscal year allotment for approved program expansions, the State allotments for FY 2010 through FY 2013 are determined as follows.

(2) *Determination of a State Allotment for FY 2010.* (i) For the 50 States and the District of Columbia, and for the Commonwealths and Territories subject to paragraph (d)(2)(ii) of this section, the State allotment for FY 2010 is equal to the product of the following:

(A) The sum of:

(*1*) The State Allotment for FY 2009, as determined under paragraph (c) of the section.

(*2*) The amount of any Federal payments made as redistributions of unexpended FY 2006 allotments under section 2104(k) of the Act.

(*3*) The amount of any Federal payments made as additional FY 2009 allotments under section 2104(l) of the Act.

(*4*) The amount of any Federal payments made as contingency fund payments for FY 2009 under section 2104(n) of the Act.

(B) The State allotment increase factor for FY 2010 as determined under paragraph (f) of the section.

(ii) In determining the amount of the FY 2010 allotment for each Commonwealth and Territory, for purposes of determining the amount of the FY 2009 allotment under paragraph (d)(2)(i)(A)(1) of this section, the amount of such FY 2009 allotment will not include the additional amount determined under paragraph (c)(2)(ii).

(3) *Determination of a State Allotment for FY 2011.* For the 50 States and the District of Columbia, and the Commonwealths and Territories, the State allotment for FY 2011 is equal to the product of:

(i) The amount of Federal payments attributable and countable toward the available State allotments in FY 2010, including—

(A) Any amount redistributed to the State in FY 2010, and

(B) Any Federal payments made as contingency fund payments for FY 2010 under section 2104(n) of the Act.

(ii) The State allotment increase factor for FY 2011 as determined under paragraph (f) of the section.

(4) *Determination of a State Allotment for FY 2012.* For the 50 States and the District of Columbia, and the Commonwealths and Territories, the State allotment for FY 2012 is equal to the product of:

(i) The sum of:

(A) The State Allotment for FY 2011, as determined under paragraph (d)(3) of this section.

(B) The amount of any Federal payments made as contingency fund payments for FY 2011 under section 2104(n) of the Act.

(ii) The State allotment increase factor for FY 2012 as determined under paragraph (f) of this section.

(5) *Determination of a State Allotment for FY 2013.*

(i) *General.* There are two State allotments for FY 2013; one for the period beginning October 1, 2012 and ending March 31, 2013 and the second beginning April 1, 2013 and ending September 30, 2013. These State allotments are determined for each of the 50 States and the District of Columbia, and the Commonwealths and Territories.

(ii) The State allotment for FY 2013 for the period October 1, 2012 and ending March 31, 2013 is determined as the product of the following:

(A) The first half ratio determined as the amount in paragraph (d)(5)(A)(*1*) of this section divided by the amount in paragraph (d)(5)(A)(*2*) of this section.

(*1*) $14,556,000,000 (calculated as the sum of the two amounts in paragraph (b)(5) of this section, $2,850,000,000 (appropriated in section 2104(a)(16)(A) of the Act) and $11,706,000,000 (appropriated in section 108 of Public Law 111–3)).

(*2*) $17,406,000,000, determined as the sum of the amount determined under paragraph (d)(5)(A)(*1*) of this section, $14,556,000,000, and $2,850,000,000, the amount in paragraph (b)(6) of this section, as appropriated in section 2104(a)(16)(B) of the Act.

(B) The product of:

(*1*) The amount of Federal payments attributable and countable toward the total amount of available State allotments in FY 2012, including—

(*i*) Any amount redistributed to the State in FY 2012; and

(*ii*) Any Federal payments made as contingency fund payments for FY 2012 under section 2104(n) of the Act.

(*2*) The State allotment increase factor for FY 2013 as determined under paragraph (f) of this section.

(iii) The State allotment for FY 2013 for the period April 1, 2013 and ending September 31, 2013 is determined as the product of the following:

(A) $2,850,000,000, the amount in paragraph (b)(6) of this section, as appropriated in section 2104(a)(16)(B) of the Act; and

(B) The ratio determined as the amount in paragraph (d)(5)(iii)(B)(*1*) of this section divided by the amount in paragraph (d)(5)(iii)(B)(*2*) of this section.

(*1*) The amount of the State allotment determined under paragraph (d)(5)(ii) of this section.

(*2*) The total of all the State allotments determined under paragraph (d)(5)(ii) of this section.

(e) *Proration.* (1) If for a fiscal year the sum of the State allotments for the 50 States and the District of Columbia, and the State allotments for the Commonwealths and Territories (not including the additional amount for FY 2009 determined under paragraph (c)(2)(ii) of this section), exceeds the total amount available for allotment for the fiscal year under paragraph (b) of this section, the amount of the allotment for each of the 50 States and the District of Columbia, and for each of the Commonwealths and Territories (not including the additional amount for FY 2009 determined under paragraph (c)(2)(ii) of this section) will be reduced on a proportional basis as indicated in paragraph (e)(2) of this section.

(2) The amount of the allotment for each of the 50 States and the District of Columbia, and for each of the Commonwealths and Territories (not including the additional amount for FY 2009 determined under paragraph (c)(2)(ii) of this section) is equal to the product of:

(i) The percentage determined by dividing the amount in paragraph (e)(2)(i)(A) by the amount in paragraph (e)(2)(i)(B) of this section.

(A) The amount of the State allotment for each of the 50 States and the District of Columbia, and for each of the Commonwealths and Territories (not including the additional amount for FY 2009 determined under paragraph (c)(2)(ii) of this section).

(B) The sum of the amounts for each of the 50 States and the District of Columbia, and the Commonwealths and Territories in paragraph (e)(2)(i) of this section.

(ii) The total amount available for allotment for the fiscal year under paragraph (b) of this section

(f) *Allotment increase factor.* The allotment increase factor for a fiscal year is equal to the product of the following:

(1) Per capita health care growth factor. The per capita health care growth factor for a fiscal year is equal to 1 plus the percentage increase in the projected per capita amount of the National Health Expenditures from the calendar year in which the previous fiscal year ends to the calendar year in which the fiscal year involved ends, as most recently published by CMS before the beginning of the fiscal year involved.

(2) *Child Population Growth Factor.* The child population growth factor for a fiscal year is equal to 1 plus the percentage increase (if any) in the population of children in the State from July 1 in the previous fiscal year to July 1 in the fiscal year involved, as determined by CMS based on the most recent published estimates of the Census Bureau available before the beginning of the fiscal year involved plus 1 percentage point. For purposes of determining the Child Population Growth Factor for FY 2009 for the Commonwealths and Territories only, in applying the previous sentence, ''United States'' is substituted for ''the State''.

(g) *Increase in State allotment for the 50 States and the District of Columbia for FY 2010 through FY 2013 to account for approved program expansions.* In the case of the 50 States and the District of Columbia, the State allotment for FY 2010 through FY 2013, as determined in accordance with the provisions of this section, may be increased under the following conditions and amounts:

(1) The State has submitted to the Secretary, and has approved by the Secretary a State plan amendment or waiver request relating to an expansion of eligibility for children or benefits under title XXI of the Act that becomes effective for a fiscal year (beginning with FY 2010 and ending with FY 2013); and

(2) The State has submitted to the Secretary, before the August 31 preceding the beginning of the fiscal year, a request for an expansion allotment adjustment under this paragraph for such fiscal year that specifies—

(i) The additional expenditures that are attributable to the eligibility or benefit expansion provided under the amendment or waiver described in paragraph (g)(1) of this section, as certified by the State and submitted to the Secretary by not later than August 31 preceding the beginning of the fiscal year; and

(ii) The extent to which such additional expenditures are projected to exceed the allotment of the State or District for the year.

(3) Subject to paragraph (e) of this section relating to proration, the amount of the allotment of the State or District under this subsection for such fiscal year shall be increased by the excess amount described in paragraph (g)(2)(i). A State or District may only obtain an increase under paragraph (g)(2)(ii) of this section for an allotment for FY 2010 or FY 2012.

(h) *CHIP Fiscal Year Allotment Process.* As determined by the Secretary, the CHIP allotments for a fiscal year may be published as Preliminary Allotments or Final Allotments in the **Federal Register**.

§ 457.610 [Amended]

5. Amend the section heading for § 457.610 by—

A. Amending the section heading by removing the words ''for a fiscal year'' and adding in its place ''prior to FY 2009''.

B. Removing the words ''for a fiscal year'' and add in its place add ''prior to FY 2009''in the first line of the paragraph.

6. Add a new § 457.611 to subpart F to read as follows:

§ 457.611 Period of availability for State allotments for a fiscal year after FY 2008.

The amount of a final allotment for a fiscal year after FY 2008, as determined under § 457.609 and reduced to reflect certain Medicaid expenditures in accordance with § 457.616, remains available until expended for Federal payments based on expenditures claimed during a 2-year period of availability, beginning with the fiscal year of the final allotment and ending with the end of the succeeding fiscal year following the fiscal year.

Authority: (Section 1102 of the Social Security Act (42 U.S.C. 1302)

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.767, State Children's Health Insurance Program))

Dated: June 19, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: July 29, 2009.

Kathleen Sebelius,

Secretary.

[FR Doc. E9–22162 Filed 9–15–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2008–0073; 14420–1113–0000–C6]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to Remove the Bliss Rapids Snail (Taylorconcha serpenticola) From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to remove the Bliss Rapids snail (*Taylorconcha serpenticola*) from the Federal List of Endangered and Threatened Wildlife (List) pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). Based on a thorough review of the best scientific and commercial data available, the species continues to be restricted to a small geographic area in the middle-Snake River, Idaho, where it is dependent upon cool-water spring outflows. Although some threats identified at the time of listing in 1992 no longer exist or have been moderated, ground water depletion and impaired water quality still threaten the Bliss Rapids snail. In addition, there are significant uncertainties about the effects of hydropower operations and New Zealand mudsnails on the

persistence of Bliss Rapids snails in riverine habitats. In the absence of the Act's protections, existing regulations are not likely to be sufficient to conserve the species. Given our current understanding of the species' geographic distribution, habitat requirements, and threats, the species continues to meet the definition of a threatened species under the Act. Therefore, we have determined that removing the Bliss Rapids snail from the List is not warranted at this time.

DATES: We made the finding announced in this document September 16, 2009.

ADDRESSES: This notice is available on the Internet at *http://www.fws.gov/idaho* and at *http://www.regulations.gov* at Docket No. FWS–R1–ES–2008–0073. Supporting documentation we used in preparing this notice will be available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office, 1387 S. Vinnell Way, Room 368, Boise, ID 87309; telephone (208) 378–5243; facsimile (208) 378–5262. New information, materials, comments, or questions concerning this species may be submitted to the Service at the above address.

FOR FURTHER INFORMATION CONTACT: Jeff Foss, Field Supervisor, U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office, (*see* **ADDRESSES** section). If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Species Information

The Bliss Rapids snail was first collected in 1959 at the Thousand Springs Preserve in Idaho's Snake River by Dwight Taylor (57 FR 59244; December 14, 1992) and formally described by Hershler *et al.* (Hershler *et al.* 1994, p. 235) as *Taylorconcha serpenticola* in 1994. The Bliss Rapids snail grows to approximately 0.08 to 0.16 inches (2.0 to 4.0 millimeter (mm)) in height. The shell is clear to white but appears to have two morphs due to coloration of the periostracum (the shell's outer layer). The periostracum can be very light tan to dark brown-red resulting in the ''pale'' and ''orange'' forms, respectively. The Bliss Rapids snail has approximately 3.5 to 4.5 whorls (turn or curl in the shell) with the protoconch (apex or top of the shell) comprising about 1.5 whorls. The apex (the highest point of the shell) is blunt.

Bliss rapids snails hatch, reproduce, and die in a single year (Hershler *et al.* 1994, pp. 239, 240). They are dioecous, having strictly male and female individuals and may exhibit an iteroparous (more than one reproductive event in an individual's lifetime) reproductive strategy (Richards 2004, p. 119). The timing of reproduction apparently varies by habitat-type. Egg-laying normally occurs in spring colonies between December and March, while in river colonies egg laying occurs in January and February (Hershler *et al.* 1994, p. 239). Eggs are laid singly, in small capsules attached to the bottoms or sides of rocks (Hershler *et al.* 1994, p. 239). Emergence of young typically takes place a few weeks after egg deposition depending on water temperature (Dillon 2000, p. 103), but specific timing and temperature information is lacking.

Bliss Rapids snails primarily consume epilithic periphyton (diatom films that primarily grow on rock surfaces), as do many freshwater snails (Richards 2006b). They may also consume quantities of detritus, bacteria, and protozoa embedded in the simple sugar matrix (*i.e.,* the periphyton) on the surfaces of benthic (bottom) substrates.

Range

At the time of listing in 1992, the distribution of the Bliss Rapids snail was thought to be discontinuous over 204 miles of the Snake River in Idaho, between King Hill (river mile (RM) 546) and Lower Salmon Falls Dam (RM 573) with a disjunct occurrence at RM 749. The species' distribution upstream of Upper Salmon Falls Reservoir was known to be localized to spring complexes (*i.e.,* Thousand Springs (RM 585), Minnie Miller Springs (RM 585), Banbury Springs (RM 589), Niagara Springs (RM 599), and Box Canyon Springs (RM 588)) (57 FR 59244; December 14, 1992). This range was based on approximately 14 spring/tributary collection points (Richards *et al.* 2006, p. 33). The reported occurrence at RM 749 is now regarded as erroneous because: (1) Samples from this collection have not been located to verify the occurrence (Frest 2002); (2) the reported collection site is 150 river miles upstream of the known distribution of the species (Pentec 1991 in 57 FR 59244); and, (3) numerous collection efforts in and above American Falls Reservoir (U.S. Bureau of Reclamation (USBR) 2003; USBR 2004; USBR 2005; Gregg 2006), and in the upper Snake River (Fields 2006) have all failed to document the occurrence of the species.

The current known range of the Bliss Rapids snail is similar to what was described at the time of listing (minus the erroneous location at American Falls Reservoir). Increased sampling effort has documented its presence at many more locations within its range. Based on 837 sample events conducted by the Idaho Power Company (IPC), the Bliss Rapids snail is documented to occur within the non-reservoir sections of the middle Snake River from approximately RM 547 to RM 572, and RM 580 (Richards *et al.* 2006, pp. 33–38). This represents a refined distribution since the time of listing in 1992 due to more accurate survey data.

Bliss Rapids snails are also known to occur in 14 springs or Snake River tributary streams (from RM 552.8 to RM 604.5) derived from cold water springs including: Bancroft Springs; Thousand Springs and Minnie Miller Springs (Thousand Springs Preserve); Banbury Springs; Niagara Springs; Crystal Springs; Briggs Springs; Blue Heart Springs; Box Canyon Creek; Riley Creek; Sand Springs Creek; Elison Springs; the Malad River; Cove Creek (a tributary to the Malad River); and the headwater springs to Billingsley Creek (Richards *et al.* 2006, p. 2; USFWS 2008a, p. 6).

The U.S. Geological Survey (USGS) reported finding several Bliss Rapids snails at Blue Lakes (approximately Snake River mile 610.4) in 1994, but surveys of this site in 1996 and 2007 did not locate the species (Mebane 2007, Grotheer 2008). Over 200 springs or spring clusters have been mapped or identified on the north side of the Snake River canyon (Clark and Ott 1996, p. 559) where the Bliss Rapids snail has been documented to occur. Springs also occur on the south side of the Snake River canyon (Clark and Ott 1996, p. 559), but studies conducted by the Idaho Power Company (IPC) have not observed Bliss Rapids colonies in springs or tributaries on the south side (Bates and Richards 2008). The species is likely present at additional springs on private lands that have not been sampled (*e.g.,* Hopper 2006b).

In summary, we now know the Bliss Rapids snail to be distributed discontinuously over 22 miles, from RM 547–560, RM 566–572, and at RM 580 on the Snake River and to occur in 14 springs or tributaries to the Snake River. The area between RM 561–565 represents reservoir areas where the Bliss Rapids snail does not occur. The species' overall geographic range has not substantially changed since it was first described by Hershler *et al.* (1994), but the species has been detected at more locations within its range.

Habitat Use

The Bliss Rapids snail occurs in cold water springs and spring-fed tributaries to the Snake River (hereafter referred to

as spring colonies), and in some reaches of the Snake River (hereafter referred to as river colonies). Available data indicate that spring colonies are consistently larger, at least in terms of density and relative abundance, than river colonies (Stephenson and Bean 2003, pp. 12, 18; Stephenson *et al.* 2004, p. 24; Richards *et al.* 2006, pp. 97–99). The species is absent from reservoirs (Hershler *et al.* 1994, p. 237; Finni 2003, p. 28; Richards *et al.* 2006, p. 35), patchily distributed and in low densities in the mainstem Snake River (Stephenson *et al.* 2004, pp. 11, 22, 24; Richards *et al.* 2006, p. 37), and relatively abundant, though patchily distributed in spring habitats (Stephenson and Bean 2003, pp. 12, 18; Richards 2004, pp. 59–69; Richards *et al.* 2006, p. 37).

The Bliss Rapids snail is known to occur on stable, cobble substrates in unimpounded sections of the mainstem Snake River (Richards *et al.* 2006, pp. 35, 41), on cobble-boulder substrates in the Malad River (Stephenson and Clark 2004, p. 33), and on various substrates in several spring complexes (Stephenson and Myers 2003, p. 5). The species is generally not found in, or on, very fine (silt) sediments (Hershler *et al.* 1994, p. 237; Richards *et al.* 2006, p. 23), but has been documented infrequently on sand and gravel (Stephenson and Myers 2003, p. 5), aquatic vegetation (Lysne 2006), and coarse woody debris (Hopper 2006a, Lysne 2006). A notable exception to this characterization of habitat use is the presence of Bliss Rapids snails on fine sediments (silt/gravel) at the upper pool in Cove Creek (Stephenson and Myers 2003, p. 5), a cold water spring creek tributary to the Malad River. Overall, the cobble-boulder substrate is considered to be the dominant habitat type where the Bliss Rapids snail is found (Richards *et al.* 2006, p. 51).

Field studies and observations have demonstrated that the species uses the sides and bottoms of cobbles preferentially to the exclusion of cobble tops (Richards 2004, pp. 32–34). The Bliss Rapids snail is found at various water depths in springs ranging from 0.3 to 3 feet (0.1–1 meters (m)), and in spring-fed tributary habitats ranging from 0.07 to 3.35 feet (0.02–1.02 m) (Stephenson and Myers 2003, pp. 23–35; Stephenson and Clark 2004, p. 32). This species has also been documented to occur at depths up to 20 feet (6.1 m) in the mainstem Snake River (Richards *et al.* 2006, p. 52). Most Bliss Rapids snails are found in less than 3 feet (0.9 m) of water (Richards *et al.* 2006, p. 43) but this could be due to sampling effort.

The Bliss Rapids snail has been collected in water temperatures ranging from 44.6 to 69.8 degrees Fahrenheit (F) (7 to 21 degrees Celsius (C)) (Finni 2003, p. 14; Clark *et al.* 2005, p. 55), but is generally found in water temperatures between 59 and 60.8 degrees F (15 and 16 degrees C) (Hershler *et al.* 1994, p. 237). Richards *et al.* (2001, p. 377) collected Bliss Rapids snails from Banbury Springs in thermally constant waters measuring 55.2 to 61.5 degrees F (12.9 to 16.4 degrees C), and Stephenson and Clark (2004, p. 32) collected the species from the Malad River in water measuring 57.2 to 59.0 degrees F (14 to 15 degrees C).

Richards *et al.* (2006, pp. 39–51) analyzed the physio-chemical data from all IPC collections in river, spring, and spring-influenced sites and determined the probability of encountering Bliss Rapids snails for various parameters. The best predictors of Bliss Rapids snail presence (*i.e.,* having statistically significant regression values based on large samples), in order of significance, were dominant substrate, conductivity (a measure of total dissolved solids), depth, dissolved oxygen, and temperature (Richards *et al.* 2006, p. 41).

In summary, based on available information, the Bliss Rapids snail occurs in riverine and spring or spring-influenced habitats but is not known to occur in reservoir habitats. It is known from the Snake River (22 miles), the Malad River (1 mile), Cove Creek (0.4 mile), and in 14 springs. In the Snake River the species is predominately associated with cobble-boulder substrates; substrate use in spring complexes is more variable. The species is generally not found in, or on, very fine sediments. It has been collected at various water depths in springs ranging from 0.3 to 3 feet (0.1–0.9 m), and in spring-fed tributary habitats ranging 0.07 to 3.35 feet (0.02–1.02 m). This species has also been documented to occur at depths up to 20 feet (6.1 m) in the mainstem Snake River. Most Bliss Rapids snails are found in less than 3 feet (0.9 m) of water, but this may be an artifact of sampling effort rather than true habitat selection. The species has been observed in water temperatures ranging from 44.6 to 69.8 degrees F (7 to 21 degrees C), but is generally found in water temperatures between 59 and 60.8 degrees F (15 and 16 degrees C).

Densities and Relative Abundance

It is difficult to estimate the density and relative abundance of Bliss Rapids snail colonies. The species is documented to reach high densities in cold-water springs and tributaries in the Hagerman reach of the middle Snake River (Stephenson and Bean 2003, pp. 12, 18; Stephenson *et al.* 2004, p. 24), whereas colonies in the mainstem Snake River (Stephenson and Bean 2003, p. 27; Stephenson *et al.* 2004, p. 24) tend to have lower densities (Richards *et al.* 2006, p. 37). Bliss Rapids snail densities in Banbury Springs averaged approximately 32.53 snails per square foot (350 snails per square meter) on three habitat types (vegetation, edge, and run habitat as defined by Richards *et al.* 2001, p. 379). Densities greater than 790 snails per square foot (5,800 snails per square meter) have been documented at the outlet of Banbury Springs (Morgan Lake outlet) (Richards *et al.* 2006, p. 99).

In an effort to account for the high variability in snail densities and their patchy distribution, researchers have used predictive models to give more accurate estimates of population size in a given area (Richards 2004, p. 58). In the most robust study to date, predictive models estimated between 200,000 and 240,000 Bliss Rapids snails in a study area measuring 58.1 square feet (625 square meters) in Banbury Springs, the largest known colony (Richards 2004, p. 59). Due to data limitations, this model has not been used to extrapolate population estimates to other spring complexes, tributary streams, or mainstem Snake River colonies. However, with few exceptions (*i.e.,* Thousand Springs and Box Canyon), Bliss Rapids snail colonies are much smaller in areal extent than the colony at Banbury Springs, occupying only a few square feet.

Previous Federal Actions

The Service listed the Bliss Rapids snail as threatened on December 14, 1992 (57 FR 59244). At that time it was an undescribed monotypic genus in the family Hydrobiidae. Subsequent research in 1994 formalized its taxonomic status and its scientific name—*Taylorconcha serpenticola* (Hershler *et al.* 1994).

Based on the best available data at the time of listing, we determined that the Bliss Rapids snail was threatened by: proposed construction of new hydropower dams, the operation of existing hydropower dams, degraded water quality, water diversions, the introduced New Zealand mudsnail (*Potamopyrgus antipodarum*), and the lack of existing regulatory protections (57 FR 59244). In 1995, we published the Snake River Aquatic Species Recovery Plan (Plan), which included the Bliss Rapids snail (USFWS 1995). Critical habitat has not been designated for this species.

On July 27, 2004, we initiated a 5-year status review for the species in accordance with section 4(c)(2) of the Act (69 FR 44676). On December 26, 2006, the Service received a petition from the Governor of Idaho and IPC requesting that the Bliss Rapids snail be removed from the List. On June 6, 2007, the Service published a **Federal Register** notice announcing that the petition presented substantial scientific information indicating that removing the Bliss Rapids snail from the List may be warranted, and the initiation of a 12-month status review of the species to be conducted concurrent with our 5-year status review (72 FR 31250). A 30-day peer review was completed in January 2008, on the draft status review document of the best available information and scientific literature (USFWS 2008a).

As part of the 12-month status review, we used a structured decision analysis process (USFWS 2008b) to assist us in making our 12-month finding. A component of the structured decision analysis was the formation of an expert scientific review panel that provided us with information regarding the current status of the species and primary threats. The Service reopened the public comment period on its 90-day finding from August 12 to August 27, 2008 (73 FR 46867), to allow the public to access and provide comments on the scientific review panel's results and other documents. No additional comments were received.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533 *et seq.*) and implementing regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal List of Endangered and Threatened Wildlife. Section 4(b)(3)(A) of the Act requires that for any petition containing substantial scientific and commercial information that listing, delisting, or reclassification may be warranted, we make a finding within 12 months of receiving the petition, on whether the petitioned action is: (a) Not warranted; (b) warranted; or (c) warranted, but that immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether other species are threatened or endangered.

Under section 4 of the Act, a species may be determined to be endangered or threatened on the basis of any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreation, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We must consider these same five factors in delisting a species. We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer endangered or threatened; or (3) the original scientific data used at the time the species was classified were in error.

A species is ''endangered'' for purposes of the Act if it is in danger of extinction throughout all or ''a significant portion of its range'' and is ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. The word ''range'' in the significant portion of its range (SPR) phrase refers to the range in which the species currently exists. The word ''significant'' in the SPR phrase refers to the value of that portion to the conservation of the species. For the purposes of this analysis, we will evaluate whether the currently listed species, the Bliss Rapids snail, should be considered threatened or endangered. Then we will consider whether there are any portions of the species' range in which it is in danger of extinction or likely to become endangered within the foreseeable future.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Construction of New Hydropower Dams

In our 1992 final rule listing the Bliss Rapids snail as a threatened species, we stated: ''Six proposed hydroelectric projects, including two high dam facilities, would alter free flowing river reaches within the existing range of [the Bliss Rapids snail]. Dam construction threatens the [Bliss Rapids snail] through direct habitat modification and moderates the Snake River's ability to assimilate point and non-point pollution. Further hydroelectric development along the Snake River would inundate existing mollusk habitats through impoundment, reduce critical shallow, littoral shoreline habitats in tailwater areas due to operating water fluctuations, elevate water temperatures, reduce dissolved oxygen levels in impounded sediments, and further fragment remaining mainstem populations or colonies of [the Bliss Rapids snail]'' (57 FR 59251).

Proposed hydroelectric projects discussed in the 1992 final listing rule are no longer moving forward. The A.J. Wiley project and Dike Hydro Partners preliminary permits have lapsed; the Kanaka Rapids, Empire Rapids, and Boulder Rapids permits were denied by the Federal Energy Regulatory Commission (FERC) in 1995; there was a notice of surrender of the preliminary permit for the River Side Project in 2002; and two other proposed projects, the Eagle Rock and Star Falls Hydroelectric Projects, were denied preliminary permits by the FERC. In 2003, a notice was provided of surrender of the preliminary permit for the Auger Falls Project. Information provided by the State of Idaho indicates that all proposals and preliminary permits for the construction of new dams along the mid-Snake River have either lapsed or been denied by the FERC (Caswell 2006).

Operation of Existing Hydropower Dams

In the December 14, 1992, final listing rule we stated: ''Peak-loading, the practice of artificially raising and lowering river levels to meet short-term electrical needs by local run-of-the-river hydroelectric projects also threatens [the Bliss Rapids snail]. Peak-loading is a frequent and sporadic practice that results in dewatering mollusk habitats in shallow, littoral shoreline areas * * * these diurnal water fluctuations [prevent the Bliss Rapids snail] from occupying the most favorable habitats'' (57 FR 59252). The Bliss Rapids snail occurs in riverine and spring or spring-influenced habitats but is not known to occur in reservoir habitats. Peak loading operations within the range of river colonies of the Bliss Rapids snail occur below the Bliss Dam (RM 560) and the Lower Salmon Falls Dam (RM 573) (USFWS 2004, pp. 19, 20). For example, at the Bliss Dam (Stephenson and Bean 2003, p. 30) the Snake River can experience daily fluctuation of water levels from hydropower generating activities (peak loading) up to 7 feet (2.1 m). It appears that Bliss Rapids snails are found primarily in areas less than 3 feet (0.9 m) deep, although this may be an artifact of more intensive sampling at shallow depths (Richards *et al.* 2006, pp. 43, 52–56). Nevertheless, our current understanding based on the best available information, is that a majority of Bliss Rapids snails in the Snake River occupy shallow water. Furthermore, Bliss Rapids snails in these shallow-water areas are susceptible to the effects from peak loading operations, including desiccation and freezing when water

levels drop and expose snails to atmospheric conditions.

Laboratory studies have shown that peak-loading during winter months, a time when the species is reproducing, is likely to result in mortality of individual Bliss Rapids snails. Air temperatures within the range of Bliss Rapids snails in Idaho regularly fall below 32 degrees F (0 degrees C) between November and March (Richards 2006a, p. 28). In a laboratory study conducted by Richards (2006a, p. 12), half of the Bliss Rapids snails subjected to a temperature of 19 degrees F (minus 7 degrees C) died in less than an hour. In a field study, Richards (unpublished data, cited in Richards *et al.* 2006, pp. 125–126) found that Bliss Rapids snails could survive for many hours to several days in moist conditions (*i.e.,* undersides of cobbles) and when air temperatures were above freezing (32 degrees F (0 degrees C)) (Richards *et al.* 2006, p. 125). Although the mortality rate outside of these conditions has not been documented in field studies or after an actual peak loading event, work by other researchers, utilizing laboratory-controlled aquaria, found Bliss Rapids snail mortality to be up to 100 percent under conditions characteristic (winter low and summer high temperatures) of some hydropower operations in the middle Snake River (Richards and Kerans 2007, p. 4). Based on the above information, peak loading likely affects individual Bliss Rapids snails through desiccation and freezing but the effects of peak loading on the survival of Bliss Rapids snail colonies in riverine habitats is unknown at this time.

Degraded Water Quality

In the 1992 final listing rule we stated: ''The quality of water in [snail] habitats has a direct effect on the species survival. The [Bliss Rapids snail] require[s] cold, well-oxygenated unpolluted water for survival. Any factor that leads to deterioration in water quality would likely extirpate [the Bliss Rapids snail]'' (57 FR 59252). New information has become available indicating some improvements to Snake River water quality. Significant nutrient and sediment reduction has occurred in the Snake River following implementation of the Idaho Nutrient Management Act and regulated Total Maximum Daily Load (TMDL) reductions from the mid-1990s to the present (Richards *et al.* 2006, pp. 5–6, 86). The Mid-Snake River reach also receives a large infusion of clean, cold-water spring flows and supports the highest densities and occurrence of Bliss Rapids snails.

Hypereutrophy (planktonic algal blooms and nuisance rooted aquatic plant growths), prior to listing in 1992, was very severe during drought cycles when deposition of sediments and organic matter blanketed river substrate often resulting in unsuitable habitat conditions for Bliss Rapids snails. Although some nutrient and sediment reduction has been documented in the Snake River since listing (Richards *et al.* 2006, p. 5), there are still large inflows of agriculture and aquaculture runoff entering the river at Twin Falls to Lower Salmon Falls dam (RM 573). As a result, nutrient and sediment concentrations can be relatively high in this portion of the river, especially during lower summer flows (Richards *et al.* 2006, p. 91).

Phosphorus concentrations, the key nutrient leading to hypereutrophic conditions in the middle Snake River, exceeded Environmental Protection Agency (USEPA) guidelines for the control of nuisance algae at numerous locations along the Snake River from 1989 to 2002, including areas immediately upstream of Bliss Rapids snail colonies (Hardy *et al.* 2005, p. 13). Several water quality assessments have been completed by the USEPA, USBR, and IPC, and all generally agree that water quality in the Snake River of southern Idaho meets Idaho water quality standards for aquatic life for some months of the year, but may not meet these standards when temperatures are high and flows are low (Meitl 2002, p. 33). Idaho Department of Environmental Quality's (IDEQ) 2005 performance and progress report to the USEPA states that projects are meeting the Idaho non-point source pollution program goals (IDEQ 2006, 115 pp.). Others report that water quality has not improved appreciably between 1989 and 2002 (Hardy *et al.* 2005, pp. 19–21, 49, 51).

Several reaches of the Snake River are classified as water-quality-impaired due to the presence of one or more pollutants (*e.g.,* Total Phosphorus (TP), sediments (TSS), total coliforms) in excess of State or Federal guidelines. Nutrient-enriched waters primarily enter the Snake River via springs, tributaries, fish farm effluents, municipal waste treatment facilities, and irrigation returns (USEPA 2002, pp. 4–18 to 4–24). Irrigation water returned to rivers is generally warmer, contains pesticides or pesticide byproducts, has been enriched with nutrients from fish farms and land-based agriculture (*e.g.,* nitrogen and phosphorous), and frequently contains elevated sediment loads. Pollutants in fish farm effluent include nutrients derived from metabolic wastes of the fish and unconsumed fish food, disinfectants, bacteria, and residual quantities of drugs used to control disease outbreaks. Furthermore, elevated levels of fine sediments, nitrogen, and trace elements (including cadmium, chromium, copper, lead, and zinc), have been measured immediately downstream of several aquaculture discharges (Hinson 2003, pp. 44–45). Additionally, concentrations of lead, cadmium, and arsenic have been previously detected in snails collected during a research study in the Snake River (Richards 2002). The effects of these elevated levels of nutrients and trace elements on Bliss Rapids snails, both individually and synergistically, are not fully understood. However, studies have shown another native Snake River snail, the Jackson Lake springsnail (*Pyrgulopsis robusta*), to be relatively sensitive to copper (a common component in algaecides) and pentachlorophenol, a restricted use pesticide/wood preservative (Ingersoll 2006), and Bliss Rapids snails are known to be highly sensitive to copper, ammonia, and pentachlorophenol (Besser *et al.* 2008).

Water Diversions and Ground Water Withdrawals

Threats to cold water spring-influenced habitats from ground water withdrawal and diversions for irrigation and aquaculture are not as they were perceived when the Bliss Rapids snail was listed in 1992. At the time the species was listed in 1992, the threat from ground water withdrawal was identified only at Box Canyon, and the scope of this threat was underestimated. Based on the best available data, we now know that this threat is likely to affect the Bliss Rapids snail throughout its range. In concert with the historical losses of habitat to surface diversions of spring water for irrigation and aquaculture, the continuing decline of the groundwater aquifer is one of the primary threats to the long-term viability of the Bliss Rapids snail.

Average annual spring flows increased from about 4,400 cubic feet per second (cfs) in 1910, to approximately 6,500 cfs in the early 1960s, because widespread flood irrigation caused artificial recharge of the aquifer (Richards *et al.* 2006, pp. 84, 87). As a result of more efficient irrigation practices from 1960 to the present (*i.e.,* switching from flood irrigation or direct surface diversion to more efficient center-pivot irrigation systems utilizing ground water), more water was pumped from the aquifer while water percolation into the aquifer

declined, resulting in declines (from the high values of the 1960s) in average annual spring flows to about 5,000 cfs (Richards *et al.* 2006, pp. 84, 87). Although the current spring flow levels are total about 15 percent higher than average spring flows measured in 1910, they are declining. We anticipate spring flows will likely continue to decline in the near future, even as water-conservation measures are implemented and are being developed as water demands in the vicinity continue to increase (USFWS 2008b).

The State of Idaho has taken steps to improve ground water recharge and limit new ground water development within the eastern Snake River plain; however, the Snake River Plain aquifer level continues to decline (USFWS 2008b). Effects from the over-allocation of ground water and the subsequent declining ground water levels appear to be more of a threat than previously thought. Evidence indicates that springs from the Eastern Snake River Aquifer where the Bliss Rapids snail resides depend on ground water levels and that the ground water levels are declining (USFWS 2008b) even with ongoing measures attempting to address the decline (Caswell 2007). Spring sites are important since Bliss Rapids snail colonies that occur in springs have been shown to be a source of genetic diversity to riverine colonies and to contain four times as many private (*i.e.,* unique) alleles (n=16) compared to riverine populations (Liu and Hershler 2009, p. 1296). Colonies in springs or at their outflows are also the most dense, may account for most of the reproductive output of the species, and likely act as refugia from competition with invasive New Zealand mudsnails (*see* Factor E, below). Finally, if spring colonies are lost, particularly those at the upstream end of the species' distribution, the probability of recolonization is likely to be extremely small (USFWS 2008b).

Summary of Factor A: Our understanding of the threats to the Bliss Rapids snail has changed since we listed the species in 1992. Some threats are now known to be removed (*i.e.,* new hydropower dam construction) while other threats have emerged (*i.e.,* depletion of groundwater that supports the spring colonies). All proposals for the construction of new hydropower dams have either expired or been withdrawn. The Bliss Rapids snail occurs in riverine and spring or spring-influenced habitats, but is not known to occur in reservoir habitats. Some colonies of Bliss Rapids snails are known to occur in shallow-water areas that are susceptible to peak loading operations (*i.e.,* below the Bliss Dam (RM 560) and the Lower Salmon Falls Dam (RM 573)). Individual snails may be affected by desiccation and freezing when water levels drop and expose snails to atmospheric conditions, but the effects on these colonies are unknown. Water quality appears to have improved in the Snake River, but new research has indicated that the species is sensitive to the toxic effects of some aquatic contaminants such as copper, which is known to be used in aquaculture and discharged from facilities into the Snake River. Springs or spring-influenced habitats are vulnerable from the effects of ongoing and anticipated future ground water depletion and degraded ground water quality. Spring flows at several occupied spring sites have been declining due to continued ground water withdrawal from the Eastern Snake River Plain Aquifer. If spring colonies are lost, it is unlikely that areas would be recolonized and a loss of occupied springs may reduce genetic diversity and eliminate rare alleles. Spring colonies are also important as they may provide refugia from competition with New Zealand mudsnails (*see* Factor E, below). Therefore, destruction, modification, or curtailment of the Bliss Rapids snail's habitat or range is an ongoing primary threat to the Bliss Rapids snail that is likely to contribute to the species becoming endangered in the foreseeable future.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Based on the best available scientific and commercial information, we believe that overutilization for commercial, recreational, scientific or educational purposes is not currently placing the Bliss Rapids snail in danger of extinction, and is not likely to result in the endangerment or extinction of the species in the foreseeable future. There is no known commercial or recreational use of the species and collections for scientific or educational purposes are likely limited in scope and extent. While collection could result in mortality of individuals within a small area, it is unlikely to have a population level effect because only a few individuals and institutions are interested in collecting a small number of individuals of the species.

Factor C. Disease or Predation

Parasitic trematodes similar to those of the genus *Microphallus* have been identified in some freshwater snails in Idaho (*e.g., Pyrgulopsis robusta*); however, the occurrence of trematode parasites in Bliss Rapids snail has not been studied (Dybdahl *et al.* 2005, p. 8).

Predators of the Bliss Rapids snail have not been documented, but we assume that some predation by native and nonnative species occurs. Predation on aquatic snails by crayfish and fish is well documented (Lodge *et al.* 1994, p. 1265; Martin *et al.* 1992, p. 476; Merrick *et al.* 1992, p. 225; Lodge *et al.* 1998, p. 53).

Based on the best available scientific and commercial information, disease or predation is not currently threatening the viability of the Bliss Rapids snail and is not expected to threaten its viability in the foreseeable future.

Factor D. Inadequacy of Existing Regulatory Mechanisms

In the 1992 final listing rule, we found inadequate regulatory mechanisms to be a threat because: (1) Regulations were inadequate to curb further water withdrawal from ground water spring outflows or tributary spring streams; (2) it was unlikely that pollution control regulations would reverse the trend in nutrient loading in the near future; (3) there was a lack of State-mandated protections for invertebrate species in Idaho; and (4) regulations did not require FERC or the U.S. Army Corps of Engineers to address Service concerns regarding licensing hydroelectric projects or permitting projects under the Clean Water Act (CWA) for unlisted snails. Below, we address each of these concerns in turn.

Ground Water Withdrawal Regulations

The Idaho Department of Water Resources (IDWR) manages water in the State of Idaho. Among the IDWR's responsibilities is the development of the State Water Plan (IDWR 2006a). The State Water Plan was updated in 1996 and included a table of Federally threatened and endangered species in Idaho, such as the Bliss Rapids snail. The State Water Plan outlines objectives for the conservation, development, management, and optimum use of all unappropriated waters in the State. One of these objectives is to ''maintain, and where possible enhance water quality and water-related habitats'' (IDWR 2006a). It is the intent of the State Water Plan that any water savings realized by conservation or improved efficiencies is appropriated to other beneficial uses (*e.g.,* agriculture, hydropower, or fish and wildlife).

Another IDWR regulatory mechanism is the ability of the Idaho Water Resource Board to designate ''in-stream flows'' (IDWR 2006b). The IDWR currently has 89 licensed water rights for minimum in-stream flows in Idaho

(IDWR 2006b). Of these, 11 potentially have conservation benefits for Bliss Rapids snails (*i.e.,* provide for minimum in-stream flows near tributary spring outflows that provide habitat for Bliss Rapids snails). However, individuals that hold water rights with earlier priority dates have the right to fill their needs before the minimum stream flow is considered. If there is not enough water available to satisfy all of the water rights, then the senior water rights are satisfied first, and so on in order, until there is no water left. It is the junior water right holders that do not get water when there is not enough to satisfy all the water rights. Senior diversions can legally dewater the stream in a drought year or when low flows occur, leaving no water for the minimum stream flow (IDWR 2009), therefore impacting species such as the Bliss Rapids snail.

The IDWR and other State agencies have also created additional regulatory mechanisms that limit future surface and ground water development; they include the continuation of various moratoria on new consumptive water rights and the designation of Water Management Districts (Caswell 2007). The State is attempting to stabilize aquifer levels and enhance cold water spring outflows from the Eastern Snake River Plain by implementing water conservation measures to be proposed in the Comprehensive Aquifer Management Plan (CAMP) for this area (Barker *et al.* 2007). The goal of the CAMP is to ''sustain the economic viability and social and environmental health of the Eastern Snake Plain by adaptively managing a balance between water use and supplies.'' The CAMP will include several alternatives in an attempt to increase water supply, reduce withdrawals from the aquifer, and decrease overall demand for groundwater (Barker *et al.* 2007).

In addition, the State of Idaho established moratoria in 1993 (the year after listing of the Bliss Rapids snail) that restricted further surface-water and groundwater withdrawals for consumptive uses from the Snake River Plain aquifer between American Falls Reservoir and C.J. Strike Reservoir. The 1993 moratoria were extended by Executive Order in 2004 (Caswell 2006, attachment 1). However, these actions have not yet resulted in stabilization of aquifer levels. Depletion of spring flows and declining groundwater levels are a collective effect of drought conditions, changes in irrigation practices (the use of central-pivot sprinklers contribute little to groundwater recharge), and groundwater pumping (University of Idaho 2007). The effects of groundwater pumping downstream in the aquifer can affect the upper reaches of the aquifer, and the effects of groundwater pumping can continue for decades after pumping ceases (University of Idaho 2007).

Thus, we anticipate groundwater levels will likely continue to decline in the near future, even as water-conservation measures are implemented, and are being developed. Furthermore, species associated with these springs that are dependent upon the presence of water, such as the Bliss Rapids snail, will likely experience local extinctions without the opportunity for recolonization (USFWS 2008b). Loss of a colony from any individual habitat patch, without subsequent recolonization, increases the extinction risk for the species as a whole, a phenomenon dubbed the ''extinction ratchet'' (Burkey and Reed 2006, p. 11).

Pollution Control Regulations

Since the 1992 final listing rule, reductions in TSS and TP loading have improved water quality in localized reaches of the Snake River (Buhidar 2005) (*see* Factor A above). Various State-managed water quality programs are being implemented within the range of the Bliss Rapids snail. These programs are tiered off the Clean Water Act (CWA), which requires States to establish water-quality standards that provide for (1) the protection and propagation of fish, shellfish, and wildlife, and (2) recreation in and on the water. As required by the CWA, Idaho has established water-quality standards (*e.g.,* for water temperature and dissolved oxygen) for the protection of cold-water biota (*e.g.,* invertebrate species) in many reaches of the Snake River. The CWA also specifies that States must include an antidegradation policy in their water quality regulations that protects water-body uses and high-quality waters. Idaho's antidegradation policy, updated in the State's 1993 triennial review, is detailed in their Water Quality Standards (IDEQ 2009).

The IDEQ works closely with the USEPA to manage point and non-point sources of pollution to water bodies of the State through the National Pollutant Discharge Elimination System (NPDES) program under the CWA. IDEQ has not been granted authority by the USEPA to issue NPDES permits directly; all NPDES permits are issued by the USEPA Region 10 (USEPA 2009). These NPDES permits are written to meet all applicable water-quality standards established for a water body to protect human health and aquatic life. Waters that do not meet water-quality standards due to point and non-point sources of pollution are listed on EPA's 303(d) list of impaired water bodies. States must submit to EPA a 303(d) list (water-quality-limited waters) and a 305(b) report (status of the State's waters) every 2 years. IDEQ, under authority of the State Nutrient Management Act, is coordinating efforts to identify and quantify contributing sources of pollutants (including nutrient and sediment loading) to the Snake River basin via the Total Maximum Daily Load (TMDL) approach. In water bodies that are currently not meeting water-quality standards, the TMDL approach applies pollution-control strategies through several of the following programs: State Agricultural Water Quality Program, Clean Water Act section 401 Certification, BLM Resource Management plans, the State Water Plan, and local ordinances. Several TMDLs have been approved by the USEPA in stream segments within the range of the Bliss Rapids snail in the Snake River or its tributaries (Buhidar 2006), although most apply only to TSS, TP, or temperature. Therefore, these stream segments do not yet have water quality attributes that are protective of the Bliss Rapids snail until the TMDL approach has sufficient time to bring the stream segment water quality in line with approved standards.

State Invertebrate Species Regulations

There has been no change in State regulations regarding invertebrate protections since the time of listing. Take of Bliss Rapids snails is not regulated under Idaho State law.

Federal Consultation Regulations

In Idaho, the USEPA retains authority for the issuance of permits through the NPDES, which is designed to manage point source discharges. There are presently more than 80 licensed aquaculture facilities on the Snake River permitted by the USEPA (USEPA 2002, pp. 4–19, 4–20). Updated draft permits for aquaculture and fish processing facilities throughout Idaho have recently been made available for public review (71 FR 35269). Draft permits have been issued for aquaculture facilities on Billingsley Creek, Riley Creek, Niagara Springs, and Thousands Springs, all within the known range of the Bliss Rapids snail. Facilities that produce less than 20,000 pounds (9,072 kilograms) of fish annually are not required to obtain an NPDES permit (USEPA 2006, p. 3–1). These smaller facilities lie outside of this regulatory nexus, and as such their discharges are not regulated or reported.

Since the species was listed in 1992, Federal agencies, including the Army Corps of Engineers and the FERC, have been required to comply with section 7

of the Act on any projects or managed activities that may affect the Bliss Rapids snail. If the species is delisted, terms and conditions now required of these agencies and their applicants to reduce the effects of their actions on the Bliss Rapids snail, such as placing conservation measures into agency permits, would not be required (*e.g., see* USFWS 2007). Currently, IPC and the Service are cooperating in a Settlement Agreement (Agreement) approved by the FERC. This Agreement was designed to assess potential effects of the IPC's operations in the Wiley and Dike Reaches, and was approved as part of the biological opinion and license issuance for the Lower Salmon Falls and Bliss Projects. These studies and their analyses are scheduled to be completed in 2009.

The BLM manages more than 260 million acres of land in the 11 western States, including land adjacent to the Snake River in Idaho. The BLM manages activities on Federal lands such as outdoor recreation, livestock grazing, mining development, and energy production to conserve natural, historical, cultural, and other resources on the public lands (USBLM 2006). In Idaho, the BLM has been consulting with the Service pursuant to section 7 of the Act on ongoing BLM actions that may affect the Bliss Rapids snail. Through these consultation efforts, coordinated and cooperative conservation measures have been added to proposed actions (*e.g.,* new or renewed grazing permits on public lands) to minimize impacts to the species. Programmatic guidance and direction, documented through a conservation agreement between the BLM and Service, has increased the likelihood that conservation benefits may be realized for new, re-authorized, and ongoing actions; however, without the continued protections of the Act, there are no regulatory assurances that these conservation measures would continue.

Summary of Factor D: While there are no specific State regulations protecting the Bliss Rapids snail, the primary threats identified in the final listing rule were related to the loss or alteration of the species' aquatic habitat. Regulatory mechanisms such as Idaho's water quality standards and TMDLs will continue to apply to habitats occupied by the Bliss Rapids snail. Water quality in some stretches of the Snake River has improved, primarily for phosphorus and TSS. New research indicates the species is sensitive to some aquatic contaminants such as copper, ammonia, and pentachlorophenol. Ground water withdrawal and the subsequent decline of the aquifer that feeds springs where the species occurs is a prominent threat. Depletion of cold water spring flows and declining ground water levels are a collective result of drought conditions, changes in irrigation practices, and ground water pumping. The effects of ground water pumping downstream in the aquifer can affect the upper reaches of the aquifer, and the effects of ground water pumping can continue for decades after pumping ceases. Thus, we anticipate ground water levels will likely continue to decline even if water conservation measures are implemented or are being developed. Some conservation benefits to the species are being realized through section 7 consultation with other Federal agencies, but without the Act's protection there are no regulatory assurances that these conservation benefits would continue. Based on this information, the inadequacy of existing regulatory mechanisms represents an ongoing threat to the Bliss Rapids snail that is likely to contribute to the species becoming endangered in the foreseeable future.

Factor E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

The final listing rule stated that New Zealand mudsnails (*Potamopyrgus antipodarum*) were not abundant in cold water springflows with colonies of Bliss Rapids snails, but that they did compete with the Bliss Rapids snail in the mainstem Snake River (57 FR 59254; December 14, 1992). We have no direct evidence that New Zealand mudsnails have displaced colonies of Bliss Rapids snails, but New Zealand mudsnails have been documented in dark mats at densities of nearly 400 individuals per square inch in free-flowing habitats within the range of the Bliss Rapids snail (57 FR 59254). Richards *et al.* (2006, pp. 61, 64, 68) found that Bliss Rapids snails may be competitively excluded by New Zealand mudsnails in most habitats, and that Bliss Rapids snail densities would likely be higher in the absence of New Zealand mudsnails. Both species are mostly scraper-grazers on algae and have similar resource requirements (Richards *et al.* 2006, pp. 59, 66). Furthermore, New Zealand mudsnails have become established in every cold water spring-fed creek or tributary to the Hagerman Reach of the Snake River that has been surveyed (USFWS 2007). However, New Zealand mudsnails do not appear able to colonize headwater spring habitats, which may provide Bliss Rapids snails refugia from competition with New Zealand mudsnails (Frest and Johannes 1992, p. 50; Richards *et al.* 2006, pp. 67–68).

The physiological tolerances of the New Zealand mudsnail, including temperature and water velocity (Winterbourn 1969, pp. 457, 458; Lysne and Koetsier 2006b, p. 81); life history attributes such as high fecundity and growth rates (Richards 2004, pp. 25–34); and wide variety of habitat use such as springs, rivers, reservoirs, and ditches (Cada 2004, pp. 27, 28; USBR 2002, pp. 3, 11; Hall *et al.* 2003, pp. 407, 408; Clark *et al.* 2005, pp. 10, 32–35; Richards 2004, pp. 47–67), may provide the New Zealand mudsnail a competitive advantage over Bliss Rapids snails outside of cold headwater springs.

Summary of Factor E: Studies since the time of listing indicate that competition for resources occurs between the New Zealand mudsnail and the Bliss Rapids snail due to similar life history requirements. The New Zealand mudsnail has become established and widely distributed in the Snake River and its tributaries, however we do not know what this expansion has done to the distribution and abundance of Bliss Rapids snails. The current information is inconclusive as to whether the New Zealand mudsnail presently endangers the Bliss Rapids snail, largely because Bliss Rapids snails appear to have refugia from competition with New Zealand mudsnails in headwater springs. However, the available evidence suggests that the New Zealand mudsnail may endanger the Bliss Rapids snail in the foreseeable future given projected declines in aquifer levels, which will likely cause the extirpation of Bliss Rapids snails from these refugia.

Conclusion

In making a finding on whether or not a species warrants listing under the Act we must consider the legal definitions of ''endangered'' and ''threatened.'' A species is ''endangered'' for purposes of the Act if it is in danger of extinction throughout all or ''a significant portion of its range'' and is ''threatened'' if it is likely to become endangered within the *foreseeable future* throughout all or a significant portion of its range (emphasis added). The Act does not define the term ''foreseeable future.'' However, in a January 16, 2009 memorandum addressed to the Acting Director of the U.S. Fish and Wildlife Service, the Office of the Solicitor, Department of the Interior, concluded, ''* * * as used in the [Act], Congress intended the term 'foreseeable future' to describe the extent to which the Secretary can reasonably rely on

predictions about the future in making determinations about the future conservation status of the species.'' In considering the foreseeable future as it relates to the status of the Bliss Rapids snail, we considered the (1) biological and demographic characteristics of the species (such as habitat requirements (water depth, substrate, and temperature), spring vs. riverine colonies, and dispersal and recolonization ability), (2) our ability to predict or extrapolate the effects of threats facing the species into the future, and the (3) the relative permanency or irreversibility of these threats.

The Bliss Rapids snail is a species endemic to Idaho and occurs primarily in cold water spring tributaries and the ground water influenced areas within the Snake River. Studies conducted since the species was listed in 1992 indicate that the species' overall geographic range has not substantially changed since it was first described by Hershler *et al.* (1994), but the species has been detected in more riverine, cold water springs, and spring tributary locations within its historical range. The Bliss Rapids snail has specific and rather narrow habitat requirements in the form of suitable substrate and water temperature.

As discussed in the Summary of Factors section, we believe, based on the best available data, that it is reasonable to expect the primary threats (*i.e.,* reduced ground water levels, water quality and pollution concerns, and competition from nonnative species) to Bliss Rapids snails will continue to occur throughout the range of the species and to affect all colonies into the future. Ground water levels are expected to continue to decline, resulting in increased risks to spring and spring-influenced colonies beginning at the upstream end of the species' range. Recent data show that spring colonies of Bliss Rapids snail contain rare alleles, and loss of such colonies are likely to reduce genetic diversity, which in turn reduces the species' ability to respond to changes in environmental conditions. If current ground water trends continue—and we have a reasonable expectation that they will based on the best available data—we expect some colonies to become extirpated as sites become unsuitable for Bliss Rapids snails due to reduced flows and degraded water quality. Loss of spring colonies is also likely to result in the loss of potentially important refugia from competition with the New Zealand mudsnail. Without the cold water spring refugia that provide stable environmental conditions (relative to riverine habitats), there is significant uncertainty regarding the ability of riverine populations to persist in the face of ongoing competition with New Zealand mudsnails. These uncertainties are exacerbated by existing hydropower operations that result in unknown levels of mortality to Bliss Rapids snails in the riverine environment, and the relatively low densities of Bliss Rapids snails in riverine habitats. Because of these significant uncertainties, if spring populations were lost due to groundwater depletion and/or changes to water quality in the springs, we would have little confidence that the Bliss Rapids snail could persist in the riverine environment alone.

Therefore, we have determined that the Bliss Rapids snail is not now in danger of extinction, but is likely to become endangered in the foreseeable future based on the expected persistence of threats from reduced ground water levels, water quality and pollution concerns, and competition from nonnative species.

Significant Portion of the Range Analysis

Having determined that the Bliss Rapids snail is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, we must next consider whether there are any significant portions of its range that are currently in danger of extinction. The Act defines an endangered species as one ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as one ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The term ''significant portion of its range'' is not defined by statute. For purposes of this finding, a portion of a species' range is significant if it is part of the current range of the species and is important to the conservation of the species because it contributes meaningfully to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species.

The first step in determining whether a species is threatened or endangered in a significant portion of its range is to identify any portions of the range that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and threatened or endangered. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that (1) the portions may be significant and (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. If any concentration of threats applies only to portions of the range that are unimportant to the conservation of the species, such portions will not warrant further consideration.

If we identify any portions that warrant further consideration, we then determine whether in fact the species is threatened or endangered in any significant portion of its range. Depending on the biology of the species, its range, and the threats it faces, it may be more efficient in some cases for the Service to address the significance question first, and, in others, the status question first. Thus, if the Service determines that a portion of the range is not significant, the Service need not determine whether the species is threatened or endangered there; conversely, if the Service determines that the species is not threatened or endangered in a portion of its range, the Service need not determine if that portion is significant.

If the Service determines that both a portion of the range of a species is significant and the species is threatened or endangered there, the Service will specify that portion of the range where the species is in danger of extinction pursuant to section 4(c)(1) of the Act.

The terms ''resiliency,'' ''redundancy,'' and ''representation'' are intended to be indicators of the conservation value of portions of the species' range. Resiliency allows the species to recover from periodic disturbance. A species will likely be more resilient if large populations exist in high-quality habitat that is distributed throughout the range of the species in such a way as to capture the environmental variability within the range of the species. It is likely that the larger size of a population will help contribute to the viability of the species. Thus, a portion of the range of a species may make a meaningful contribution to the resiliency of the species if the area is relatively large and contains particularly high-quality habitat or if its location or characteristics make it less susceptible to certain threats than other portions of the range. When evaluating whether or how a portion of the range contributes to resiliency of the species, it may help to evaluate the historical

value of the portion and how frequently the portion is used by the species. In addition, the portion may contribute to resiliency for other reasons—for instance, it may contain an important concentration of certain types of habitat that are necessary for the species to carry out its life history functions, such as breeding, feeding, migration, dispersal, or wintering.

Redundancy of populations may be needed to provide a margin of safety for the species to withstand catastrophic events. This does not mean that any portion that provides redundancy is a significant portion of the range of a species. The idea is to conserve enough areas of the range such that random perturbations in the system act on only a few populations. Therefore, each area must be examined based on whether that area provides an increment of redundancy that is important to the conservation of the species.

Adequate representation insures that the species' adaptive capabilities are conserved. Specifically, the portion should be evaluated to see how it contributes to the genetic diversity of the species. The loss of genetic diversity may substantially reduce the ability of the species to respond and adapt to future environmental changes. A peripheral population may contribute meaningfully to representation if there is evidence that it provides genetic diversity due to its location on the margin of the species' habitat requirements.

Based upon factors that contribute to our analysis of whether a species or subspecies is in danger of extinction throughout all or a significant portion of its range, and in consideration of the status of, and threats to, the Bliss Rapids snail discussed previously, we find that the primary threats to the continued existence of the Bliss Rapids snail occur throughout all of its range. Therefore, it is not necessary to conduct further analysis with respect to the significance of any portion of its range.

Finding

On the basis of the best available scientific and commercial information, as discussed above, we find that the Bliss Rapids snail is likely to become endangered within the foreseeable future (*i.e.,* it is threatened, as defined by the Act). Therefore, removing the Bliss Rapids snail from the List is not warranted.

References Cited

A complete list of all references cited herein is available upon request from the Idaho Fish and Wildlife Office (*see* **ADDRESSES**).

Author

The primary authors of this document are the Idaho Fish and Wildlife Office (*see* **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 26, 2009.

Daniel M. Ashe,

Acting Director, Fish and Wildlife Service.

[FR Doc. E9–21949 Filed 9–15–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 0907281183–91184–01]

RIN 0648–AX98

Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Data Collection for the Trawl Rationalization Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to collect data to support implementation of a future trawl rationalization program under the Pacific Coast Groundfish Fishery Management Plan (FMP). NMFS proposes to collect ownership information from all potential participants in the trawl rationalization program. In addition, NMFS is notifying potential participants that the agency intends to use the Pacific States Marine Fisheries Commission's Pacific Fisheries Information Network (PacFIN) database and NMFS' Northwest Fisheries Science Center's Pacific whiting observer data from NORPAC (a database of North Pacific fisheries and Pacific whiting information) to determine initial allocation of quota share (QS) for the trawl rationalization program, if it is approved and implemented.

DATES: Comments on this proposed rule must be received no later than 5 p.m., local time on October 16, 2009.

ADDRESSES: You may submit comments, identified by RIN 0648–AX98 by any one of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.

Fax: 206–526–6736, Attn: Jamie Goen.

Mail: Barry Thom, Acting Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Jamie Goen.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS, Northwest Region and by e-mail to David__Rostker@omb.eop.gov or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Jamie Goen, phone: 206–526–4656, fax: 206–526–6736, and e-mail *jamie.goen@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This proposed rule is accessible via the Internet at the Office of the **Federal Register's** Web site at *http://www.gpoaccess.gov/fr/index.html*. Background information and documents are available at the Pacific Fishery Management Council's website at *http://www.pcouncil.org/*.

Background

Since 2003, the Pacific Fishery Management Council (Council) has been developing a trawl rationalization program, which would affect the limited entry trawl fishery of the Pacific Coast groundfish fishery. The trawl rationalization program is intended to increase net economic benefits, create individual economic stability, provide full utilization of the trawl sector allocation, consider environmental impacts, and achieve individual accountability of catch and bycatch.

The Council has developed the trawl rationalization program through two amendments to the Groundfish FMP: (1) Amendment 20, the trawl

rationalization program; and (2) Amendment 21, intersector allocation. Amendment 20 would create the structure and management details of the trawl rationalization program, while Amendment 21 would allocate the groundfish stocks between trawl and non-trawl fisheries. The Council took final action on Amendment 20 at their November 2008 meeting, with trailing actions at its March 2009, April 2009, and June 2009 meetings. The Council took final action on Amendment 21 at its April 2009 meeting. When the Council formally transmits those amendments to NMFS, the agency will publish a notice of availability (NOA) of an FMP amendment and a proposed rule in the **Federal Register** to announce a public comment period. Following the public comment period on the NOA and proposed rule, NMFS will announce its decision on whether or not to approve the amendments in a final rule published in the **Federal Register**. The FMP approval process and implementation, if appropriate, are expected to occur in 2010.

The trawl rationalization program would be a limited access privilege program (LAPP) under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C.1851–1891d, as reauthorized in 2007. A LAPP is considered a grant of permission to the holder of the limited access privilege or QS to participate in the program and may be revoked, limited, or modified at any time. In other words, it is a conditional privilege, conveyed through QS or catch shares, to harvest a specified amount of fish. The MSA requires the Council or the Secretary of Commerce to ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program and to establish a maximum share, expressed as a percentage that each limited access privilege holder may hold, acquire, or use. For the trawl rationalization program, the Council has adopted limits on the amount of pounds a vessel can hold, acquire, or use (i.e., vessel limits) and limits on the amount of QS that can be held, acquired, or used (i.e., control limits).

Trawl Rationalization Program Structure

The trawl rationalization program would consist of: (1) An individual fishing quota (IFQ) program for the shore-based trawl fleet; and (2) cooperative (co-op) programs for the at-sea trawl fleet. Under trawl rationalization, the shore-based trawl fleet would consist of IFQ participants who land groundfish to shore-based processors or first receivers. The at-sea trawl fleet would consist of fishery participants harvesting whiting with midwater trawl gear (i.e., whiting catcher/processor vessels, whiting motherships, and whiting catcher vessels associated with motherships). The co-op programs for the at-sea trawl fleet would be further divided as follows: (1) The whiting catcher/processor co-op; and (2) the whiting mothership co-ops. The mothership co-ops may consist of a single co-op or multiple co-ops where vessels pool their harvest together, or it may consist of vessels not associated with a particular mothership (i.e., ''non-co-op'' segment of the mothership fishery).

The IFQ program for the shore-based fleet would require an initial allocation of harvest QS to individual participants based on historic participation in the fishery, specifically to limited entry trawl permit owners and shore-based whiting processors who meet the eligibility requirements. In order to comply with the MSA, NMFS would be required to determine and track ownership interest in QS to determine if individuals are within set limits, both at the initial allocation stage and during the operation of the program. In Amendment 20, the Council has adopted limits (by species group and area) on the amount of QS an individual can control (control limits).

The Council has adopted different program structures for the whiting catcher/processor co-ops and whiting mothership co-ops, based on how these co-ops have operated in the past. The structure of the co-ops will be described in more detail in the proposed rule to implement Amendment 20, which is expected in 2010. The catcher/processor co-op would not require an initial allocation of QS to individual vessels, provided a co-op is established.

QS for the at-sea mothership fleet (called ''catch history assignments'' in Council documents) would initially be allocated to the individual whiting catcher vessels associated with the mothership fishery, and would be non-transferable amounts associated with the vessel. The QS allocated to individual vessels would reflect that individual vessel's contribution to the total amount of fish its mothership co-op can harvest. However, an individual vessel in the co-op could harvest more than its at-sea quota, within the restrictions on individual vessel harvest and mothership co-op limits. Similar to the shore-based IFQ program, NMFS would be required to track ownership interest in QSs to determine if individuals are within set limits. In addition, ownership interest in the co-op programs (both the catcher/processor and mothership) and IFQ program would be tracked at the individual level to monitor crossover of participants and ownership interest among the programs.

Collection of Ownership Information

Pursuant to section 402(a)(2) of the MSA, if the Secretary of Commerce determines that additional information is necessary for developing or implementing an FMP, the Secretary may, by regulation, implement an information collection program requiring submission of additional information for the fishery. In this proposed rule, ownership information would be collected from the potential participants in the trawl rationalization program, including the at-sea fleet (whiting motherships, whiting mothership catcher vessels, and whiting catcher/processors), the shore-based fleet (whiting and non-whiting permit owners and holders) and the shore-based whiting processors. Ownership information would be collected to support and facilitate the timely implementation of the potential future trawl rationalization program under the Groundfish FMP.

Similar to current NMFS requirements to collect ownership information from the limited entry fixed gear sablefish fleet, the primary purpose of collecting ownership interest information from the trawl fleet is to allow NMFS to monitor control of the groundfish resource in the trawl fishery to ensure participants remain within the accumulation limits, or control limits on QS, recommended by the Council in Amendment 20 to the FMP. Initially, NMFS would use the ownership information collected under this rule as the first step in the application process to determine which potential QS holders might be over their accumulation limits as individuals or as members of a business entity. By collecting ownership information from potential participants in advance of the FMP amendment approval process, NMFS would expedite the QS initial issuance process, which is expected to take place in the fall of 2010. After ownership interest forms from this rulemaking are completed early in 2010, NMFS intends to provide pre-filled ownership interest forms with the initial issuance application package in the fall of 2010, thereby reducing the burden on potential participants and shortening the application process. If the collection of the ownership information requested as part of this rulemaking is not completed at the time NMFS provides these forms, NMFS may delay implementation of the trawl

rationalization program or the issuance of an eligible participant's QS due to the additional time needed to gather the ownership information and determine if an eligible participant is within the accumulation limits.

In addition, the ownership information collected would create a baseline of ownership information to evaluate the trawl rationalization program during periodic reviews of the program, as required by the MSA. It would allow NMFS to better understand the relationship between processors, permit owners, and the entities owning the vessel registered to the permit (i.e., permit holders). In other words, it would allow NMFS to better understand who will control QS and which individuals will potentially use quota pounds (QP). Moreover, the ownership information would allow NMFS to better understand potential vessel accounts for QP and to better understand the ownership of vessels that crossover between different sectors in the trawl fishery. For example, it would allow NMFS to better understand the ownership of vessels that participate in both the whiting shore-based and the mothership fisheries.

NMFS would send a Trawl Identification of Ownership Interest Form to potential participants in the trawl rationalization program requiring the following information to be filled out: Type of entity; qualifying permit number; name of company or name of individuals owning the limited entry permit, vessel or processing plant; tax identification number (TIN) for each entity; date of birth (DOB) for each individual; state in which each business entity is registered; business mailing address; physical address for processing plants; business phone number, fax number and email; authorized representative's name; name of each individual having ownership interest in the limited entry permit, vessel or processing plant; the individual's business addresses; percentage of ownership by each entity (if there are multiple entities given as an owner of the permit, vessel, or processing plant) and each individual shareholder in each entity; printed name of authorized representative, their signature, and the date. The percentage of ownership of all shareholders must equal 100 percent. The form would also allow owners to certify whether or not they are a small business according to Small Business Administration (SBA) and the Regulatory Flexibility Act (RFA) standards.

For permits, the legal owner of the permit or authorized representative would be required to complete the form and provide all necessary information on the individual or entity owning each groundfish limited entry trawl permit. For vessels, the vessel owner would be required to complete the form and provide all necessary information on the individual or entity owning each vessel that is registered to a groundfish limited entry trawl permit (i.e., permit holder). For shore-based whiting processors or first receivers, the legal owner or authorized representative would be required to complete the form and provide all necessary information on the individual or entity owning each shore-based whiting processing or first receiver company. The individual signing the form would certify under penalty of perjury that the information provided is true and correct and the form would be required to be notarized by a notary public.

The form would be required even if the owner of the permit or potential participant in the trawl rationalization program is a person and not an entity. This form does NOT prequalify these persons for QS nor guarantee that they will qualify for QS under the future trawl rationalization program.

In addition to filling out the mandatory ownership interest form, potential trawl rationalization program participants may be required to submit additional documentation to NMFS. If the ownership interest in the permit, vessel, or potential QS includes a business entity, then additional documentation will be required. If there is an authorized representative for a business entity, then a corporate resolution would be required authorizing the person signing to do so on behalf of the entity. Business entities established under the laws of the United States or of any State would be required to provide proof of the establishment of their business and to verify that they are an active corporation. If an entity was not established under the laws of the United States or of any other State, this rule would not require the entity to become so established. However, an entity must be established under the laws of the United States or of any State in order to qualify for an initial allocation of QS, pursuant to section 303A(c)(1)(D) of the MSA. Providing the information at this stage will expedite the initial issuance process.

Additional documentation that NMFS may request after review of the completed Trawl Identification of Ownership Interest Form includes articles of incorporation, a contract, or any other credible documentation that substantiates those with ownership interests in the entity and their percent ownership. NMFS may require a certified copy of the current vessel document (United States Coast Guard or state) as evidence of vessel ownership. NMFS may also request or consider any other relevant, credible evidence.

NMFS would send out the Trawl Identification of Ownership Interest Form with instructions to the current address in NMFS records for potential participants in the trawl rationalization program. Completion of this form would be required only once in preparation for implementation of the trawl rationalization program. This form would be sent to the at-sea fleet (whiting motherships, whiting mothership catcher vessels, and whiting catcher/processors), the shore-based fleet (whiting and non-whiting permit owners and holders) and the shore-based whiting processors. Potential participants would have at least 60 days from the effective date of the **Federal Register** final rule for this action to return the completed form. The completed form must be returned to NMFS no later than May 1, 2010. In the future and if the trawl program is implemented under Amendment 20, the ownership interest form would likely be required during the permit or QS renewal process and during any permit or QS transfers.

Databases to be Used for Initial Allocation of Quota Share

Potential participants of the trawl rationalization program should be aware that the agency intends to use landings data from the Pacific States Marine Fisheries Commission's PacFIN database and NMFS' Northwest Fisheries Science Center's Pacific whiting observer data from NORPAC to determine initial allocations of QS for the trawl rationalization program. Landings data from state fish tickets, as provided by the states to the PacFIN database, would be used to determine initial allocation of IFQ QS for the shore-based whiting and nonwhiting harvesters and for the shore-based whiting processors. Landings data from the NORPAC database would be used to determine initial allocation of at-sea QS for the whiting mothership catcher vessels.

NMFS intends to ''freeze'' the databases for the purposes of initial allocation on the date the proposed rule proposing to implement Amendment 20 to the FMP is published in the **Federal Register**. This should allow time for NMFS to compile the dataset and cross check the data for any errors. ''Freezing'' the databases means that NMFS will extract a snapshot of the databases as of the proposed rule publication date and will use those for initial allocation of

QS. ''Freezing'' the databases is necessary to hold them constant for use during qualification and initial issuance of the trawl rationalization program and to form an administrative record of the database at a given point in time. Following the ''freezing'' of the databases, any corrections to the ''frozen'' database would be made with NMFS through the processes set forth in future trawl rationalization rules. After NMFS extracts a copy of the databases, the PacFIN and NORPAC databases will continue to exist and be updated through their normal processes, but such updates may not be used for initial allocations of QS.

If potential participants in the trawl rationalization program have concerns over the accuracy of their data in the PacFIN database, they should contact the state in which they landed those fish to correct any errors. Any revisions to an entity's fish tickets would have to be approved by the state in order to be accepted. State contacts are as follows: (1) Washington - Carol Turcotte (360–902–2253, *Carol.Turcotte@dfw.wa.gov*); (2) Oregon - Michelle Grooms (503–947–6247, *Michelle.L.Grooms@state.or.us*); and (3) California - Gerry Kobylinski (916–323–1456, *Gkobylin@dfg.ca.gov*). For concerns over the accuracy of NORPAC data, contact Janell Majewski (206–860–3293, *janell.majewski@noaa.gov*). NMFS urges potential QS owners to go directly to the source where fisheries data is entered in the database to get it corrected before NMFS extracts the data for initial issuance of QS.

Classification

Pursuant to section 402(a)(2) of the MSA, the NMFS Assistant Administrator, acting on behalf of the Secretary of Commerce, has determined that information collected under this proposed rule is necessary for developing and implementing the trawl rationalization program. The NMFS Assistant Administrator has also determined that this proposed rule is consistent with other applicable law, subject to further consideration after public comment.

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

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A copy of the IRFA is available from the NMFS (see ADDRESSES). A summary of the analysis follows:

The proposed rule would allow NMFS to collect data to support implementation of a future trawl rationalization program, Amendment 20, to the Groundfish FMP. A separate Regulatory Impact Review/IRFA will be prepared for the full trawl rationalization program as part of the rulemaking for Amendment 20. This proposed rule would also announce that NMFS intends to use landings data from the PacFIN and NORPAC databases to determine initial allocations of QS for the trawl rationalization program. Section 402(a)(2) of the MSA gives the legal authority for the action. If the Secretary determines that additional information is necessary for developing or implementing an FMP, the Secretary may, by regulation, implement an information collection requiring submission of such additional information for the fishery.

The Council has recommended accumulation limits to comply with the MSA requirement to ensure that participants do not acquire an excessive share of the total limited access privileges in the trawl rationalization program. Initially, NMFS would use the ownership information collected as the first step in the application process to determine which potential QS holders might be over their accumulation limits as individuals or as members of a business entity. By collecting ownership information from potential participants in advance of the FMP amendment approval process, NMFS would expedite the initial issuance of QS, which is expected to take place in the fall of 2010. Also, NMFS could use the completed forms to troubleshoot any unforeseen data collection issues and to provide pre-filled ownership interest forms with the initial issuance package in the fall of 2010. Pre-filled forms would reduce the burden on potential participants and shorten the initial issuance and appeals process.

The IRFA considers three alternatives: (1) No action; (2) a blank form to collect ownership interest information; and (3) a partially pre-filled form to collect ownership information. The no action alternative would delay collecting any ownership interest information until the initial issuance and appeals process for the trawl rationalization program, which is expected to take place in the fall of 2010. Under the second alternative, NMFS would mail a blank Trawl Identification of Ownership Interest Form to potential participants in the trawl rationalization program. Under the third and selected alternative, NMFS would mail out a partially pre-filled Trawl Identification of Ownership Interest Form to potential participants in the trawl rationalization program. NMFS would use its Permit Office's database to pre-fill the permit and/or vessel owner's name of record and address. NMFS would also use this information to begin to fill out the names of participants with ownership interest.

Compared to the no action alternative, both alternatives would facilitate a timelier implementation of the trawl rationalization program. Additionally, the preferred alternative, partially pre-filled forms, would further expedite the trawl rationalization program implementation process and would be the most helpful to the person completing the form. This should aid the person completing the form by providing details on what information is needed and how NMFS database currently views the permit and/or vessel owner or owner of the whiting processor. While timely implementation of the trawl rationalization program benefits its participants, NMFS must also be aware that doing so is not too burdensome and costly to the potential trawl rationalization program participants. This proposed rule would establish a onetime mailing requesting ownership information. Filling out a Trawl Ownership Interest Form is expected to take approximately 30 minutes per response and cost approximately $19.15 per response (which includes the respondent's time ($8.51), mailing, photocopying, and notary fee). There is no fee for this form. There is an incentive to respond because this is the initial step by any business to gain ownership rights in the fishery that can, at a future time, be harvested, sold, leased, or combined with other businesses in fishing operations. The financial benefits of participating in the trawl rationalization program should far outweigh the minimal cost of time and effort to fill out a form. (Very preliminary Pacific Council estimates indicate that for the harvesting vessels, after taking into account the costs of having observer coverage, over time the fishery may increase annual profits (revenue minus costs) by $10 to $20 million.)

This proposed rule would collect ownership information from approximately 250 potential participants who may receive initial allocation of QS, including the at-sea fleet (whiting motherships, whiting mothership catcher vessels, and whiting catcher/processors), the shore-based fleet (whiting and non-whiting permit

owners and holders) and the shore-based whiting processors. Using SBA standards, most of the estimated 250 entities are considered small businesses, except for some catcher vessels that also fish off Alaska, some shoreside processors and all catcher-processors and motherships (fewer than 30) that are affiliated with larger processing companies or large international seafood companies. One of the purposes of this data collection is to have these entities certify that they are ''small'' or ''large'' entities based on SBA size and affiliation criteria.

This information collection would be requested of all potential participants in the trawl rationalization program, regardless of size, and would not have a disproportionate effect on small versus large entities. Nor would this information collection have any effect on profitability for small entities.

These changes will not duplicate, overlap or conflict with other laws or regulations. This proposed action is not expected to meet any of the RFA tests of having a ''significant'' economic impact on a ''substantial number'' of small entities. Nonetheless, NMFS has prepared an IRFA for this action. NMFS is requesting comments on this conclusion.

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. The public reporting burden for the Trawl Identification of Ownership Interest Form is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. This form is estimated to cost approximately $19.15 per response (which includes the respondent's time ($8.51), mailing, photocopying, and notary fee). There is no fee for this form.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; 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, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS, Northwest Region (see **ADDRESSES** section), and by e-mail to *David__Rostker@omb.eop.gov* or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to 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 in 50 CFR Part 660

Fishing, Fisheries, and Indian Fisheries.

Dated: September 11, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

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

2. A new § 660.337 is added to read as follows:

§ 660.337 Trawl rationalization program - data collection requirements.

(a) Ownership reporting requirements - (1) In 2010, NMFS will send a Trawl Identification of Ownership Interest Form to the current address on record requesting information from participants in the trawl fishery. Receipt of this form does NOT prequalify these persons for quota share nor does it guarantee that they will qualify for quota share under a future trawl rationalization program. The following participants in the trawl fishery must complete and return the form to NMFS:

(i) Owners of each limited entry permit endorsed for trawl gear;

(ii) Owners of each vessel registered to a limited entry permit endorsed for trawl gear (i.e., permit holder) if not identical to the permit owner covered by paragraph (a)(1)(i) of this section;

(iii) Owners of each vessel registered to a Pacific whiting vessel license that are not covered by paragraphs (a)(1)(i) and (ii) above; and

(iv) First receivers issued current Pacific whiting first receiver exempted fishing permits.

(2) Supporting documentation.

(i) Business entities completing the Trawl Identification of Ownership Interest Form are required to submit the following:

(A) A corporate resolution or any other credible documentation as proof of the authorized representative selected to act on behalf of the entity; and

(B) Proof that the business entity was established and is currently recognized as active under the laws of the United States or any State, if indeed they were.

(ii) After review of the Trawl Identification of Ownership Interest Form, NMFS may require the following additional documentation:

(A) Articles of incorporation, a notarized contract, or any other credible documentation that identifies each person who owns an interest in the entity and their percentage of ownership;

(B) A certified copy of the current vessel document (United States Coast Guard or state) as evidence of vessel ownership; or

(C) Such other relevant, credible evidence as the applicant may submit, or as the SFD or the Regional Administrator request or acquire.

(3) Deadline. Persons listed in paragraph (a)(1) will be provided at least 60 calendar days to submit completed forms. All forms must be completed and returned to NMFS with a postmark no later than the deadline date of May 1, 2010.

(b) [Reserved]

[FR Doc. E9–22325 Filed 9–15–09; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 74, No. 178

Wednesday, September 16, 2009

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.

FINANCIAL CRISIS INQUIRY COMMISSION

Open Meeting

AGENCY: Financial Crisis Inquiry Commission.

ACTION: Notice of open meeting.

SUMMARY: The Financial Crisis Inquiry Commission (FCIC) announces that it will hold its initial open meeting in Washington, DC. The meeting will include announcements, statements from Commissioners, and a discussion of the scope of work, work plan, and timeline of the Financial Crisis Inquiry Commission.

DATES: The open meeting will be held on Thursday, September 17, 2009, from 9 a.m. to 11:30 a.m.

ADDRESSES: The open meeting will be held in the hearing room of the Committee on House Administration, U.S. House of Representatives, 1310 Longworth House Office Building, Washington, DC 20515.

FOR FURTHER INFORMATION CONTACT: Gretchen Kinney Newsom, Office of Phil Angelides, 3001 I Street, Suite 115, Sacramento, California 95816. Fax: 310–272–1613.

SUPPLEMENTARY INFORMATION: *Purpose of the Commission:* The purpose of the Financial Crisis Inquiry Commission is to examine the causes, domestic and global, of the current financial and economic crisis in the United States, per the requirements of the Fraud Enforcement and Recovery Act of 2009 (''FERA''), Section 5, Public Law 111–21, 123 Stat. 1617 (2009).

Public Participation: The meeting is open to the public. The Chairman of the Commission will lead the meeting for the orderly conduct of business.

Dated: September 14, 2009.

Bill Thomas,

Vice Chairman, Financial Crisis Inquiry Commission.

[FR Doc. E9–22422 Filed 9–14–09; 4:15 pm]

BILLING CODE 6820–RK–P

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Shasta County Resource Advisory Committee (RAC) will meet at the USDA Service Center in Redding, California, on September 24, 2009, from 8:30 a.m. to 12 noon. The purpose of this meeting is to discuss the Shasta College monitoring program, the project progress report and the Western Shasta RCD proposal. A quorum is not expected in Group C.

DATES: Thursday, September 24, 2009 at 8:30 a.m.

ADDRESSES: The meeting will be held at the USDA Service Center, 3644 Avtech Parkway, Redding, California 96002.

FOR FURTHER INFORMATION CONTACT: Resource Advisory Committee Coordinator John Heibel at (530) 226–2524 or *jheibel@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public input sessions will be provided and individuals will have the opportunity to address the Shasta County Resource Advisory Committee.

Dated: September 8, 2009.

J. Sharon Heywood,

Forest Supervisor, Shasta-Trinity National Forest.

[FR Doc. E9–22153 Filed 9–15–09; 8:45 am]

BILLING CODE M

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting to hear speakers and to hold a short public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 106–393) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393). The meeting is open to the public.

DATES: The meeting will be held on September 22, 2009, 6:30 p.m.

ADDRESSES: The meeting will be held at the Bitterroot National Forest, Supervisor Office, 1801 N First, Hamilton, Montana. Send written comments to Daniel G. Ritter, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *dritter@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Daniel C Ritter, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: September 9, 2009.

Julie King,

Deputy Forest Supervisor.

[FR Doc. E9–22158 Filed 9–15–09; 8:45 am]

BILLING CODE M

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Thursday, September 24, 2009; 11:30 a.m. EDT.

PLACE: Via Teleconference. Public Dial In—1–800–597–7623. Conference ID # 30578462.

Meeting Agenda

This meeting is open to the public.

I. Approval of Agenda
II. Approval of Minutes of September 3, 2009 and September 11, 2009 Meetings
III. Management and Operations
- Submission of FY 2011 Budget Estimate to the Office of Management and Budget.

IV. State Advisory Committee Issues
- Iowa SAC.
- Nevada SAC.
- North Dakota SAC.

V. Adjourn

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8582. TDD: (202) 376–8116. Persons

with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202–376–8105. TDD: (202) 376–8116.

Dated: September 14, 2009.

David Blackwood,

General Counsel.

[FR Doc. E9–22438 Filed 9–14–09; 4:15 pm]

BILLING CODE 6335–01–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 Oceanic and Atmospheric Administration (NOAA).

Title: Socioeconomic Monitoring Program for the Florida Keys National Marine Sanctuary.

OMB Control Number: 0648–0409.

Form Number(s): NA.

Type of Request: Regular submission.

Number of Respondents: 109.

Average Hours per Response: Fishermen's Socioeconomic Profile, 3 hours; Dive Shop Log, 10 hours.

Burden Hours: 810.

Needs and Uses: The National Marine Sanctuaries Act (16 USC 1431, *et seq.*) authorizes the use of monitoring within National Marine Sanctuaries (NMS). The Florida Keys National Marine Sanctuary and Protection Act (Pub. L. 101–605, Sec 7 (5)) also authorizes monitoring. The Management Plan for the Florida Keys National Marine Sanctuary (FKNMS) and regulations in 1997 and 2001 created a series of ''no take'' zones, with no consumptive or other ''take'' activities allowed. The purpose of this information collection is to gather socioeconomic monitoring information in the FKNMS in order to continue evaluation of the socioeconomic impacts of these zones. The results will be used to help guide revisions to the management plan for the sanctuary.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

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, 14th and 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 David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: September 11, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–22301 Filed 9–15–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–549–822

Certain Frozen Warmwater Shrimp From Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 9, 2009, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from Thailand. This review covers 135 [1] producers/exporters of the subject merchandise to the United States. The POR is February 1, 2007, through January 31, 2008.

Based on our analysis of the comments received, we have made certain changes in the margin calculations for Andaman Seafood Co., Ltd. (Andaman), Wales & Co. Universe Limited, Chanthaburi Frozen Food Co., Ltd. (CFF), Chanthaburi Seafoods Co., Ltd. (CSF), Intersia Foods Co., Ltd. (formerly Y2K Frozen Foods Co., Ltd.), Phattana Seafood Co., Ltd. (PTN), Phattana Frozen Food Co., Ltd. (PFF), S.C.C. Frozen Seafood Co., Ltd., Thailand Fishery Cold Storage Public Co., Ltd. (TFC), Thai International Seafoods Co., Ltd. (TIS), and Sea Wealth Frozen Food Co., Ltd. (Sea Wealth) (collectively, the Rubicon Group), and Pakfood Public Company Limited and its affiliates, Asia Pacific (Thailand) Company, Limited, Chaophraya Cold Storage Company Limited, Okeanos Company Limited, Okeanos Food Company, Limited, and Takzin Samut Company, Limited (collectively, Pakfood), producer/exporters selected for individual review. Therefore, the final results for the Rubicon Group and Pakfood differ from the preliminary results. The final weighted–average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: September 16, 2009.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or David Goldberger, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4929 or (202) 482–4136, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers 135 producers/exporters. The respondents which the Department selected for individual review are the Rubicon Group and Pakfood. The respondents which were not selected for individual review are listed in the ''Final Results of Review'' section of this notice.

On March 9, 2009, the Department published in the **Federal Register** the preliminary results of the 2007–2008 administrative review of the antidumping duty order on shrimp from Thailand. *See Certain Frozen Warmwater Shrimp from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 10000 (March 9, 2009) (*Preliminary Results*). We invited parties to comment on those preliminary results.

We conducted the cost verification of CFF, a member of the Rubicon Group, from February 9 through February 13, 2009, the sales verification of CFF from March 23 through March 25, 2009, and the verification of Rubicon Resources, the Rubicon Group's U.S. affiliate, from March 30 through April 1, 2009.

On April 8, 2009, the domestic processors of frozen warmwater shrimp (*i.e.*, The American Shrimp Processors Association, hereafter ''domestic processors''), an interested party in this proceeding, requested that a public hearing be held in this proceeding. On May 13, 2009, the domestic processors withdrew their hearing request.

In May 2009, we received case briefs from the domestic producers of the subject merchandise (*i.e.*, the Ad Hoc

[1] This figure excludes Euro-Asian International Seafoods Co., Ltd. (Euro-Asian), a member of the Rubicon Group, the company for which we are rescinding the review due to the fact that it made no shipments of the subject merchandise during the period of review (POR). *See* ''Partial Rescission of Review'' section, below.

Shrimp Trade Action Committee), the respondents selected for individual review, the Rubicon Group and Pakfood, the domestic processors, and Thai I–Mei Frozen Foods Co., Ltd. (Thai I–Mei), a producer/exporter not selected for individual review. Rebuttal briefs were received from the domestic producers, the Rubicon Group, Pakfood, and Thai I–Mei.

In May 2009, we extended the deadline for the final results, due no later than September 8, 2009. *See Certain Frozen Warmwater Shrimp from Thailand: Notice of Extension of Time Limit for the Final Results of the Third Administrative Review*, 74 FR 25705 (May 29, 2009).

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild–caught (ocean harvested) or farm–raised (produced by aquaculture), head–on or head–off, shell–on or peeled, tail–on or tail–off,[2] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild–caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (Trachypenaeus curvirostris), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

[2] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: 1) breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); 2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; 3) fresh shrimp and prawns whether shell–on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); 4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); 5) dried shrimp and prawns; 6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); 7) certain dusted shrimp; and 8) certain battered shrimp. Dusted shrimp is a shrimp–based product: 1) that is produced from fresh (or thawed–from-frozen) and peeled shrimp; 2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; 3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; 4) with the non–shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and 5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp–based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par–fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Period of Review

The POR is February 1, 2007, through January 31, 2008.

Partial Rescission of Review

In February 2007, the Department received a timely request, in accordance with 19 CFR 351.213(b)(1), from the domestic producers and the Louisiana Shrimp Association, a domestic interested party, to conduct a review of Euro–Asian. The Department initiated a review of this company on April 7, 2008. *See Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India, and Thailand: Notice of Initiation of Administrative Reviews*, 73 FR 18754 (April 7, 2008). However, the Rubicon Group's July 14, 2008, Section A questionnaire response at pages A–27 A–28, indicates that Euro–Asian is not a producer and/or exporter of the subject merchandise. We confirmed that Euro–Asian had no shipments of subject merchandise during the POR using U.S. Customs and Border Protection (CBP) data. Therefore, because Euro–Asian had no shipments of subject merchandise to the United States during the POR, in accordance with 19 CFR 351.213(d)(3), and consistent with the Department's practice, we are rescinding our review with respect to this company. *See, e.g., Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065, 52067 (September 12, 2007); and *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part*, 70 FR 67665, 67666 (November 8, 2005).

Cost of Production

As discussed in the *Preliminary Results*, we conducted a sales below cost investigation to determine whether Pakfood and the Rubicon Group made home market and third country sales, respectively, of the foreign like product during the POR at prices below their costs of production (COP) within the meaning of section 773(b)(1) of the Act. For both respondents, we performed the cost test for these final results following the same methodology as in the *Preliminary Results*.

We found 20 percent or more of each respondent's sales of a given product during the reporting period were at prices less than the weighted–average COP for this period. Thus, we determined that these below–cost sales were made in ''substantial quantities'' within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. *See* sections 773(b)(2)(B) - (D) of the Act.

Therefore, for purposes of these final results, we find that Pakfood and the Rubicon Group made below–cost sales not in the ordinary course of trade. Consequently, we disregarded these

sales for each respondent and used the remaining sales as the basis for determining normal value pursuant to section 773(b)(1) of the Act.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review, and to which we have responded, are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum (the Decision Memo), which is adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, HCHB Room 1117, of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/* . The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made certain changes in the margin calculations for Pakfood and the Rubicon Group. These changes are discussed in the relevant sections of the Decision Memo.

In addition, we have changed our calculation of the cash deposit and assessment rates applicable to the companies not selected for individual examination to reflect the simple average of the margins calculated for the respondents selected for individual examination in this review, rather than the weighted average of these margins, excluding *de minimis* margins or margins based entirely on facts available (FA). This is consistent with our current practice with respect to the calculation of the cash deposit and assessment rates applicable to non–mandatory respondents in cases such as the instant one, where there are only two mandatory respondents with above de minimis margins, or margins based entirely upon FA. *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Preliminary Results of Antidumping Duty Administrative Reviews and Intent to Rescind Reviews in Part*, 73 FR 25654, 25655 (May 7, 2008); unchanged in *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008).

Final Results of Review

We determine that weighted–average dumping margins exist for the respondents for the period February 1, 2007, through January 31, 2008, as follows:

Manufacturer/Exporter	Percent Margin
Pakfood Public Company Limited / Asia Pacific (Thailand) Company Limited / Chaophraya Cold Storage Company Limited/ Okeanos Company Limited/ Okeanos Food Company, Limited/ and Takzin Samut Company Limited (collectively, Pakfood)	4.61
Andaman Seafood Co., Ltd. / Chanthaburi Frozen Food Co., Ltd. / Chanthaburi Seafoods Co., Ltd. /Intersia Foods Co., Ltd. (formerly Y2K Frozen Foods Co., Ltd.)/ Phattana Seafood Co., Ltd. / Phattana Frozen Food Co., Ltd. /S.C.C. Frozen Seafood Co., Ltd./Sea Wealth Frozen Food Co. Ltd. / Thailand Fishery Cold Storage Public Co., Ltd. / Thai International Seafoods Co., Ltd. /Wales & Co. Universe Limited (collectively, the Rubicon Group)	4.80

Review–Specific Average Rate Applicable to the Following Companies:[3]

Manufacturer/Exporter	
ACU Transport Co., Ltd.	4.71
Ampai Frozen Food Co., Ltd.	4.71
A.S. Intermarine Foods Co., Ltd	4.71
Asian Seafoods Coldstorage Public Co., Ltd.	4.71
Asian Seafoods Coldstorage (Suratthani) Co., Ltd.	4.71
Assoc. Commercial Systems	4.71
A. Wattanachai Frozen Products Co., Ltd.	4.71
Bangkok Dehydrated Marine Product Co., Ltd.	4.71
Bright Sea Co., Ltd.	4.71
C P Mdse	4.71
C Y Frozen Food Co., Ltd.	4.71
Chaiwarut Co., Ltd.	4.71
Chaivaree Marine Products Co., Ltd.	4.71
Charoen Pokphand Foods Public Co., Ltd.	4.71
Chue Eie Mong Eak Ltd. Part.	4.71
Core Seafood Processing Co., Ltd.	4.71
Crystal Seafood	4.71
Daedong (Thailand) Co. Ltd.	4.71
Daiei Taigen (Thailand) Co., Ltd.	4.71
Daiho (Thailand) Co., Ltd.	4.71
Earth Food Manufacturing Co., Ltd.	4.71
F.A.I.T. Corporation Limited	4.71
Far East Cold Storage Co., Ltd.	4.71
Findus (Thailand) Ltd.	4.71
Fortune Frozen Foods (Thailand) Co., Ltd.	4.71
Frozen Marine Products Co., Ltd.	4.71
Gallant Ocean (Thailand) Co., Ltd.	4.71
Gallant Ocean Seafood Corporation	4.71
Good Fortune Cold Storage Co., Ltd.	4.71
Good Luck Product Co., Ltd.	4.71
Gulf Coast Crab Intl	4.71
H.A.M. International Co., Ltd.	4.71
Heng Seafood Limited Partnership	4.71
Heritrade Co., Ltd.	4.71
HIC (Thailand) Co., Ltd.	4.71
I.T. Foods Industries Co., Ltd.	4.71
Inter–Oceanic Resources Co., Ltd.	4.71
Inter–Pacific Marine Products Co., Ltd.	4.71
K .D. Trading Co., Ltd.	4.71
K Fresh	4.71
KF Foods	4.71
K.L. Cold Storage Co., Ltd.	4.71
Kiang Huat Sea Gull Trading Frozen Food Public Co., Ltd.	4.71
Kingfisher Holdings Ltd.	4.71
Kibun Trdg	4.71
Klang Co., Ltd.	4.71
Kitchens of the Ocean (Thailand) Ltd.	4.71
Kongphop Frozen Foods Co., Ltd.	4.71
Kosamut Frozen Foods Co., Ltd.	4.71

[3] This rate is based on the simple average of the margins calculated for those companies selected for individual examination, excluding de minimis margins or margins based entirely on FA, as discussed above.

Manufacturer/Exporter	
Lee Heng Seafood Co., Ltd.	4.71
Leo Transports	4.71
Maersk Line	4.71
Magnate & Syndicate Co., Ltd.	4.71
Mahachai Food Processing Co., Ltd.	4.71
Marine Gold Products Limited	4.71
May Ao Co., Ltd.	4.71
May Ao Foods Co., Ltd.	4.71
N&N Foods Co., Ltd.	4.71
Namprik Maesri Ltd. Part.	4.71
Narong Seafood Co., Ltd.	4.71
Ongkorn Cold Storage Co., Ltd.	4.71
Pacific Queen Co., Ltd.	4.71
Penta Impex Co., Ltd.	4.71
Pinwood Nineteen Ninety Nine	4.71
Piti Seafoods Co., Ltd.	4.71
Premier Frozen Products Co., Ltd.	4.71
Preserved Food Specialty Co., Ltd.	4.71
Rayong Coldstorage (1987) Co., Ltd.	4.71
S&D Marine Products Co., Ltd.	4.71
S&P Aquarium	4.71
S&P Syndicate Public Company Ltd.	4.71
S. Chaivaree Cold Storage Co., Ltd.	4.71
S. Khonkaen Food Industry Public Co., Ltd.	4.71
SMP Foods Products Co., Ltd.	4.71
Samui Foods Company Limited	4.71
Sea Bonanza Food Co., Ltd.	4.71
Seafoods Enterprise Co., Ltd.	4.71
Seafresh Fisheries	4.71
Seafresh Industry Public Co., Ltd.	4.71
Siam Food Supply Co., Ltd.	4.71
Siam Intersea Co., Ltd.	4.71
Siam Marine Products Co. Ltd.	4.71
Siam Ocean Frozen Foods Co. Ltd.	4.71
Siam Union Frozen Foods	4.71
Siamchai International Food Co., Ltd.	4.71
Southport Seafood	4.71
STC Foodpak Ltd.	4.71
Suntechthai Intertrading Co., Ltd.	4.71
Surapon Foods Public Co., Ltd.	4.71
Surapon Nichirei Foods Co., Ltd.	4.71
Surapon Seafood	4.71
Suratthani Marine Products Co., Ltd.	4.71
Suree Interfoods Co., Ltd.	4.71
T.S.F. Seafood Co., Ltd.	4.71
Tanaya International Co., Ltd.	4.71
Teppitak Seafood Co., Ltd.	4.71
Tey Seng Cold Storage Co., Ltd.	4.71
Thai–Ger Marine Co., Ltd.	4.71
Thai Agri Foods Public Co., Ltd.	4.71
Thai I–Mei Frozen Foods Co., Ltd.	4.71
Thai Mahachai Seafood Products Co., Ltd.	4.71
Thai Ocean Venture Co., Ltd.	4.71
Thai Patana Frozen	4.71
Thai Prawn Culture Center Co., Ltd.	4.71
Thai Royal Frozen Food Co. Ltd.	4.71
Thai Spring Fish Co., Ltd.	4.71
Thai Union Frozen Products Public Co., Ltd.	4.71
Thai Union Seafood Co., Ltd.	4.71
Thai Yoo Ltd., Part.	4.71
The Siam Union Frozen Food Co., Ltd.	4.71
The Union Frozen Products Co., Ltd.	4.71
Trang Seafood Products Public Co., Ltd.	4.71
Transamut Food Co., Ltd.	4.71
Tung Lieng Trdg	4.71
United Cold Storage Co., Ltd.	4.71
V Thai Food Product	4.71
Xian–Ning Seafood Co., Ltd.	4.71
Yeenin Frozen Foods Co., Ltd.	4.71
YHS Singapore Pte	4.71
ZAFCO TRDG	4.71

Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

For those sales where Pakfood and the Rubicon Group reported the entered value of their U.S. sales, we have calculated importer–specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. For those sales where the respondents did not report the entered value of their U.S. sales, we have calculated importer–specific or customer–specific per–unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. With respect to the respondents' U.S. sales of shrimp with sauce, for which no entered value was reported, we have included the total quantity of the merchandise with sauce in the denominator of the calculation of the importer–specific or customer–specific rate because CBP will apply the per–unit duty rate to the total quantity of merchandise entered, including the sauce weight. To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated importer–specific or customer–specific *ad valorem* ratios based on the estimated entered value.

For the companies which were not selected for individual review, we have calculated an assessment rate based on the simple average of the cash deposit rates calculated for the companies selected for individual review excluding any which are *de minimis* or determined entirely on FA.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any 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 *de minimis (i.e.*, less than 0.50 percent). *See* 19 CFR 351.106(c)(1). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

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 Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate established in the LTFV investigation if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

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 administrative review, as provided by section 751(a)(2)(C) of the Act: 1) the cash deposit rates for each specific company listed above[4] will be the rates shown above, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; 2) for previously reviewed or investigated companies not participating in this review, 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 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 or exporters will be 5.34 percent, the all–others rate made effective by the *Section 129 Determination*. These requirements, when imposed, 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)(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.

Notification to Interested Parties

This notice serves as the only 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 written notification of return/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 final results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 8, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix Issues in Decision Memo

General Comments:

Comment 1: Offsetting of Negative Margins
Comment 2: Using CBP Data for Respondent Selection
Comment 3: Restricting Count–Size Comparisons Under the Model–Matching Methodology
Comment 4: Assessment Rate Assigned to Companies Receiving the Review–Specific Average Rate

Company-Specific Comments:

Pakfood

Comment 5: Treatment of DDP Interest Income Earned by Pakfood
Comment 6: Application of Pakfood's Final Antidumping Duty Margin to its 100 Percent–Owned Subsidiaries

The Rubicon Group

Comment 7: Interest Income Offset to Financial Expenses
Comment 8: CEP Offset
Comment 9: Calculation of U.S. Warehousing and Inventory Carrying Costs
Comment 10: Inadvertent Errors in the Draft Cash Deposit and Liquidation Instructions

[FR Doc. E9–22335 Filed 9–15–09; 8:45 am]

BILLING CODE 3510–DS–S

[4] Effective January 16, 2009, there is no longer a cash deposit requirement for certain producers/exporters in accordance with the *Implementation of the Findings of the WTO Panel in United States Antidumping Measure on Shrimp from Thailand: Notice of Determination under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp from Thailand*, 74 FR 5638 (January 30, 2009) (*Section 129 Determination*). These producers/exporters are as follows: Andaman Seafood Co., Ltd., Chanthaburi Frozen Food Co., Ltd., Chanthaburi Seafoods Co., Ltd., Intersia Foods Co., Ltd. (formerly Y2K Frozen Foods Co., Ltd.), Phatthana Seafood Co., Ltd., S.C.C. Frozen Seafood Co., Ltd., Thailand Fishery Cold Storage Public Co., Ltd., Thai International Seafoods Co., Ltd., Wales & Co. Universe Limited, and Thai I-Mei Frozen Foods Co., Ltd.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Hydrographic Services Review Panel Charter Renewal

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of Hydrographic Services Review Panel Charter Renewal.

SUMMARY: The charter for NOAA's Hydrographic Services Review Panel, a Federal Advisory Panel, has been renewed. The charter is available for review on the following Web site: *http://www.nauticalcharts.noaa.gov/ocs/hsrp/charter.htm.*

DATE AND TIME: No comments are solicited through this notice.

FOR FURTHER INFORMATION CONTACT: Rebecca Arenson, Office of Coast Survey, National Ocean Service (NOS), NOAA (N/CS), 1315 East West Highway, Silver Spring, Maryland, 20910; Telephone: 301–713–2780 x158, Fax: 301–713–4019; E-mail: *Rebecca.Arenson@noaa.gov.*

SUPPLEMENTARY INFORMATION: The charter for NOAA's Hydrographic Services Review Panel has been renewed. The charter is available for review on the following Web site: *http://www.nauticalcharts.noaa.gov/ocs/hsrp/charter.htm.*

The charter has been renewed in accordance with the Federal Advisory Committee Act, 5 U.S.C. (as amended), Section 14(b)(1)(2) which states, ''Any advisory committee established by an Act of Congress shall file a charter in accordance with such section upon the expiration of each successive two-year period following the date of enactment of the Act establishing such advisory committee.''

Dated: August 19, 2009.

Steven Barnum,

Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. E9–22324 Filed 9–15–09; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–059]

Pressure Sensitive Plastic Tape From Italy: Notice of Initiation of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* September 16, 2009.

SUMMARY: In response to a request from Evotape Packaging S.r.l. (Evotape Packaging), a producer/exporter of pressure sensitive plastic tape from Italy, and pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216 and 351.221(c)(3), the Department is initiating a changed circumstances review of the antidumping duty finding

on pressure sensitive plastic tape from Italy. This review is being conducted to determine whether there is a successor-in-interest to Tyco Adhesives Italia S.p.A. (Tyco) for purposes of determining antidumping liability.

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova or Rebecca Trainor, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1280 and (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 2009, pursuant to section 751(b) of the Act and 19 CFR 351.216 and 351.221(c)(3), Evotape Packaging requested that the Department conduct a changed circumstances review to determine that it is the successor-in-interest to Tyco,[1] and therefore assign to it Tyco's antidumping duty deposit rate for future entries of subject merchandise. In addition, Evotape Packaging requested that the Department expedite this review in accordance with 19 CFR 351.221(c)(3)(ii), by issuing the notice of initiation and preliminary determination simultaneously within 45 days of the filing of the request. Evotape Packaging further requested that the Department issue a final affirmative changed circumstances determination within 45 days of initiation, in accordance with 19 CFR 351.216(e).

On August 28, 2009, at the request of the Department, Evotape Packaging submitted additional information pertaining to its changed circumstances review request.

Scope of the Finding

The products covered by the finding are shipments of pressure sensitive plastic tape measuring over one and three-eighths inches in width and not exceeding four millimeters in thickness, currently classifiable under subheadings 3919.90.20 and 3919.90.50 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and for customs purposes. The written description remains dispositive.

[1] On March 25, 2004, the Department determined that Tyco was the successor-in-interest to Manuli Tapes S.p.A. (Manuli). *See Final Results of Antidumping Duty Changed Circumstances Review: Pressure Sensitive Plastic Tape from Italy*, 69 FR 15297 (March 25, 2004).

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed circumstance review upon receipt of a request from an interested party or receipt of information concerning an antidumping duty order [2] which shows changed circumstances sufficient to warrant a review of the order.

As noted above, on July 27, 2009, Evotape Packaging submitted its request for a changed circumstances review. With its request, Evotape Packaging submitted certain information to demonstrate that in May 2005, its parent company (Evotape S.p.A) acquired Tyco's business and assets, which included two production units (packaging and masking tape) and related sales offices; and that in December 2007, Evotape S.p.A restructured the company and created two wholly-owned subsidiaries (*i.e.*, Evotape Packaging and Evotape Masking S.r.l. (Evotape Masking)) using the assets and business of the two production units. Evotape Packaging also provided information pertaining to management, production facilities, supplier relationships and customer base with respect to the production and sale of subject merchandise during the 2005 acquisition and 2007 restructuring. In its August 28, 2009, response to the Department's request for information, Evotape Packaging provided information regarding the business operations of Evotape Masking.

In its request, Evotape Packaging claims that it operates as the same business entity as Tyco with respect to merchandise exported to the United States,[3] and that its production facilities have not changed since it was part of Tyco. In addition, it claims that its product line, supplier relations, employees and customer base have remained largely the same, and although there were certain changes in management, these changes did not have a substantial impact on the production and sale of subject merchandise.

Based on the information submitted by Evotape Packaging and in accordance with section 19 CFR 351.216, the Department finds there is sufficient information to warrant initiating a changed circumstances review. Therefore, pursuant to section 751(b)(1) of the Act and 19 CFR 351.216, we are initiating a changed circumstances review to determine whether there is a successor-in-interest to Tyco.

In making a successor-in-interest determination in antidumping proceedings, the Department typically examines several factors including, but not limited to: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber from Japan*, 67 FR 58 (January 2, 2002) (*Polychloroprene Rubber from Japan*); *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992) (*Canadian Brass*). While no single factor or combination of these factors will necessarily be dispositive, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is not materially dissimilar to that of its predecessor. *See, e.g.*, *Polychloroprene Rubber from Japan; Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review*, 59 FR 6944 (February 14, 1994); *Canadian Brass; Fresh and Chilled Atlantic Salmon from Norway: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 63 FR 50880 (September 23, 1998) (unchanged in final results, *Fresh and Chilled Atlantic Salmon From Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979 (March 1, 1999)). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will generally accord the new company the same antidumping duty treatment as its predecessor.

Although Evotape Packaging has submitted information which is sufficient for purposes of initiating a changed circumstances review, as discussed above, this information is not a sufficient basis to make a preliminary successor-in-interest determination at

[2] Prior to the Trade Agreements Act of 1979 (1979 Act), Public Law 96–39, the Treasury Department issued antidumping ''findings.'' Section 106(a) of the 1979 Act expressly preserved the existing antidumping ''findings'' in the new law, but provided that after January 1, 1980, the Tariff Act of 1930 would be amended to require the Department to issue antidumping ''orders'' instead of ''findings.''

[3] Evotape Packaging states that it is the former production unit of Tyco that produces and sells pressure sensitive plastic tape to the United States, *i.e.*, merchandise subject to the antidumping duty finding. According to Evotape Packaging, Evotape Masking produces two products that fall within the scope of this finding, which Tyco also produced when it was in existence. However, Evotape Packaging states that Evotape Masking does not ship or sell these products to the United States, and has no future plans to do so.

this time. Specifically, the Department has questions concerning the restructuring discussed above with respect to the business operations of Evotape Masking and Evotape Packaging. It appears from the information on the record that both companies use facilities once owned by Tyco (and before Tyco, by Manuli). Manuli/Tyco's antidumping duty margin may have been calculated based on information derived from all of these facilities. Therefore, a determination of a successor-in-interest, for purpose of antidumping liability, requires the Department to gather further information before it can make a preliminary successor-in-interest determination.

Accordingly, the Department has determined that it would be inappropriate to expedite this action by combining the preliminary results of review with this notice of initiation, as permitted under 19 CFR 351.221(c)(3)(ii) and as requested by Evotape Packaging. As a result, the Department is not issuing preliminary results for this changed circumstances review at this time.

The Department will request additional information in accordance with 19 CFR 351.221(b)(2), and will publish in the **Federal Register** a notice of preliminary results of the changed circumstances review, in accordance with 19 CFR 351.221(b)(4) and (c)(3)(i), which will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed. Interested parties will have an opportunity to comment on the preliminary results of review. In accordance with 19 CFR 351.216(e), the Department will issue the final results of this antidumping duty changed circumstances review no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary results.

During the course of this antidumping duty changed circumstances review, cash deposit requirements for the subject merchandise produced and exported by Evotape Packaging will continue to be the all-others rate established in the investigation. *See Pressure Sensitive Plastic Tape From Italy; Determination of Injury or Likelihood Thereof*, 42 FR 44853 (September 7, 1977). The cash deposit rate requirement will be altered, if warranted, pursuant only to the final results of this review.

This notice of initiation is in accordance with sections 751(b)(1) and 777(i) of the Act and 19 CFR 351.216 and 351.221(c)(3).

Dated: September 10, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–22340 Filed 9–15–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR44

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

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

ACTION: Notification of a proposal for an EFP to conduct exempted fishing; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that the subject EFP application that was submitted by the University of Rhode Island (URI) warrants further consideration and should be issued for public comment. The EFP would exempt participating vessels from summer flounder size restrictions, scup size restrictions, scup possession restrictions, and possession restrictions for squid and butterfish. The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP); and the Atlantic Mackerel, Squid, and Butterfish FMP. However, further review and consultation may be necessary before a final determination is made.

DATES: Comments must be received on or before October 1, 2009.

ADDRESSES: Comments may be submitted by e-mail. The mailbox address for providing e-mail comments is *nero.efp@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: ''Comments on URI Drop Chain Trawl Net EFP.'' Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on URI Drop Chain Trawl Net EFP.'' Comments may also be sent via facsimile (fax) to (978) 281–9135.

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

SUPPLEMENTARY INFORMATION: A complete application for an EFP was submitted by URI on August 31, 2009, for a study that would test the effectiveness of a drop chain small mesh net in its ability to reduce catches of summer flounder in the small mesh fishery. The study would also evaluate discard mortality of summer flounder caught using the Reflex Action Mortality Predictor (RAMP) method.

The study would be conducted aboard two commercial fishing vessels in the directed small mesh fishery for squid in Block Island Sound and Rhode Island Sound. Research trips associated with the study would be conducted over a 12-month period, beginning in October 2009 and continuing through September 2010. Field work would be split into three time periods, consisting of a total of 12 fishing days. Vessels would conduct side-by-side tows, with one vessel towing a control net and the other towing an experimental net. The control net would be a 362 x 12–cm two-seam polyethylene balloon net equipped with a 20–cm rockhopper sweep. The experimental net would be identical to the control net, but equipped with a 1–ft (30.5–cm) drop chain sweep.

Each fishing day would consist of four to six tows of 1.5 hr duration. For each tow, total catch size would be determined prior to subsampling. Following Northeast Fisheries Science Center (NEFSC) protocols, either all of the summer flounder catch, or a subsample, would be weighed. Target catch species would include squid, butterfish, and scup. These species would also be sampled and weighed. Species would be sorted by sub-legal and legal-sized fish, and weights would be taken for each group.

On 5 fishing days, up to 50 legal and sub-legal sized summer flounder would be transferred to an on-board holding tank. Individual fish would be measured for length, and the presence or absence of six RAMP tests would be noted. After visual inspection, fish would be tagged, transported in coolers to the Blount Aquaculture Research Laboratory, and held for 60 days for survival and growth studies.

The applicants have requested exemptions from summer flounder size restrictions at § 648.103. This exemption would allow vessels to retain and land summer flounder that would be transported to the Blount Aquaculture

Research Lab for a 2-month holding period to quantify delayed mortality. Fish surviving the 2-month holding period would be returned to Rhode Island coastal waters. The applicants have also requested temporary exemptions from scup size restrictions at § 648.124; scup possession limits at § 648.125; and possession restrictions for squid and butterfish at § 648.25. These exemptions would allow incidental catch species to be temporarily retained for data collection purposes. Incidental catch below the minimum size, and above the possession limit, would be discarded immediately following data collection.

The applicants anticipate that for each control net tow, the legal-sized summer flounder catch would be 75 lb (34 kg), and the sub-legal sized summer flounder catch would be 12 lb (5.4 kg). Target catch, including squid, butterfish, and scup, would total 150 lb (68 kg). For each experimental net tow, both the legal-sized and sub-legal sized summer flounder catch would be less than 10 lb (4.5 kg). Target catch would remain 150 lb (68 kg). Each day of fishing would consist of four to six side-by-side tows, with a total of 12 fishing days for the project.

The applicants may request minor modifications and extensions to the EFP throughout the course of research. EFP modifications and extensions may be granted without further public notice if they are deemed essential to facilitate completion of the proposed research and result in only a minimal change in the scope or impacts of the initially approved EFP request.

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

Dated: September 11, 2009.

Emily H. Menashes,

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

[FR Doc. E9–22269 Filed 9–15–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Emerging Technology and Research Advisory Committee; Notice of Partially Closed Meeting

The Emerging Technology and Research Advisory Committee (ETRAC) will meet on October 1, 2009, 8:30 a.m., Room 4830, and on October 2, 2009, 8:30 a.m., Room 3884, at the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on emerging technology and research activities, including those related to deemed exports.

Agenda

Thursday, October 1

Open Session:

1. Opening Remarks.
2. Deemed Export Control Methodology.
3. Public Comments.

Closed Session:

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

Friday, October 2

Open Session:

1. Deemed Export Control Methodology.
2. Subcommittee Break-Out Meetings.

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than September 24, 2009.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via e-mail.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 10, 2009, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 §§ (10)(d)), that the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: September 10, 2009.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. E9–22300 Filed 9–15–09; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–904]

Certain Activated Carbon From the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 16, 2009.

FOR FURTHER INFORMATION CONTACT: Katie Marksberry, 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) 482–7906.

SUPPLEMENTARY INFORMATION:

Background

On May 29, 2009, the Department of Commerce (''Department'') published a notice of initiation of an administrative review of the antidumping duty order on certain activated carbon from the People's Republic of China (''PRC'') covering the period, April 1, 2008 March 31, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 74 FR 25711 (May 29, 2009) (''*Initiation*''). On June 18, 2009, Calgon Carbon Corporation and Norit Americas Inc. (collectively known as, ''Petitioners'') withdrew their request for a review of 155 companies, and on July 2, 2009, the Department published a notice of partial rescission of the antidumping duty order on certain activated carbon for those companies. *See Certain Activated Carbon from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 31690 (July 2, 2009).

On August 19, 2009, respondent Calgon Carbon Tianjin Co., Ltd. (''CCT'') withdrew its request for review. On August 21, 2009, Petitioners withdrew their request for an administrative review for CCT and the following additional 12 companies: Datong Forward Activated Carbon Co., Ltd.; Datong Guanghua Activated Co., Ltd.; Datong Locomotive Coal & Chemicals Co., Ltd.; Huairen Jinbei Chemicals Co., Ltd.; Jilin Province Bright Future Industry and Commerce Co., Ltd.; Nuclear Ningxia Activated Carbon Co., Ltd.; Pingluo Yu Yang Activated Carbon Co., Ltd.; Shanxi Sincere Industrial Co., Ltd.; Shanxi Xuanzhong Chemical Industry Co., Ltd.; Tiangjin Maijin Industries Co., Ltd.; Xi'an Shuntong

International Trade & Industries Co., Ltd.; and Xingtai Coal Chemical Co., Ltd. With the exception of CCT, which withdrew its request for review, as noted above, Petitioners were the only party to request a review of these companies.

Partial Rescission

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. CCT and Petitioners' requests were submitted within the 90-day period, and thus are timely. Because CCT and Petitioners' withdrawal of requests for review are timely and because there is no longer a review request for the above–mentioned companies, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review with respect to the above listed companies.

Assessment Rates

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. For those companies for which this review has been rescinded and which have a separate rate, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification to Importers

This notice serves as a final reminder to importers for whom this review is being rescinded, as of the publication date of this notice, 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 the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: September 8, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–22337 Filed 9–16–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Stellwagen Bank National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC)

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applicants for the following seats on The Stellwagen Bank National Marine Sanctuary Advisory Council (Council): Member and Alternate three-year terms for (1) Research; (1) Conservation; (1) Education; (1) Marine Transportation; (1) Recreational Fishing; (1) Mobile Gear Commercial Fishing; (1) At-Large, and (1) At-Large (Member only). Additionally seeking applications for two-year term (1) Education (Member) and (1) Conservation (Alternate) seats. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve two and three year terms, pursuant to the Council's Charter. The Council consists also of three state and three Federal non voting ex-officio seats.

DATES: Applications are due by 18 December 2009.

ADDRESSES: Application kits may be obtained from *Elizabeth.Stokes@noaa.gov*, Stellwagen Bank National Marine Sanctuary, 175 Edward Foster Road, Scituate, MA 02066. Telephone 781–545–8026, ext. 201. Completed applications should be sent to the same address or e-mail, or faxed to 781–545–8036.

FOR FURTHER INFORMATION CONTACT: *Nathalie.Ward@noaa.gov*, External Affairs Coordinator, telephone: 781–545–8026, ext. 206.

SUPPLEMENTARY INFORMATION: The Council was established in March 2001 to assure continued public participation in the management of the Sanctuary. The Council's 23 members represent a variety of local user groups, as well as the general public, plus seven local, state and Federal government agencies. Since its establishment, the Council has played a vital role in advising NOAA on critical issues and is currently focused on the sanctuary's final five-year Management Plan.

The Stellwagen Bank National Marine Sanctuary encompasses 842 square miles of ocean, stretching between Cape Ann and Cape Cod. Renowned for its scenic beauty and remarkable productivity, the sanctuary supports a rich diversity of marine life including 22 species of marine mammals, more than 30 species of seabirds, over 60 species of fishes, and hundreds of marine invertebrates and plants.

Authority: 16 U.S.C. Sections 1431, *et seq.* (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: September 8, 2009.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. E9–22161 Filed 9–15–09; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XQ29

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Boom Exercise Drills at Point Mugu, California

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Naval Base Ventura County (NBVC) Point Mugu to take marine mammals, by harassment, incidental to boom deployment exercises at Point Mugu, California.

DATES: Effective September 14, 2009, through January 31, 2010.

ADDRESSES: A copy of the application containing a list of the references used in this document and the IHA may be obtained by writing to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Candace Nachman, Office of Protected Resources, NMFS, (301) 713–2289, ext 156, or Monica DeAngelis, Southwest Regional Office, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [''Level A harassment'']; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [''Level B harassment''].

Summary of Request

NMFS received an application on May 12, 2009, from NBVC Point Mugu for the taking, by harassment, of marine mammals incidental to boom exercise drills at Point Mugu, California. As part of the NBVC Spill Response Program, boom deployment methods in the area contingency plan (U.S. Coast Guard, 2007) need to be tested to ensure response plans for spills are effective and can realistically be achieved. This will also provide training to spill responders, giving them the required training to successfully deploy the booms in the event of an oil spill. The activity will occur within Mugu Lagoon within NBVC Point Mugu. Watercraft operating in the project area will likely affect seals by causing them to disperse from haul-out sites into the adjacent waters. No harassment by acoustic disturbance is anticipated from the boom exercise drill. NBVC Point Mugu requested an authorization to take harbor seals (Phoca vitulina) by Level B harassment.

Description of the Specified Activity

The purpose of this exercise is to develop response strategies that will provide the best possible protection for the lagoon in the event of an oil spill. To protect Mugu Lagoon from offshore oil-spills, the boom needs to be deployed near the mouth of the estuary to keep offshore oil from entering sensitive estuarine habitat. The booms will be attached to zodiac watercraft, and the vessels will cross the estuary and anchor the boom on the north and south side of the estuary. Booming strategies were tested in September 2008, where it became evident that the strategy proposed in 2008 could not be accomplished due to strong currents and the fact that the boom was not placed at a wide enough angle. A new boom deployment strategy will now be tested (which includes increasing the angle at which the boom is placed in relation to the current); however, this changes the location of the activity and requires the boom to be situated within a regular harbor seal haul-out.

The boom exercise drill will occur annually during the month of September; however, training may need to be rescheduled for October or November (or possibly even later), depending on availability of SUPSALV staff. Therefore, the IHA is effective from September through January 2010. The exercise will last 5 days. Only days 2 through 4 have the potential to disturb harbor seals. A detailed overview of the activity was provided in the Notice of Proposed IHA (74 FR 36463, July 23, 2009). No changes have been made to the proposed activities.

Comments and Responses

A notice of receipt of NBVC's application and NMFS' proposal to issue an IHA to NBVC Point Mugu was published in the **Federal Register** on July 23, 2009 (74 FR 36463). During the 30–day public comment period, NMFS received a letter from the Marine Mammal Commission, which recommended that NMFS issue the requested IHA provided that all reasonable measures will be taken to ensure the least practicable impact on the subject species and the required mitigation and monitoring activities are carried out, as described in NMFS' July 23, 2009 **Federal Register** Notice (74 FR 36463) and the application. All measures proposed in the initial **Federal Register** notice are included in the authorization and NMFS has determined that they will ensure the least practicable impact on the subject species. NMFS received one other letter from the Bureau of Land Management (BLM). The BLM appreciated the opportunity to comment but stated that the BLM has no jurisdiction or authority with respect to the project, the BLM does not have experience or information relevant to the project, nor does the BLM intend to submit comments regarding the project.

Description of Marine Mammals in the Area of the Specified Activity

Harbor seals are the only marine mammal species that will likely be affected by the activity and that are found in the immediate area of the boom drill exercise. The mudflats within Mugu Lagoon are used for resting, molting, and breeding of harbor seals. Mugu Lagoon is one of the few mainland pupping sites, with 60 pups born in 2008. The harbor seal is not listed as threatened or endangered under the Endangered Species Act (ESA), and the California stock, members of which occur in the Mugu Lagoon, is not considered a strategic stock under the MMPA. No other marine mammals are expected to occur in the area of NBVC's activity. A description of other marine mammals found in Mugu Lagoon was provided in the Notice of Proposed IHA (74 FR 36463, July 23, 2009).

NBVC Point Mugu has compiled information on the abundance, status, and distribution of harbor seals in Mugu Lagoon from surveys that they have conducted every month from April 1992 through February 2009, with the exception of 1998, when counts were made only during the period from June through August and from NMFS Stock Assessment Reports (SARs). This information may be viewed in NBVC Point Mugu's application (see **ADDRESSES**). Additional information is available in the NMFS SARs, which are available on the internet at: *http://www.nmfs.noaa.gov/pr/pdfs/sars/po2008.pdf*.

Potential Effects on Marine Mammals

The boom exercise activities within Mugu Lagoon will introduce boats into the estuary, which are not allowed under normal conditions. It is anticipated that as the boats approach the seals (within approximately 200 ft [61 m]), seals will likely enter the water for safety. It is anticipated that seals located further away from the water (i.e., further up on the haul-out site) will move closer to the water in order to be able to move quickly into the water if needed.

Harbor seals hauled out on shore can be disturbed by passing hikers, recreational vehicles, and small boats. This has been noted in many areas, including the western U.S. and Alaska, eastern Canada, and western Europe (e.g., Bowles and Stewart, 1980; Reijnders, 1981; Renouf *et al.*, 1981; Allen *et al.*, 1984; Osborn, 1985; Brasseur, 1993; Suryan, 1993; Swift and Morgan, 1993). Harbor seals spent more time scanning and less time sleeping in areas with human disturbance and occasional hunting (Terhune, 1985). In the absence of hunting or active harassment, habituation likely occurs (Awbrey, 1980; Bonner, 1982; Thompson, 1992; Brasseur, 1993).

Startle responses or stampedes are not expected to occur, as boats will be visible and will slowly approach the haul-out sites, allowing the seals to see the approaching vessels in advance of their arrival at the haul-out site. This will provide time for individual seals to either move towards or enter the water for safety if necessary. It is anticipated that the seals will move further east down the mudflats or closer towards the mouth of the estuary to avoid the disturbance associated with the presence of the boats and the boom.

Although this booming location is used year-round as a haul-out site for harbor seals, impacts to seals as a result of the activity are expected to be minimal and short-term in nature. Impacts are expected to be limited to Level B behavioral harassment. The training exercise will likely displace harbor seals from the immediate proposed activity area, resulting in hauled out seals moving into the water when watercraft (zodiacs) are placing or maintaining the boom in close proximity to hauled out seals. As there are additional mudflats to haul-out on away from the exercise area, seals will likely move to those sites and use as a haul-out during the boom exercise. Additionally, since a majority of the booming activity will occur during high-tides when zodiacs area able to navigate in the estuary, very few seals should be displaced, as mudflats would be inundated and most seals would be in the estuarine waters or out foraging. No injury or mortality of harbor seals is anticipated as a result of this activity.

Anticipated Effects on Habitat

The seals do not feed when hauled out in the lagoon. The seals leave Mugu Lagoon to feed in the open sea (T. Keeney, NBVC Point Mugu Environmental Division, pers. comm., 1998), therefore it is not expected that the boom exercise activities will have any impact on the food or feeding success of these seals. The boom exercise is not expected to cause significant impacts on habitats used by seals in Mugu Lagoon or on the food sources that these seals utilize. Additionally, no loss or modification of the habitat used by harbor seal populations that haul out within Mugu Lagoon is expected. A full description of anticipated effects on habitat was provided in the Notice of Proposed IHA (74 FR 36463, July 23, 2009).

Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(D) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

The following mitigation measures have been included in the IHA: (1) The exercise will occur outside of the harbor seal pupping season of February through April; (2) If seals are hauled out within the exercise area before commencement of the exercise, a boat will move slowly (i.e., not at full speed, just above idle) towards the animals in order to have them move slowly into the water in order to avoid stampedes into the water; (3) A boat will remain active in the immediate activity area when tides are high enough for boat activity/movement to reduce the chances of seals hauling out in the exercise area during low activity periods. This would minimize the number of seals likely disturbed should activity levels need to be increased; (4) If the boom placement appears to be holding successfully, then boats will refrain from movement to reduce any additional disturbance events; and (5) The majority of the boom deployment exercise activities will occur at high tide when fewer harbor seals are expected to be on the haul-outs.

NMFS carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has determined that the required

mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must, where applicable, set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

NBVC biologists will monitor the haul-out areas during the exercise to document and characterize any observed responses by harbor seals to the boom exercise drill. The monitoring will be designed to determine if there are disturbance reactions and to determine how many seals are disturbed by boat activity. Every 2 hours (0700–1600), biologists will count seals hauled out using a spotting scope and identify haul-out locations. Regarding data to be recorded about the seals present, at a minimum, biologists must record numbers and sex of each age class (if determinable), movements of pinnipeds, including number and proportion moving, direction and distance moved, and pace of movement, and description of reactions. NMFS will review the qualifications of each biologist and approve their selection in advance of the proposed activities.

NBVC will establish a land-based monitoring program to assess effects on the harbor seals hauled out in the estuary. This monitoring will occur at the area during the entire period when boats are in the water. The monitoring will be conducted via direct observation. Through this method, seal reactions, as indicated by numbers of seals hauled out and haul-out locations, will be documented during the exercise. This monitoring will also provide data required to characterize the extent and nature of ''taking''. The monitoring work described here has been planned as a self-contained project independent of any other related monitoring projects that may be occurring in the same region. NBVC Point Mugu will discuss coordination of its monitoring program with other entities that may be conducting related work insofar as this is practical and desirable. As standard procedure, shore count data will be made available to NMFS staff.

NBVC Point Mugu Environmental Division personnel will survey the exercise area prior to activities to count the number of seals and to identify locations before the exercise begins. These marine mammal monitors will also ensure that the mitigation measures (described in the previous section of this document) are being implemented. The biological monitor will make observations as the exercise activities commence and continue to make observations while activities are underway. Depending on results of these initial observations and subsequent planned activities, NBVC's monitors will decide each day whether monitoring for the entire day is needed. If the boom is in place and holding, and there is no need for boats to re-enter the water, then no monitoring will be conducted, other than surveys every 2 hours. If boats again are required to enter the exercise area, biologists will be called and return immediately to the drill site. NBVC anticipates that monitoring will occur throughout the first morning, and, if the boom is placed successfully, the site will be visited once every 2 hours to conduct a survey, until it is decided to pull the boom.

In addition to recording specific biological information described earlier in this section, the marine mammal monitors will record a variety of other information, which will include: (1) Date and time of the activity; (2) tidal state (the number of hours before or after peak flood tide; exact times for local high tides will be determined by consulting relevant tide tables); (3) weather condition; (4) horizontal visibility; (5) occurrence, or planned occurrence of any other event that might result in behavioral reactions by seals within the lagoon and therefore affect numbers hauled out (such as unusual military aircraft activity or other anthropogenic activities in or around the lagoon); (6) current state of the exercise (i.e., boom being placed, remains in place); and (7) approximate distance of boat from seals when seals react and enter the water.

NBVC will prepare and submit to the NMFS Office of Protected Resources and NMFS Southwest Regional Office a draft report describing the activities that were conducted, marine mammal monitoring work and results, and other information as described in the preceding paragraphs 90 days after the activities cease or after expiration of the IHA, whichever occurs first. This report would include all monitoring results from each annual exercise event. This report will summarize the results of the activities, summarize seal behavioral observations, and estimate the amount and nature of ''take'' of seals by harassment or in other ways. It will also provide locations and numbers of seals hauled out away from the exercise area. The 90–day report will be subject to review and comment by NMFS. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS. If a freshly dead or seriously injured pinniped is found during activity monitoring surveys, the incident must be reported within 48 hours to the NMFS Office of Protected Resources and the NMFS Southwest Regional Office.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]. Only take by Level B behavioral harassment is anticipated and authorized as a result of the boom exercise drills. The presence of the boats in the water approaching the haul-out sites have the potential to startle hauled out harbor seals and cause them to enter the water and relocate to other haul-outs closer to the mouth of the lagoon or outside of the lagoon. Although there will be increased boat activity in the area of these haul-out sites, vessel strikes of pinnipeds are not expected to occur, as boats will be approaching at very slow speeds in order to reduce startle reactions by the animals. There is no evidence that the planned activities could result in serious injury or mortality. The mitigation and monitoring measures required to be implemented (mentioned earlier in this document) during the exercise will minimize any potential risk to injury or mortality.

The Notice of Proposed IHA (74 FR 36463, July 23, 2009) included an in-depth discussion of the methodology used by NBVC to estimate take by harassment incidental to the boom deployment exercise and the numbers of harbor seals that might be affected by the exercise. Additional information can also be found in NBVC's application (see ADDRESSES). A summary is provided here.

The Navy estimates the number of hauled out seals within the lagoon using census data obtained during ground-based surveys of the lagoon by staff of the Point Mugu Environmental Division. To estimate the likely potential numbers of harbor seals that might be hauled out within the lagoon during the September period of the activity, the Navy calculated using the low counts in September from 2003–2008, as low counts are usually associated with higher tides when the activity is planned to occur. The mean number of low counts is 57 seals. Take would be expected at the beginning of the exercise as boats are put into the water and seals would be slowly moved off the haul-out. Using mean low numbers for the month of September since 2003, 57 seals could be disturbed and move into the water each time the boats are launched (days 2–4). Seals would likely move to a mudflat away from the boom exercise activity. However once boats are finished deploying the boom and boats return to shore, seals may return to mudflats in the immediate area. In the event NBVC staff need to return to the water to check or adjust the boom, there is a possibility there could be another displacement of seals from the mudflats in the project area. NBVC has projected that it may be necessary to return to the site three times during the day, meaning that there would be three opportunities for seals to return to the exercise area each day (57 seals x 3 movements x 3 days), which would equal 513 individual displacement events (i.e., takes). If the boom placement is successful, it would likely lead to fewer disturbance events. However, if the boom placement is problematic, this could result in additional disturbance events. Moreover, these numbers are likely overestimations of actual take estimates, as harbor seal counts are not conducted during high tide events due to low numbers of seals. Therefore, based on these considerations, NMFS has authorized 513 takes of harbor seals by Level B behavioral harassment incidental to NBVC Point Mugu's boom exercise drill.

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers: (1) the number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, and intensity, and duration of Level B harassment; and (4) the context in which the takes occur.

No injuries or mortalities are anticipated to occur as a result of NBVC Point Mugu's boom exercise drills, and none are authorized. Takes will be limited to Level B behavioral harassment over a 3 day period in the month of September (which may possibly slip to October or November, depending on contractor availability). As mentioned previously, NMFS estimates that 513 harbor seal takes may occur as a result of the activity. It is possible that some individual animals may be taken more than once if the animal returns to the site on one of the later days of the exercise.

There is no habitat of significance for this species. While Mugu Lagoon is one of the few mainland pupping sites for harbor seals, the activity will occur outside of the harbor seal pupping season of February through April. While these haul-out sites are used for resting throughout the year, few (if any) seals are expected to be found on the haul-outs during the drill because the activity will occur at high tide when most animals are in the water. Additionally, there are other haul-out sites in other parts of the lagoon that seals can use during the exercise. The activity is not expected to impact rates of recruitment or survival of harbor seals since no mortality (which would remove individuals from the population) or injury are anticipated to occur. Only short-term Level B behavioral harassment is anticipated to occur over a very short period of time (maximum of 3 days), occurring at very limited times of the day. Additionally, the activity would occur at a time of year when breeding does not occur.

Harbor seals are not listed as threatened or endangered under the ESA. Additionally, the California stock of harbor seals is not listed as depleted under the MMPA. Survey counts conducted by NBVC Point Mugu Environmental Division staff indicate that numbers of harbor seals have increased with an average of 83 seals in 1992 to an average of 231 seals in 2006.

The most recent SAR for the California stock of harbor seals provides a population estimate of 34,233 individuals (Carretta *et al.*, 2009). The take estimate of 513 individuals represents 1.5 percent of the stock size. This estimate does not take into account that survey data is collected during lower tides when more animals are likely to be present on the haul-out sites and the fact that three events may not need to occur per day on each of the three days. Therefore, it is estimated that 1.5 percent of the California stock of harbor seals will be taken by Level B behavioral harassment during the planned exercise if no animals are taken more than once.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that NBVC Point Mugu's boom deployment exercise will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the boom deployment exercise will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

No species listed under the ESA are expected to be affected by these activities. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

In compliance with the NEPA of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity is categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement.

Authorization

As a result of these determinations, NMFS has issued an IHA to NBVC Point Mugu for the take of harbor seals incidental to boom deployment exercises at Point Mugu, California, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 10, 2009.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–22329 Filed 9–15–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 16, 2009.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 11, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: State Plan for Independent Living (SPIL).

Frequency: Every three years.

Affected Public: Federal Government; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 3,360.

Abstract: States wishing to receive funding under the State Independent Living Services (SILS) and Centers for Independent Living (CIL) programs must submit an approvable three-year State Plan for Independent Living (SPIL) to the Rehabilitation Services Administration (RSA). The purpose of these programs is to promote the independent living philosophy—based on consumer control, peer support, self-help, self-determination, equal access and individual and systems advocacy—to maximize the leadership, empowerment, independence and productivity of individuals with significant disabilities and to promote and maximize the integration and full inclusion of individuals with significant disabilities into the mainstream of American society. The SPIL encompasses the activities planned by the State to achieve its specified independent living objectives and reflects the State's commitment to comply with all applicable statutory and regulatory requirements during the three years covered by the plan.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4133. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–22338 Filed 9–15–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 16, 2009.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 10, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Annual Performance Report for the State Grant for Assistive Technology Program.

Frequency: Annually.

Affected Public: Federal Government; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.
Burden Hours: 26,768.

Abstract: Section 4 of the Assistive Technology (AT) Act of 1998, as amended, requires states to submit annual data reports. This instrument helps the grantees report annual data related to the required activities implemented by the State under the AT Act. This data is used by Rehabilitation Services Administration (RSA) in order to prepare required annual reports to Congress. RSA calls this data collection an Annual Progress Report.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 4131. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–22250 Filed 9–15–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Request

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On August 18, 2009, the Department of Education published a comment period notice in the **Federal Register** (Page 41690, Column 3) for the information collection, ''Beginning Teacher Longitudinal Study (BTLS) 2009–2012''. This notice is being corrected to state that interested persons are invited to submit comments on or before September 18, 2009. The IC Clearance Official, Regulatory Information Management Services, Office of Management, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: September 10, 2009.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

[FR Doc. E9–22249 Filed 9–15–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Ultra-Deepwater Advisory Committee

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Ultra-Deepwater Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, October 22, 2009, 10 a.m. to 12 p.m. (EDT).

ADDRESSES: TMS, Inc., 955 L'Enfant Plaza North, SW., Suite 1500, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Elena Melchert, U.S. Department of Energy, Office of Oil and Natural Gas, Washington, DC 20585. Phone: 202–586–5600.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Ultra-Deepwater Advisory Committee is to provide advice on development and implementation of programs related to ultra-deepwater architecture and technology to the Secretary of Energy and provide comments and recommendations and priorities for the Department of Energy Annual Plan per requirements of the Energy Policy Act of 2005, Title IX, subtitle J, section 999.

Tentative Agenda

9:30 a.m. Registration.
10 a.m. Welcome and Roll Call; Opening Remarks by the Committee Chair; report by the Editing Subcommittee; facilitated discussion by the members regarding final report; approval of Committee final report.
11:45 a.m. Public Comments.
12 p.m. Adjourn.

Public Participation: The meeting is open to the public. The Designated Federal Officer and the Chairman of the Committee will lead the meeting for the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Elena Melchert at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 5 minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, Room 1G–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on September 10, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–22280 Filed 9–15–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Unconventional Resources Technology Advisory Committee

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Unconventional Resources Technology Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, October 22, 2009, 1 p.m. to 3 p.m. (EDT).

ADDRESSES: TMS, Inc., 955 L'Enfant Plaza North, SW., Suite 1500, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Elena Melchert, U.S. Department of Energy, Office of Oil and Natural Gas, Washington, DC 20585. Phone: 202–586–5600.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Unconventional Resources Technology Advisory Committee is to provide advice on development and implementation of programs related to onshore unconventional natural gas and other petroleum resources to the Secretary of Energy and provide comments and recommendations and priorities for the Department of Energy Annual Plan per requirements of the Energy Policy Act of 2005, Title IX, Subtitle J, Section 999.

Tentative Agenda

12:30 p.m. Registration.
1 p.m. Welcome and Rollcall; Opening Remarks by the Committee Chair; report by the Editing Subcommittee; facilitated discussion by the members regarding final report; approval of Committee final report.
2:45 p.m. Public Comments.
3 p.m. Adjourn.

Public Participation: The meeting is open to the public. The Designated Federal Officer and the Chairman of the Committee will lead the meeting for the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Elena Melchert at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 5 minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, Room 1G–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on September 10, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–22282 Filed 9–15–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Department of Energy (DOE)

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Saturday, October 3, 2009, 4:30 p.m.

ADDRESSES: Shawnee State Lodge, 4404 State Route 125 # B, West Portsmouth, Ohio 45663.

FOR FURTHER INFORMATION CONTACT: David Kozlowski, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–2759, *David.Kozlowski@lex.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

- Call to Order, Introductions, Review of Agenda;
- Approval of September Meeting Minutes;
- Deputy Designated Federal Officer's Comments;
- Federal Coordinator's Comments;
- Liaisons' Comments;
- *Administrative Issues:*
  - Committee Updates;
  - Motions;
- Public Comments;
- Final Comments;
- Adjourn.

Breaks taken as appropriate.

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact David Kozlowski at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Kozlowski at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling David Kozlowski at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.ports-ssab.org/publicmeetings.html.*

Issued at Washington, DC on September 10, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–22283 Filed 9–15–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC09–715–000]

Commission Information Collection Activities (FERC–715); Comment Request; Extension

September 9, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments in consideration of the collection of information are due November 16, 2009.

ADDRESSES: An example of this collection of information may be obtained from the Commission's Web site (at *http://www.ferc.gov/docs-filing/elibrary.asp).* Comments may be filed either electronically or in paper format, and should refer to Docket No. IC09–715–000. Documents must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines at *http://www.ferc.gov/help/submission-guide.asp.*

Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* First time users will have to establish a user name and password (*http://www.ferc.gov/docs-filing/eregistration.asp*) before eFiling. The Commission will send an automatic acknowledgement to the sender's e-mail

address upon receipt of comments through eFiling.

Commenters filing electronically should not make a paper filing. Commenters that are not able to file electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Users interested in receiving automatic notification of activity in this docket may do so through eSubscription (at *http://www.ferc.gov/docs-filing/esubscription.asp*). In addition, all comments and FERC issuances may be viewed, printed or downloaded remotely through FERC's Web site using the ''eLibrary'' link and searching on Docket Number IC09–715. For user assistance, contact FERC Online Support (e-mail at *ferconlinesupport@ferc.gov,* or call 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: The FERC–715 (''Annual Transmission Planning and Evaluation Report,'' OMB Control No. 1902–0171) is a mandatory filing described at 18 CFR 141.300. The FERC–715 must be submitted by each transmitting utility that operates integrated (that is, non-radial) transmission facilities at or above 100 kilovolts. [An overview and instructions for filing the FERC–715 are posted on the FERC Web site at: *http://www.ferc.gov/docs-filing/eforms/form-715/instructions.asp.*]

Section 213 (b) of the Federal Power Act (FPA), as amended by the Energy Policy Act of 1992, requires FERC to collect, annually from transmitting utilities, sufficient information about their transmission systems to inform potential transmission customers, state regulatory authorities, and the public, of available transmission capacity and constraints. FERC–715 also supports the Commission's expanded responsibilities under Sections 211, 212, 213(a), 304, 307(a), 309, and 311 of the FPA, as amended, for reviewing reliability issues, market structure relationships, and in rate and other regulatory proceedings.

Action: The Commission is requesting a three-year extension of the current reporting requirements, with no change.

Burden Statement: Public reporting burden for this collection is estimated as follows.

FERC data collection	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)
FERC–715	183	1	160	29,280

Note: These figures may not be exact, due to rounding.

The total estimated annual cost burden [1] to respondents is $1,806,026.90 {[(29,280 hrs.)/(2,080 hrs./yr.)] × ($128,297 per yr.)}.

The reporting burden 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 respondents 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 collection of information is 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 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, *e.g.* permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–22230 Filed 9–15–09; 8:45 am]

BILLING CODE 6717–01–P

[1] Employees work an average of 2,080 hours per year, at an estimated cost of $128,297 per year.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC09–912–000]

Commission Information Collection Activities (FERC–912); Comment Request; Extension

September 9, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments in consideration of the collection of information are due November 19, 2009.

ADDRESSES: An example of this collection of information may be obtained from the Commission's Web site (at *http://www.ferc.gov/docs-filing/elibrary.asp*). Comments may be filed either electronically or in paper format, and should refer to Docket No. IC09–912–000. Documents must be prepared in an acceptable filing format and in

compliance with the Federal Energy Regulatory Commission submission guidelines at *http://www.ferc.gov/help/submission-guide.asp.*

Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* First time users will have to establish a user name and password (*http://www.ferc.gov/docs-filing/eregistration.asp*) before eFiling. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments through eFiling.

Commenters filing electronically should not make a paper filing. Commenters that are not able to file electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Users interested in receiving automatic notification of activity in this docket may do so through eSubscription (at *http://www.ferc.gov/docs-filing/esubscription.asp*). In addition, all comments and FERC issuances may be viewed, printed or downloaded remotely through FERC's Web site using the ''eLibrary'' link and searching on Docket Number IC09–912. For user assistance, contact FERC Online Support (e-mail at *ferconlinesupport@ferc.gov,* or call 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: FERC–912 (''Cogeneration and Small Power Production, PURPA Section 210(m) Regulations for Termination or Reinstatement of Obligation to Purchase or Sell,'' OMB Control No. 1902–0237) [1] covers the reporting requirements in 18 CFR Part 292.

On August 8, 2005, the Energy Policy Act of 2005 (EPAct 2005, Pub. L. 109–58, 119 Stat. 594 (2005)) was signed into law. Section 1253(a) of EPAct 2005 amends section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) by adding subsection (m), that provides for the termination and reinstatement of an electric utility's obligation to purchase and sell energy and capacity. The implementing regulations in 18 CFR part 292 (18 CFR 292.309–292.313) provide procedures for:

- An electric utility to file an application for the termination of its obligation to purchase energy from a Qualifying Facility (QF) (18 CFR 292.310);
- An affected entity or person to apply to the Commission for an order reinstating the electric utility's obligation to purchase energy from a QF (18 CFR 292.311);
- An electric utility to file an application for the termination of its obligation to sell energy and capacity to QFs (18 CFR 292.312);
- An affected entity or person to apply to the Commission for an order reinstating the electric utility's obligation to sell energy and capacity to QFs (18 CFR 292.313).

Action: The Commission is requesting a three-year extension of the current FERC–912 reporting requirements, with no change.

Burden Statement: The estimated annual public reporting burden for FERC–912 follows.

FERC–912	Annual No. of respondents (1)	Average No. of reponses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)
Termination of obligation to purchase in § 292.310	4	1	12	48
Reinstatement of obligation to purchase in § 292.311	1	1	13	13
Termination of obligation to sell in § 292.312	1	1	12	12
Reinstatement of obligation to sell in § 292.313	1	1	13	13
Totals				86

The total estimated annual cost burden to respondents is $5,304.58 [(86 hours/2,080 hours [2] per year) × $128,297 [3] per year].

The reporting burden 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 respondents 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 collection of information

[1] During its history, ''FERC–912'' has been known by various 'names' and OMB control numbers. Originally, FERC had wanted to include FERC–912 requirements in the FERC–556 'umbrella' of requirements. Because FERC–556 (''Cogeneration and Small Power Production;'' OMB Control No. 1902–0075) was pending OMB review of another rulemaking (in Docket No. RM05–36–000) prior to the issuance of the Notice of Proposed Rulemaking (NOPR) in RM06–10, the Commission used a temporary identifier of ''FERC–912''.

''FERC–912'' was originally assigned the OMB Control No. 1902–0219 at the NOPR stage. However, prior to issuance of the final rule in Docket RM06–10, OMB Control No. 1902–0219 was eliminated from OMB's inventory.

FERC–556 (OMB Control No. 1902–0075) was then approved in RM05–36, so FERC used the ''FERC–912(556)'' identifier in the Final Rule in RM06–10. The Commission planned to transfer the hours associated with ''FERC–912(556)'' in RM06–10 to FERC–556. Page two of the OMB approval (dated 2/23/2007) for ICR Reference Number 200611–1902–003 listed OMB Control No. 1902–0237 as FERC–556.

Currently FERC–556 (OMB Control No. 1902–0075) is pending OMB review, so this collection is being called ''FERC–912'' and is being submitted separately. FERC–556 is not a subject of this Notice.

[2] Number of hours an employee works each year.

[3] Estimated mean annual salary of a lawyer.

is 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 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, *e.g.* permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–22231 Filed 9–15–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2602–029]

Duke Energy Carolinas, LLC; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

September 9, 2009.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of Project Boundary.

b. *Project No.:* 2602–029.

c. *Date Filed:* May 29, 2009.

d. *Applicant:* Duke Energy Carolinas, LLC.

e. *Name of Project:* Dillsboro Project.

f. *Location:* The project is located on the Tuckaseegee River in the town of Dillsboro in Jackson County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a—825r.

h. *Applicant Contact:* John Whittaker, Winston and Strawn LLP, 1700 K Street, NW., Washington, DC 20006 (202) 282–5766.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Steven Sachs at (202) 502–8666 or *Steven.Sachs@ferc.gov.*

j. *Deadline for filing comments and or motions:* October 9, 2009.

Please include the project number (P–2602) on any comments or motions filed. All documents (an original and eight copies) must be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Motions to intervene, protests, comments and recommendations may be filed electronically via the Internet in lieu of paper filings, see 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-filing'' link. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener 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. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Duke Energy Carolinas, LLC proposes to include within the project boundary about 1,600 feet of land between the full pond contour of the Dillsboro Project reservoir and the western edge of River Road, and approximately 1,000 feet of land between the full pond contour and the eastern edge of Mockingbird Lane. The lands in question are identified as Jackson County, NC tax parcel Nos. 7631–44–2809, 7631–44–2597, 7631–44–3352, and 7631–35–5169. The amendment would add to the project about 11 acres of land upstream of the dam. The applicant states this land is required to perform the sand dredging operation as approved by the Commission.

l. *Location of the Application:* A copy of the licensee's filing is available for inspection and reproduction at the Commission's 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://ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docsfiling/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call toll-free at 1–866–208–3372 or e-mail *ferconlinesupport@ferc.gov,* or for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address listed 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, 385.211, and 385.214. 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 (see item (j) above).

o. Any filing must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', ''MOTION TO INTERVENE'', or ''RECOMMENDATIONS'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–22235 Filed 9–15–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13530–000]

City of Keene, NH; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

September 9, 2009.

On July 6, 2009, the City of Keene, New Hampshire filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Ashuelot River Dam Project, to be located on the Ashuelot

River, in Cheshire County, New Hampshire.

The proposed project would consist of: (1) The existing 160-foot-long, 16-foot-high Ashuelot Park Dam with 2-foot-high flashboards; (2) the existing 34-acre reservoir with 120 acre-feet of storage capacity; (3) a new powerhouse below the existing outlet works containing two generating units with a installed capacity of 240 kilowatts; (4) a new 150-foot-long tailrace; and (5) an approximately 500-foot-long transmission line. The project would have an estimated average annual generation of 1,000 megawatts-hours.

Applicant Contact: Mr. John Maclean, City Manager, 3 Washington Street, Keene, NH 03431, phone (603) 357–9804.

FERC Contact: Michael Spencer, (202) 502–6093.

Competing Application: This application competes with Project No. 13419–000 filed April 2, 2009. Competing applications had to be filed on or before July 3, 2009.

Deadline for filing comments, motions to intervene: 60 days from the issuance of this notice. Comments, and motions to intervene 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 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–13530) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–22233 Filed 9–15–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration; Electrical Interconnection of the Kittitas Valley Wind Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of record of decision (ROD).

SUMMARY: The Bonneville Power Administration (BPA) has decided to offer Sagebrush Power Partners, LLC, a Large Generator Interconnection Agreement for interconnection of up to 108 megawatts of power into the Federal Columbia River Transmission System. The power would be generated from their proposed Kittitas Valley Wind Project (Wind Project) in Kittitas County, Washington. To interconnect the Wind Project, BPA will construct a new substation (Bettas Road Substation) on the Columbia-Covington 230-kilovolt transmission line about 11 miles northeast of Ellensburg, Washington. This decision to interconnect the Wind Project is consistent with and tiered to BPA's Business Plan Environmental Impact Statement (DOE/EIS–0183, June 1995), and the Business Plan Record of Decision (BP ROD, August 1995).

ADDRESSES: Copies of this tiered ROD and the Business Plan EIS may be obtained by calling BPA's toll-free document request line, 1–800–622–4520. The RODs and EIS are also available on our Web site, *http://www.efw.bpa.gov*.

FOR FURTHER INFORMATION CONTACT: Richard Yarde, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon 97208–3621; toll-free telephone number 1–800–622–4519; fax number 503–230–5699; or e-mail *rryarde@bpa.gov*.

Issued in Portland, Oregon, on September 4, 2009.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. E9–22284 Filed 9–15–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2165–027]

Alabama Power Company; Notice of Availability of Environmental Assessment

September 9, 2009.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed an application for non-project use of project lands and waters at the Warrior River Hydroelectric Project (FERC No. 2165). An environmental assessment (EA) has been prepared as part of staff's review of the proposal. The proposed non-project use is located on Lewis Smith Lake in Winston County, Alabama.

In the application, Alabama Power requests Commission authorization to permit Silverock Cove, LLC to install 11 cluster docks (with a total of 74 boat slips), a walking trail, and a community boat launch within the project boundary. These structures would serve the residents of Silverock Cove, a planned community that is located adjacent to project lands. The EA contains Commission staff's analysis of the probable environmental impacts of the proposal and concludes that approval of the proposal, as modified by the staff, would not constitute a major federal action significantly affecting the quality of the human environment.

The EA is attached to a Commission order titled ''Order Modifying and Approving Non-Project Use of Project Lands and Waters,'' which was issued September 8, 2009, and is available for review and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''elibrary'' link. Enter the docket number (P–2165) in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3372, or for TTY, (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–22234 Filed 9–15–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11291–023–IN]

Star Mill, Inc.; Notice of Availability of Environmental Assessment

September 9, 2009.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the proposed termination of license by implied surrender for the Star Milling and Electric Minor Water Power Project, located on the Fawn River in La Grange

County, Indiana, and has prepared an Final Environmental Assessment (FEA).

The FEA contains the Commission staff's analysis of the potential environmental effects of the proposed action (termination by implied surrender with project facilities in place), alternative action (termination by implied surrender with partial/full dam removal), and no-action alternative (project would remain licensed and subject to license requirements). On September 3, 2009, the Commission issued an Order Conditionally Terminating License by Implied Surrender which authorized the implied surrender with the project facilities in place. The FEA is attached to the order.

A copy of the FEA is on file with the Commission and is available for inspection. The FEA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (P–11291) excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3372, or for TTY, (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–22232 Filed 9–15–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–408–000]

PacifiCorp; Notice of Filing

September 9, 2009.

Take notice that, on September 4, 2009, PacifiCorp filed to amend, supplement, or otherwise revise its filing in the above captioned docket with information required under the Commission's regulations. Such filing served to reset the filing date in this proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 25, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–22236 Filed 9–15–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–31–000]

The Dow Chemical Company, Dow Pipeline Company, and Dow Hydrocarbons and Resources LLC; Notice of Petition for Declaratory Order

September 9, 2009.

Take notice that on August 19, 2009, The Dow Chemical Company, Dow Pipeline Company and Dow Hydrocarbons and Resources LLC (collectively referred to as Dow) filed a Petition for Declaratory Order pursuant to Rule 207 of the Commission's regulations, 18 CFR 385.207 (2009). Dow requests that the Commission issue a declaratory order authorizing Dow Hydrocarbons and Resources LLC to link an assignment of firm intrastate pipeline capacity on the Dow Pipeline Company system, to be used for firm transportation service, pursuant to Natural Gas Policy Act section 311(a)(2). Dow proposes that such an assignment be made with some or all of the Dow Chemical Company's capacity rights at the Freeport LNG Development L.P. terminal.

Any person desiring to participate in this filing must file a motion to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time Wednesday, September 16, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–22229 Filed 9–15–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–8437–5]

Access to Confidential Business Information by CGI Federal Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized contractor, CGI Federal Inc. of Fairfax, VA, to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than September 23, 2009.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Scott Sherlock, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8257; fax number: (202) 564–8251; e-mail address: *sherlock.scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. 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 material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

Under Contract Number GS-35F4797H, Task Order Number 1518, contractor CGI of 12601 Fair Lakes Circle, Fairfax, VA., will assist the Office of Pollution Prevention and Toxics (OPPT) in developing a scalable, target-solutions architecture and strategic plan with the design to handle all TSCA content starting with an appropriate data mapping/modeling effort. The TSCA-wide aspect of this effort shall include, but not be limited to, Section 8(a), 8(b) Inventory Update Report, 8(e), 8(d), Section 4, and Section 12(b) notices.

In accordance with 40 CFR 2.306(j), EPA has determined that under Contract Number GS-35F4797H, Task Order Number 1518, CGI will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. CGI personnel will be given access to information submitted to EPA under all sections of TSCA.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide CGI access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters in accordance with EPA's TSCA CBI Protection Manual.

Access to TSCA data, including CBI, will continue until March 30, 2012. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

CGI personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental Protection, Confidential Business Information.

Dated: September 9, 2009.

Matthew Leopard,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E9–22291 Filed 9–15–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–8437–4]

Access to Confidential Business Information by Battelle Memorial Institute and Its Identified Subcontractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized contractor, Battelle Memorial Institute (BMI) of Columbus, OH and its subcontractors, Avanti Corporation of Alexandria, VA and Pegasus Technical Services, Inc. of Cincinnati, OH, to access information which has been submitted to EPA under sections 4, 5, 6, 8, 11, and 21 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than September 23, 2009.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Scott Sherlock, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8257; fax number: (202) 564–8251; e-mail address: *sherlock.scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. 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 material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

Under EPA Contract Number EP-W-09-024, contractors BMI of 505 King Avenue, Columbus, OH and its subcontractors, Avanti Corporation of 5520 Cherokee Avenue, Suite 205, Alexandria, VA; and Pegasus Technical Services, Inc. of 46 E. Hollister St., Cincinnati, OH will assist the Office of Pollution Prevention and Toxics (OPPT) in providing statistical and technical support for the assessment of Toxics Substances. They will also provide statistical, mathematical, field data collection, High Production Volume (HPV), and technical analysis support and planning for OPPT programs such as Lead Programs and other technology and exposure related studies.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA Contract Number EP-W-09-024, BMI and its subcontractors will require access to CBI submitted to EPA under sections 4, 5, 6, 8, 11, and 21 of TSCA to perform successfully the duties specified under the contract. BMI and its subcontractors' personnel will be given access to information submitted to EPA under sections 4, 5, 6, 8, 11, and 21 of TSCA.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, 8, 11, and 21 of TSCA that EPA may provide BMI and its subcontractors access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and BMI's site in Columbus, OH in accordance with EPA's TSCA CBI Protection Manual.

Access to TSCA data, including CBI, will continue until June 22, 2013. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

BMI and its subcontractor personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental Protection, Confidential Business Information.

Dated: September 8, 2009.

Matthew Leopard,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E9–22289 Filed 9–15–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–8437–6]

Access to Confidential Business Information by Guident Technologies Inc. and Its Identified Subcontractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Guident Technologies Inc. of Herndon, VA and subcontractors, Flatirons Solutions Corporation of Boulder, CO; Impact Innovations Systems, Inc (ISS) of Manassas, VA; and Science Applications International Corporation (SAIC) of McLean, VA, to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than September 23, 2009.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Scott Sherlock, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8257; fax number: (202) 564–8251; e-mail address: *sherlock.scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. 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 material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the **''Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

Under Contract Number GS-35F-0799M, Order Number EP09D000603, contractor Guident Technologies Inc. of 198 Van Buren Street, Suite 120, Herndon, VA and subcontractors, Flatirons of 4747 Table Mesa Drive, Suite 200, Boulder, CO; ISS of 9720 Capital Court, Suite 403, Manassas, VA; and SAIC of 8301 Greensboro Drive, McLean, VA will assist the Office of Pollution Prevention and Toxics (OPPT) in developing the capability to scan documents into Documentum repository. The development will be transferred (Captiva) from the development environment to the EPA Confidential Business environment.

In accordance with 40 CFR 2.306(j), EPA has determined that under Contract Number GS-35F-0799M, Order Number EP09D000603, Guident Technologies Inc. and its subcontractors will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. Guident Technologies Inc. and its subcontractors' personnel will be given access to information submitted to EPA under all sections of TSCA.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide Guident Technologies Inc. and its subcontractors access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters in accordance with EPA's TSCA CBI Protection Manual.

Access to TSCA data, including CBI, will continue until September 1, 2010. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

Guident Technologies Inc. and its subcontractors' personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental Protection, Confidential Business Information.

Dated: September 9, 2009.

Matthew Leopard,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E9–22288 Filed 9–15–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0321; FRL–8432–5]

Dimethyldithiocarbamate Salts; Amendment to Ziram and Ferbam Reregistration Eligibility Decisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's decision to amend the 2003 and 2005 Reregistration Eligibility Decisions (RED) documents for the antimicrobial pesticides Ziram and Ferbam (Reregistration Case 2180). EPA conducted a reassessment of the Ziram and Ferbam REDs upon learning that the salts Potassium Dimethyldithiocarbamate and Sodium Dimethyldithiocarbamate were not evaluated at the same time as the rest of case 2180. The Agency has conducted a risk assessment and issued a RED addendum for the Dimethyldithiocarbamate Salts, which were inadvertently not included in the 2003 and 2005 Reregistration Eligibility Decision documents for Ziram and Ferbam. This notice opens an additional 60–day public comment period for Dimethyldithiocarbamate Salts because a previous comment period for the Risk Assessment portion of this addendum was restricted to registrants only.

DATES: Comments must be received on or before November 16, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0321, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0321. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. 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 material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Eliza Blair, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308-7279; e-mail address: *blair.eliza@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

Section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) directs EPA to reevaluate existing pesticides to ensure that they meet current scientific and regulatory standards. In 2003 and 2005, EPA issued REDs for Ziram and Ferbam, respectively, under section 4(g)(2)(A) of FIFRA. The associated Dimethyldithiocarbamate Salts RED reflects the evaluation of the final two active ingredients in case 2180, which were inadvertently not included in the 2003 and 2005 Ziram and Ferbam Reregistration Eligibility Decision documents, as well as efforts by the Agency to appropriately mitigate overall risk. The RED amendment for Ziram and Ferbam concludes EPA's reregistration eligibility decision-making process for these pesticides.

The Agency evaluated Sodium Dimethyldithiocarbamate and Potassium Dimethyldithiocarbamate and determined that products containing Dimethyldithiocarbamate Salts are eligible for reregistration, provided that the risk mitigation measures identified within the Dimethyldithiocrabmante Salts RED addendum are adopted and labels are amended accordingly. The label table incorporated into the Dimethyldithiocarbamate Salts RED addendum includes modifications which specify label language for protecting occupational handlers from inhalation exposure to powdered end-use products, as well as amending the environmental hazards statement for clarity.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests, Dimethyldithiocarbamate salts, Potassium dimethyldithiocarbamate, Sodium dimethyldithiocarbamate, Ferbam, Ziram.

Dated: August 26, 2009.

Joan Harrigan Farrelly,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E9–22293 Filed 9–15–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0683; FRL–8435–7]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 4–day consultation meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA

SAP) to consider and review a set of scientific issues related to the assessment of hazard and exposure associated with nanosilver and other nanometal pesticide products.

DATES: The consultation meeting will be held on November 3 – 6, 2009, from approximately 8:30 a.m. to 5:00 p.m.

Comments. The Agency encourages that written comments be submitted by October 20, 2009 and requests for oral comments be submitted by October 27, 2009. However, written comments and requests to make oral comments may be submitted until the date of the meeting, but anyone submitting written comments after October 20, 2009 should contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT.** For additional instructions, see Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

Nominations. Nominations of candidates to serve as ad hoc members of FIFRA SAP for this meeting should be provided on or before September 30, 2009.

Special accommodations. For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

ADDRESSES: The consultation meeting will be held at the Environmental Protection Agency, Conference Center, Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA 22202.

Comments. Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0683, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility 's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions. Direct your comments to docket ID number EPA–HQ–OPP–2009–0683. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. 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 material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

Nominations, requests to present oral comments, and requests for special accommodations. Submit nominations to serve as ad hoc members of FIFRA SAP, requests for special seating accommodations, or requests to present oral comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Joseph E. Bailey, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–2045; fax number: (202) 564–8382; e-mail address: *bailey.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

C. How May I Participate in this Meeting?

You may participate in this consultation meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–OPP–2009–0683 in the subject line on the first page of your request.

1. *Written comments.* The Agency encourages that written comments be submitted, using the instructions in **ADDRESSES**, no later than October 20, 2009, to provide FIFRA SAP the time necessary to consider and review the written comments. Written comments are accepted until the date of the meeting, but anyone submitting written comments after October 20, 2009 should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT.** Anyone submitting written comments at the meeting should bring 30 copies for distribution to FIFRA SAP.

2. *Oral comments.* The Agency encourages that each individual or group wishing to make brief oral comments to FIFRA SAP submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than October 27, 2009, in order to be included on the meeting agenda. Requests to present oral comments will be accepted until the date of the meeting and, to the extent that time permits, the Chair of FIFRA SAP may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to the FIFRA SAP at the meeting.

3. *Seating at the meeting.* Seating at the meeting will be open and on a first-come basis.

4. *Request for nominations to serve as ad hoc members of FIFRA SAP for this meeting.* As part of a broader process for developing a pool of candidates for each meeting, FIFRA SAP staff routinely solicits the stakeholder community for nominations of prospective candidates for service as ad hoc members of FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas: Nanosilver and other nanometals, ecotoxicology and environmental fate of nanoparticles, characterization of nanoparticles, nanoparticle toxicology (inhalation and dermal absorption), nanoparticle toxicology in general and nanoparticle occupational exposure. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before September 30, 2009. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency except the EPA. Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Although financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the panel. In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 10 ad hoc scientists.

FIFRA SAP members are subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. In anticipation of this requirement, prospective candidates for service on the FIFRA SAP will be asked to submit confidential financial information which shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds, and where applicable, sources of research support. The EPA will evaluate the candidates financial disclosure form to assess whether there are financial conflicts of interest, appearance of a lack of impartiality or any prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on FIFRA SAP. Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP website at *http://epa.gov/scipoly/sap* or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov*.

II. Background

A. Purpose of FIFRA SAP

FIFRA SAP serves as the primary scientific peer review mechanism of EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) and is structured to provide scientific advice, information and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. FIFRA SAP is a Federal advisory committee established in 1975 under FIFRA that operates in accordance with requirements of the Federal Advisory Committee Act. FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health and the National Science Foundation. FIFRA, as amended by FQPA, established a Science Review Board consisting of at least 60 scientists who are available to the SAP on an ad hoc basis to assist in reviews conducted by the SAP. As a peer review mechanism, FIFRA SAP provides comments, evaluations and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. Members of FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to

provide expert advice and recommendation to the Agency.

B. Public Meeting

Companies with an interest in marketing products that contain nanosilver and/or other nanometals or nanometal oxides as pesticides regulated under FIFRA have approached the Office of Pesticide Programs (OPP) seeking product registration. Based on OPP's understanding of the scientific literature, it appears that there may be potential for pesticides containing nanoscale materials to pose different risks to humans and the environment than those of pesticides that do not contain nanomaterials. The Agency will hold a consultation meeting with the FIFRA Scientific Advisory Panel (SAP) to obtain advice and recommendations on the following issues that are associated with the identification and assessment of these potential risks:

1. Scientific evidence that nanosilver and other nanometals/nanometal oxides with dimensions in the range of 1 - ~100 nm have unique behavior under conditions relevant to human and environmental risk assessment and other properties (in addition to size) that may influence this behavior.

2. Recommendations regarding the types of data that OPP should require to evaluate the risks to humans and the environment for products containing free nanosilver and/or nanometals or nanometal oxides and products with incorporated nanosilver and/or nanometals or nanometal oxides with variable potential to leach and the relative priorities for obtaining recommended types of data.

3. Recommendations regarding how OPP should conduct risk assessments of pesticide products containing nanosilver and/or nanometals or nanometal oxides.

C. FIFRA SAP Documents and Meeting Minutes

EPA's background paper, related supporting materials, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., members and ad hoc members for this meeting), and the meeting agenda will be available by mid-October. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, at *http://www.regulations.gov* and the FIFRA SAP homepage at *http://www.epa.gov/scipoly/sap*.

FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency approximately 90 days days after the meeting. The meeting minutes will be posted on the FIFRA SAP website or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov*.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 8, 2009.

Jim Kariya,

Acting Director, Office of Science Coordination and Policy.

[FR Doc. E9–22165 Filed 9–15–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0687; FRL–8435–9]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 4–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review scientific issues associated with field volatilization of conventional pesticides.

DATES: The meeting will be held on December 1–4, 2009, from 9 a.m. to approximately 5:30 p.m, Eastern Time.

Comments. The Agency encourages that written comments be submitted by November 23, 2009 and requests for oral comments be submitted by November 27, 2009. However, written comments and requests to make oral comments may be submitted until the date of the meeting, but anyone submitting written comments after November 23, 2009 should contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT.** For additional instructions, see Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

Nominations. Nominations of candidates to serve as ad hoc members of FIFRA SAP for this meeting should be provided on or before September 30, 2009.

Special accommodations. For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Conference Center, Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA 22202.

Comments. Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0687, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions. Direct your comments to docket ID number EPA–HQ–OPP–2009–0687. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. 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 material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

Nominations, requests to present oral comments, and requests for special accommodations. Submit nominations to serve as ad hoc members of FIFRA SAP, requests for special seating accommodations, or requests to present oral comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Sharlene Matten, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–0130; fax number: (202) 564–8382; e-mail addresses: *matten.sharlene@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

C. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–OPP–2009–0687 in the subject line on the first page of your request.

1. *Written comments*. The Agency encourages that written comments be submitted, using the instructions in **ADDRESSES**, no later than November 23, 2009, to provide FIFRA SAP the time necessary to consider and review the written comments. Written comments are accepted until the date of the meeting, but anyone submitting written comments after November 23, 2009 should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT.** Anyone submitting written comments at the meeting should bring 30 copies for distribution to FIFRA SAP.

2. *Oral comments*. The Agency encourages that each individual or group wishing to make brief oral comments to FIFRA SAP submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than November 27, 2009, in order to be included on the meeting agenda. Requests to present oral comments will be accepted until the date of the meeting and, to the extent that time permits, the Chair of FIFRA SAP may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to the FIFRA SAP at the meeting.

3. *Seating at the meeting*. Seating at the meeting will be open and on a first-come basis.

4. *Request for nominations to serve as ad hoc members of FIFRA SAP for this meeting*. As part of a broader process for developing a pool of candidates for each meeting, FIFRA SAP staff routinely solicits the stakeholder community for nominations of prospective candidates for service as ad hoc members of FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas: Inhalation Toxicity, Pesticide Exposure and Risk Assessment, Pesticide Fate and Transport, and Environmental Air Modeling. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before September 30, 2009. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or Agency or their employment by a Federal department or agency except the EPA. Other factors considered during the selection process include availability of the potential panel

member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Although, financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the panel. In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 10–12 ad hoc scientists.

FIFRA SAP members are subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. In anticipation of this requirement, prospective candidates for service on the FIFRA SAP will be asked to submit confidential financial information which shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds, and where applicable, sources of research support. The EPA will evaluate the candidates financial disclosure form to assess whether there are financial conflicts of interest, appearance of a lack of impartiality or any prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on FIFRA SAP. Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP website at *http://epa.gov/scipoly/sap* or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov*.

II. Background

A. Purpose of FIFRA SAP

FIFRA SAP serves as the primary scientific peer review mechanism of EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) and is structured to provide scientific advice, information and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. FIFRA SAP is a Federal advisory committee established in 1975 under FIFRA that operates in accordance with requirements of the Federal Advisory Committee Act. FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health and the National Science Foundation. FIFRA, as amended by FQPA, established a Science Review Board consisting of at least 60 scientists who are available to the SAP on an ad hoc basis to assist in reviews conducted by the SAP. As a peer review mechanism, FIFRA SAP provides comments, evaluations and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. Members of FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendation to the Agency.

B. Public Meeting

The Standard Operating Procedures (SOPs) for Residential Exposure Assessment is a set of standard instructions for estimating residential exposure resulting from various direct, labeled pesticide uses. Residential individuals can also be potentially exposed via indirect exposure to conventional pesticides. These types of exposures can occur through a variety of means including field volatilization of conventional pesticides, spray drift, and transport of pesticide residues to the residence (''take-home'' exposure). Methodologies for assessing indirect exposures are not currently included in the Residential SOPs.

Recently, the Agency has been exploring the development of an approach for assessing inhalation exposure resulting from the field volatilization of conventional pesticides. The following issues have been identified as key elements for this exposure scenario:

- Use of the Agency's Reference Concentration (RfC) methodology to calculate Human Equivalent Concentrations (HECs) when inhalation toxicity studies are available.
- Comparison of the use of inhalation vs. oral toxicity studies.
- Development of a tiered approach to determine the level of complexity and refinement needed to estimate exposure, including:

a. Use of available air monitoring data: California Air Resource Board (CARB), Pesticide Action Network – North America (PANNA), and other data sources.

b. Development of a volatilization screening tool to estimate flux based on physical/chemical properties of a pesticide.

c. Use of more refined soil models to estimate flux.

d. Use of air models to estimate concentrations around a treated field.

EPA's goal is to have a set of procedures that include transparent methodologies and data inputs that will guide the assessment of bystander exposure resulting from field volatilization of conventional pesticides in a straight-forward and user-friendly fashion. The Agency is seeking comment from the Panel on the adequacy of the toxicological and exposure assessment methodologies; the applicability, analysis, and use of available air monitoring data; the strengths and limitations of the models being considered by the Agency for predicting flux of conventional pesticides; and the overall presentation of the issues related to field volatilization of conventional pesticides with respect to the overall clarity and transparency of the science.

C. FIFRA SAP Documents and Meeting Minutes

EPA's background paper, related supporting materials, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., members and ad hoc members for this meeting), and the meeting agenda will be available by November 16, 2009. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, at *http://www.regulations.gov* and the FIFRA SAP homepage at *http://www.epa.gov/scipoly/sap*.

FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency approximately 90 days after the meeting. The meeting minutes will be posted on the FIFRA SAP website or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov*.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 10, 2009.

Steven M. Knott,

Acting Director, Office of Science Coordination and Policy.

[FR Doc. E9–22296 Filed 9–15–09; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0321; FRL–8432–7]

Dimethyldithiocarbamate Salts; Notice of Receipt of Requests to Voluntarily Cancel or to Amend to Terminate Uses of Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by the registrants to voluntarily cancel and/or amend their registrations to terminate uses of certain products containing the pesticides sodium dimethyldithiocarbamate and potassium dimethyldithiocarbamate. The requests would terminate dimethyldithiocarbamate salts use in or on pressure-treated wood preservatives, sapstain, paints, coatings, and cutting fluids, and prohibit ''open pour'' applications of one product. The request(s) would not terminate the last dimethyldithiocarbamate salts products registered for use in the United States. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests within this period. Upon acceptance of these requests, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before March 15, 2010. Written requests to withdraw the cancellation must be received on or before March 15, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0321, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0321. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. 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 material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Eliza Blair, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–7279; e-mail address: blair.eliza@*epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background on the Receipt of Requests to Cancel and/or Amend Registrations to Delete Uses

This notice announces receipt by EPA of requests from registrants Buckman Laboratories, Inc. and Akzo Nobel Surface Chemistry LLC to cancel one sodium dimethyldithiocarbamate use and to amend to terminate uses of four sodium dimethyldithiocarbamate and potassium dimethyldithiocarbamate product registrations. Dimethyldithiocarbamate salts are used as materials preservatives and water antifoulants in a wide range of water systems, including industrial cooling/air washer water and oil recovery fluids. In letters dated June 6, 2009 and June 1, 2009, respectively, Buckman and Akzo Nobel requested that EPA cancel affected product registrations and/or to amend to terminate uses of pesticide product registrations identified in Tables 1 and 2. Specifically, a risk assessment performed for the Dimethyldithiocarbamate Salts RED identified human health and environmental risks of concern for several current uses, and suggested data needs that EPA will request in order to support the reregistration of dimethyldithiocarbamate salts. The registrants then identified specific uses that they would not support through the data-gathering process and submitted letters of request to amend/or remove the related product labels. The uses to be canceled are all wood-preservative uses, including pressure-treated wood and sapstain, all paints and coatings preservatives, and one registrant's metalworking fluids uses. One product with only wood-preservative uses will be canceled. One product label will be amended to prohibit ''open pour'' application of the product, and restrict application to ''closed-system'' methods such as water-soluble packets. The requests would not terminate the last dimethyldithiocarbamate salts products registered for use in the United States.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of requests from registrants to cancel and/or amend to terminate uses of sodium dimethyldithiocarbamate and potassium dimethyldithiocarbamate product registrations. The affected products and the registrants making the requests are identified in Tables 1–3 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The dimethyldithiocarbamate salts registrants have not requested that EPA waive the 180–day comment period. EPA will provide a 180–day comment period on the proposed requests.

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued canceling and/or amending the affected registrations in the following tables 1 and 2.

TABLE 1.—SODIUM DIMETHYLDITHIOCARBAMATE PRODUCT REGISTRATION WITH PENDING REQUEST FOR CANCELLATION

Registration Number	Product Name	Company
34688–83	Aquatreat DCD	Akzo Nobel Surface Chemistry LLC

TABLE 2.—DIMETHYLDITHIOCARBAMATE SALTS PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

EPA Registration No.	Product Name	Active Ingredient	Delete from Label
34688–78	Aquatreat SDM	Sodium Dimethyldithiocarbamate	Sapstain
34688–82	Aquatreat DNM-80	Sodium Dimethyldithiocarbamate	All ''open pour'' applications in water systems - see Sec. II above
1448–70	Busan 85	Potassium Dimethyldithiocarbamate	Paints, coatings and cutting fluids
1448–381	Dimet	Potassium Dimethyldithiocarbamate	Paints, coatings and cutting fluids

Table 3 of this unit includes the names and addresses of record for the registrants of the products listed in Table 1 and Table 2 of this unit.

TABLE 3.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS

EPA Company Number	Company Name and Address
34688	Akzo Nobel Surface Chemistry LLC 7140 Heritage Village Plaza Gainesville, VA 20136
1448	Buckman Laboratories Inc. 1256 North McLean Blvd Memphis, TN 38108

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request and Considerations for Reregistration of Sodium Dimethyldithiocarbamate and Potassium Dimethyldithiocarbamate

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before March 15, 2010. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 28, 2009.

Betty Shackleford,

Acting Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E9–22298 Filed 9–15–09; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIROMENTAL PROTECTION AGENCY

[FRL–8957–4]

Notice of U.S. Environmental Protection Agency Region III's Use of Web Site to Provide Notice of Intent To Terminate Pesticide Producing Establishment Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Information Notice.

SUMMARY: EPA Region III is announcing that it will be using its Web site to provide public notice of its intent to terminate pesticide producing establishment registrations under section 7 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in cases where it is unable to provide notice of its intent to terminate directly.

FOR FURTHER INFORMATION CONTACT: Kyla Townsend-McIntyre, Pesticides and Asbestos Programs Branch (3LC62), EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029; telephone (215) 814–2045; fax (215) 814–3113; e-mail: *townsend.kyla@epa.gov*.

SUPPLEMENTARY INFORMATION: Section 7 of FIFRA requires that all establishments that produce pesticides, active ingredients used in producing pesticides, or devices subject to FIFRA be registered with EPA, and that all such establishments submit annual pesticide production reports to EPA. EPA regulations at 40 CFR part 167 establish requirements concerning these annual pesticide production reports including the types of information to be included in annual pesticide production reports (40 CFR 167.85). The regulations require annual pesticide production reports to be submitted to the EPA Regional Office which serves the area where the establishment is located (40 CFR 167.90). For establishments that are not found at the same location as their company headquarters, the regulations require the annual pesticide production reports to be submitted to the EPA Regional Office that has jurisdiction over the State in which the company headquarters is located (40 CFR 167.90). EPA's Region III office serves establishments or establishments with company headquarters located in Delaware, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia (40 CFR 1.7).

The regulations state that establishment registrations are subject to termination if annual pesticide production reports are not submitted (40 CFR 167.20(f)). Upon deciding to terminate an establishment registration based on the failure to submit annual pesticide production reports, EPA Region III generally sends a notice of intent to terminate letter (NOIT) directly to the establishment registrant via certified mail with return receipt requested, or by other reliable delivery service that provides written verification of delivery. If the establishment registrant does not submit the missing pesticide production report(s) by the deadline set forth in the NOIT, EPA Region III will issue it a notice of termination letter (NOT).

NOITs are generally mailed to the establishment registrant's last address of record. Occasionally, such notices are returned as undeliverable and, despite reasonable efforts to locate such registrants, EPA Region III is unable to directly notify them of its intent to terminate their establishment registrations. In the past, EPA used the **Federal Register** to provide public notice of its intent to terminate such registrations. EPA Region III will now be using its Web site to provide public notice of its intent to terminate such establishment registrations. The Web site address is: *http://www.epa.gov/reg3wcmd/pesticides.htm*.

EPA Region III will continue to first attempt to provide NOITs directly to establishment registrants at their last address of record. In cases where such notices are returned as undeliverable, and when reasonable subsequent efforts to locate such parties are unsuccessful, EPA Region III will use its Web site to provide public notice of its intent to terminate such registrations. This notice addresses establishments or establishments with company headquarters located in Delaware, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia only.

Dated: September 3, 2009.

Abraham Ferdas,

Director, Land and Chemicals Division, Region III.

[FR Doc. E9–22277 Filed 9–15–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

September 10, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other

Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 16, 2009. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission, and an e-mail to *PRA@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0531.

Title: Part 101 Rules for Local Multipoint Distribution Service (LMDS), Multiple Address System (MAS) and 24 GHz Services.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,474 respondents; 1,474 responses.

Estimated Time per Response: 15 hours.

Frequency of Response: Once every ten years.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 151, 154(i), 301, 303(f), 303(g), 303(r), 307, 308, 309, 310 and 316.

Total Annual Burden: 4,261 hours.

Total Annual Cost: $368,900.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality. Respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting approval of a revision of this information collection.

The reason for the revision is that the Commission is consolidating information collections (ICs) previously approved by the OMB. They were OMB Control Numbers 3060–0947 (Section 101.1327) and 3060–0963 (Sections 101.527 and 101.529). Those ICs were discontinued because it was found that the reporting requirements contained in those rule sections would not be reported until the year 2010 (when the 10 year license renewal term is expiring). Therefore, all these reporting requirements are now being consolidated into this OMB control number 3060–0531. The information required by Sections 101.527, 101.529, 101.1011, 101.1325, and 101.1327 of the Commission's rules is used to determine whether an applicant for renewal of a Local Multipoint Distribution Service (LMDS), Multiple Address System (MAS) or 24 GHz Service license has complied with the requirement to provide substantial service by the end of the ten-year license term.

The FCC uses this information to determine whether the applicant's license will be renewed at the end of the license period. The information requested pursuant to Section 101.103 (originally approved under OMB Control Number 3060–0531) of the Commission's rules is used by the FCC staff in carrying out its duties to determine the technical, legal and other qualifications of applicants to operate and remain licensees to operate a station in the LMDS. Specifically, the frequency coordination information requested by Section 101.103 is necessary to facilitate the rendition of communication services on an interference-free basis in each service area. The frequency coordination procedures ensure that LMDS applicants and licensees have the information necessary to cooperate in the selection and use of frequencies assigned in order to minimize interference and thereby obtain the most effective use of the spectrum. The information is also necessary for the Commission staff to resolve interference conflicts that cannot be settled between or among the affected applicants and licensees. Please note that none of the rule sections have been modified or changed. The Commission is simply revising this collection to include the renewal requirements previously approved under OMB Control Numbers 3060–0947 and 3060–0963.

OMB Control Number: 3060–0270.

Title: Section 90.443, Content of Station Records.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions and state, local or tribal government.

Number of Respondents: 65,295 respondents; 65,295 responses.

Estimated Time per Response: .25 hours.

Frequency of Response: Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Section 309(j).

Total Annual Burden: 16,324 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: Yes.

Nature and Extent of Confidentiality: There is a need for confidentiality with respect to all Private Land Mobile Radio Service (PLMRS) filers in this collection. Pursuant to Section 208(b) of the E–Government Act of 2002, 44 US.C. 3501, in conformance with the Privacy Act of 1974, 5 U.S.C. 552a, the Wireless Telecommunications Bureau (Bureau) instructs licensees to use the FCC's Universal Licensing System (ULS), Antenna Structure Registration (ASR), Commission Registration System (CORES) and related systems and subsystems to submit information. CORES is used to receive a FCC Registration Number (FRN) and password, after which one must register all current call sign and ASR numbers associated with a FRN within the Bureau's system of records (ULS database). Although ULS stores all information pertaining to the individual license via the FRN, confidential information is accessible only by persons or entities that hold the password for each account, and the Bureau's Licensing Division staff. Upon the request of a FRN, the individual licensee is consenting to make publicly available, via the ULS database, all

information that is not confidential in nature.

Information on PLMRS licensees is maintained in the Commission's system of records, FCC/WTB–1, ''Wireless Services Licensing Records''. The licensee records will be publicly available and routinely used in accordance with subsection (b) of the Privacy Act. FRN numbers and material which is afforded confidential treatment pursuant to a request made under 47 CFR 0.459 of the Commission's rules will not be available for public inspection. Any personally identifiable information (PII) that individual applicants provide is covered by a system of records, FCC/WTB–1, and these and all other records may be disclosed pursuant to Routine Uses as stated in this system of records notice.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting approval of an extension of this information collection. The Commission is also reporting a significant increase in the total annual burden hours (+11,559 hours) due to an increase in respondents/responses. Therefore, the Commission has adjusted these estimates to report more accurate information to the OMB. Each licensee in the Private Land Mobile Radio Service (PLMRS) service must comply with the recordkeeping requirements of 47 CFR 90.443 of the Commission's rules. Specifically, paragraph (b) of that rule section requires that the dates and pertinent details of any maintenance performed on station equipment, and the name and address of the service technician who did the work be entered in the station records. These records will reflect whether or not maintenance of the licensee's equipment has been performed.

The maintenance records may be used by the licensee or Commission field personnel to note any recurring equipment problems or conditions that may lead to degraded equipment performance and/or interference generation. Tower lighting records are required to ensure that the licensee is aware of the tower light condition and proper operation, in order to prevent and/or correct any hazards to air navigation.

OMB Control Number: 3060–1127.

Title: First Responder Emergency Contact Information in the Universal Licensing System (ULS).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 133,095 respondents; 133,095 responses.

Estimated Time per Response: .25 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in 47 U.S.C. Section 154(i)

Total Annual Burden: 36,601 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: To protect the identities and locations of key first responder communications personnel, the Commission will treat emergency contact information submitted into ULS as confidential and will not make such information publicly available. The contact information submitted into ULS by public safety licensees and non-public safety licensees designated as emergency first responders will be available only to Commission staff. Interested licensees should file their operational point of contact information in ULS in the form of a confidential pleading.

To protect the confidentiality, integrity and availability of the emergency contact information submitted in this collection, the Commission will provide the information assurance services it currently provides to encrypt and store sensitive information.

Needs and Uses: The Commission is requesting approval of an extension of this information collection. The Commission sought and received emergency OMB approval of this information collection on September 3, 2009. The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them.

The Commission's Public Safety and Homeland Security Bureau (Bureau) enhanced the existing Universal Licensing System (ULS) to collect operational point of contact information from public safety licensees and non-public safety licensees designated as emergency first responders responsible for coordinating with state, county and local authorities during times of emergency. The process of procuring and maintaining spectrum using the ULS remains intact and requires no additional training for licensees to participate in this voluntary collection. This enhancement to ULS to collect emergency point of contact information will enable Commission staff to more effectively provide immediate assistance and outreach to licensees during times of emergency. Using this information, the Bureau will be able to coordinate among licensees in given geographic areas to make more wireless radio service available to emergency first responders and emergency operations. The Bureau deployed these enhancements upon receipt of OMB approval for the emergency request.

Public safety licensees designated as emergency first responders operating pursuant to Part 90 rules should identify the following information regarding the operational point of contact for the Licensee directly responsible for coordinating with the state, county, and/or local emergency authorities: (a) Name and title; (b) office telephone number; (c) mobile telephone number; and (4) e-mail address.

The Bureau will issue a Public Notice with step-by-step instructions on how to use the enhanced features made available to licensees to provide this information.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–22317 Filed 9–15–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request (3064–0152)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and renewal of the collections of information described below:

DATES: Comments must be submitted on or before October 16, 2009.

ADDRESSES: Interested parties are invited to submit written comments to FDIC by any of the following methods. All comments should refer to the name of the collection as well as the OMB control number(s):

• *Web site: http://www.FDIC.gov/regulations/laws/federal/notices.html.*

• *E-mail: Comments@FDIC.gov.* Include the name of the collection in the subject line of the message.

• *Mail:* Gary A. Kuiper, Counsel, 202.898.3877, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

• *Public Inspection:* All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

Comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 727 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collection of information:

Title: Identity Theft Red Flags and Address Discrepancies under the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).

OMB Number: 3064–0152.

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 5260.

Estimated Time per Response: 16 hours.

Estimated Total Annual Burden: 84,160 hours.

General Description of the Collection: 12 CFR 334.82, 334.90, 334.91 and Appendix J to Part 334 implement sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), Public Law 108–159 (2003). Section 114 amended section 615 of the Fair Credit Reporting Act (FCRA) to require the OCC, FRB, FDIC, OTS, NCUA, and FTC (Agencies) to issue jointly (i) Guidelines for financial institutions and creditors regarding identity theft with respect to their account holders and customers; (ii) regulations requiring each financial institution and creditor to establish reasonable policies and procedures for implementing the guidelines to identify possible risks to account holders or customers or to the safety and soundness of the institution or creditor; and (iii) regulations generally requiring credit and debit card issuers to assess the validity of change of address requests under certain circumstances. Section 315 amended section 605 of the FCRA to require the Agencies to issue regulations providing guidance regarding reasonable policies and procedures that a user of consumer reports must employ when a user receives a notice of address discrepancy from a consumer reporting agency (CRA). The information collections in Sec. 334.90 require each financial institution and creditor that offers or maintains one or more covered accounts to develop and implement a written Identity Theft Prevention Program (Program). In developing the Program, financial institutions and creditors are required to consider the guidelines in Appendix J to Part 334 and include those that are appropriate. The initial Program must be approved by the board of directors or an appropriate committee thereof and the board, an appropriate committee thereof or a designated employee at the level of senior management must be involved in the oversight of the Program. In addition, staff must be trained to carry out the Program. Pursuant to Sec. 334.91, each credit and debit card issuer is required to establish and implement policies and procedures to assess the validity of a change of address request under certain circumstances. Before issuing an additional or replacement card, the card issuer must notify the cardholder or use another means to assess the validity of the change of address. The information collections in Sec. 41.82 require each user of consumer reports to develop and implement reasonable policies and procedures designed to enable the user to form a reasonable belief that a consumer report relates to the consumer about whom it requested the report when the user receives a notice of address discrepancy from a CRA. A user of consumer reports must also develop and implement reasonable policies and procedures for furnishing an address for the consumer that the user has reasonably confirmed to be accurate to the CRA from which it receives a notice of address discrepancy when (1) The user can form a reasonable belief that the consumer report relates to the consumer about whom the user has requested the report; (2) the user establishes a continuing relationship with the consumer; and (3) the user regularly and in the ordinary course of business furnishes information to the CRA from which it received the notice of address discrepancy.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 10th day of September, 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–22237 Filed 9–15–09; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request (3064–0046, 0090, 0093, 0138, & 0145)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collections to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and renewal of the collections of information described below:

DATES: Comments must be submitted on or before October 16, 2009.

ADDRESSES: Interested parties are invited to submit written comments to FDIC by any of the following methods. All comments should refer to the name of the collection as well as the OMB control number(s):

• *Web site: http://www.FDIC.gov/regulations/laws/federal/notices.html.*

• *E-mail: Comments@FDIC.gov.* Include the name of the collection in the subject line of the message.

• *Mail:* Gary A. Kuiper, Counsel, 202.898.3877, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

• *Public Inspection:* All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

Comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 727 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collections of information:

1. *Title:* Home Mortgage Disclosure Act (HMDA).

OMB Number: 3064–0046.

Form Number: None.

Frequency of Response: On occasion.

Affected Public: Insured State nonmember banks.

Estimated Number of Responses: 1,890,384

Estimated Time per Response: 5 minutes.

Total Annual Burden: 157,532 hours.

General Description of Collection: To permit the FDIC to detect discrimination in residential mortgage lending, certain insured State nonmember banks are required by FDIC regulation 12 CFR 338 to maintain various data on home loan applicants.

2. *Title:* Public Disclosure by Banks.

OMB Number: 3064–0090.

Form Number: None.

Frequency of Response: On occasion.

Affected Public: Insured State nonmember banks.

Estimated Number of Respondents: 5,050.

Estimated Time per Response: 0.5 hours.

Total Annual Burden: 2,525 hours.

General Description of Collection: 12 CFR 350 requires a bank to notify the general public, and in some instances shareholders, that financial disclosure statements are available on request. Required disclosures consist of financial reports for the current and preceding year, which can be photocopied directly from the year-end call reports. Also, on a case-by-case basis, the FDIC may require that descriptions of enforcement actions be included in disclosure statements. The regulation allows, but does not require, the inclusion of management discussions and analysis.

3. *Title:* Notices Required of Government Securities Dealers or Brokers (Insured State Nonmember Banks).

OMB Number: 3064–0093.

Form Number: G–FIN; G–FINW; G–FIN4; & G–FIN5.

Frequency of Response: On occasion.

Affected Public: Insured State nonmember banks acting as government securities brokers and dealers.

Estimated Number of Respondents: 49.

Estimated Time per Response: 1 hour.

Total Annual Burden: 49 hours.

General Description of Collection: The Government Securities Act of 1986 requires all financial institutions acting as government securities brokers and dealers to notify their Federal regulatory agencies of their broker-dealer activities, unless exempted from the notice requirement by Treasury Department regulation.

4. *Title:* Applicant Background Questionnaire.

OMB Number: 3064–0138.

Form Number: FDIC 2100/14.

Frequency of Response: On occasion.

Affected Public: FDIC job applicants who are not current FDIC employees.

Estimated Number of Respondents: 30,000.

Estimated Time per Response: 3 minutes.

Total Annual Burden: 1500 hours.

General Description of Collection: The FDIC Applicant Background Questionnaire is completed voluntarily by FDIC job applicants who are not current FDIC employees. Responses to questions on the survey provide information on gender, age, disability, race/national origin, and to the applicant's source of vacancy announcement information. Data is used by the Office of Diversity and Economic Opportunity and the Personnel Services Branch to evaluate the effectiveness of various recruitment methods used by the FDIC to ensure that the agency meets workforce diversity objectives.

5. *Title:* Notice Regarding Unauthorized Access to Customer Information.

OMB Number: 3064–0145.

Form Number: None.

Frequency of Response: On occasion.

Affected Public: Insured State nonmember banks.

Number of FDIC Regulated Banks that will notify customers: 93

Estimated Time per Response: 29 hrs.

Annual Burden: 2,697 hours.

General Description of Collection: This collection reflects the FDIC's expectations regarding a response program that financial institutions should develop to address unauthorized access to or use of customer information that could result in substantial harm or inconvenience to a customer. The information collections require financial institutions to: (1) Develop notices to customers; and (2) in certain circumstances, determine which customers should receive the notices and send the notices to customers.

Request for Comment

Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 10th day of September, 2009.

Robert E. Feldman,

Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. E9–22238 Filed 9–15–09; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

[Notice 2009–20]

Filing Dates for the Massachusetts Senate Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Massachusetts has scheduled elections on December 8, 2009, and January 19, 2010, to fill the vacant U.S. Senate seat held by the late Senator Edward M. Kennedy.

Committees required to file reports in connection with the Special Primary Election on December 8, 2009, shall file a 12-day Pre-Primary Report. Committees required to file reports in connection with both the Special Primary and Special General Election on

January 19, 2010, shall file a 12-day Pre-Primary Report, a consolidated 12-day Pre-General and Year-End Report, and a 30-day Post-General Report.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the Massachusetts Special Primary and Special General Elections shall file a 12-day Pre-Primary Report on November 26, 2009; a consolidated 12-day Pre-General and Year-End Report on January 7, 2010; and a 30-day Post-General Report on February 18, 2010. (See chart below for the closing date for each report).

All principal campaign committees of candidates participating *only* in the Special Primary Election shall file a 12-day Pre-Primary Report on November 26, 2009, and a Year End report on January 31, 2010. (See chart below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a semi-annual basis in 2009 or a quarterly basis in 2010 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Massachusetts Special Primary or Special General Elections by the close of books for the applicable report(s). (See chart below for the closing date for each report).

Committees filing monthly that support candidates in the Massachusetts Special Primary or Special General Elections should continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the Massachusetts Special Election may be found on the FEC Web site at *http://www.fec.gov/info/report_dates.shtml.*

CALENDAR OF REPORTING DATES FOR MASSACHUSETTS SPECIAL ELECTION

Report	Close of books [1]	Reg./cert. & overnight mailing deadline	Filing deadline
Committees Involved in *Only* the Special Primary (12/08/09) Must File:			
Pre-Primary	11/18/09	11/23/09	[2] 11/26/09
Year-End	12/31/09	01/31/10	[2] 01/31/10
Committees Involved in Both the Special Primary (12/08/09) and Special General (01/19/10) Must File:			
Pre-Primary	11/18/09	11/23/09	[2] 11/26/09
Pre-General & Year End [3]	12/31/09	01/04/10	01/07/10
Post-General	02/08/10	02/18/10	02/18/10
April Quarterly	03/31/10	04/15/10	04/15/10
Committees Involved in *Only* the Special General (01/19/10) Must File:			
Pre-General & Year End [3]	12/31/09	01/04/10	01/07/10
Post-General	02/08/10	02/18/10	02/18/10
April Quarterly	03/31/10	04/15/10	04/15/10

[1] The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee with the Commission up through the close of books for the first report due.

[2] Notice that the filing deadline falls on a weekend or federal holiday. Filing deadlines are not extended when they fall on nonworking days.

[3] Committees should file a consolidated Pre-General & Year-End Report by the filing deadline of the Pre-General Report.

Dated: September 10, 2009.

On behalf of the Commission,

Steven T. Walther,

Chairman, Federal Election Commission.

[FR Doc. E9–22257 Filed 9–15–09; 8:45 am]

BILLING CODE 6715–01–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 October 9, 2009.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Union Bankshares Corporation, Bowling Green, Virginia; to acquire 100 percent of the voting shares of FMB UBSH Interim Bank, Bowling Green, Virginia.

In connection with this application, Applicant also has applied to acquire First Market Bank, FSB, Richmond, Virginia, and thereby engage in extending credit and servicing loans, pursuant to section 225.28(b)(1); activities related to extending credit, pursuant to section 225.28(b)(2); operating a savings association, pursuant to section 225.28(b)(4)(ii);

financial and investment advisory activities, pursuant to section 225.28(b)(6); and agency transactional services for customer investments, pursuant to section 225.28(b)(7), all of Regulation Y. In addition, FMB UBSH Interim Bank, will merge with First Market Bank, FSB.

Board of Governors of the Federal Reserve System, September 10, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–22190 Filed 9–15–09; 8:45 am]

BILLING CODE 6210–01–S

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 October 13, 2009.

A. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. Linn County Bancshares, Inc., Brookfield, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of, and thereby merge with, First Missouri Bancshares, Inc., and indirectly acquire voting shares of First Missouri National Bank, both of Brookfield, Missouri.

B. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. 1st Pacific Bancorp, San Diego, California; to acquire 100 percent of the voting shares of FB Bancorp, and thereby indirectly acquire voting shares of First Business Bank, National Association, both of San Diego, California.

2. FB Bancorp, San Diego, California; to become a bank holding company by acquiring 100 percent of the voting shares of First Business Bank, National Association, San Diego, California.

Board of Governors of the Federal Reserve System, September 11, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–22261 Filed 9–16–09; 8:45 am]

BILLING CODE 6210–01–S

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 October 9, 2009.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Union Bankshares Corporation, Bowling Green, Virginia; to acquire 100 percent of the voting shares of FMB UBSH Interim Bank, Bowling Green, Virginia.

In connection with this application, Applicant also has applied to acquire First Market Bank, FSB, Richmond, Virginia, and thereby engage in extending credit and servicing loans, pursuant to section 225.28(b)(1); activities related to extending credit, pursuant to section 225.28(b)(2); operating a savings association, pursuant to section 225.28(b)(4)(ii); financial and investment advisory activities, pursuant to section 225.28(b)(6); and agency transactional services for customer investments, pursuant to section 225.28(b)(7), all of Regulation Y. In addition, FMB UBSH Interim Bank, will merge with First Market Bank, FSB.

Board of Governors of the Federal Reserve System, September 10, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–22193 Filed 9–15–09; 8:45 am]

BILLING CODE 6210–01–S

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; Review of IRAP and NAME Member Conflicts.

Date: September 30, 2009.

Time: 12 p.m. to 2 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: Elisabeth Koss, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435–1721, *kosse@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: Oncology 1–Basic Translational Integrated Review Group; Cancer Genetics Study Section.

Date: October 1–2, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Avenue Hotel Chicago, 160 E. Huron Street, Chicago, IL 60611.

Contact Person: Zhiqiang Zou, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892, 301–451–0132, *zouzhiq@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: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Clinical and Integrative Diabetes and Obesity Study Section.

Date: October 1–2, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Nancy Sheard, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046–E, MSC 7892, Bethesda, MD 20892, (301) 435–1154, *sheardn@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; Clinical Diabetes and Obesity.

Date: October 2, 2009.

Time: 8 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Nancy Sheard, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046–E, MSC 7892, Bethesda, MD 20892, 301–435–1154, *sheardn@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; Tumor Biomarkers.

Date: October 2, 2009.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Avenue Hotel Chicago, 160 E. Huron Street, Chicago, IL 60611.

Contact Person: Zhiqiang Zou, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892, 301–451–0132, *zouzhiqcsr.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: Emerging Technologies and Training Neurosciences Integrated Review Group; Neurotechnology Study Section.

Date: October 5–6, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance M Street Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Robert C. Elliott, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative and Clinical Endocrinology and Reproduction Study Section.

Date: October 5–6, 2009.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Syed M. Amir, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6172, MSC 7892, Bethesda, MD 20892, 301–435–1043, *amirs@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Biomedical Imaging Technology Study Section.

Date: October 5–6, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Washington DC Downtown, 1201 K Street, NW., Washington, DC 20005.

Contact Person: Lee Rosen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, *rosenl@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Motor Function, Speech and Rehabilitation Study Section.

Date: October 5, 2009.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Biao Tian, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, 301–402–4411, *tianbi@csr.nih.gov.*

Name of Committee: Oncology 1–Basic Translational Integrated Review Group; Tumor Cell Biology Study Section.

Date: October 5–6, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Allerton Hotel Chicago, 701 N. Michigan Avenue, Chicago, IL 60611.

Contact Person: Angela Y. Ng, PhD, MBA, Scientific Review Officer Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (For courier delivery, use MD 20817), Bethesda, MD 20892, 301–435–1715, *nga@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Bioengineering, Technology and Surgical Sciences Study Section.

Date: October 5–6, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn San Francisco Fisherman's Wharf, 1300 Columbus Avenue, San Francisco, CA 94133.

Contact Person: Khalid Masood, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, 301–435–2392, *masoodk@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Hepatobiliary Pathophysiology Study Section.

Date: October 5–6, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott San Francisco Fisherman's Wharf, 1250 Columbus Avenue, San Francisco, CA 94133.

Contact Person: Rass M. Shayiq, PhD, Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Nursing Science: Adults and Older Adults Study Section.

Date: October 5–6, 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: Melinda Tinkle, PhD, Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3141, MSC 7770, Bethesda, MD 20892, (301) 594–6594, *tinklem©csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics A Study Section.

Date: October 5–6, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance M Street Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Michael M. Sveda, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1114, MSC 7890, Bethesda, MD 20892, 301–435–3565, *svedamcsr.nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Cellular, Molecular and Integrative Reproduction Study Section.

Date: October 5, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Amalfi Hotel Chicago, 20 W. Kinzie Street, Chicago, IL 60654.

Contact Person: Michael Knecht, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046, *knechtm@csr.nih.gov*.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Biology Structure and Regeneration Study Section.

Date: October 5–6, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: John P. Holden, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301–496–8551, *holdenjocsr.nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Brain Injury and Neurovascular Pathologies Study Section.

Date: October 5–6, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Alexander Yakovlev, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, 301–435–1254, *yakovleva@csr.nih.gov*.

Name of Committee: Biology of Development and Aging Integrated Review Group; Aging Systems and Geriatrics Study Section.

Date: October 5–6, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: James P. Harwood, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7840, Bethesda, MD 20892, 301–435–1256, *harwoodj@csr.nih.gov*.

Name of Committee: Vascular and Hematology Integrated Review Group; Vascular Cell and Molecular Biology Study Section.

Date: October 5–6, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802,Bethesda, MD 20892, (301) 435–1210, *chaudhaa@csr.nih.gov*.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Kidney, Nutrition, Obesity and Diabetes Study Section.

Date: October 5–6, 2009.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Palomar Hotel, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Fungai F Chanetsa, 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*.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Clinical Oncology Study Section.

Date: October 5–6, 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: Malaya Chatterjee, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301–451–0131, *chatterm@csr.nih.gov*.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Medical Imaging Study Section.

Date: October 5, 2009.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Washington DC, Downtown 1201 K Street, NW., Washington, DC 20005.

Contact Person: Xiang-Ning Li, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, 301–435–1744, *lixiang@csr.nih.gov*.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Clinical, Integrative and Molecular Gastroenterology Study Section.

Date: October 5–6, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Najma Begum, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2186, MSC 7818, Bethesda, MD 20892, 301–435–1243, *begumn@csr.nih.gov*.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Child Psychopathology and Developmental Disabilities Study Section.

Date: October 5–6, 2009.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Washington, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

Contact Person: Jane A. Doussard-Roosevelt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov*.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Drug Discovery and Molecular Pharmacology Study Section.

Date: October 5–6, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Hungyi Shau, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804,Bethesda, MD 20892, 301–435–1720, *shauhung@csr.nih.gov*.

Name of Committee: Oncology 1–Basic Translational Integrated Review Group; Tumor Microenvironment Study Section.

Date: October 5–6, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Eun Ah Cho, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301)451–4467, *choe@csr.nih.gov*.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Epidemiology of Cancer Study Section.

Date: October 5–6, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Denise Wiesch, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0684, *wieschd@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Behavioral Medicine, Interventions and Outcomes Study Section.

Date: October 5–6, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 1000 Aliceanna Street, Baltimore, MD 21202.

Contact Person: Lee S. Mann, JD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, 301–435–0677, *mannl@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Arthritis, Connective Tissue and Skin Study Section.

Date: October 5–6, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

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.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Adult Psychopathology and Disorders of Aging Study Section.

Date: October 5–6, 2009.

Time: 8:30 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Harbor Court Baltimore, 550 Light Street, Baltimore, MD 21202.

Contact Person: Estina E. Thompson, PhD, MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301–496–5749, *thompsone@mail.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroscience and Neurodegeneration Study Section.

Date: October 5–6, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Seetha Bhagavan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 435–1121, *bhagavas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; SAT and BTSS Member Conflict.

Date: October 5, 2009.

Time: 2 p.m. to 5 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: Roberto J. Matus, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, (301) 435–2204, *matusr@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: September 9, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–22218 Filed 9–15–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; 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 Complementary and Alternative Medicine Special Emphasis Panel. SBIR.

Date: October 13, 2009.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health/NCCAM, 6707 Democracy Blvd, Suite 401, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Ray Bramhall, PhD, Scientific Review Officer, National Center for Complementary and Alternative Medicine, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892. *bramhallr@mail.nih.gov.*

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel. Basic and Preclinical Research and Career Development Applications.

Date: October 19–20, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, Gaithersburg Washingtonian Center, 204 Boardwalk Place, Gaithersburg, MD 20878.

Contact Person: Peter Kozel, PhD, Scientific Review Officer, NCCAM,6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892–5475. 301–496–8004. *kozelp@mail.nih.gov.*

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel. Fellowship and Training Applications.

Date: October 28, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Peter Kozel, PhD, Scientific Review Officer, NCCAM, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892–5475. 301–496–8004. *kozelp@mail.nih.gov.*

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel. Clinical Science.

Date: October 29–30, 2009.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Laurie Friedman Donze, PhD, Scientific Review Officer, Office of Scientific Review, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892. 301–402–1030. *donzel@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: September 10, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–22311 Filed 9–15–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2001–F–0049] (formerly Docket No. 2001F–0047)

National Fisheries Institute; Filing of Food Additive Petition; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the

filing notice for a food additive petition filed by the National Fisheries Institute, to provide for the safe use of ionizing radiation for control of foodborne pathogens in crustaceans and processed crustaceans.

FOR FURTHER INFORMATION CONTACT: Lane A. Highbarger, Center for Food Safety and Applied Nutrition (HFS–255), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1204.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), a notice was published in the **Federal Register** of February 6, 2001 (66 FR 9086) announcing that a food additive petition (FAP 1M4727) had been filed by the National Fisheries Institute, 7918 Jones Branch Dr., McLean, VA 22102, proposing that the food additive regulations in part 179 *Irradiation in the Production, Processing and Handling of Food* (21 CFR part 179) be amended to provide for the safe use of ionizing radiation for control of foodborne pathogens in raw-, frozen-, cooked-, partially cooked-, shelled-, or dried crustaceans, or cooked- or ready-to-cook crustaceans processed with batter, breading, spices, or small amounts of other food ingredients.

Subsequent to the publication of the filing notice, the National Fisheries Institute amended the scope of their petition so as to exclude the use of breading or batter. FDA received a letter from the National Fisheries Institute, dated July 16, 2009, asking FDA to modify the scope of the petition so that breading and batter are not included.

Therefore, FDA is amending the filing notice of February 6, 2001, to state that the National Fisheries Institute is proposing that the food additive regulations in part 179 be amended to provide for the use of ionizing radiation for the control of foodborne pathogens in raw-, frozen-, cooked-, partially cooked-, shelled-, or dried-crustaceans or cooked- or ready-to-cook crustaceans processed with spices or small amounts of other food ingredients.

The agency has determined under 21 CFR 25.32(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: September 4, 2009.

Laura M. Tarantino,

Director, Office of Food Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. E9–22008 Filed 9–15–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–057]

Request for Information on 1-Bromopropane

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public comment period.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) intends to evaluate the scientific data on the brominated organic solvent, 1-Bromopropane (1–BP, CAS # 106–94–5, also known as n-propyl bromide), and develop appropriate communication documents, such as a Current Intelligence Bulletin, Criteria Document and/or other informational products, and establish a Recommended Exposure Limit (REL) for 1–BP. NIOSH is requesting information on the following: (1) published and unpublished reports and findings from *in vitro* and *in vivo* toxicity studies with 1–BP, (2) information on possible health effects observed in workers exposed to 1–BP, (3) information on workplaces and products in which 1–BP can be found, (4) description of work tasks and scenarios with a potential for exposure to 1–BP, (5) workplace exposure data, and (6) information on control measures (*e.g.,* engineering controls, work practices, personal protective equipment) that are being used in workplaces where potential exposures to 1–BP occur.

Public Comment Period: Comments must be received by December 14, 2009.

ADDRESSES: You may submit comments, identified by docket number NIOSH–057, by any of the following methods:

- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226.
- *Facsimile:* (513) 533–8285.
- *E-mail: nioshdocket@cdc.gov.*

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, 4676 Columbia Parkway, Cincinnati, Ohio 45226. A complete electronic docket containing all comments submitted will be available on the NIOSH Web page at *http://www.cdc.gov/niosh/docket,* and comments will be available in writing by request. NIOSH includes all comments received without change in the docket, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: G. Scott Dotson, PhD, NIOSH, Robert A Taft Laboratories, MS–C32, 4676 Columbia Parkway, Cincinnati, OH 45226, telephone (513) 533–8540.

SUPPLEMENTARY INFORMATION: 1–BP is a brominated organic solvent that has received increased global attention in recent years as a potential alternative for ozone depleting substances and other compounds with known adverse health effects, such as chlorofluorocarbons (CFC), hydrochlorofluorocarbons (HCFC), and methylene chloroform. 1–BP is used in multiple industrial processes including vapor and immersion degreasing operations, and as a solvent in industries using aerosol-applied adhesives; 1–BP is also proposed as a replacement solvent for perchloroethylene in the dry-cleaning sector. The National Toxicology Program (NTP) estimated that approximately 8.2 million pounds (lbs) of 1–BP were used in the United States (U.S.) in 2002. Estimates of the number of workers exposed to 1–BP are unavailable due to limited exposure data and its relatively recent introduction into domestic commerce.

The toxic nature of 1–BP is not fully understood. Recently published case reports describe possible adverse health effects, including neurotoxicity, following occupational exposures to 1–BP. The findings of animal toxicity studies in rats and mice indicate that 1–BP may be a reproductive and developmental toxicant, in addition a neurotoxicant. No occupational exposure limits for 1–BP have been established by NIOSH or the Occupational Safety and Health Administration (OSHA).

NIOSH seeks to obtain materials, including published and unpublished reports and research findings, to evaluate the possible health risks of occupational exposure to 1–BP. Examples of requested information include, but are not limited to, the following:

(1) Identification of industries or occupations in which exposures to 1–BP may occur.

(2) Trends in the production and use of 1–BP and 1–BP containing compounds.

(3) Description of work tasks and scenarios with a potential for exposure to 1–BP.

(4) Workplace exposure measurement data in various types of industries and jobs.

(5) Case reports or other health information demonstrating potential health effects in workers exposed to 1–BP.

(6) Research findings from *in vitro* and *in vivo* toxicity studies.

(7) Information on controls (*e.g.,* engineering controls, work practices, PPE) including costs and effectiveness of control measures being taken to minimize worker exposure to 1–BP.

(8) Educational materials for worker safety and training on the safe handling of 1–BP.

(9) Data pertaining to the feasibility of establishing a more protective REL for 1–BP including projected costs of control strategies considered.

(10) Names of substitute chemicals or processes being used in place of 1–BP and type of work tasks.

Dated: September 9, 2009.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. E9–22297 Filed 9–15–09; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–150]

Request for Information on Alternative Duty: Temporary Reassignment for Health Care Workers Who Work With Hazardous Drugs

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public comment period.

SUMMARY: NIOSH intends to publish a Current Intelligence Bulletin (CIB) on alternative duty and other forms of administrative controls for health care workers who work with hazardous drugs and are trying to conceive, are pregnant, and/or are breast feeding. Alternative duty involves transferring the worker to a similar position, but one in which they would not be required to handle hazardous drugs.

Exposure to certain hazardous drugs can affect reproduction and have adverse health effects on the developing fetus. Some hazardous drugs are known to be present in the breast milk of patients treated with them [Briggs *et al.* 2005]. NIOSH plans to develop recommendations in this CIB on alternative duty and administrative controls that will protect the workers and their offspring from the potential adverse reproductive effects of hazardous drugs.

NIOSH is requesting (1) comments and information relevant to the potential reproductive effects of hazardous drugs, (2) reports or other data that investigate possible adverse reproductive effects in workers exposed to hazardous drugs, and (3) information pertaining to alternative duty policies and administrative controls for workers, particularly couples trying to conceive and women who are pregnant and breastfeeding, and who are exposed to hazardous drugs in health care and other industries.

Public Comment Period: Comments must be received within 60 calendar days of publication in the **Federal Register**.

ADDRESSES: You may submit comments, identified by docket number NIOSH–150, by any of the following methods:

- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226.
- *Facsimile:* (513) 533–8285.
- *E-mail: nioshdocket@cdc.gov.*

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, Room 111, 4676 Columbia Parkway, Cincinnati, Ohio 45226. A complete electronic docket containing all comments submitted will be available on the NIOSH Web page at *http://www.cdc.gov/niosh/docket,* and comments will be available in writing by request. NIOSH includes all comments received without change in the docket, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Thomas Connor, PhD, NIOSH Robert A. Taft Laboratories, MS–C23, 4676 Columbia Parkway, Cincinnati, OH 45226, (513) 533–8399, e-mail *tmc6@cdc.gov.*

SUPPLEMENTARY INFORMATION: Drugs have a successful history in treating illnesses and injuries, and are responsible for many of our medical advances over the past century. However, virtually all drugs can have side effects associated with patient use [NIOSH 2004]. In addition to risks in patients, workers who handle them are at risk of suffering these effects. In addition, it is known that exposures to even very small concentrations of certain drugs may be hazardous for workers who handle them or work near them. Occupational exposures to hazardous drugs can lead to adverse reproductive events [NIOSH 2004, Dranitsaris et al. 2005].

The term ''*hazardous drugs''* was first used by the American Society of Hospital Pharmacists (ASHP) in 1990 and recent updates to their guidelines [ASHP 2006] and is currently used by NIOSH [2004] and the Occupational Safety and Health Administration (OSHA) [OSHA 1999]. Drugs are classified as hazardous if studies in animals or humans indicate that exposures to them have a potential for causing cancer, genotoxicity, developmental or reproductive toxicity, or harm to organs. Many drugs with a hazardous classification are used to treat illnesses such as cancer (antineoplastic drugs) or HIV infection (antiviral drugs). See Appendix A of the NIOSH Alert [NIOSH 2004] for examples of hazardous drugs and a full discussion of criteria used to define and classify them as hazardous.

The numbers and types of work environments containing antineoplastic drugs are expanding as these agents are used increasingly for nonmalignant rheumatologic and immunologic diseases [NIOSH 2004].

When exposed to hazardous drugs, health care workers face several health risks, including reproductive risks. A reproductive hazard affects the reproductive function of women or men or the ability of couples to have healthy children [HSE 2003]. Some chemicals, including many hazardous drugs, are considered reproductive hazards because studies in humans or animals show that exposure to them may affect fertility, pregnancy outcome, or cause birth defects.

Evidence shows that these drugs have caused adverse reproductive outcomes in health care workers. For example, nurses and pharmacists exposed to hazardous drugs at their worksite reported an increase in adverse reproductive events including spontaneous abortions, stillbirths, and congenital malformations when compared with unexposed health care workers [NIOSH 2004]. In addition, some drugs may negatively affect germ cell (sperm and egg) development [McInnes and Schilsky 1996].

In the United States, an estimated 8 million health care workers [BLS 2007] are potentially exposed to hazardous drugs at their worksites and may be vulnerable to reproductive risks. These workers include pharmacists and pharmacy technicians, nursing personnel, physicians, operating room

personnel, shipping and receiving personnel, waste handlers, maintenance, housekeeping, and laundry workers, and workers in veterinary practices who may come into contact with drugs or drug waste. Health care workers may be exposed to hazardous drugs when they compound, administer, or dispose of hazardous drugs, clean up spills, or touch surfaces that are contaminated with these drugs. These activities frequently create aerosols or generate dust, thus increasing the risk of exposure [NIOSH 2004]. Skin absorption and inhalation are the most likely routes of exposure for a health care worker. However, ingestion (from hand to mouth) or injection through a needle stick or sharps injury is possible.

When other types of controls, such as engineering controls and the use of personal protective equipment do not eliminate exposure to hazardous drugs, alternative duty or re-assignment away from the potential hazard is a type of administrative control that will help protect the workers and their offspring from the potential adverse reproductive effects of hazardous drugs [Saiki *et al.* 1994; ACOEM 1996; HSE 2003].

NIOSH seeks to obtain materials, including published and unpublished reports and research findings, to evaluate mechanisms for alternative duty and administrative controls and possible reproductive health risks of occupational exposure to hazardous drugs. Examples of requested information include, but are not limited to, the following:

(1) Trends in production and use of hazardous drugs over the past 10 years.

(2) Descriptions of procedures with a potential for exposure to hazardous drugs.

(3) Identification of industries or occupations in which exposures to hazardous drugs may occur.

(4) Case reports or other health data that investigate possible adverse reproductive health effects in workers exposed to hazardous drugs or related animal data (published or peer-reviewed data are preferred).

(5) Descriptions of work practices and engineering controls, including costs and effectiveness of control measures being taken, to reduce or prevent workplace exposure to these drugs.

(6) Educational materials for worker safety or training on the safe handling of hazardous drugs.

(7) Guidelines and/or recommendations for alternative

duty/temporary reassignment policies in the health care or other industries where exposures cannot be controlled by conventional methods (engineering controls *etc*).

(8) Data pertaining to the need for alternative duty to limit occupational exposures to hazardous drugs for couples who are tying to conceive, and women who are pregnant or breastfeeding.

(9) Data pertaining to the feasibility of these types of recommendations, including actual or projected costs of alternative duty/temporary reassignment strategies considered.

NIOSH will use this information to determine the need for developing recommendations for alternative duty/temporary reassignment for individuals who may be at reproductive risk and/or whose fetus or offspring may be at risk from exposure to these drugs.

References:

ACOEM (American College of Occupational and Environmental Medicine) [1996]. Committee report: ACOEM reproductive hazard management guidelines. JOEM 38(1):83–90.

ASHP [2006]. ASHP guidelines on handling hazardous drugs. Am J Health-Syst Pharm 63:1172–1193.

BLS [2007]. National Industry-Specific Occupational Employment and Wage Estimates from BLS, May 2007 [*http://www.bls.gov/oes/current/naics2_62.htm#(1)*].

Briggs GG, Freeman RK, and Yaffee SJ ed. Drugs in Pregnancy and Lactation, 7th ed. Lippincott, Williams and Wilkins. Philadelphia, 2005.

Dranitsaris G, Johnston M, Poirier S, Schueller T, Milliken D, Green E, Zanke B [2005]. Are health care providers who work with cancer drugs at an increased risk for toxic events? A systematic review and meta-analysis of the literature. J Oncol Pharm Practice 11:69–78.

HSE (Health and Safety Executive) [2003]. HSE Leaflet. New and expectant mothers at work; a guide to health professionals. Available at: *http://www.hse.gov.uk/pubns/indg373hp.pdf.*

McInnes S, Schilsky RL [1996]. Infertility following cancer chemotherapy. In: Chabner BA, Longo DL, eds. Cancer Chemotherapy and Biotherapy: Principles and Practice. 2nd ed. Philadelphia, PA: Lippincott-Raven, pp. 31–44.

NIOSH [2004]. NIOSH Alert: preventing occupational exposures to antineoplastic and other hazardous drugs in health care settings. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No. 2004–165.

OSHA [1999]. Categorization of drugs as hazardous. In: OSHA technical manual, TED 1–0.15A, Sec VI, Chapter II. Washington, DC: U.S. Department of Labor, Occupational Safety and Health Administration [*http://www.osha.gov/dts/osta/otm/otm_vi/otm_vi_2.html#2*].

Saiki CL, Gold EB, Schenker MB [1994]. Workplace policy on hazards to reproductive health. In: Gold EB, Laskey BL, Schenker MB, eds. Occupational Medicine: State of the Art Reviews. Vol 9. Philadelphia, PA: Hanley & Belfus, Inc, pp. 541–549.

Timpe EM, Motl SE [2004]. Environmental exposure of health care workers to category D and X medications. Am J Health-Syst Pharm 61:1556–1561.

Dated: September 9, 2009.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. E9–22275 Filed 9–15–09; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–186]

Request for Information on Glutaraldehyde

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public comment period.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) intends to evaluate the scientific data on glutaraldehyde, and develop appropriate communication documents, such as a Criteria Document, which will convey the potential health risks, recommended measures for safe handling, and establish an updated Recommended Exposure Limit (REL) for glutaraldehyde. The current NIOSH REL for glutaraldehyde is 0.2 ppm as a ceiling limit.

NIOSH is requesting information on the following: (1) Published and unpublished reports and findings from *in vitro* and *in vivo* toxicity studies with glutaraldehyde, (2) information on possible health effects observed in workers exposed to glutaraldehyde, (3)

information on workplaces and products in which glutaraldehyde can be found, (4) description of work tasks and scenarios with a potential for exposure to glutaraldehyde, (5) workplace exposure data, and (6) information on control measures (*e.g.*, engineering controls, work practices, personal protective equipment) that are being used in workplaces where potential exposures to glutaraldehyde occur.

Public Comment Period: Comments must be received by December 14, 2009.

ADDRESSES: You may submit comments, identified by docket number NIOSH–186, by any of the following methods:

- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226.
- *Facsimile:* (513) 533–8285.
- *E-mail: nioshdocket@cdc.gov*.

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, 4676 Columbia Parkway, Cincinnati, Ohio 45226. A complete electronic docket containing all comments submitted will be available on the NIOSH Web page at *http://www.cdc.gov/niosh/docket*, and comments will be available in writing by request. NIOSH includes all comments received without change in the docket, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: T.J. Lentz, NIOSH, Robert A. Taft Laboratories, MS–C32, 4676 Columbia Parkway, Cincinnati, OH 45226, telephone (513) 533–8260.

SUPPLEMENTARY INFORMATION:

Glutaraldehyde is also known as glutaral, glutardialdehyde, glutaric aldehyde, pentanedial, and 1,5-pentanedione. It is a colorless, oily liquid with a pungent odor. It is soluble in water, alcohol, and ether; and is often used in a diluted form ranging in strength from 1 to 50%. Glutaraldehyde is used as a cold sterilant to disinfect medical, surgical, and dental equipment. It has also been used as an antimicrobial in water treatment systems, in leather tanning agents, in embalming fluids, as a biocide in metalworking fluids, as a slimicide in paper manufacturing, as a preservative in cosmetics, as a disinfectant in animal housing, and as a tissue fixative.

Occupational exposure may occur by inhalation and dermal contact. Glutaraldehyde can act as an irritant of the eyes, nose, and throat; and can cause contact and/or allergic dermatitis, asthma, and difficulty breathing. The current REL for glutaraldehyde (0.2 ppm as a ceiling limit) was adopted on the basis of NIOSH comments to the Occupational Safety and Health Administration (OSHA) on the Air Contaminants Standard [54 FR 2329–2984 (1989)]. In 1991, NIOSH published a Current Intelligence Bulletin on aldehydes [DHHS (NIOSH) Publication No. 91–112] which classified acetaldehyde and malonaldehyde as occupational carcinogens and identified glutaraldehyde as a mutagen. Because the carcinogenic potential of related aldehydes had not been adequately evaluated, NIOSH recommended that careful consideration be given to reducing exposures to related aldehydes, including glutaraldehyde. OSHA has no permissible exposure limit (PEL) for glutaraldehyde. The American Conference of Governmental Hygienists (ACGIH) threshold limit value (TLV) for glutaraldehyde is 0.05 ppm as a ceiling limit. In 2001 NIOSH published a brochure about the occupational health effects of glutaraldehyde exposure in hospitals [DHHS (NIOSH) Publication no. 2001–115].

NIOSH seeks to obtain materials, including published and unpublished reports and research findings, to evaluate the possible health risks of occupational exposure to glutaraldehyde. Examples of requested information include, but are not limited to, the following:

(1) Identification of industries or occupations in which exposures to glutaraldehyde may occur.

(2) Trends in the production and use of glutaraldehyde.

(3) Description of work tasks and scenarios with a potential for exposure to glutaraldehyde.

(4) Workplace exposure measurement data in various types of industries and jobs.

(5) Case reports or other health information demonstrating potential health effects in workers exposed to glutaraldehyde.

(6) Research findings from *in vitro* and *in vivo* studies.

(7) Information on controls (*e.g.*, engineering controls, work practices, PPE) including costs and effectiveness of control measures being taken to minimize worker exposure to glutaraldehyde.

(8) Educational materials for worker safety and training on the safe handling of glutaraldehyde.

(9) Data pertaining to the feasibility of establishing a more protective REL for glutaraldehyde including projected costs of control strategies considered.

(10) Names of substitute chemicals or processes being used in place of glutaraldehyde and type of work tasks.

Dated: September 9, 2009.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. E9–22299 Filed 9–15–09; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1857–DR; Docket ID FEMA–2008–0018]

New York; Amendment No. 2 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 State of New York (FEMA–1857–DR), dated September 1, 2009, and related determinations.

DATES: *Effective Date:* September 10, 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 State of New York is hereby amended to include 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 September 1, 2009.

Chenango and Cortland Counties for Public 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. E9–22336 Filed 9–15–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–70]

Certified Eligibility for Adjustments for Damage or Neglect

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

One-time certification by mortgages to show that they have acquired hazard insurance acceptable to HUD at a reasonable rate and that the mortgagee may convey fire damaged properties without a surcharge to the claim.

DATES: *Comments Due Date:* October 16, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0349) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Certified Eligibility for Adjustments for Damage or Neglect.

OMB Approval Number: 2502–0349.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use:

One-time certification by mortgages to show that they have acquired hazard insurance acceptable to HUD at a reasonable rate and that the mortgagee may convey fire damaged properties without a surcharge to the claim.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	50	1		2		25

Total Estimated Burden Hours: 25.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 10, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–22345 Filed 9–15–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–68]

Previous Participation Certification

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The collection of this information aids in protecting HUD's Multifamily Housing Programs by comprehensively assessing industry participants. HUD will use this form to evaluate participants' performance and compliance with contracts, regulations, and directives in order to determine if their participation poses a significant risk to the Department. Respondents such as owners, managers, consultants, general contractors, and nursing home operators and administrators will be subject to review.

DATES: *Comments Due Date: October 16, 2009.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0118) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Previous Participation Certification.

OMB Approval Number: 2502–0118.

Form Numbers: HUD–2530.

Description of the Need for the Information and its Proposed Use: The collection of this information aids in protecting HUD's Multifamily Housing Programs by comprehensively assessing industry participants. HUD will use this form to evaluate participants' performance and compliance with contracts, regulations, and directives in order to determine if their participation poses a significant risk to the Department. Respondents such as owners, managers, consultants, general contractors, and nursing home operators and administrators will be subject to review.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	14,758	0.839		0.80		9,917

Total Estimated Burden Hours: 9,917.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 10, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–22351 Filed 9–15–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–69]

Multifamily Housing Mortgage and Housing Assistance Restructuring Program (Mark to Market)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Information to analyze and reduce rents to market and restructure mortgages on multifamily properties with FHA insurance and Section 8 project-based assistance whose Section 8 rents exceed market rents. The program reduces Section 8 rents to market and restructures debt as necessary.

DATES: *Comments Due Date: October 16, 2009.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0533) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Multifamily Housing Mortgage and Housing Assistance Restructuring Program (Mark to Market).

OMB Approval Number: 2502–0533.

Form Numbers: HUD–9624, 9625, and Operating Procedures Guide Forms 9624.4.1, 9624.4.2, 9624.4.3, 9624.4.4.7, 9624.4.10, 9624.6.5, 9624.7.6, 9624.7.9, 9624.7.16, 9624.7.28, 9624.7.30a, 9624.7.30b, 9624.7.32, 9624.7.34a, 9624.7.34b, 9624.7.35, 9624.7.36, 9624.7.38, 9624.7.65, 9624.7.66, 9624.7.67, 9624.7.71, 9624.9.10, 9624.9.11, 9624.9.12 *etc.*

Description of the Need for the Information and Its Proposed Use

Information to analyze and reduce rents to market and restructure mortgages on multifamily properties with FHA insurance and Section 8 project-based assistance whose Section 8 rents exceed market rents. The program reduces Section 8 rents to market and restructures debt as necessary.

Frequency of Submission: On occasion, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	2,062	1.32		0.985		2,772

Total Estimated Burden Hours: 2,772.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 10, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–22348 Filed 9–15–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5300–C–13]

Notice of Funding Availability for Fiscal Year (FY) 2009; Self-Help Homeownership Opportunity Program (SHOP); Clarifications and Technical Corrections

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of corrections and clarifications.

SUMMARY: On July 13, 2009, HUD posted its FY2009 SHOP NOFA on the Grants.gov website. The FY2009 SHOP NOFA makes $26.5 million in assistance to national and regional nonprofit organizations and consortia which facilitate and encourage innovative homeownership opportunities for low-income individuals and families. Through this document, HUD announces that it has posted a notice that corrects and clarifies a number of provisions in the FY2009 SHOP NOFA posted on July 13, 2009. Specifically, the notice: (1) Clarifies the requirement for applicants to reduce energy costs, (2) clarifies the requirement for font size; (3) clarifies the requirement that the page limit is four pages for rating factor 2, and (4) corrects a posting error that resulted in the Tables 1 and 2 being misprinted in the posted document. The notice making these corrections is available on Grants.gov Web site *http://apply07.grants.gov/apply/forms_apps_idx.html*. A link to Grants.gov is also available on the HUD Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm*.

To permit applicants time to prepare applications that take into account these changes, HUD is extending the application submission deadline for the FY2009 SHOP NOFA until September 28, 2009.

FOR FURTHER INFORMATION CONTACT: For additional information concerning the Self-Help Homeownership Opportunity Program (SHOP), contact Lou Thompson, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7168, Washington DC 20410–7000; telephone 202–402–4594 (this is not a toll-free number). Persons with speech or hearing impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service during working hours at 800–877–8339.

Dated: September 10, 2009.

Mercedes Márquez,

Assistant Secretary for Community Planning and Development.

[FR Doc. E9–22349 Filed 9–15–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5324–N–02]

Notice of Regulatory Waiver Requests Granted for the Second Quarter of Calendar Year 2009

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on April 1, 2009 and ending on June 30, 2009.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10282, Washington, DC 20410–0500, telephone 202–708–1793 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the second quarter of calendar year 2009.

SUPPLEMENTARY INFORMATION: Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register.** These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). In accordance with those procedures and with the requirements of section 106 of the HUD Reform Act, waivers of regulations are granted by the Assistant Secretary with jurisdiction over the regulations for which a waiver was requested. In those cases in which a General Deputy Assistant Secretary granted the waiver, the General Deputy Assistant Secretary was serving in the absence of the Assistant Secretary in accordance with the office's Order of Succession.

This notice covers waivers of regulations granted by HUD from April 1, 2009 through June 30, 2009. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community

Planning and Development, the Office of Fair Housing and Equal Opportunity, the Office of Housing, and the Office of Public and Indian Housing, *etc.*). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report (the second quarter of calendar year 2009) before the next report is published (the third quarter of calendar year 2009), HUD will include any additional waivers granted for the second quarter in the next report.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: September 8, 2009.

Helen R. Kanovsky,

General Counsel.

APPENDIX

Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development April 1, 2009 Through June 30, 2009

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.
II. Regulatory waivers granted by the Office of Housing.
III. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 58.22(a).

Project/Activity: The Anacortes Family Shelter received Community Development Block Grant (CDBG) funds to construct a shelter. The shelter is an eight-unit family structure and related infrastructure, including sidewalks, curb/gutter and improvements to storm and sanitary sewer. The Anacortes Family Shelter, a CDBG subrecipient, used nonfederal fund to begin construction on the site in May of 2008, prior to the City completing the environmental review or submitted the Request for Release of Funds.

Nature of Requirement: The regulation requires that an environmental review be performed and a Request for Release of Funds be completed and certified prior to the commitment of non-HUD funds to a project using HUD funds.

Granted By: Nelson R. Bregón, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: April 20, 2009.

Reason Waived: The waiver was granted based on the following findings: the above project would further the objective of providing community development; no HUD funds were committed; and based on the environmental assessment, granting a waiver would not result in any unmitigated, adverse environmental impact.

Contact: Danielle Schopp, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7250, Washington, DC 20410–7000, telephone (202) 402–4442.

• *Regulation:* 24 CFR 58.22(a).

Project/Activity: The Marklund Children's Home received an Economic Development Initiative- Special Purpose Grant (EDI) to demolish and reconstruct an existing facility. After receiving the EDI, but without DuPage County submitting a Request for Release of Fund or certification for HUD approval or completing an environmental review, Marklund Children's Home used non-HUD funds to demolish the existing building and start reconstruction of the new facility.

Nature of Requirement: The regulation requires that an environmental review be performed and a Request for Release of Funds be completed and certified prior to the commitment of non-HUD funds to a project using HUD funds.

Granted By: Nelson R. Bregón, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: May 15, 2009.

Reason Waived: The waiver was granted based on the following findings: the above project would further the objective of providing housing for low-income individuals with disabilities; the errors made in the environmental process for the commitment of non-HUD funds were made in good faith and Marklund did not willfully violate the applicable regulations; no HUD funds were committed and based on the environmental assessment and the HUD field inspection, granting a waiver would not result in any unmitigated, adverse environmental impact.

Contact: Danielle Schopp, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7250, Washington, DC 20410–7000, telephone (202) 402–4442.

• *Regulation:* 24 CFR 92.203(a)(1) and (2); 24 CFR 92.209(c), (h), (i), (j), (k); 24 CFR 92.222(b); and 24 CFR 92.251.

Project/Activity: City of Galveston, Texas.

Nature of Requirement: Section 290 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (NAHA), as amended, authorizes HUD to suspend certain HOME statutory requirements for jurisdictions located in areas that the President declares a disaster under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. In addition to the waiver of certain statutory requirements pursuant to the authority of section 290 of NAHA, HUD waived the regulations, referenced above in 24 CFR part 92, which part contains the HOME Investment Partnerships Program regulations. The identified regulatory sections pertain to income determinations, tenant-based rental assistance requirements, matching contribution requirements, and property standards, and the regulatory provisions waived were those that were identified as impeding recovery from the disaster.

Granted By: Nelson R. Bregón, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: May 14, 2009.

Reason Waived: Hurricane Ike caused significant wind and flood damage to homes and businesses in Galveston. Many households were displaced because of the storm. The waiver of the HOME Investment Partnerships Program regulations (in addition to the waiver of the statutory requirements authorized by section 290 of NAHA) will facilitate the City of Galveston's recovery efforts following damage resulting from Hurricane Ike.

• *Regulation:* 24 CFR 92.252(e).

Project/Activity: The Louisiana Housing Finance Agency (LHFA), which administers the HOME Program in the state of Louisiana, requested a waiver of the requirement that a HOME-assisted project meet the HOME affordability requirements for the applicable affordability period. LHFA provided HOME assistance to three rental properties located within the City of New Orleans that were heavily damaged by Hurricanes Katrina and Rita and, consequently, were rendered uninhabitable during their affordability periods. Because insurance proceeds and Low Income Housing Tax Credit (LIHTC) awards to the properties were insufficient to rehabilitate the properties to new stricter construction standards, the City of New Orleans sought to provide HOME funds to fill the funding gap. The HOME regulations prohibit the investment of additional HOME funds in a HOME-assisted project during the affordability period.

Nature of Requirement: The HOME final rule at 24 CFR 92.252 (e) requires that HOME-assisted units meet the affordability requirements for not less the applicable period specified in the regulation. The affordability requirements apply without regard to the term of any loan, mortgage or

transfer of ownership. They are imposed by deed restrictions or covenants running with the land.

Granted By: Nelson R. Bregón, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: May 11, 2009.

Reasons Waived: Due to the extent of the damage caused by the hurricanes, HUD determined that the useful life of the three projects as it related to the original investment of HOME funds by LHFA had ended. Granting this waiver to terminate the existing HOME affordability periods for the three projects enabled the City of New Orleans to provide HOME funds as gap financing to complete the rehabilitation of these projects. The City agreed to treat these projects as new HOME projects under the City's HOME program, and establish new affordability periods.

Contact: Virginia Sardone, Deputy Director, Office of Affordable Housing Programs, Department of Housing and Urban Development, 451 7th Street, SW., Room 7164, Washington, DC 20410, telephone 202–708–2470.

II. Regulatory Waivers Granted by the Office of Housing—Federal Housing Administration (FHA)

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 203.37a(b)(2).

Project/Activity: The waiver permits FHA financing on the sale of properties acquired by mortgagees through foreclosure within 90 days of acquisition by the mortgagee, their subsidiaries or vendors. In effect, it adds an additional exemption to those already existing in the regulation.

Nature of Requirement: The regulation provides that the mortgage for a property will not be insured by FHA if the contract of sale is executed within 90 days of the acquisition of the property by the seller.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 11, 2009.

Reason Waived: Since the promulgation of the regulation, the volume of foreclosures has increased dramatically, especially in the past year. In examining the regulation FHA found that a temporary relaxation of its eligible property requirements would help address the specific case of the mortgage crisis. The current exemptions from the 90-day restriction were found to be insufficient to accommodate sales of properties acquired as the result of foreclosure by mortgage lenders other than those currently exempted, and do not accommodate exempt institutions that use subsidiaries and vendors to sell their inventory of foreclosed properties. The additional exemption was granted for sales of real estate owned by mortgagees to facilitate those sales and reduce deterioration in properties acquired through foreclosure that may otherwise remain vacant for up to 90 days because of FHA's existing policy.

Contact: Susan Cooper, Credit Policy Specialist, Office of Home Mortgage Insurance Division, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–2121.

• *Regulation:* 24 CFR 203.43f(e)(ii).

Project/Activity: Waiver applicable to a single family detached property improved by a manufactured home located at 4259 Robinson Neck Road, Taylor's Island, Maryland 21669.

Nature of Requirement: The existing regulation requires that a manufactured home that has been permanently erected on a site for more than one year prior to the date of application for mortgage insurance must have the finished grade level beneath the manufactured home at or above the 100 year return frequency flood elevation.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 17, 2009. The waiver is to be in effect for six months from date of waiver or until the purchase of the home, financed by an FHA-insured mortgage, is completed.

Reason Waived: The Department has published a proposed rule (FHA-Insurance for Manufactured Housing, FR–5075–P–01) that would, among other things, amend the flood hazard requirements for manufactured housing and align them with that of stick built homes as provided in the Minimum Property Standards at 24 CFR 200.926d (c)(4)(i). Specifically, upon the publication of this proposed rule as a final rule, a manufactured home that is within a FEMA designated SFHA would be eligible for FHA-insured financing if the lowest floor of the home (with no basement) is at or above the FEMA-designated base flood elevation. The subject of this waiver would be eligible for FHA-insured financing upon publication of the final rule. The regulation at 24 CFR 203.43f (d)(ii) has been waived in the past. Specifically, this regulation was waived by the Department in 2006 (and extended in 2007 and 2008) to permit manufactured housing in the State of Louisiana and located within a FEMA designated SFHA that was otherwise eligible for FHA-insured financing to qualify for such. The waiver was granted because the Department believed, as part of the reconstruction efforts following Hurricane Katrina, it was important to ensure that regulatory barriers did not impede the availability of an affordable housing type (such as manufactured housing).

Contact: Peter Gillispie, Home Valuation Policy Division, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th St., SW., Washington, DC 20410–8000, telephone (202) 708–2121.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Lambreth Apartments, Pittsburgh, PA (Alleghany County), Project Number 033–44803.

Nature of Requirement: Section 219.220(b) requires the repayment of flexible subsidy operating assistance loans plus interest upon prepayment/refinance of the Section 236 mortgage loan.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: May 21, 2009.

Reason Waived: The waiver is necessary to allow for the recapitalization of the project and the preservation of Lambreth Apartments as an affordable housing resource.

Contact: Gloria Burton, Housing Project Manager, Office of Multifamily Housing Management, Department of Housing and Urban Development, 451 7th Street, SW., Room 9224 Washington, DC 20410, telephone (202) 402–2611.

• *Regulation:* 24 CFR 232.3.

Project/Activity: Existing memory care facility located in Vacaville, CA.

Nature of Requirement: Section 232.3 states that not less than one full bathroom must be provided for every four residents of a board and care home or assisted living facility, and bathroom access from any bedroom or sleeping area must not pass through a public corridor or area.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: May 26, 2009.

Reason Waived: The facility is established for 100% dementia care. Because of the specific clientele served by the facility, toileting and showering present special circumstances that do not exist in a traditional assisted living community. The facility is constructed to resemble private homes clustered together with each home having a maximum of fifteen residents. Each home includes two full bathrooms including shower and one commode and sink for every five residents. This exceeds the California state requirement of one commode and sink for every six residents.

Contact: Roger E. Miller, Director, Office of Insured Health Care Facilities Office of Insured Health Care Facilities, Office of Housing, Department of Housing and Urban Development 451 7th Street, SW., Room 9224, Washington, DC 20410–8000, telephone (202) 708–0599.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Old Towne Square, Lawton, OK, Project Number: 117–EE040/OK56–S071–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 8, 2009.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Berkshire County ARC–Lanesboro, Lanesboro, MA, Project Number: 023–HD224/MA06–Q051–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the

approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 16, 2009.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Saint Clare Court, Redding, CA, Project Number: 136–HD020/CA30–Q061–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 22, 2009.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Victory Cathedral VOA Elderly Housing, Hartford, CT, Project Number: 017–EE098/CT26–S061–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 22, 2009.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Red Lake Supportive Housing, Red Lake, MN, Project Number: 092–HD069/MN46–Q061–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 30, 2009.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Divine Providence II, Eunice, LA, Project Number: 064–HD116/LA48–Q071–008.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 13, 2009.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Locust Grove Group Home, Locust Grove, VA, Project Number: 051–HD140/VA36–Q071–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 13, 2009.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Mendenhall Woods, Juneau, AK, Project Number: 176–HD029/AK06–Q071–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 13, 2009.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: TBD, Decatur, AL, Project Number: 062–HD066/LA09–Q071–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 27, 2009.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Leonard Court Apartments, Clearfield, PA, Project Number: 033–EE133/PA28–S071–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 28, 2009.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Mrs. Lou's Palace, Chataignier, LA, Project Number: 064–HD117/LA48–Q071–009.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 29, 2009.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant

Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Gamwell Residence, Pittsfield, MA, Project Number: 023–HD226/MA06–Q061–002.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.
Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: May 29, 2009.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Riverside Manor, Pocahontas, AR, Project Number: 082–EE178/AR37–S071–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.
Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: June 4, 2009.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Village Gardens Senior Housing, Norfolk, VA, Project Number: 051–EE124/VA36–S071–009.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.
Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: June 11, 2009.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: St. Ann Senior Apartments, Lansford, PA, Project Number: 034–EE149/PA26–S061–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.
Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: June 24, 2009.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: St. Joseph Residence at Mont Marie, Holyoke, MA, Project Number: 023–EE211/MA06–S071–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.
Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: June 24, 2009.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).
Project/Activity: Piney Ridge Apartments II, Danville, VA, Project Number: 051–HD136/VA36–Q061–001.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.
Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: June 24, 2009.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 24 CFR 891.165.
Project/Activity: Kaaterskill Manor, Catskill, NY, Project Number: 014–EE252/NY06–S051–008.
Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: May 4, 2009.
Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. Additional time was needed for the Sponsor/Owner to obtain additional funds, for the firm commitment to be issued, and for the initial closing of the project.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.130(b).
Project/Activity: Country Gardens, Inc., Moore, SC, Project Number: 054–HD116/SC16–Q071–001.
Nature of Requirement: Section 891.130(b) prohibits an identity of interest between the sponsor or owner and any development team member or between development team members until two years after final closing.
Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: April 10, 2009.
Reason Waived: The sponsor/owner and land-seller are non-profit entities, have non-compensated officers, and the intention is to recover the optioned value of the property to reimburse the land-seller, and the Spartanburg Housing Authority.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.
Project/Activity: Kent Gardens, San Lorenzo, CA, Project Number: 121–EE172/CA39–S041–003.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: April 8, 2009.
Reason Waived: Additional time was needed for the project to be initially closed.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant

Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Johnnie B. Moore Towers II, Atlanta, GA, Project Number: 061–EE160/GA06–S061–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 16, 2009.

Reason Waived: The sponsor/owner needed additional time for approval of re-platting of the site required by the City of Atlanta, and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Red Lake Supportive Housing, Red Lake, MN, Project Number: 092–HD069/MN46–Q061–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 21, 2009.

Reason Waived: The sponsor/owner needed additional time to resubmit the firm commitment application exhibits and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Denton Affordable Housing Corporation, Denton, TX, Project Number: 113–HD036/TX16–Q051–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 22, 2009.

Reason Waived: Additional time was needed for the firm commitment to be processed, and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Nassau AHRC Development 2005, North Baldwin, NY, Project Number: 012–HD129/NY36–Q051–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 24, 2009.

Reason Waived: Additional time is needed for the firm commitment to be reprocessed, and for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Emerson Manor II, Longmeadow, MA, Project Number: 023–EE170/MA06–S031–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 11, 2009.

Reason Waived: Additional time was needed for the state agency to finalize the commitment of funds and for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Center of Hope (40 West Street), Southbridge, MA, Project Number: 023–HD221/MA06–Q051–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 13, 2009.

Reason Waived: Additional time was needed for the Sponsor/Owner to finalize the closing documents and for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Independence Manor III, (St. Francis of Assisi), Braintree, MA, Project Number: 023–EE169/MA06–S031–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 20, 2009.

Reason Waived: Additional time was needed for the sponsor/owner to resolve legal issues with Mass Housing and for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165

Project/Activity: Pembroke Housing for the Elderly, Pembroke, NH, Project Number: 024–EE102/NH36–S061–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 27, 2009.

Reason Waived: Additional time is needed for the firm commitment to be issued and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: North Highlands VOA Living Center, North Highlands, CA, Project Number: 136–HD019/CA30–Q061–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 29, 2009.

Reason Waived: The sponsor/owner needed additional time to revise the firm commitment application, secure additional funds, and for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban

Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Saint Claire Court, Redding, CA, Project Number: 136–HD020/CA30–Q061–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 29, 2009.

Reason Waived: Additional time was needed for the sponsor/owner to obtain amendment funds, and for the project to reach an initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Country Gardens, Inc., Moore, SC, Project Number: 054–HD116/SC16–Q071–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 29, 2009.

Reason Waived: The sponsor/owner needed additional time to submit the firm commitment application and the closing documents, and for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Octavia Court, San Francisco, CA, Project Number: 121–HD087/CA39–Q061–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 29, 2009.

Reason Waived: Additional time is needed for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Estabrook Senior Housing, San Leandro, CA, Project Number: 121–EE194/CA39–S071–007.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 29, 2009.

Reason Waived: Additional time is needed for the issuance of a firm commitment for initial/final closing to occur.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Folsom Oaks, Folsom, CA, Project Number: 136–HD017/CA30–Q041–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 8, 2009.

Reason Waived: The sponsor/owner needed additional time to secure secondary financing, for the firm commitment to be issued, and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Maranatha Senior Housing, Palantine Bridge, NY, Project Number: 014–EE264/NY06–S061–009.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 10, 2009.

Reason Waived: Additional time is needed for the firm commitment to be issued and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Johnnie B. Moore Towers II, Atlanta, GA, Project Number: 061–EE160/GA06–S061–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 25, 2009.

Reason Waived: More time is needed for the City of Atlanta to approve the re-platting of the site and for the project to reach an initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.310(b)(3).

Project/Activity: Welcome House Apartments, Lakewood, OH, Project Number: 042–HD149/OH12–Q071–004.

Nature of Requirement: Section 891.310(b)(3) provides that in projects for developmentally disabled or physically disabled persons, all dwelling units in an independent living facility (or all bedrooms and bathrooms in a group home) must be designed to be accessible or adaptable for persons with physical disabilities.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 25, 2009.

Reason Waived: The sponsor/owner will make three of the units fully accessible and should more residents require fully accessible units, accommodations will be made to ensure they are housed within the sponsor's other housing projects.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.665(a)(3).

Project/Activity: Shawnee Supportive Housing, Kansas City, MO, Project Number: 084–HD054/KS16–Q061–001.

Project/Activity: Kansas City Supportive Housing, Kansas City, MO, Project Number: 084–HD059/KS16–Q071–001.

Nature of Requirement: Section 891.665(a)(3) provides that independent living complexes for handicapped families in the developmental disability or physically handicapped occupancy categories may not have more than 24 units nor more than 24 households on one site.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 11, 2009.

Reason Waived: The project is feasible from a programmatic and market standpoint, it can be successfully integrated into the community and the state agency has approved the supportive service plan to combine the projects.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Platteville Housing Authority, (WI208), Platteville, WI.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 1, 2009.

Reason Waived: The HA, a Section 8 only entity, requested a waiver of its audited financial data reporting requirements for fiscal year end (FYE) September 30, 2008. The HA waiver request contends that the HA is a component unit of the City of Platteville (Primary Government) and the City's FYE is December 31, 2008, while the HA's FYE is September 30, 2008, causing a timing difference between the audited due dates. The waiver was granted requiring the audited financial submission due date of June 30, 2009 since the financial audit is conducted at the primary government level and will not be available by the HA's due date. The audited data is to be submitted as soon as it is completed by the City of Platteville's Independent Public Accountant but no later than October 15, 2009.

Contact: Myra E. Newbill, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8988.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Crawford County Housing Authority, (KS161), Girard, KS.

Nature of Requirement: The regulation establishes certain reporting compliance dates.

The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the Housing Authority's (HA) fiscal year end (FYE) in accordance with the Single Audit Act, and OMB Circular A–133.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 1, 2009.

Reason Waived: The HA, a Section 8 only entity, requested a waiver of its audited financial submission due date of December 31, 2008, for the fiscal year ending (FYE) March 31, 2008. The HA's waiver request contends that the FYE of the Housing Choice Voucher program is December 31, 2008, while the FYE of Southeast Kansas Community Action Program, Inc. (SEK–CAP) is November 30, 2008, causing a timing difference between the audited dates. In addition, the SEK–CAP FYE November 30, 2008, single audit is due to the Federal Audit Clearinghouse on August 31, 2009. The waiver was granted because the circumstances that prevented the HA from submitting the audited financial information by the due date were beyond the control of the HA. The HA was advised to submit its audited financial data for FYE March 31, 2008, no later than September 15, 2009.

Contact: Myra E. Newbill, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Massachusetts Department of Housing and Community Development, (MA901), Boston, MA.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the Housing Authority's (HA) fiscal year end (FYE) in accordance with the Single Audit Act, and OMB Circular A–133.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 20, 2009.

Reason Waived: The HA, a Section 8 only entity, is requesting additional sixty days to submit fiscal year ending (FYE) June 30, 2008 audit financial information. The HA's waiver request contends that the Commonwealth of Massachusetts (Primary Government) audit has not been finalized. The HA's auditors place substantial reliance upon the audit of the Commonwealth of Massachusetts and, therefore, will need additional time for their auditors to perform the necessary procedures related to the Primary Government's audit. The waiver was granted because housing authorities are unable to submit their audited financial information to the Department because the Financial Assessment Subsystem electronic submission template is being updated and modified to be compliant with asset management. The HA is to submit its audited financial date for FYE June 30, 2008, no later than June 30, 2009.

Contact: Myra E. Newbill, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Rio Arriba County Housing Authority, (NM039), Espanola, NM.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE) in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 23, 2009.

Reason Waived: The HA has requested a waiver of its audited financial submissions for fiscal years ending (FYE) June 30, 2006 and June 30, 2007. The HA contends that their auditor entered all the information into the Financial Assessment Subsystem. The waiver was approved for FYE 2007 and denied for FYE 2006. The FY2007 audited financial submission was initially submitted timely; However, as a result of a misunderstanding between the HA and the auditor, the Corrected audited financial information was not electronically submitted to the Department. The waiver was denied for FYE 2006 because the audited financial submission was due to the Department on March 31, 2007, however the HA did not contract with the auditor until June 19, 2007. In addition, the audited financial submission for FYE June 30, 2006, was initially submitted to the Department on April 15, 2008, which was well past the due date of March 31, 2007.

Contact: Myra E. Newbill, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Housing Authority of the City of Pasco & Franklin, (WA021), Pasco, WA.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE) in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 29, 2009.

Reason Waived: The HA requested an additional ninety days to submit their fiscal year end (FYE) June 30, 2008, audited financial information. The HA contends that the state auditor had difficulty in delivering his opinion on compliance with the special reporting requirements for the major federal programs, as a result of the Financial Assessment Subsystem system modifications for asset management. Accordingly, the waiver was granted because additional time was needed for the HA's auditor to perform the necessary audit procedures. The HA is to submit its audited financial data for FYE June 30, 2008, no later than July 17, 2009.

Contact: Myra E. Newbill, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Housing Authority of the City of Goldsboro, (NC015), Goldsboro, NC.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE) in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 4, 2009.

Reason Waived: The HA requested additional time to submit its fiscal year end (FYE) June 30, 2008, audit financial submission. The HA contends that the auditor would not be able to complete the audit by the due date as a result of the Financial Assessment Subsystem modifications for asset management and other unforeseen circumstances. The waiver was granted and the HA is to submit its audited financial data for FYE June 30, 2008, no later than July 17, 2009.

Contact: Myra E. Newbill, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Housing Authority of the City of Kennewick, (WA012), Kennewick, WA.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE) in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 8, 2009.

Reason Waived: The HA requested an additional ninety days to submit their fiscal year end (FYE) June 30, 2008, audit financial information. The HA contends that the Financial Assessment Subsystem (FASS) was being modified and the tools used to enter the required information was not available for use until January 2009; therefore, the HA's auditor was unable to enter the required audit financial information. In addition, the HA requested and received a Single Audit extension until June 30, 2009, from their cognizant Federal audit agency, the Department of Housing and Urban Development's Regional Office of Inspector General. The waiver was granted since the HA was not able to submit their audited financial information to the Department as a result of the FASS audited electronic submission template being updated and modified to be compliant with asset management.

Contact: Myra E. Newbill, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Arizona Department of Housing (ADOH), Phoenix, AZ.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 21, 2009.

Reason Waived: ADOH requested a waiver for additional time to submit their fiscal year audited data due to time restrictions imposed by the State's Office of the Auditor General. The HA is to submit its financial data no later than July 17, 2009.

Contact: Myra E. Newbill, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Housing Authority (HA) of Hickman, KY (KY037).

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 21, 2009.

Reason Waived: The HA requested a waiver for additional time to submit corrections to their fiscal year audited data due to an extended power outage. The HA is to submit an invalidation request to correct a Late Presumptive Failure score and include a date of resubmission.

Contact: Myra E. Newbill, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Housing Authority (HA) of the City of New Haven, CT (CT004)

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 21, 2009.

Reason Waived: The HA requested a waiver for additional time to submit their audited financial information due to no response to a first auditor bid and a second with only one response. Once a audit engagement contract was executed, a new computer system added further delays. The HA is to submit its financial no later than September 30, 2009.

Contact: Myra E. Newbill, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Kitsap County Consolidated Housing Authority, (WA036), Platteville, WI.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 13, 2009.

Reason Waived: The HA requested an additional ninety days to submit their fiscal year end (FYE) June 30, 2008, audit financial information. The HA contends that the state audit was scheduled to begin later than customary and in addition, the lead auditor had a personal emergency that resulted in additional delays. The HA also contends that the state auditor was having difficulty in delivering his opinion on compliance with the special reporting requirements for the major Federal programs as a result of their unaudited financial information being submitted but not yet approved. Accordingly, additional time was needed for the HA's auditor to perform the necessary audit procedures. The waiver was granted and the additional time will permit the HA to enter its financial information into the financial data schedule format and allow the auditor to perform the necessary audit procedures. The HA is to submit its audited financial data for FYE June 30, 2008, no later than July 17, 2009.

Contact: Myra E. Newbill, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Phillipsburg Housing Authority (HA), NJ.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 13, 2009.

Reason Waived: The HA requested a waiver for additional time to submit both

their unaudited and audited financial submissions for an FYE of June 30, 2008 due to personnel changes. The HA is to submit both no later than July 17, 2009.

Contact: Myra E. Newbill, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Monmouth County Housing Authority, (NJ095), Freehold, NJ.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE) in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 11, 2009.

Reason Waived: The Housing Authority (HA), a Section 8 only entity, is requesting a waiver of the audited financial data reporting requirements for fiscal year end (FYE) June 30, 2008. The HA's waiver request contends that the HA is a component unit of the County of Monmouth (Primary Government) and the County's FYE is December 31, 2008, while the HA's (Monmouth County Housing Authority) FYE is June 30, 2008, causing a timing difference between the audited due dates. The waiver was granted since the financial audit is conducted at the primary government level and will not be available by the HA's due date. The audited data will be submitted as soon as it is completed by the County of Monmouth's Independent Public Accountant but no later than October 15, 2009. The Department recommended that the HA change its FYE to coincide with the FYE of the Reporting Entity (County of Monmouth). The HA was advised to contact their field office representative to begin the FYE change process. The comments link within the Financial Assessment Subsystem should be used to clarify that the financial information submitted relates to the December 31, 2008, FYE of the County of Monmouth.

Contact: Myra E. Newbill, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• *Regulation:* 24 CFR 902.20.

Project/Activity: New Albany Housing Authority (IN012), New Albany, IN

Nature of Requirement: The objective of this regulation is to determine whether a housing authority (HA) is meeting the standard of decent, safe, sanitary, and in good repair. The Real Estate Assessment Center (REAC) provides for an independent physical inspection of a HA's property of properties that includes a statistically valid sample of the units.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 14, 2009.

Reason Waived: The housing authority (HA) requested a waiver from physical inspections under the Physical Assessment Subsystem (PASS) for fiscal years ending (FYE) March 31, 2009. The HA had severe damage during Hurricane Ike in September 2008. On January 29, 2009, the HA was affected by a severe ice storm that hindered repair efforts and caused additional damage. The HA was also affected by a wind storm on February 11, 2009, that resulted in further damage and delays in competing repairs. The waiver was granted because the circumstances surrounding the waiver request are beyond the HA's control.

Contact: Myra E. Newbill, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–7000, telephone (202) 475–8988.

• *Regulation:* 24 CFR 902.20.

Project/Activity: Housing Authority of the City of Donaldsonville (LA043), Donaldsonville, LA.

Nature of Requirement: The objective of this regulation is to determine whether a housing authority (HA) is meeting the standard of decent, safe, sanitary, and in good repair. The Real Estate Assessment Center (REAC) provides for an independent physical inspection of a HA's property of properties that includes a statistically valid sample of the units.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 13, 2009.

Reason Waived: The housing authority (HA) requested a waiver from physical inspections under the Physical Assessment Subsystem (PASS) for fiscal year ending (FYE) December 31, 2008. The HA requested a waiver from physical inspections due to physical damage to ninety percent of their units incurred during Hurricane Gustav in September 2008. The waiver was granted because the circumstances surrounding the waiver request are beyond the HA's control.

Contact: Myra E. Newbill, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• *Regulation:* 24 CFR 902.20.

Project/Activity: Housing Authority of the City of Harlingen (TX065), Harlingen, TX.

Nature of Requirement: The objective of this regulation is to determine whether a housing authority (HA) is meeting the standard of decent, safe, sanitary, and in good repair. The Real Estate Assessment Center (REAC) provides for an independent physical inspection of a HA's property of properties that includes a statistically valid sample of the units.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 13, 2009.

Reason Waived: The housing authority (HA) requested a waiver from physical inspections due to significant roof and siding damages to their development sites incurred during Hurricane Dolly in July 2008. In addition, the HA is having difficulties contracting for repairs. The waiver was granted because the circumstances surrounding the waiver request are beyond the HA's control.

Contact: Myra E. Newbill, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• *Regulation:* 24 CFR 902.20.

Project/Activity: Deland Housing Authority (FL072), DeLand, FL.

Nature of Requirement: The objective of this regulation is to determine whether a housing authority (HA) is meeting the standard of decent, safe, sanitary, and in good repair. The Real Estate Assessment Center (REAC) provides for an independent physical inspection of a HA's property of properties that includes a statistically valid sample of the units.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 24, 2009.

Reason Waived: The housing authority (HA) requested a waiver from physical inspections under the Physical Assessment Subsystem (PASS) for fiscal years ending (FYE) June 30, 2007, through FYE June 30, 2011. The HA requested a waiver due to the fact that it has no public housing units in place. All the public housing units were demolished and the site is currently vacant. The HA received a HOPE VI relocation and demolition grant. However, the HA is not inactive because they are in the planning phase of rebuilding mixed finance units. The waiver was granted because the physical inspections for FY2007 and FY2008 have ended and no successful inspections were able to be completed. The waiver would also be extended to no overall PHAS assessment for FY2008 and FY2009 because there are no public housing units in place. The HA's request from physical inspections for FY2010 and for FY2011 will be re-evaluated when the FY2010 inspections are due.

Contact: Myra E. Newbill, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• *Regulation:* 24 CFR 941.306(b) and (c).

Project/Activity: Boston Housing Authority (BHA), Washington Beech Project, HOPE VI Grant MA06URD002I107.

Nature of Requirement: Subparts (b) and (c) of the regulation require that the construction of units are within the Total Development Costs (TDC) and Housing Construction Costs (HCC).

Granted by: Paula Blunt, former General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 4, 2009.

Reason Waived: During BHA's search for additional funding, Congress enacted and the President signed the American Reinvestment

and Recovery Act (Recovery Act) on February 17, 2009. BHA received a commitment of Recovery Act Capital Funds of $33 million from HUD. BHA is committing $10 million of these funds to fill the gap left from a reduction in funding from the city and the reduction of tax credit equity. This change in source of funds caused the TDC/HCC limit to be exceeded, since now HOPE VI and Recovery Act funds will be used. The approval of the waiver of the TDC and HCC limit permits BHA to fully fund Phases IA and IB that contain a total of 53 public housing rental units and 47 affordable rental units and to proceed with construction and completion of this phase as planned. Also, the waiver enables BHA to use the balance of its HOPE VI grant for the other planned phases as originally budgeted and approved in the Washington Beech Revitalization Plan.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20140–5000, Room 4130, telephone (202) 402–4181.

• *Regulation:* 24 CFR 941.306(b).

Project/Activity: Bremerton Housing Authority (BHA), WA, Bay Vista, HOPE VI Grant WA19URD003I108.

Nature of Requirement: Subpart (b) of the regulation require that the construction of units is within the Total Development Costs (TDC).

Granted by: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 25, 2009.

Reason Waived: BHA received a commitment of Recovery Act funds of $1,457,591, of which it is committing $1,250,000 to Phase 2B to fill the gap left from not being able to sell public housing property. Phase 2B will now include HOPE VI, additional Capital Fund Program funds and Recovery Act funds. This change in the source of funds causes the TDC limit to be exceeded. This waiver permits BHA to construct 32 public housing units and 43 affordable units and to maintain its schedule of redevelopment at Bay Vista.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC 20140–5000, telephone (202) 402–4181.

• Regulation: 24 CFR 941.606(n)(1)(ii)(B).

Project/Activity: Daytona Beach Housing Authority (DBHA), Martin Luther King, Jr. HOPE VI Grant FL29URD007I103.

Nature of Requirement: The provision requires that if the partner and/or owner entity (or any other entity with an identity of interest with such parties) wants to serve as a general contractor for the project or development, it may award itself the construction contract only if it can demonstrate to HUD's satisfaction that its bid is the lowest submitted in response to a public request for bids.

Granted by: Paula Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 12, 2009.

Reason Waived: The DBHA submitted an independent cost estimate for the homeownership phase of the Martin Luther King, Jr. HOPE VI project. The third party construction cost estimate totaled $201,604 per home. The estimate provided by the contractor per home totaled $112,600 per home. As cost was below that of the independent cost estimates, HUD's condition is satisfied.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC 20140–5000, telephone (202) 402–4181.

• Regulation: 24 CFR 941.606(n)(1)(ii)(B).

Project/Activity: San Antonio Housing Authority (SAHA), TX, Sutton Homes Apartments, Phase I.

Nature of Requirement: The provision requires that if the partner and/or owner entity (or any other entity with an identity of interest with such parties) wants to serve as a general contractor for the project or development, it may award itself the construction contract only if it can demonstrate to HUD's satisfaction that its bid is the lowest submitted in response to a public request for bids.

Granted by: Paula Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 15, 2009.

Reason Waived: SAHA submitted an independent cost estimate for the Sutton Homes Apartments. The estimate provided by the contractor per square feet was less than the estimate per square feet for the development. As cost was below that of the independent cost estimates, HUD's condition is satisfied.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC 20140–5000, telephone (202) 402–4181.

• Regulation: 24 CFR 941.606 (n)(1)(ii)(B).

Project/Activity: Charleston-Kanawha Housing Authority's Replacement Housing Mixed-Finance Proposal

Nature of Requirement: The provision requires that if the partner and/or owner entity (or any other entity with an identity of interest with such parties) wants to serve as a general contractor for the project or development, it may award itself the construction contract only if it can demonstrate to HUD's satisfaction that its bid is the lowest submitted in response to a public request for bids.

Granted by: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 30, 2009.

Reason Waived: Charleston-Kanawha Housing Authority submitted a certification by an independent third-party construction estimator who reviewed plans/specifications and construction costs for Charleston Replacement Housing Phase 3 and certified that the costs were reasonable for the market area. HUD reviewed the independent cost estimate and related budgets and determined that the construction cost is reasonable and below the estimate. As cost was below that of the independent cost estimates, HUD's condition is satisfied.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC 20140–5000, telephone (202) 402–4181.

• Regulation: 24 CFR 941.610 (a)(1)–(a)(7).

Project/Activity: San Antonio Housing Authority (SAHA), TX, Closing of the Sutton Homes Phase I Mixed-Finance Phase.

Nature of Requirement: These regulatory provisions require HUD review and approval of certain legal documents relating to mixed-finance development before a closing can occur and public housing funds can be released. In lieu of HUD's review of these documents, SAHA must submit certifications to the accuracy and authenticity of the legal documents detailed in 24 CFR 941.610(a)(1)–(a)(7).

Granted by: Paula Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 7, 2009.

Reason Waived: The waiver streamlined the review process, expedited closing and the production of public housing. The good cause justification includes prior SAHA experience, maintenance of previous financial structure and the timing of Low Income Housing Tax Credits (LIHTC).

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC 20140–5000, telephone (202) 402–4181.

• Regulation: 24 CFR 941.610 (a)(1)–(a)(7).

Project/Activity: Charlotte Housing Authority (CHA), NC, Closing of the McCreesh Place Mixed-Finance Phase of Piedmont Courts HOPE VI Grant: NC19URD003I103.

Nature of Requirement: These regulatory provisions require HUD review and approval of certain legal documents relating to mixed-finance development before a closing can occur and public housing funds can be released. In lieu of HUD's review of these documents, CHA must submit certifications to the accuracy and authenticity of the legal documents detailed in 24 CFR 941.610(a)(1)–(a)(7).

Granted by: Deborah Hernandez, for Paula Blunt, former General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 1, 2009.

Reason Waived: The waiver streamlines the review process, expedited closing and production of public housing. Good cause justification includes prior CHA experience, duplication of prior mixed-finance structure, experience of legal counsel and status as a Moving to Work agency.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC 20140–5000, telephone (202) 402–4181.

• Regulation: 24 CFR 941.610(a)(1)–(a)(7).

Project/Activity: Closing of the Charleston Replacement Housing #3 Mixed-Finance Phase of the Charleston-Kanawha Housing Authority's (CKHA).

Nature of Requirement: These regulatory provisions require HUD review and approval of certain legal documents relating to mixed-finance development before a closing can occur and public housing funds can be released. In lieu of HUD's review of these documents, CKHA must submit certifications to the accuracy and authenticity of the legal documents detailed in 24 CFR 941.610 (a)(1)–(a)(7).

Granted by: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 30, 2009.

Reason Waived: The waiver streamlined the review process, expedited closing and production of public housing. Good cause justification includes prior partnership experience, previous legal documents, general development experience and pending regulatory changes.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW. Washington, DC 20140–5000, Room 4130, telephone (202) 402–4181.

• *Regulation:* 24 CFR 982.503(d) and 982.505(c)(3).

Project/Activity: Perry Metropolitan Housing Authority (PMHA), Perry County, OH.

Nature of Requirement: The regulation, 24 CFR 982.503(d), states that HUD may consider and approve a PHA's establishment of a payment standard lower than the basic range, but that HUD will not approve a lower payment standard if the family share for more than 40 percent of participants in the PHA's HCV program exceeds 30 percent of adjusted monthly income. The regulation, 24 CFR 982.505(c)(3), provides that if the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 20, 2009.

Reason Waived: These waivers were granted because these cost-saving measures would enable the PMHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.503(d) and 982.505(c)(3).

Project/Activity: City Crescent Housing Authority (CCHA), City Crescent, CA.

Nature of Requirement: The regulation at 24 CFR 982.505(c)(3) provides that if the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease. The regulation at 24 CFR 982.503(d) states that HUD may consider and approve a PHA's establishment of a payment standard lower than the basic range, but that HUD will not approve a lower payment standard if the family share for more than 40 percent of participants in the PHA's HCV program exceeds 30 percent of adjusted monthly income

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 3, 2009.

Reason Waived: The first waiver was granted because this cost-saving measure would enable the CCHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid or lessen the termination of HAP contracts due to insufficient funding. The second waiver was granted to allow the field office to approve payment standards below basic range since the CCHA's program was rent burdened.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: City of Glens Falls Housing Authority (CGFHA), Glens Falls, NY.

Nature of Requirement: The regulation at 24 CFR 982.505(c)(3) provides that if the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 14, 2009.

Reason Waived: This waiver was granted because this cost-saving measure would enable the CGFHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid or lessen the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Housing Authority of the City of Oneonta (HACO), Oneonta, NY.

Nature of Requirement: The regulation at 24 CFR 982.505(c)(3) provides that if the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 14, 2009.

Reason Waived: This waiver was granted because this cost-saving measure would enable the HACO to both manage its Housing Choice Voucher program within allocated budget authority and avoid or lessen the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Yakima Housing Authority (YHA), Yakima, WA.

Nature of Requirement: The regulation at 24 CFR 982.505(c)(3) provides that if the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 8, 2009.

Reason Waived: This waiver was granted because this cost-saving measure would enable the YHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Village of Clinton, Village of Sylvan Beach, town of Camden and Village of Waterville, NY.

Nature of Requirement: The regulation at 24 CFR 982.505(c)(3) provides that if the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount

generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 5, 2009.

Reason Waived: This waiver was granted because this cost-saving measure would enable these agencies administered by the Mohawk Valley Community Action Agency to both manage their Housing Choice Voucher programs within allocated budget authority and avoid or lessen the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Spokane Housing Authority (SHA), Spokane, WA.

Nature of Requirement: The regulation at 24 CFR 982.505(c)(3) provides that if the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 5, 2009.

Reason Waived: This waiver was granted because this cost-saving measure would enable the SHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid or lessen the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Cohoes Housing Authority (CHA), Cohoes, NY.

Nature of Requirement: The regulation at 24 CFR 982.505(c)(3) provides that if the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 16, 2009.

Reason Waived: This waiver was granted because this cost-saving measure would enable the CHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid or lessen the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Housing Authority of Kings County (HAKC), Kings County, CA.

Nature of Requirement: The regulation at 24 CFR 982.505(c)(3) provides that if the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 16, 2009.

Reason Waived: This waiver was granted because this cost-saving measure would enable the HAKC to both manage its Housing Choice Voucher program within allocated budget authority and avoid or lessen the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Lake County Housing Authority (LCHA), Lake County, FL.

Nature of Requirement: The regulation at 24 CFR 982.505(c)(3) provides that if the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 16, 2009.

Reason Waived: This waiver was granted because this cost-saving measure would enable the LCHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid or lessen the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: City of Utica Section 8 Department (CUS8D), Utica, NY.

Nature of Requirement: The regulation at 24 CFR 982.505(c)(3) provides that if the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 16, 2009.

Reason Waived: This waiver was granted because this cost-saving measure would enable the CUS8D to both manage its Housing Choice Voucher program within allocated budget authority and avoid or lessen the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Madison Community Development Authority (MCDA), Madison, WI.

Nature of Requirement: The regulation at 24 CFR 982.505(c)(3) provides that if the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 25, 2009.

Reason Waived: This waiver was granted because this cost-saving measure would enable the MCDA to both manage its Housing Choice Voucher program within allocated budget authority and avoid or lessen the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(4).

Project/Activity: Shelby Metropolitan Housing Authority (YHA), Shelby County, OH.

Nature of Requirement: This regulation states that if the payment standard amount is increased during the term of the housing assistance payments (HAP) contract, the increased payment standard amount shall be used to calculate the monthly HAP for the family beginning at the effective date of the family's first regular reexamination on or after the effective date of the increase in the payment standard amount.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 29, 2009.

Reason Waived: The regulation was waived since the SMHA proposed to alleviate any rent burden that may have resulted through the implementation of a lower payment standard as a previous cost-savings measure by immediately applying increased payment standards for all affected participants.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(4).

Project/Activity: Adams Metropolitan Housing Authority (AMHA), Adams, OH.

Nature of Requirement: The regulation at 24 CFR 982.505(c)(4) provides that if the payment standard amount is increased during the term of the housing assistance payments (HAP) contract, the increased payment standard amount shall be used to calculate the monthly HAP for the family beginning at the effective date of the family's first regular reexamination on or after the effective date of the increase in the payment standard amount. A waiver of this regulation was requested so that the AMHA could apply increased payment standards immediately for all families rather than wait until a family's next regular annual reexamination.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 16, 2009.

Reason Waived: This waiver was granted so that the MHA could alleviate any rent burden that may have resulted through the implementation of a lower payment standard as a cost-savings measure.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: San Francisco Housing Authority (SFHA), San Francisco, CA.

Nature of Requirement: Regulations state that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size. The HACSC requested a waiver so to provide reasonable accommodations to a person with disabilities.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 14, 2009.

Reason Waived: The participants were rent burdened due to a significant rent increase. Their health care provider recommended that they remain in their current unit due to their disabilities. For these participants to pay no more than 40 percent of adjusted income toward the family share, SFHA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: San Francisco Housing Authority (SFHA), San Francisco, CA.

Nature of Requirement: Regulations state that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size. The HACSC requested a waiver so to provide reasonable accommodations to a person with disabilities.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 5, 2009.

Reason Waived: The participants were rent burdened due to a significant rent increase. Their health care provider recommended that they remain in their current unit due to their disabilities. For these participants to pay no more than 40 percent of adjusted income toward the family share, SFHA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Housing Authority of the City of Daytona Beach (HACDB), Daytona Beach, FL.

Nature of Requirement: Regulations state that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size. The HACSC requested a waiver so to provide reasonable accommodations to a person with disabilities.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 21, 2009.

Reason Waived: The applicant's health care provider recommended that he remain in his manufactured home to be close to family that provides daily assistance with his everyday needs. For this applicant to pay no more than 40 percent of adjusted income toward the family share, HACDB was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Housing Authority of the City of Los Angeles (HACLA).

Nature of Requirement: 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 3, 2009.

Reason Waived: The client, who is disabled, needs to remain in her current unit as moving would be detrimental to her overall health. To provide a reasonable accommodation so that this client could be assisted in her current unit and pay no more than 40 percent of her adjusted income toward the family share, the HACLA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.627(b).

Project/Activity: Housing Authority of New Orleans (HANO), New Orleans, LA.

Nature of Requirement: The regulation at 24 CFR 982.627(b) provides that at the commencement of homeownership assistance under the Housing Choice Voucher program, the family must be a first-time homeowner as defined in 24 CFR 982.4.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 16, 2009.

Reason Waived: This waiver was granted to allow former homeowners of Christopher Park units affected by Hurricane Katrina to immediately participate in HANO's homeownership program at such time that they no longer have ownership interest in their units at Christopher Park.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.152(a) and (b).

Project/Activity: Richmond Housing Authority (RHA), Richmond, CA.

Nature of Requirement: The regulation at 24 CFR 983.152(a) and (b) require that a public housing agency (PHA) enter into an Agreement to Enter into a Housing Assistance Payments (HAP) Contract (Agreement) in a form required by HUD in which the owner agrees to develop the contract units to comply with housing quality standards and the PHA agrees that upon timely completion of such development in accordance with the terms of the Agreement, the PHA will enter into a HAP contract with the owner for the units.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 26, 2009.

Reason Waived: This waiver was granted since it was documented that the developed complied with all of the requirements under the Agreement and that project-based voucher assistance for the Trinity Plaza was an integral piece of a much larger funding commitment on the part of the RHA and the city of Richmond to revitalize the neighborhood.

Contact: Laure Rawson, Acting Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.51(b).

Project/Activity: Louisiana Office of Community Development (OCD), Baton Rouge, LA.

Nature of Requirement: 24 CFR Section 983.51(b) states a PHA must select PBV proposals in accordance with the selection procedures in the PHA administrative plan. The PHA must select PBV proposals by one of two methods. OCD requested a waiver for families receiving temporary housing assistance under the Road Home program with Community Development Block Grant (CDBG) funds and a related Louisiana State initiative. The programs were designed to provide up to two years of rental assistance. The recipients of the assistance also benefit from the CDBG-funded supportive services that are also part of the Road Home program. OCD requested the waiver in order to select eligible units that house eligible families who are receiving the temporary housing assistance without requiring the unit owners to compete for PBV assistance.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary.

Date Granted: May 15, 2009.

Reason Waived: The waiver was granted because of the extremely unique circumstances in this case, including, the vulnerability of the population to be assisted; the statutory requirement that the PBV assistance be provided in connection with permanent supportive housing as referenced in the Road Home Program of the Louisiana Recovery Authority; the fact that the families benefitting from the waiver are eligible and will be assisted by the OCD under the PSH–PBV; and that to require a competition could result in unnecessary displacement of eligible families.

Contact: Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• *Regulation:* 24 CFR 990.185(a).

Project/Activity: Tampa Housing Authority (THA), Tampa, FL.

Nature of Requirement: 24 CFR 990.185(a) states that ''if a PHA undertakes energy conservation measures that are financed by an entity other than HUD, the PHA may qualify for incentives available under 24 CFR 990.185''.

Granted By: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 8, 2009.

Reason Waived: The Tampa Housing Authority requested to use and was approved to use accumulated energy savings from an earlier Energy Performance Contract (EPC) as collateral and as a source of payment for third party financing of their planned energy improvements.

Contact: Richard D. Santangelo, Senior Engineer, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4226, Washington, DC 20410–5000, telephone (202) 402–3540.

• *Regulation:* 24 CFR 1000.336(d).

Project/Activity: Request by the Ponca Tribe of Nebraska's for a waiver of deadline for submitting a Census challenge to the Fiscal Year 2010 Indian Housing Block Grant (IHBG) formula data.

Nature of Requirement: In accordance with 24 CFR 1000.336(d), documentation supporting Census challenges to needs data used to compute IHBG formula allocations must be submitted to HUD by March 30th in order for them to be considered for the upcoming FY allocation.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing

Date Granted: April 09, 2009.

Reason Waived: The Northern Ponca Housing Authority (NPHA) did not have the opportunity to prepare a submission prior to the March 30, 2009, deadline because the NPHA has had several administrative and staffing changes within the past 4 months. The survey process was to be completed during this time but because of these changes, the NPHA was inadequately staffed to complete the project. Considering the importance of using the best available data to determine FY 2010 IHBG allocations, HUD found good cause existed to waive the deadline for the Ponca Tribe of Nebraska to submit a Census challenge for FY 2010. HUD provided the Tribe with an additional 90 days from the date the request was approved to submit data and proper documentation for consideration in FY 2010, data and proper documentation must be submitted to the IHBG Customer Service Center.

Contact: Deborah Lalancette, Director, Office of Grants Management, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 1670 Broadway, 23rd Floor, Denver, CO 80202, telephone (303) 675–1600.

• *Regulation:* 24 CFR 1000.232.

Project/Activity: Request by the following tribally designated housing entities (TDHEs) for a waiver of requiring tribal certifications for their Indian Housing Plan (IHP) amendments in order to receive economic stimulus funds made available under the American Recovery and Reinvestment Act of 2009 (Recovery Act) or Native Americans: Aleutian Housing Authority, Association of Village Council Presidents Regional Housing Authority, Bering Straits Regional Housing Authority, Copper River Basin Regional Housing Authority, Interior Regional Housing Authority, Kodiak Island Housing Authority, North Pacific Rim Regional Housing Authority, Tagiugmiullu Nunamiullu Housing Authority and Tlingit-Haida Regional Housing Authority.

Nature of Requirement: The regulation at 24 CFR 1000.232 requires that tribal certifications must accompany IHP amendments when submitted by a TDHE to HUD.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 13, 2009.

Reason Waived: There are 150 tribes represented by these 9 umbrella TDHEs. It is an administrative burden upon these TDHEs, necessitating additional time and expense to obtain the tribal certifications from each tribe in order to determine that an IHP is in compliance. In addition, tribal certifications were submitted at the time of the initial IHP submittal that authorized the TDHE to submit an IHP on its behalf. Further, the Area Office of Native American Programs is not able to process 2008 IHP Amendments for the Recovery Act submitted by TDHEs in a timely manner due to this requirement. Considering the urgent need to improve the housing conditions on Indian reservations and in Alaska Native villages, HUD found good cause exists to waive the provision of § 1000.232 so that the TDHEs listed above can have their IHP amendments processed in an expedited manner, and to ensure that funds are provided to the tribes as quickly as possible so that the timelines in the Recovery Act for obligation and expenditure of funds can be met.

Contact: Deborah Lalancette, Director, Office of Grants Management, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 1670 Broadway,

23rd Floor, Denver, CO 80202, telephone (303) 675–1600.

[FR Doc. E9–22352 Filed 9–15–09; 8:45 am]

BILLING CODE 4210–67–P

INTER-AMERICAN FOUNDATION BOARD MEETING

Sunshine Act Meetings

TIME AND DATE: September 28, 2009, 9 a.m.–1 p.m.

PLACE: 901 N. Stuart Street, Tenth Floor, Arlington, Virginia 22203.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

- Approval of the Minutes of the April 27, 2009, Meeting of the Board of Directors
- Advisory Council Report and Recommendations
- President's Report
- Congressional Affairs
- IAF Program Activities
- RedEAmerica
- Operations
- Schedule of Upcoming Events

PORTIONS TO BE OPEN TO THE PUBLIC:

- Approval of the Minutes of the April 27, 2009, Meeting of the Board of Directors
- Advisory Council Report and Recommendations
- President's Report
- Congressional Affairs
- IAF Program Activities
- RedEAmerica
- Operations
- Schedule of Upcoming Events

CONTACT PERSON FOR MORE INFORMATION:

Dated: September 8, 2009.

Jennifer Hodges Reynolds,

General Counsel, (703) 306–4301.

[FR Doc. E9–22393 Filed 9–14–09; 4:15 pm]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0115

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to seek renewed approval for the collection of information for 30 CFR part 773.

DATES: Comments on the proposed information collection must be received by November 16, 2009, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 202–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John A. Trelease, at (202) 208–2783 or at the e-mail address listed above.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies an information collection that OSM will be submitting to OMB for extension. This collection is contained in 30 CFR part 773—Requirements for permits and permit processing.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for the information collection activity. Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will be included in OSM's submissions of the information collection requests to OMB.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware 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 your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: 30 CFR part 773—Requirements for Permits and Permit Processing.

OMB Control Number: 1029–0115.

Summary: The collection activities for this part ensure that the public has the opportunity to review permit applications prior to their approval, and that applicants for permanent program permits or their associates who are in violation of the Surface Mining Control and Reclamation Act do not receive surface coal mining permits pending resolution of their violations.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Applicants for surface coal mining and reclamation permits and State governments and Indian Tribes.

Total Annual Respondents: 3,577 applicants and 24 regulatory authorities.

Total Annual Burden Hours: 41,438.

Dated: September 9, 2009.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. E9–22150 Filed 9–15–09; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2009–N139; 40136–1265–0000–S3]

Bayou Sauvage National Wildlife Refuge, Orleans Parish, LA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: final comprehensive conservation plan and finding of no significant impact.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of our final comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for the environmental assessment for Bayou Sauvage National Wildlife Refuge (NWR). In the final CCP, we describe how we will manage this refuge for the next 15 years.

ADDRESSES: A copy of the CCP may be obtained by writing to: Mr. Pon Dixson, Deputy Project Leader, Southeast Louisiana National Wildlife Refuge Complex, 61389 Highway 434, Lacombe, LA 70445. The CCP may also be accessed and downloaded from the Service's Web site: *http://southeast.fws.gov/planning/*.

FOR FURTHER INFORMATION CONTACT: Mr. Pon Dixson; telephone: 985/882–2014; fax: 985/882–9133; e-mail: *pon_dixson@fws.gov*.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for Bayou Sauvage NWR. We started this process through a notice in the **Federal Register** on May 16, 2007 (72 FR 27585). For more about the process, see that notice.

Bayou Sauvage NWR is located in eastern Orleans Parish, Louisiana, and is entirely situated within the corporate limits of the city of New Orleans. It is the largest national wildlife refuge located in an urban area and is one of the last remaining marsh areas adjacent to the south shores of Lakes Pontchartrain and Borgne. The refuge consists of 24,000 acres of wetlands and is bordered on three sides by water: Lake Pontchartrain to the north, Chef Menteur Pass to the east, and Lake Borgne to the south. The western side of the refuge is bordered by the Maxent Canal, and lands consisting of bottomland hardwood habitats and exotic species, such as Chinese tallow and china berry. Un-leveed portions of the refuge consist of estuarine tidal marshes and shallow water. The Hurricane Protection Levee System, along with roadbeds, created freshwater impoundments, which altered the plant communities as well as the fish communities within these impoundments. Small forested areas exist on the low, natural ridges formed along natural drainages and along manmade canals.

We announce our decision and the availability of the CCP and FONSI for Bayou Sauvage NWR in accordance with National Environmental Policy Act (NEPA) [40 CFR 1506.6(b)] requirements. We completed a thorough analysis of impacts on the human environment, which we included in the draft comprehensive conservation plan and environmental assessment (Draft CCP/EA). The CCP will guide us in managing and administering Bayou Sauvage NWR for the next 15 years. Alternative B is the foundation for the CCP.

Background

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Comments

We solicited comments on the Draft CCP/EA for Bayou Sauvage NWR as announced in the **Federal Register** on April 24, 2009 (72 FR 18742). Ten respondents, consisting of the Louisiana Department of Wildlife and Fisheries, the Louisiana Department of Environmental Quality, local and national non-profit organizations, and local citizens, submitted written comments by mail or e-mail.

Selected Alternative

After considering the comments we received and based on the professional judgment of the planning team, we selected Alternative B to implement the CCP. The primary focus of the CCP will be to restore and improve refuge resources needed for wildlife and habitat management and to provide additional public use opportunities. Implementing the CCP will allow us to provide law enforcement protection that adequately meets the demands of an urban environment.

We will focus on augmenting wildlife and habitat management to identify, conserve, and restore populations of native fish and wildlife species, with an emphasis on migratory birds and threatened and endangered species. This will partially be accomplished by increased monitoring of waterfowl, other migratory birds, and endemic species in order to assess and adapt management strategies and actions. The restoration of fresh and brackish marsh systems and hardwood forests will be crucial to ensuring healthy and viable ecological communities as the area recovers from the devastation of Hurricane Katrina. This restoration will require increased wetland vegetation and tree plantings, and the use of beneficial dredge, breakwater structures, and organic materials to promote reestablishment of emergent marsh and to reduce wave energy erosion along Lakes Pontchartrain and Borgne. Improving and monitoring water quality and managing moist soil will assist in reestablishing freshwater marsh habitat.

We will more aggressively control and, where possible, eliminate invasive plant species. The control of the Chinese tallow trees and cogon grass along the hardwood ridge will be a focal point. The control of nuisance wildlife will increase to include yearly population evaluations and more aggressive trapping programs for feral hogs and nutria.

Visitor services will be enhanced by: (1) Improving and providing additional fishing opportunities; (2) considering limited hunting opportunities on the refuge; (3) providing environmental education that emphasizes refuge restoration activities, coastal conservation issues, and the diversity of water management regimes in the aftermath of Hurricane Katrina; (4) establishing a visitor center or contact station; (5) developing and implementing a visitor services management plan; and (6) enhancing personal interpretive opportunities. Volunteer programs and friends groups also will be expanded to enhance all aspects of refuge management and to increase resource availability.

Land acquisitions within the approved acquisition boundary will be based on importance of the habitat for target management species and public use value. The refuge headquarters will not only house administrative offices, but will offer interpretation of wildlife and habitats. We will demonstrate habitat improvements for individual landowners. The headquarters facility will be developed as an urban public use area with trails; buildings presently not being used and landscaping will be refurbished for visitor and community outreach.

We will enforce all Federal and State laws applicable to the refuge in order to protect archaeological and historical sites. We will develop a plan to protect all known sites. The allocation of a law enforcement officer will not only provide security for these resources, but will also ensure visitor safety and public compliance with refuge regulations.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: July 31, 2009.

Jeffrey Fleming,

Acting Regional Director.

[FR Doc. E9–22303 Filed 9–15–09; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–687]

In the Matter of Certain Video Displays, Components Thereof, and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 12, 2009, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of LG Electronics, Inc. of Korea. An amended complaint was filed on August 27, 2009. The amended complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain video displays, components thereof, and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 5,790,096; 5,537,612; 5,459,522; and 7,154,564. The amended complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The amended complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Jeffrey T. Hsu, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2579.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2009).

Scope of Investigation: Having considered the amended complaint, the U.S. International Trade Commission, on September 10, 2009, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain video displays, components thereof, or products containing same that infringe one or more of claims 24 and 25 of U.S. Patent No. 5,790,096; claims 1–9 of U.S. Patent No. 5,537,612; claim 1 of U.S. Patent No. 5,459,522; claims 1–5 and 7–16 of U.S. Patent No. 7,154,564, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—LG Electronics, Inc., LG Twin Towers, 20, Yeouido-dong, Yeongdeungpo-gu, Seoul, 150–721, Korea.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Funai Electric Company, Ltd., 7–7–1 Nakaigato, Daito City, Osaka, 574–0013, Japan.

Funai Corporation, Inc., 201 Route 17 North, Suite 903, Rutherford, NJ 07070.

P&F USA, Inc., 3015 Windward Plaza, Ste. 100, Alpharetta, GA 30005–8724.

Vizio, Inc., 39 Telsa, Irvine, CA 92618.

(c) The Commission investigative attorney, party to this investigation, is Jeffrey T. Hsu, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the amended complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the amended complaint and the notice of investigation. Extensions of time for submitting responses to the amended complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against a respondent.

Issued: September 11, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–22332 Filed 9–15–09; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–634]

In the Matter of Certain Liquid Crystal Display Modules, Products Containing Same, and Methods Using the Same; Notice of Commission Decision Not To Review a Final Initial Determination Finding a Violation of Section 337; Request for Written Submissions Regarding Remedy, Bonding, and the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review a final initial determination (''ID'') of the presiding administrative law judge (''ALJ'') finding a violation of section 337 in the above-captioned investigation, and is requesting written submissions regarding remedy, bonding, and the public interest.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 4, 2008, based on a complaint filed by Sharp Corporation (''Sharp'') of Japan. 73 FR 11678. The complaint, as amended and supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain liquid crystal display devices, products containing same, and methods for using the same by reason of infringement of certain claims of U.S. Patent Nos. 6,879,364; 6,952,192; 7,304,703; and 7,304,626. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named the following respondents: Samsung Electronics America, Inc. of Korea; Samsung Electronics America, Inc. of Ridgefield Park, New Jersey; and Samsung Semiconductor, Inc. of San Jose, California (collectively ''Samsung'').

On June 12, 2009, the ALJ issued his final ID finding a violation of section 337 by Samsung. He also issued his recommendation on remedy and bonding during the period of Presidential review. On June 29, 2009, Samsung and the Commission investigative attorney (''IA'') filed petitions for review of the final ID. The IA and Sharp filed responses to the petitions on July 7, 2009. The Commission has determined not to review the subject ID.

In connection with the final disposition of this investigation, the Commission may issue an order that results in the exclusion of the subject articles from entry into the United States. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

When the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

When the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See section 337(j), 19 U.S.C. 1337(j) and the Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding, and such submissions should address the recommended determination by the ALJ on remedy and bonding. The complainant and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the dates that the patents at issue expire and the HTSUS numbers under which the accused articles are imported. The written submissions and proposed remedial orders must be filed no later than close of business on September 16, 2009. Reply submissions must be filed no later than the close of business on September 23. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.42–46 of the Commission's Rules of Practice and Procedure, 19 CFR 210.42–46.

By order of the Commission.

Issued: September 9, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–22179 Filed 9–15–09; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting Notice No. 6–09]

Sunshine Act Meeting Notice

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the

transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Wednesday, September 23, 2009, at 11 a.m.

SUBJECT MATTER: Issuance of Proposed Decisions in claims against Albania and Libya.

STATUS: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6975.

Mauricio J. Tamargo,

Chairman.

[FR Doc. E9–22360 Filed 9–14–09; 11:15 am]

BILLING CODE 4410–01–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 09–17]

Report on Countries That Are Candidates for Millennium Challenge Account Eligibility in Fiscal Year 2010 and Countries That Would Be Candidates But for Legal Prohibitions

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: Section 608(d) of the Millennium Challenge Act of 2003 requires the Millennium Challenge Corporation to publish a report that identifies countries that are ''candidate countries'' for Millennium Challenge Account assistance during FY 2010. The report is set forth in full below.

Dated: September 10, 2009.

Henry C. Pitney,

(Acting) Vice President and General Counsel, Millennium Challenge Corporation.

Report on Countries That Are Candidates for Millennium Challenge Account Eligibility for Fiscal Year 2010 and Countries That Would Be Candidates But for Legal Prohibitions

This report to Congress is provided in accordance with Section 608(a) of the Millennium Challenge Act of 2003, 22 U.S.C. 7701, 7707(a) (Act).

The Act authorizes the provision of Millennium Challenge Account (MCA) assistance for countries that enter into Compacts with the United States to support policies and programs that advance the progress of such countries achieving lasting economic growth and poverty reduction. The Act requires Millennium Challenge Corporation (MCC) to take a number of steps in selecting countries with which MCC will seek to enter into a compact, including (i) determining the countries that will be eligible for MCA assistance for fiscal year 2010 (FY10) based on a country's demonstrated commitment to (a) just and democratic governance, (b) economic freedom, and (c) investing in its people; and (ii) considering the opportunity to reduce poverty and generate economic growth in the country. These steps include the submission of reports to the congressional committees specified in the Act and the publication of notices in the **Federal Register** that identify:

1. The countries that are ''candidate countries'' for MCA assistance for FY10 based on their per-capita income levels and their eligibility to receive assistance under U.S. law and countries that would be candidate countries but for specified legal prohibitions on assistance (section 608(a) of the Act);

2. The criteria and methodology that the MCC Board of Directors (Board) will use to measure and evaluate the relative policy performance of the ''candidate countries'' consistent with the requirements of subsections (a) and (b) of section 607 of the Act in order to select ''MCA eligible countries'' from among the ''candidate countries'' (section 608(b) of the Act); and

3. The list of countries determined by the Board to be ''MCA eligible countries'' for FY10, identification of such countries with which the Board will seek to enter into compacts, and justification for such eligibility determination and selection for compact negotiation (section 608(d) of the Act).

This report is the first of three required reports listed above.

Candidate Countries for FY 2009

The Act requires the identification of all countries that are candidates for MCA assistance for FY10 and the identification of all countries that would be candidate countries but for specified legal prohibitions on assistance. Sections 606(a) and (b) of the Act provide that for FY10 a country shall be a candidate for the MCA if it:

- *Meets one of the following two income level tests:*
  - Has a per capita income equal to or less than the historical ceiling of the International Development Association eligibility for the fiscal year involved (or $1,855 gross national income (GNI) per capita for FY10) (the ''low income category''); or
  - Is classified as a lower middle income country in the then most recent edition of the World Development Report for Reconstruction and Development published by the International Bank for Reconstruction and Development and has an income greater than the historical ceiling for International Development Association eligibility for the fiscal year involved (or $1,856 to $3,855 GNI per capita for FY10) (the ''lower middle income category''); and
  - Is not ineligible to receive U.S. economic assistance under part I of the Foreign Assistance Act of 1961, as amended, (the ''Foreign Assistance Act''), by reason of the application of the Foreign Assistance Act or any other provision of law.

Pursuant to section 606(c) of the Act, the Board has identified the following countries as candidate countries under the Act for FY10. In so doing, the Board has anticipated that prohibitions against assistance as applied to countries in the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2009 (Div. H, Pub. L. 111–8) (FY 2009 SFOAA), will again apply for FY10, even though the Department of State, Foreign Operations, and Related Programs Appropriations Act for FY10 has not yet been enacted and certain findings under other statutes have not yet been made. As noted below, MCC will provide any required updates on subsequent changes in applicable legislation or other circumstances that affects the status of any country as a candidate country for FY10.

Candidate Countries: Low Income Category

1. Afghanistan
2. Bangladesh
3. Benin
4. Bolivia
5. Burkina Faso
6. Burundi
7. Cambodia
8. Cameroon
9. Central African Republic
10. Chad
11. Comoros
12. Dem. Republic of the Congo
13. Djibouti
14. Egypt, Arab Rep.
15. Eritrea
16. Ethiopia
17. Gambia
18. Ghana
19. Guinea
20. Guinea Bissau
21. Guyana
22. Haiti
23. Honduras
24. India
25. Kenya
26. Kosovo

27. Kyrgyz Republic
28. Lao PDR
29. Lesotho
30. Liberia
31. Malawi
32. Mali
33. Moldova
34. Mongolia
35. Mozambique
36. Nepal
37. Nicaragua
38. Niger
39. Nigeria
40. Pakistan
41. Papua New Guinea
42. Rwanda
43. Sao Tome and Principe
44. Senegal
45. Sierra Leone
46. Solomon Islands
47. Somalia
48. Sri Lanka
49. Tajikistan
50. Tanzania
51. Togo
52. Uganda
53. Vietnam
54. Yemen, Rep.
55. Zambia

Candidate Countries: Lower Middle Income Category

1. Albania
2. Angola
3. Armenia
4. Azerbaijan
5. Belize
6. Bhutan
7. Cape Verde
8. Congo, Rep.
9. Ecuador
10. El Salvador
11. Georgia
12. Guatemala
13. Indonesia
14. Jordan
15. Kiribati
16. Maldives
17. Marshall Islands
18. Micronesia, Fed. Sts.
19. Morocco
20. Paraguay
21. Philippines
22. Samoa
23. Swaziland
24. Thailand
25. Timor-Leste
26. Tonga
27. Tunisia
28. Turkmenistan
29. Tuvalu
30. Ukraine
31. Vanuatu

Countries That Would Be Candidate Countries But for Legal Prohibitions That Prohibit Assistance

Countries that would be considered candidate countries for FY10, but are ineligible to receive United States economic assistance under part I of the Foreign Assistance Act by reason of the application of any provision of the Foreign Assistance Act or any other provision of law are listed below. As noted above, this list is based on legal prohibitions against economic assistance that apply for FY 2009 and that are anticipated to apply again for FY10.

Prohibited Countries: Low Income Category

1. *Burma* is subject to numerous restrictions, including but not limited to section 570 of the FY 1997 Foreign Operations, Export Financing, and Related Programs Appropriations Act (P.L. 104–208) which prohibits assistance to the government of Burma until it makes progress on improving human rights and implementing democratic government, and due to its status as a major drug-transit or major illicit drug producing country for 2008 (Presidential Determination No. 2008–28 (9/16/2008)) and a Tier III country under the Trafficking Victims Protection Act (Presidential Determination No. 2009–5 (10/17/2008)).

2. *Cote d'Ivoire* is subject to section 7008 of the FY 2009 SFOAA, which prohibits assistance to the government of a country whose duly elected head of government is deposed by military coup or decree.

3. *Madagascar* is subject to section 7008 of the FY 2009 SFOAA, which prohibits assistance to the government of a country whose duly elected head of government is deposed by military coup or decree.

4. *Mauritania* is subject to section 7008 of the FY 2009 SFOAA, which prohibits assistance to the government of a country whose duly elected head of government is deposed by military coup or decree.

5. *North Korea* is subject to numerous restrictions, including section 7076 of the FY 2009 SFOAA which prohibits any direct assistance to the government.

6. *Sudan* is subject to numerous restrictions, including but not limited to section 620A of the Foreign Assistance Act which prohibits assistance to governments supporting international terrorism, section 7012 of the FY 2009 SFOAA, and section 620(q) of the Foreign Assistance Act, both of which prohibit assistance to countries in default in payment to the U.S. in certain circumstances, section 7008 of the FY 2009 SFOAA, which prohibits assistance to a country whose duly elected head of government being deposed by military coup or decree, and section 7070(b) of the FY 2009 SFOAA.

7. *Uzbekistan's* central government is subject to section 7076 of the FY 2009 SFOAA, which states that funds may be made available for assistance to the central government of Uzbekistan only if the Secretary of State determines and reports to the Congress that the government is making substantial and continuing progress in meeting its commitments under a framework agreement with the United States.

8. *Zimbabwe* is subject to Section 620(q) of the Foreign Assistance Act and section 7012 of the FY 2009 SFOAA, which prohibit assistance to countries in default in payment to the United States in certain circumstances, and section 7070(e) of the FY 2009 SFOAA which prohibits assistance to the central government of Zimbabwe in the absence of a waiver by the Secretary of State.

Prohibited Countries: Lower Middle Income Category

1. *China* is not eligible to receive economic assistance from the United States, absent special authority, because of concerns relative to China's record on human rights.

2. *Iran* is subject to numerous restrictions, including but not limited to section 620A of the Foreign Assistance Act which prohibits assistance to governments supporting international terrorism and section 7007 of the FY 2009 SFOAA which prohibits direct assistance.

3. *Iraq* is subject to section 7042 of the FY 2009 SFOAA, which prohibits the use of FY 2009 SFOAA funds for assistance for Iraq, and section 620(t) of the Foreign Assistance Act which prohibits assistance to a country which has severed diplomatic relations with the United States, until such diplomatic relations are restored and framework bilateral assistance agreements are in place.

4. *Syria* is subject to numerous restrictions, including but not limited to 620A of the Foreign Assistance Act which prohibits assistance to governments supporting international terrorism, section 7007 of the FY 2009 SFOAA which prohibits direct assistance, and section 7012 of the FY 2009 SFOAA and section 620(q) of the Foreign Assistance Act, both of which prohibit assistance to countries in default in payment to the U.S. in certain circumstances.

Countries identified above as candidate countries, as well as countries that would be considered candidate countries but for the applicability of legal provisions that prohibit U.S. economic assistance, may be the subject of future statutory restrictions or determinations, or changed country circumstances, that affect their legal eligibility for assistance under part I of the Foreign Assistance Act by reason of application of Foreign Assistance Act or any other provision of law for FY10. MCC will include any required updates on such statutory eligibility that affect countries' identification as candidate countries for FY10, at such time as it publishes the notices required by sections 608(b) and 608(d) of the Act or at other appropriate times. Any such updates with regard to the legal eligibility or ineligibility of particular countries identified in this report will not affect the date on which the Board is authorized to determine eligible countries from among candidate countries which, in accordance with section 608(a) of the Act, shall be no sooner than 90 days from the date of publication of this report.

[FR Doc. E9–22306 Filed 9–11–09; 4:15 pm]

BILLING CODE 9211–03–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 09–16]

Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in Fiscal Year 2010

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: This report to Congress is provided in accordance with Section 608(b) of the Millennium Challenge Act of 2003, as amended, 22 U.S.C. 7707(b) (the ''Act'').

Dated: September 14, 2009.

Henry C. Pitney,

(Acting) Vice President and General Counsel, Millennium Challenge Corporation.

Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in Fiscal Year 2010 Summary

This report to Congress is provided in accordance with section 608(b) of the Millennium Challenge Act of 2003, as amended, 22 U.S.C. 7707(b) (the ''Act'').

The Act authorizes the provision of Millennium Challenge Account (MCA) assistance to countries that enter into compacts with the United States to support policies and programs that advance the prospects of such countries achieving lasting economic growth and poverty reduction. The Act requires the Millennium Challenge Corporation (MCC) to take a number of steps in determining what countries will be eligible for MCA assistance during fiscal year 2010 (FY10) based on the countries' demonstrated commitment to just and democratic governance, economic freedom, investing in their people, and the opportunity to reduce poverty and generate economic growth in the country. These steps include the submission of reports to the congressional committees specified in the Act and the publication of notices in the **Federal Register** that identify:

1. The countries that are ''candidate countries'' for MCA assistance during FY10 based on their per-capita income levels and their eligibility to receive assistance under U.S. law, and countries that would be candidate countries but for specified legal prohibitions on assistance (section 608(a) of the Act; 22 U.S.C. 7707(a));

2. The criteria and methodology that the Board of Directors of MCC (the Board) will use to measure and evaluate the relative policy performance of the candidate countries consistent with the requirements of section 607 of the Act (22 U.S.C. 7706) in order to determine ''MCA eligible countries'' from among the ''candidate countries'' (section 608(b) of the Act); and

3. The list of countries determined by the Board to be ''MCA eligible countries'' for FY10, with justification for eligibility determination and selection for compact negotiation, including which of the MCA eligible countries the Board will seek to enter into MCA compacts (section 608(d) of the Act).

This report sets out the criteria and methodology to be applied in determining eligibility for new partner countries for FY10 MCA assistance.

The Criteria and Methodology for FY10

MCC reviews all of its indicators and methodology annually and, from time to time, recommends changes or refinements if MCC identifies better methodologies, better indicators, or improved sources of data. MCC takes into account public comments received on the previous year's criteria and methodology and consults with a broad range of experts in the development community and within the U.S. Government.

In response to a request in the Explanatory Statement accompanying the 2009 Department of State, Foreign Operations, and Related Programs Appropriations Act, MCC considered an indicator that takes into account the votes and positions of the countries in international and multilateral institutions with respect to human rights; however, MCC's current indicator framework already includes three indicators—*Political Rights, Civil Liberties,* and *Voice and Accountability*—that measure government commitment to human and democratic rights within their own borders. These indicators are better suited for measuring a government's commitment to human rights than its voting record, which can be influenced by political goals. Thus, such a measure is not a good fit for MCC's indicator-based system, as it would potentially politicize the country selection process.

In keeping with MCC's commitment to aid effectiveness through the regular evaluation of its own practice, the agency plans to review the selection criteria and methodology as a whole in 2010. This will include, as a matter of course, consultations with a broad group of stakeholders. As a first step, we invite broad participation in the 30-day public comment period that follows the publication of this report.

Changes to the Criteria and Methodology for FY10

Approach to Country Income Graduation

Every year, changes in candidate countries' income status substantially affect MCC's candidate country pool—some countries ''graduate'' from one income category to another; low income countries (LIC) become reclassified as lower middle income countries (LMIC), and LMICs are reclassified as upper middle income countries. Changes in economic growth rates, exchange rates, and relative inflation can contribute to country graduation, without necessarily representing a dramatic or immediate improvement in overall living standards of the country's population.

Because MCC evaluates the relative performance of LICs and LMICs in separate income groups, when a country graduates from LIC to LMIC, it typically does not meet the higher performance standards in its new group, even if it performed relatively well as an LIC, and, in absolute terms, maintained or improved performance over the previous year.

To address the challenges associated with graduating countries that have experienced no real change in performance, MCC is adopting an approach to income graduation in which a country that graduates from LIC to LMIC will have its indicator performance considered both relative to its LMIC peers as well as in comparison to the current fiscal year's LIC pool for a period of three years. This practice is consistent with the flexible, gradual graduation approaches of other donor institutions.

Eligibility for Consecutive Compact

Several of MCC's early compacts are due to conclude within the next two years. MCC's experience to date suggests that compact development takes approximately 18 months. To maximize benefits of lessons learned in the first compact, the Board may determine that certain compact countries should be selected as eligible to develop a second compact before the completion of their first compact program.

For FY10, when determining a country's eligibility for a second compact, MCC will consider, among other factors, the country's policy performance using the selection criteria and methodology outlined in this report, the opportunity to reduce poverty and generate economic growth in the country, and the country's performance implementing its first compact. To assess implementation of a first compact, the MCC recommends

that the Board consider the nature of the country partnership with MCC, the degree to which the country has demonstrated a commitment and capacity to achieve program results, and the degree to which the country has implemented the compact in accordance with MCC's core policies and standards.

Criteria and Methodology

The Board will determine eligible countries based on several factors including (i) their overall performance in three broad policy categories—*Ruling Justly, Encouraging Economic Freedom,* and *Investing in People;* and (ii) the opportunity to reduce poverty and generate economic growth. Section 607 of the Act requires that the Board's determination of eligibility be based ''to the maximum extent possible, upon objective and quantifiable indicators of a country's demonstrated commitment'' to the criteria set out in the Act.

For FY10, there will be two groups of candidate countries—LICs and LMICs. LIC candidates refer to those countries that have a per capita income equal to or less than $1,855 and are not ineligible to receive United States economic assistance under part I of the Foreign Assistance Act of 1961 by reason of the application of any provision of the Foreign Assistance Act or any other provision of law. Lower middle income candidate countries are those that have a per capita income between $1,856 and $3,855 and are not ineligible to receive United States economic assistance.

The Board will make use of seventeen indicators to assess policy performance of individual countries (specific definitions of the indicators and their sources are set out in annex A). These indicators are grouped for purposes of the FY10 assessment methodology under the three policy categories listed below.

Ruling justly	Encouraging economic freedom	Investing in people
1. Civil Liberties	1. Inflation	1. Public Expenditure on Health.
2. Political Rights	2. Fiscal Policy	2. Public Expenditure on Primary Education.
3. Voice and Accountability	3. Business Start-Up	3. Immunization Rates (DPT3 and Measles).
4. Government Effectiveness	4. Trade Policy	4. Girls' Primary Education Completion.
5. Rule of Law	5. Regulatory Quality	5. Natural Resource Management.
6. Control of Corruption	6. Land Rights and Access	

In making its determination of eligibility with respect to a particular candidate country, the Board will consider whether a country performs above the median in relation to its income level peers (LIC or LMIC) on at least half of the indicators in the *Ruling Justly* and *Encouraging Economic Freedom* categories, above the median on at least three of the five indicators in the *Investing in People* category, and above the median on the *Control of Corruption* indicator. One exception to this methodology is that the median is not used for the *Inflation* indicator. Instead, to pass the *Inflation* indicator a country's inflation rate needs to be under a fixed ceiling of 15 percent. The Board will also take into consideration whether a country performs substantially below the median on any indicator (*i.e.* in the bottom 25th percentile) and has not taken appropriate measures to address this shortcoming.

Each year a number of countries shift income groups, and some countries formerly classified as LICs suddenly face new, higher performance standards in the LMIC group. To address the challenges associated with sudden changes in criteria for these countries, MCC has adopted an approach to income graduation whereby the Board may consider the indicator performance of countries that graduated from the LIC to the LMIC category in FY10 both relative to their LMIC peers as well as in comparison to the current fiscal year's LIC pool for a period of three years.

Consistent with the Act, the indicators will be the predominant basis for determining which countries will be eligible for MCA assistance. However, the Board may exercise discretion when evaluating performance on the indicators and determining a final list of eligible countries. Where necessary, the Board may also take into account other quantitative and qualitative information (supplemental information) to determine whether a country performed satisfactorily in relation to its peers in a given category. There are elements of the criteria set out in the Act for which there is either limited quantitative information (*e.g.,* rights of people with disabilities) or no well-developed performance indicator. Until such data and/or indicators are developed, the Board may rely on additional data and qualitative information to assess policy performance. For example, the State Department Human Rights Report contains qualitative information to make an assessment on a variety of criteria outlined by Congress, such as the rights of people with disabilities, the treatment of women and children, workers rights, and human rights. The Board may also consider whether any adjustments should be made for data gaps, lags, trends, or other weaknesses in particular indicators. For example, as additional information in the area of corruption, the Board may consider how a country scores on supplemental sources like Transparency International's Corruption Perceptions Index and the Global Integrity Index, as well as on the defined indicator.

Countries nearing the end of compact implementation may be considered for eligibility for a second compact. In determining eligibility for consecutive compacts, MCC recommends that the Board consider, among other factors, the country's policy performance using the methodology and criteria described above, the opportunity to reduce poverty and generate economic growth in the country, and the country's track record of performance implementing its first compact.

Compact eligible country partners are expected to seek to maintain and improve policy performance. MCC recognizes that country partners may not meet the eligibility criteria from time to time due to a number of factors, such as changes in the peer-group median; graduation into a new income category (*e.g.,* from low income to lower middle income); numerical declines that are within the margin of error; slight declines in policy performance; revisions or corrections of data; the introduction of new sub-data sources; or changes in the indicators used to measure performance. None of these factors alone signifies a significant policy reversal or warrants suspension or termination of eligibility and/or assistance. However, countries that demonstrate a significant policy reversal may be issued a warning, suspension, or termination of eligibility and/or assistance. According to MCC's authorizing legislation, ''[a]fter consultation with the Board, the Chief Executive Officer may suspend or terminate assistance in whole or in part for a country or entity * * * if * * *

the country or entity has engaged in a pattern of actions inconsistent with the criteria used to determine the eligibility of the country or entity * * *.'' Because of data lags, this pattern of behavior need not be captured in the indicators for MCC to take action.

Relationship to Legislative Criteria

Within each policy category, the Act sets out a number of specific selection criteria. As indicated above, a set of objective and quantifiable policy indicators is used to establish eligibility for MCA assistance and measure the relative performance by candidate countries against these criteria. The Board's approach to determining eligibility ensures that performance against each of these criteria is assessed by at least one of the seventeen objective indicators.

Most are addressed by multiple indicators. The specific indicators appear in parentheses below next to the corresponding criterion set out in the Act.

Section 607(b)(1) Just and democratic governance, including a demonstrated commitment to:

1. Promote political pluralism, equality and the rule of law (*Political Rights, Civil Liberties, Voice and Accountability, and Rule of Law*);

2. Respect human and civil rights, including the rights of people with disabilities (*Political Rights, Civil Liberties, and Voice and Accountability*);

3. Protect private property rights (*Civil Liberties, Regulatory Quality, Rule of Law, and Land Rights and Access*);

4. Encourage transparency and accountability of government (*Political Rights, Civil Liberties, Voice and Accountability, Control of Corruption, Rule of Law, and Government Effectiveness*); and

5. Combat corruption (*Political Rights, Civil Liberties, Rule of Law, and Control of Corruption*).

Section 607(b)(2): Economic freedom, including a demonstrated commitment to economic policies that:

1. Encourage citizens and firms to participate in global trade and international capital markets (*Fiscal Policy, Inflation, Trade Policy, Business Start-Up, and Regulatory Quality*);

2. Promote private sector growth (*Inflation, Business Start-Up, Fiscal Policy, Land Rights and Access, and Regulatory Quality*);

3. Strengthen market forces in the economy (*Fiscal Policy, Inflation, Trade Policy, Business Start-Up, Land Rights and Access, and Regulatory Quality*); and

4. Respect worker rights, including the right to form labor unions (*Civil Liberties and Voice and Accountability*).

Section 607(b)(3): Investments in the people of such country, particularly women and children, including programs that:

1. Promote broad-based primary education (*Girls' Primary Education Completion and Public Expenditure on Primary Education*);

2. Strengthen and build capacity to provide quality public health and reduce child mortality (*Immunization Rates, Public Expenditure on Health, and Natural Resource Management*); and

3. Promote the protection of biodiversity and the transparent and sustainable management and use of natural resources (*Natural Resource Management*).

Annex A to Report: Indicator Definitions

The following 17 indicators will be used to measure candidate countries' demonstrated commitment to the criteria found in section 607(b) of the Act. The indicators are intended to assess the degree to which the political and economic conditions in a country serve to promote broad-based sustainable economic growth and reduction of poverty; and thus provide a sound environment for the use of MCA funds. The indicators are not goals in themselves; rather they measure policies that are linked to broad-based sustainable economic growth. The indicators were selected based on their (i) relationship to economic growth and poverty reduction, (ii) the number of countries they cover, (iii) transparency and availability, and (iv) relative soundness and objectivity. Where possible, the indicators are developed by independent sources.

Ruling Justly

1. *Civil Liberties:* A panel of independent experts rates countries on freedom of expression; association and organizational rights; rule of law and human rights; and personal autonomy and economic rights. *Source: Freedom House*.

2. *Political Rights:* A panel of independent experts rates countries on the prevalence of free and fair elections of officials with real power; the ability of citizens to form political parties that may compete fairly in elections; freedom from domination by the military, foreign powers, totalitarian parties, religious hierarchies and economic oligarchies; and the political rights of minority groups. *Source: Freedom House*.

3. *Voice and Accountability:* An index of surveys/expert assessments that rates countries on: the ability of institutions to protect civil liberties; the extent to which citizens of a country are able to participate in the selection of governments; and the independence of the media. *Source: World Bank Institute*.

4. *Government Effectiveness:* An index of surveys/expert assessments that rates countries on the quality of public service provision; civil servants' competency and independence from political pressures; and the government's ability to plan and implement sound policies. *Source: World Bank Institute*.

5. *Rule of Law:* An index of surveys/expert assessments that rates countries on the extent to which the public has confidence in and abides by the rules of society; the incidence of violent and nonviolent crime; the effectiveness, independence, and predictability of the judiciary; and the enforceability of contracts. *Source: World Bank Institute*.

6. *Control of Corruption:* An index of surveys/expert assessments that rates countries on the frequency of ''additional payments to get things done;'' the effects of corruption on the business environment; ''grand corruption'' in the political arena; and the tendency of elites to engage in ''state capture.'' *Source: World Bank Institute*.

Encouraging Economic Freedom

1. *Inflation:* The most recent average annual change in consumer prices. *Source: The International Monetary Fund's World Economic Outlook database*.

2. *Fiscal Policy:* The overall budget deficit divided by GDP, averaged over a three-year period. The data for this measure relies primarily on IMF country reports with input from U.S. missions in host countries, or is provided directly by the recipient government where public IMF data is outdated or unavailable. All data is cross-checked with the IMF's World Economic Outlook database to try to ensure consistency across countries and made publicly available. *Source: International Monetary Fund Country Reports, National Governments, and the International Monetary Fund's World Economic Outlook database*.

3. *Business Start-Up:* An index that rates countries on the time and cost of complying with all procedures officially required for an entrepreneur to start up and formally operate an industrial or commercial business. *Source: International Finance Corporation*.

4. *Trade Policy:* A measure of a country's openness to international trade based on weighted average tariff

rates and non-tariff barriers to trade. *Source: The Heritage Foundation.*

5. *Regulatory Quality:* An index of surveys/expert assessments that rates countries on the burden of regulations on business; price controls; the government's role in the economy; foreign investment regulation; and many other areas. *Source: World Bank Institute.*

6. *Land Rights and Access:* An index that rates countries on: The extent to which the institutional, legal, and market framework provide secure land tenure and equitable access to land in rural areas and the time and cost of property registration in urban and peri-urban areas. *Source: The International Fund for Agricultural Development and the International Finance Corporation.*

Investing in People

1. *Public Expenditure on Health:* Total expenditures on health by government at all levels divided by GDP. *Source: The World Health Organization.*

2. *Immunization Rates:* The average of DPT3 and measles immunization rates for the most recent year available. *Source: The World Health Organization.*

3. *Total Public Expenditure on Primary Education:* Total expenditures on primary education by government at all levels divided by GDP. *Source: The United Nations Educational, Scientific and Cultural Organization and National Governments.*

4. *Girls' Primary Completion Rate:* The number of female students enrolled in the last grade of primary education minus repeaters divided by the population in the relevant age cohort. *Source: United Nations Educational, Scientific and Cultural Organization.*

5. *Natural Resource Management:* An index made up of four indicators: Eco-region protection, access to improved water, access to improved sanitation, and child (ages 1–4) mortality. *Source: The Center for International Earth Science Information Network and the Yale Center for Environmental Law and Policy.*

[FR Doc. E9–22331 Filed 9–15–09; 8:45 am]

BILLING CODE 9211–03–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before October 16, 2009. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: request.schedule@nara.gov.

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (*See* 36 CFR 1228.24(b)(3).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agencywide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Defense, Office of the Secretary (N1–330–09–5, 1 item, 1

temporary item). Master files of an electronic information system that contains data concerning victims and/or the family members of victims of terrorism who travel in order to view trials before military commissions. Included is such information as name, address, passport information, and victim impact questionnaires.

2. Department of Defense, Defense Finance and Accounting Service (N1–507–09–2, 4 items, 4 temporary items). Pay account records pertaining to the Marine Corps Total Force System, including bond authorizations, allotments, and allotment data.

3. Department of Defense, National Geospatial-Intelligence Agency (N1–537–09–2, 7 items, 7 temporary items). Records of the Systems Integrity Division, including records of internal committees, systems engineering files, and technical/configuration files for systems.

4. Department of Education, Office for Civil Rights (N1–441–08–8, 3 items, 2 temporary items). Annual, bi-annual, and one-time survey data relating to the compliance status of recipients of Federal financial assistance pursuant to the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and other civil rights legislation. Proposed for permanent retention is the final edited master version of the Civil Rights Survey.

5. Department of Health and Human Services, Food and Drug Administration (N1–88–09–1, 13 items, 13 temporary items). Records relating to inspection and compliance activities, including such records as inspection case files, files pertaining to investigator disqualifications, master data files for the Drug Quality Reporting System, and master files for systems used to track inspection work.

6. Department of Health and Human Services, Food and Drug Administration (N1–88–09–5, 11 items, 11 temporary items). Records of the Center for Food Safety and Applied Nutrition. Included are such records as pre-marketing permits for experimental foods; food and color additive petitions, notifications, and consultations and related electronic administrative tracking data; data files and background information on food additive chemical and toxicological profiles; files relating to the importation of milk; subject files relating to infant formula manufacturers; pre-market notifications for infant formulas and related electronic administrative tracking data; and master data files and final reports from the Seafood Hazard Analysis and Critical Control Point survey.

7. Department of Homeland Security, U.S. Citizenship and Immigration Services (N1–566–09–5, 1 item, 1 temporary item). Master files associated with an electronic information system used for such administrative purposes as workflow management, production evaluation, and time and attendance matters.

8. Department of the Interior, National Business Center (N1–48–09–1, 1 item, 1 temporary item). Master files of an electronic information system that contains information concerning maintenance problems and other conditions involving agency aircraft that have the potential to cause mishaps.

9. Department of Justice, Executive Office for U.S. Attorneys (N1–60–09–26, 3 items, 3 temporary items). Master files and outputs associated with an electronic information system that contains information regarding training activities, such as data concerning course participants, descriptions of courses, and training materials.

10. Department of State, Bureau of Diplomatic Security (N1–59–09–15, 1 item, 1 temporary item). Master files of an electronic information system that contains data concerning the protection of personnel and diplomatic contingents of dignitaries visiting the United States.

11. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (N1–564–09–1, 1 item, 1 temporary item). Master files of an electronic information system used for audits and investigations conducted by agency field offices.

12. Department of the Treasury, Financial Crimes Enforcement Network (N1–559–09–1, 3 items, 3 temporary items). Master files, inputs, and outputs of an electronic case management system used for bank secrecy and compliance reporting.

13. Department of the Treasury, Internal Revenue Service (N1–58–09–41, 1 item, 1 temporary item). Master files of an electronic information system used to provide information to participating agencies concerning taxpayers' eligibility for public assistance.

14. Department of the Treasury, Internal Revenue Service (N1–58–09–55, 5 items, 5 temporary items). Master files and outputs associated with an electronic information system used to process tax law questions submitted by taxpayers via the agency Web site.

15. Department of the Treasury, Internal Revenue Service (N1–58–09–57, 3 items, 3 temporary items). Master files, inputs, and outputs associated with an electronic information system used to monitor benefits and services provided to agency employees.

16. Department of the Treasury, Internal Revenue Service (N1–58–09–64, 4 items, 4 temporary items). Master files and outputs associated with an electronic information system used to track employee job satisfaction matters.

17. Department of the Treasury, Internal Revenue Service (N1–58–09–65, 2 items, 2 temporary items). Master files and outputs associated with an electronic information system used to apply State income tax refunds to individual taxpayers' Federal debts.

18. Department of the Treasury, Internal Revenue Service (N1–58–09–66, 3 items, 3 temporary items). Master files, inputs, and outputs of an electronic information system used to manage the distribution of agency publications.

19. Department of the Treasury, Internal Revenue Service (N1–58–09–67, 3 items, 3 temporary items). Master files, inputs, and outputs associated with an electronic information system used in connection with processing, validation, and correction of tax returns.

20. Department of Veterans Affairs, Veterans Benefits Administration (N1–15–09–1, 1 item, 1 temporary item). Requests for certifications of eligibility for loan guaranty benefits.

21. Export-Import Bank of the United States, Chief Information Office (N1–275–09–2, 1 item, 1 temporary item). Master files of an electronic information system used to track loans and guarantees provided to foreign buyers for the purchase of U.S. exports.

22. Export-Import Bank of the United States, Chief Information Office (N1–275–09–3, 1 item, 1 temporary item). Master files of an electronic information system used to manage insurance applications and policies.

Dated: September 10, 2009.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. E9–22239 Filed 9–15–09; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0186]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on June 11, 2009.

1. *Type of submission: new, revision, or extension:* Extension.

2. *The title of the information collection:* Policy Statement on Cooperation with States at Commercial Nuclear Power Plants and Other Production or Utilization Facilities.

3. *Current OMB approval number:* 3150–0163.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* On occasion, when a State wishes to observe NRC inspections or perform inspections for NRC.

6. *Who will be required or asked to report:* Those States interested in observing or performing inspections.

7. *An estimate of the number of annual responses:* 80.

8. *The estimated number of annual respondents:* 56 (50 for nuclear facility licensees + 6 for materials security licensees).

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 800 hours (approximately 10 hours per response).

10. *Abstract:* States wishing to enter into an agreement with NRC to observe or participate in NRC inspections at nuclear power facilities or conduct materials security inspections against NRC Orders are requested to provide certain information to the NRC to ensure close cooperation and consistency with the NRC inspection program, as specified by the Commission's Policy of Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities and Section 274i of the Atomic Energy Act, as amended.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by October 16, 2009. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Christine J. Kymn, Office of Information and Regulatory Affairs (3150–0163), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

The NRC Acting Clearance Officer is Tremaine Donnell, (301) 415–6258.

Dated at Rockville, Maryland, this 3rd day of September 2009.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E9–22327 Filed 9–15–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–315; NRC–2009–0406; License No. DPR–058]

Indiana Michigan Power Company Donald C. Cook Nuclear Plant, Unit 1; Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a director's decision with regard to a petition dated December 16, 2008, filed on behalf of the Union of Concerned Scientists (UCS) by Mr. David Lochbaum, hereinafter referred to as the ''petitioner.'' In a letter dated February 2, 2009, Mr. Lochbaum designated Dr. Edwin Lyman as the petitioner and new point of contact for UCS. The petition concerns the safe future operation of Indiana Michigan Power Company's (the licensee) Donald C. Cook Nuclear Power Plant, Unit 1 (CNP–1).

The petition requested that the U.S. Nuclear Regulatory Commission (NRC) issue a demand for information requiring the licensee to docket information on four issues described below at least 30 days before restarting CNP–1 from the current outage.

As the basis for the December 16, 2008, request, the petitioner raised concerns stemming from the significant vibration resulting from the failure of the CNP–1 main turbine on September 20, 2008. Specifically, the petitioner stated that the event caused significant vibration levels that resulted in the spurious operation of standby equipment and may have contributed to a breach that seriously impaired the fire protection system. The petitioner requested the information, in part, to ensure that the licensee had applied the proper lessons learned from the event to the future operation of the CNP–1 reactor. The petitioner further stated that without this information, the NRC could not be assured that the public was adequately protected from the significant adverse safety implications resulting from a safe shutdown earthquake event that causes the spurious actuation of equipment.

On January 21, 2009, the NRC Petition Review Board (PRB) convened to discuss the petition under consideration and determined that it met the criteria established in NRC Management Directive 8.11, ''Review Process for 10 CFR 2.206 Petitions,'' dated October 25, 2000, for acceptance into the process under Title 10 of the *Code of Federal Regulations* (10 CFR) 2.206, ''Requests for action under this subpart.'' On January 27, 2009, the NRC staff discussed this conclusion with the petitioner during a telephone conversation. The petitioner stated during this conversation that he would not need a public meeting to address the PRB.

The NRC sent a copy of the proposed director's decision to the petitioner and the licensee for comment on July 2, 2009. The staff did not receive any comments on the proposed director's decision.

The Director of the Office of Nuclear Reactor Regulation has determined that the agency should deny the request that the NRC issue a demand for information requiring Indiana Michigan Power Company to docket information on four issues at least 30 days before restarting CNP–1 from the current outage. The director's decision, DD–09–02, explains the reasons for this decision pursuant to 10 CFR 2.206. The complete text of the decision is available in the Agencywide Documents Access and Management System (ADAMS) Electronic Reading Room (ADAMS Accession No. ML092230012) on the NRC's Web site, *http://www.nrc.gov/reading-rm/adams.html*, and for inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

In a letter dated May 12, 2009, the licensee provided a response to the petitioner's request for information. The NRC technical staff reviewed the licensee's response and other docketed information associated with the event. The NRC staff has concluded that public health and safety were not affected by

the event, nor would they be affected by a similar event in the future. Furthermore, the NRC has found the licensee's event response and corrective actions to be reasonable and technically sound.

Based on the above, the Office of Nuclear Reactor Regulation has concluded that future operation of CNP–1 provides reasonable assurance of the continued protection of public health and safety. There were no violations associated with the event. The licensee's corrective actions in response to the event appear appropriate. No further action is required.

In accordance with 10 CFR 2.206 of the Commission's regulations, the staff will file a copy of the director's decision with the Secretary of the Commission for the Commission's review. As provided for by this regulation, the director's decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the director's decision within that time.

Dated at Rockville, Maryland, this 4th day of September 2009.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. E9–22323 Filed 9–15–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on AP1000; Notice of Meeting

The ACRS Subcommittee on the AP1000 will hold a meeting on October 6–7, 2009, 11555 Rockville Pike, Commissioners' Conference Room O1–F16, One White Flint North, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, October 6, 2009—8:30 a.m.–5 p.m.

Wednesday, October 7, 2009—8:30 a.m.–5 p.m.

The Subcommittee will review selected chapters of the Draft Safety Evaluation Report associated with the amendment to the AP1000 Design Certification Document. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Michael Lee, telephone 301–415–6887, e-mail: *Mike.Lee@nrc.gov* five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the Designated Federal Official 30 minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the Designated Federal Official 1 day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Designated Federal Official with a CD containing each presentation at least 30 minutes before the meeting. Electronic recordings will be permitted. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 6, 2008 (73 FR 58268–58269).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8:15 a.m. and 5:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: September 9. 2009.

Antonio Dias,

Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. E9–22333 Filed 9–15–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on October 7, 2009, Room T2–E2, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, October 7, 2009, 12 p.m.–1 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer, Mr. Sam Duraiswamy, Telephone: 301–415–7364, e-mail: *Sam.Duraiswamy@nrc.gov* between 7:30 a.m. and 4 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the Designated Federal Official 30 minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the Designated Federal Official 1 day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Designated Federal Official with a CD containing each presentation at least 30 minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 6, 2008, (73 FR 58268–58269).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: September 9, 2009.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. E9–22334 Filed 9–15–09; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

Sunshine Act Meetings

AGENCY: Postal Regulatory Commission.

TIME AND DATE: Thursday, October 1, 2009 at 10:30 a.m.

PLACE: Commission conference room, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001.

STATUS: Open.

MATTERS TO BE CONSIDERED: Selection of vice chairman.

CONTACT PERSON FOR MORE INFORMATION: Stephen L. Sharfman, General Counsel, Postal Regulatory Commission, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001, 202–789–6820 or *stephen.sharfman@prc.gov.*

Dated: September 14, 2009.

Shoshana M. Grove,

Secretary.

[FR Doc. E9–22436 Filed 9–14–09; 4:15 pm]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

Sunshine Act Meetings

Federal Register *Citation of Previous Announcement:* 74 FR 45487 (September 2, 2009).

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 3 p.m., Monday, September 14, 2009.

CHANGES IN THE MEETING: The matters to be considered included two items: consideration and adoption of FY 2011 budget and election of vice chairman. The revised agenda consists of one item: Consideration and adoption of FY 2011 budget.

CONTACT PERSON FOR MORE INFORMATION: Stephen L. Sharfman, General Counsel, 202–789–6824 or *stephen.sharfman@prc.gov.*

Shoshana M. Grove,

Secretary.

[FR Doc. E9–22437 Filed 9–14–09; 4:15 pm]

BILLING CODE 7710–FW–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11874 and # 11875]

California Disaster # CA–00141

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of California dated 09/09/2009.

Incident: 49 Fire.

Incident Period: 08/30/2009 And Continuing.

DATES: *Effective Date:* 09/09/2009.

Physical Loan Application Deadline Date: 11/09/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 06/09/2010.

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 Administrator's disaster declaration, applications for disaster loans may be filed 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: Placer.

Contiguous Counties: California: El Dorado, Nevada, Sacramento, Sutter, Yuba.

Nevada: Carson City, Douglas, Washoe.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.500
Homeowners Without Credit Available Elsewhere	2.750
Businesses WIth Credit Available Elsewhere	6.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.500
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11874 5 and for economic injury is 11875 0.

The States which received an EIDL Declaration # are California, Nevada.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: September 9, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–22290 Filed 9–15–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11876 and # 11877]

Pennsylvania Disaster # PA–00023

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Pennsylvania dated 09/09/2009.

Incident: Severe Storms and Flooding.

Incident Period: 06/16/2009 through 06/30/2009.

DATES: *Effective Date:* 09/09/2009.

Physical Loan Application Deadline Date: 11/09/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 06/09/2010.

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 Administrator's disaster declaration, applications for disaster loans may be filed 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: Allegheny, Erie, Westmoreland.

Contiguous Counties: Pennsylvania: Armstrong, Beaver, Butler, Cambria, Crawford, Fayette, Indiana, Somerset, Warren, Washington.

New York: Chautauqua.

Ohio: Ashtabula.

The Interest Rates are:

	Percent
Homeowners with Credit Available Elsewhere	4.875.
Homeowners without Credit Available Elsewhere	2.437.
Businesses with Credit Available Elsewhere	6.000.
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000.
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	4.500.
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000.

The number assigned to this disaster for physical damage is 11876 6 and for economic injury is 11877 0.

The States which received an EIDL Declaration # are Pennsylvania, New York, Ohio.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: September 9, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–22294 Filed 9–15–09; 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 T–6, OMB Control No. 3235–0391, SEC File No. 270–344.

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 T–6 (17 CFR 269.9) is a statement of eligibility and qualification for a foreign corporate trustee under the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*). Form T–6 provides the basis for determining if the foreign corporate trustee is qualified. Form T–6 is filed on occasion. The information collected must be filed with the Commission and is publicly available. Form T–6 takes approximately 17 burden hours per response and is filed by approximately 15 respondents annually. We estimate that 25% of the 17 hours (4.25 hours) is prepared by the filer for an annual reporting burden of 64 hours (4.25 hours per response × 15 responses).

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: September 8, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–22247 Filed 9–15–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60643; File No. 4–590]

Securities Lending and Short Sale Roundtable

AGENCY: Securities and Exchange Commission.

ACTION: Notice of roundtable discussion; request for comment.

SUMMARY: The Commission will host a one and a half day roundtable to solicit the views of investors, issuers, financial services firms, self-regulatory organizations and the academic community regarding securities lending and short sales. The roundtable will include a comprehensive overview of securities lending and also analyze possible short sale pre-borrowing requirements and additional short sale disclosures.

The roundtable discussion will be held in the auditorium of the Securities and Exchange Commission headquarters at 100 F Street, NE., in Washington, DC on September 29, 2009 from 9:30 a.m. to approximately 4 p.m. (securities lending) and September 30, 2009 from 9:30 a.m. to approximately 12:30 p.m. (pre-borrowing and possible additional short sale disclosures). The public is invited to observe the roundtable discussion. Seating will be available on a first-come, first-served basis. The roundtable discussion also will be available via Web cast on the Commission's Web site at *http://www.sec.gov*.

The roundtable will consist of panels focused on securities lending and possible short sale pre-borrowing requirements and additional short sale disclosures. The panelists will consider a range of securities lending topics, such as current lending practices and participants, compensation arrangements and conflicts, the benefits and risks of securities lending, risks related to cash collateral reinvestment, improvements to transparency, and consideration of whether the securities lending regulatory regime can be improved for the benefit of investors. The panelists will also consider short sale disclosure topics, such as whether investors would benefit from adding a short sale indicator to the tapes to which transactions are reported for exchange-listed securities, and requiring public disclosure of individual large short positions. In addition, the panelists will evaluate the potential impact of imposing a pre-borrow or enhanced ''locate'' requirement on short sellers, potentially on a pilot basis, as a way to curtail abusive ''naked'' short selling.

DATES: The roundtable discussion will take place on September 29, 2009 (securities lending) and September 30, 2009 (pre-borrowing and possible additional short sale disclosures). The Commission will accept comments regarding issues addressed in the roundtable discussion until October 30, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number 4–590 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number 4–590. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: The Division of Trading and Markets, at (202) 551–5720, Securities and Exchange Commission, 100 F Street NE., Washington DC 20549–7561.

Dated: September 10, 2009.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–22264 Filed 9–15–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a hold a roundtable about securities lending and short sale issues on September 29 and September 30, 2009.

The roundtable discussion will be held in the auditorium at SEC headquarters at 100 F Street, NE., in Washington, DC. On September 29, the roundtable will focus on securities lending issues and take place from 9:30 a.m. to approximately 4 p.m. On September 30, the roundtable will focus on short sale pre-borrowing and additional short sale disclosures and take place from 9:30 a.m. to approximately 12:30 p.m.

The roundtable will be open to the public with seating on a first-come, first-served basis. Visitors will be subject to security checks.

For further information, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: September 14, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–22431 Filed 9–14–09; 4:15 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60639; File No. SR–CTA–2008–01]

Consolidated Tape Association; Order Approving the Eleventh Charges Amendment to the Second Restatement of the Consolidated Tape Association Plan To Waive the Automatic Annual Increase in the Enterprise Cap for 2008

September 9, 2009.

I. Introduction

On June 7, 2009, the Consolidated Tape Association (''CTA'') Plan Participants (''Participants'') [1] filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 608 thereunder,[3] a proposal to amend the Second Restatement of the CTA Plan (the ''Plan'') [4] to waive the automatic annual increase in the enterprise cap for 2008. The proposed Plan amendment was published for comment in the **Federal Register** on June 29, 2009.[5] No comment letters were received in response to the Notice. This order approves the proposed Plan amendment.

II. Description of the Proposal

The Plan currently caps the maximum monthly charge that a broker-dealer is required to pay in respect of the aggregate amount of: (1) Network A display-device charges for devices that the broker-dealer's officers, partners and employees use; plus (2) Network A display-device and per-quote-packet charges that the broker-dealer pays in respect of services that it provides to nonprofessional subscribers that are brokerage account customers of the broker-dealer (''Enterprise Cap'').[6]

Footnote 5 to Schedule A–1 of Exhibit E to the CTA Plan subjects the Enterprise Cap to an automatic annual increase. The automatic annual increase is equal to ''the percentage increase in the annual composite share volume for the preceding calendar year, subject to a maximum annual increase of five percent.''

Through this amendment, the Participants proposed to amend the CTA Plan to waive the automatic annual increase in the Enterprise Cap for 2008. As a result, the monthly fee will remain at $660,000 for 2008, the same amount as for 2007. The waiver applies to the Enterprise Cap only, and not to the ''Television Ticker Maximum,'' also set forth in Footnote 6 to Schedule A–1 of Exhibit E to the CTA Plan. The amendment also proposed to update Footnote 6 by applying the automatic annual increase to the ''Television Ticker Maximum,'' by bringing that monthly fee to $157,000 for 2008.

III. Discussion

After careful review, the Commission finds that the proposed CTA Plan amendment is consistent with the Act and the rules and regulations thereunder.[7] Specifically, the Commission finds that the amendment is consistent with Rule 608(b)(2) [8] of the Act in that it is necessary for the protection of investors, the maintenance of fair and orderly markets, and to remove impediments to a national market system. The proposed amendment would reduce the amount of fees paid by some entities which should result in a reduction of costs for investors. Thus, the proposed amendment is consistent with, and would further, one of the principal objectives for the national market system set forth in Section 11A(a)(1)(C)(iii) [9] of the Act—increasing the availability of market information to broker-dealers and investors.

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act,[10] and the rules thereunder, that the proposed amendment to the CTA Plan (SR–CTA–2008–01) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–22244 Filed 9–15–09; 8:45 am]

BILLING CODE 8010–01–P

[1] Each Participant executed the proposed amendment. The Participants are the American Stock Exchange LLC (n/k/a NYSE Alternext US LLC); Boston Stock Exchange, Inc. (n/k/a NASDAQ OMX BX, Inc.); Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC; The NASDAQ Stock Market LLC (''Nasdaq''); National Stock Exchange, Inc.; New York Stock Exchange LLC (''NYSE''); NYSE Arca, Inc.; and Philadelphia Stock Exchange, Inc. (n/k/a NASDAQ OMX PHLX, Inc.).

[2] 15 U.S.C. 78k-1.

[3] 17 CFR 242.608.

[4] The proposal was originally submitted on June 19, 2008, however the exhibits did not reflect the plan language accurately. It was refiled on June 7, 2009 with appropriate exhibits.

[5] *See* Securities Exchange Act Release No. 60154 (June 19, 2009), 74 FR 31076 (''Notice'').

[6] Enterprise Cap found in Schedule A–1 of Exhibit E to the CTA Plan.

[7] In approving this amendment, the Commission has considered the proposed amendment's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 242.608 (b)(2).

[9] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[10] 15 U.S.C. 78k–1.

[11] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60645; File No. SR–FINRA–2009–039]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Adopt FINRA Rule 3310 (Anti-Money Laundering Compliance Program) in the Consolidated FINRA Rulebook

September 10, 2009.

I. Introduction

On June 1, 2009, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt FINRA Rule 3310 (Anti-Money Laundering (''AML'') Compliance Program). The Commission published the proposed rule change for comment in the **Federal Register** on June 22, 2009.[3] The comment period expired on July 13, 2009. The Commission received seven comments in response to the proposed rule change.[4] On July 29, 2009, FINRA responded to the comments.[5] This order approves the proposed rule change.

II. Description of the Proposed Rule Change

FINRA proposed to adopt: (1) NASD Rule 3011 (AML Compliance Program) as FINRA Rule 3310 (AML Compliance Program), without substantive change; (2) NASD IM–3011–1 (Independent Testing Requirements) as supplementary material to proposed FINRA Rule 3310, subject to certain amendments; and (3) NASD IM–3011–2 (Review of AML Compliance Person Information) as supplementary material to proposed FINRA Rule 3310, without substantive change. The proposed rule change would delete Incorporated NYSE Rule 445 (AML Compliance Program) in its entirety as duplicative.

A. Background

NASD Rule 3011 (AML Compliance Program) and Incorporated NYSE Rule 445 (AML Compliance Program) are substantially similar rules requiring members to develop and implement a written AML program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act (''BSA'') [6] and the implementing regulations promulgated by the Department of the Treasury. Each member's AML compliance program must be approved, in writing, by a member of senior management.

Both NASD 3011 and NYSE 445 require that each AML compliance program must, at a minimum: (1) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions; (2) establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the BSA and its implementing regulations; (3) provide for annual (on a calendar-year basis) independent testing for compliance to be conducted by member personnel or a qualified outside party; [7] (4) designate and identify to FINRA an individual or individuals (*i.e.,* AML compliance person(s)) who will be responsible for implementing and monitoring the day-to-day operations and internal controls of the AML compliance program and provide prompt notification to FINRA of any changes to the designation; and (5) provide on-going training for appropriate persons.

NASD IM–3011–1 (Independent Testing Requirements) and the supplementary material to Incorporated NYSE Rule 445 also contain substantially similar provisions clarifying that: (1) Members should undertake more frequent testing than required if circumstances warrant; (2) the person conducting the independent test must have a working knowledge of applicable requirements under the BSA and its implementing regulations; and (3) the testing cannot be conducted by the AML compliance person(s), by any person who performs the functions being tested, or by any person who reports to any of these persons.

NASD IM–3011–1, however, permits the AML compliance program testing to be conducted by persons who report to either the AML compliance person or persons performing the functions being tested if: (1) The member has no other qualified internal personnel to conduct the test; (2) the member establishes written policies and procedures to address conflicts that may arise from allowing the test to be conducted by a person who reports to the person(s) whose activities he or she is testing (*e.g.,* anti-retaliation procedures); (3) to the extent possible, the person conducting the test reports the results of the test to someone who is senior to the AML compliance person or persons performing the functions being tested; and (4) the member documents its rationale, which must be reasonable, for determining there is no other alternative than to comply in this manner. In addition, if the person does not report the results consistent with (3) above, the member must document a reasonable explanation for not doing so. This provision is referred to as the ''independent testing exception.'' Incorporated NYSE Rule 445 does not have a comparable provision.

Finally, NASD IM–3011–2 (Review of AML Compliance Person Information) requires each member to identify, review, and if necessary, update the information regarding its AML compliance person in the manner prescribed in NASD Rule 1160.[8] This provision is comparable to SM .03 of NYSE Rule 445.

B. Proposed FINRA Rule 3310 and Related Supplementary Material

The proposed rule change would adopt NASD Rule 3011 without

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60112 (June 15, 2009), 74 FR 29527 (June 22, 2009).

[4] *See* Letters from Deborah M. Castiglioni, CEO, Cutter & Company, Inc., dated July 9, 2009 (''Cutter''); Larry Dorn, Owner/President/AML Officer/Financial Principal, Dorn & Co., Inc., dated July 16, 2009 (''Dorn''); Joe Giordano, President, Joseph James Financial Services, Inc., dated July 14, 2009 (''Joseph James''); S. Lauren Heyne, Chief Compliance Officer, RW Smith & Associates, Inc., dated July 13, 2009 (''RW Smith''); Judy L. Loy, CEO, Nestlerode & Loy Inc., dated July 8, 2009 (''Nestlerode''); William R. Pictor, CEO, Trubee Collins Co., Inc., dated July 10, 2009 (''Trubee Collins''); Terri F. Rumans, Chief Compliance Officer, Sage Rutty Co., Inc., dated July 13, 2009 (''Sage Rutty''). Unless otherwise indicated, all letters cited in this order were addressed to either Florence Harmon, Deputy Secretary of the Commission or Elizabeth M. Murphy, Secretary of the Commission.

[5] *See* Letter from Patricia Albrecht, Assistant General Counsel, FINRA, dated July 29, 2009 (''FINRA's Response'').

[6] *See* Currency and Foreign Transactions Reporting Act of 1970 (commonly referred to as the Bank Secrecy Act), 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330).

[7] NASD Rule 3011 permits a member to conduct the independent testing every two years (on a calendar-year basis) if it does not execute transactions for customers or otherwise hold customer accounts or act as an introducing broker with respect to customer accounts (*e.g.,* engages solely in proprietary trading, or conducts business only with other broker-dealers). Incorporated NYSE Rule 445 uses slightly different terminology to achieve the same result, specifically providing that a member may conduct independent testing every two years (on a calendar-year basis) if it ''does not engage in a public business (*e.g.,* engages solely in proprietary trading, or conducts business only with other broker-dealers).''

[8] FINRA is proposing to replace NASD Rule 1160 with FINRA Rule 4540 (Member Information and Data Reporting and Filing Requirements). *See Regulatory Notice* 09–02 (January 2009).

substantive change into the Consolidated FINRA Rulebook as FINRA Rule 3310 (AML Compliance Program). In addition, the proposed rule change would adopt NASD IM–3011–2, without substantive change, as supplementary material to proposed FINRA Rule 3310.

With respect to NASD IM–3011–1, the proposed rule change would adopt its provisions as supplementary material to proposed FINRA Rule 3310, but would eliminate the independent testing exception. The Financial Crimes Enforcement Network (''FinCEN''), a bureau within the Department of the Treasury that is responsible for administering the BSA and its implementing regulations, has stated that the independent testing provision of the BSA [9] precludes AML program testing by personnel with an interest in the outcome of the testing and that an independent testing exception, such as the one in NASD IM–3011–1, is inconsistent with the BSA's independent testing provision and FinCEN's interpretation of this provision.[10] Accordingly, consistent with FinCEN's guidance, FINRA is proposing to eliminate the independent testing exception in connection with its adoption of proposed FINRA Rule 3310.

Finally, as stated previously, the proposed rule change would delete Incorporated NYSE Rule 445 and its related supplementary material in their entirety as duplicative. FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

III. Comment Letters

Seven commenters raised objections to the elimination of the independent testing exception.[11] Three commenters expressed their view that the exception was being eliminated to address a problem that has not been shown to exist.[12] These commenters also took exception with FinCEN's view that the independent testing exception was inconsistent with the requirements of the BSA.[13] Commenters also expressed concern that elimination of the independent testing exception would require small firms to incur additional expenses.[14] Some commenters also suggested that FINRA should seek additional member comment on the proposed elimination of the independent testing exception.[15] In responding to the comments, FINRA stated that it was proposing to eliminate the independent testing exception to be consistent with FinCEN's views regarding the BSA's independent testing requirements.[16]

IV. Discussion and Findings

After a careful review of the proposal, the comments received, and FINRA's Response, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to FINRA.[17] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act,[18] which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative practices and to promote just and equitable principles of trade.

The Commission finds that the proposed rule change is reasonably designed to accomplish these ends by aligning the independent testing requirements of proposed FINRA Rule 3310 with FinCEN's interpretation of the BSA's independent testing requirement. The Commission notes in particular that FinCEN is responsible for administering the BSA and its implementing regulations. In light of FinCEN's view that the independent testing provisions of the BSA preclude AML program testing by persons with an interest in the outcome of the test, the independent testing exception in NASD IM–3011–1, is not consistent with the BSA.[19]

V. Conclusion

It is therefore concluded, pursuant to Section 19(b)(2) of the Exchange Act,[20] that the proposed rule change (SR–FINRA–2009–039) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–22240 Filed 9–15–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60642; File No. SR–ISE–2009–61]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Exposure of Reserve Orders

September 9, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 27, 2009, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its rules to adopt an interpretation to its rules related to the exposure of reserve orders. The text of the proposed rule change is as follows, with additions in *italics:*

Rule 717. Limitations on Orders

(a) through (g) no change.

Supplementary Material to Rule 717

.01–.04 no change.

.05 With respect to the non-displayed reserve portion of a reserve order, the exposure requirement of paragraphs (d) and (e) are satisfied if the displayable

---

[9] *See* 31 U.S.C. 5318(h)(1)(D). *See also* 31 CFR 103.120 (AML programs requirements for financial institutions regulated by, among others, self-regulatory organizations).

[10] *See* Letter from Jamal El-Hindi, Associate Director, Regulatory Policy & Programs Division, FinCEN, to Nancy M. Morris, Secretary, SEC (August 22, 2007) (''FinCEN Comment Letter''). FinCEN submitted the letter to the SEC in response to the NYSE's ''omnibus filing,'' which sought to achieve greater harmonization between the NYSE and NASD rules, including the AML compliance program rules (SR–NYSE–2007–22). *See* Securities Exchange Act Release No. 56142 (July 16, 2007), 72 FR 42195 (August 1, 2007).

[11] *See supra* note 4.

[12] Cutter, Dorn, and Nestlerode.

[13] *Id.* The commenters asserted that employees of a small broker-dealer have an interest in bringing problems to light, not ignoring them.

[14] Cutter, Dorn, Joseph James, RW Smith, Sage Rutty, and Trubee Collins.

[15] Nestlerode, Cutter, RW Smith, and Dorn.

[16] *See* FINRA's Response, *supra* note 5. *See also* FinCEN Comment Letter, *supra* note 10 and accompanying text.

[17] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78*o*–3(b)(6).

[19] *See* FinCEN Comment Letter, *supra* note 10 and accompanying text.

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

portion of the reserve order is displayed at its displayable price for one second.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) *Purpose*—The purpose of the proposal is to adopt an interpretation to ISE Rule 717(d) and (e) to specify that the exposure requirement contained in these paragraphs is satisfied with respect to the non-displayed reserve portion of a reserve order if the displayable portion is displayed at its displayable price for one second. A reserve order is an order where only a portion of the full size is included in the Exchange's disseminated quotation.[3] The displayed size is executed according to the Exchange's regular priority rules, and is refreshed with additional volume from the non-displayed portion of the order. The non-displayed portion of the reserve order is available for execution only after the exchange's displayed quote is fully exhausted.

Under the proposed interpretation, after entering a reserve order, a member may enter a contra-side order for its own account or a contra-side order that was solicited from another broker-dealer that would execute against the displayable and non-displayed portions of the order so long as the displayable portion of the order was displayed on the ISE (*i.e.,* the price of the order is at the ISE BBO) for at least one second. This proposed interpretation is the same as an existing interpretation to the rule of the Nasdaq Options Market that contains the same exposure requirements as ISE Rule 717(d) and (e).[4] Accordingly, the Commission has previously determined that display of the displayable portion of a reserve order is sufficient to satisfy the exposure requirements of ISE Rule 717(d) and (e).

(b) *Basis*—The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system, and in general, to protect investors and the public interest. In particular, the proposal is the same as an existing rule of another exchange,[5] and will provide members with certainty with respect to the applicable exposure requirements for reserve orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change as required by Rule 19b–4(f)(6).[6] The proposed rule change is the same as a rule that the Commission has previously approved for another self-regulatory organization.[7] For the foregoing reason, this rule filing qualifies for immediate effectiveness as a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 of the Act.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2009–61 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2009–61. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You

[3] ISE Rule 715(g).

[4] Nasdaq Rules, Chapter VII, Sec. 12 (Order Exposure Requirements), Commentary .03.

[5] *Id.*

[6] 17 CFR 240.19b–4(f)(6).

[7] *Supra* note 4.

should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2009–61 and should be submitted on or before October 7, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–22245 Filed 9–15–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60640; File No. SR–FINRA–2009–056]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee for Investment Banking Representative Examination

September 9, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 26, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as ''establishing or changing a due, fee or other charge'' under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend Schedule A to the FINRA By-Laws to establish a fee for the new Investment Banking Representative Examination (''Series 79'').

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 13, 2009, the Commission approved NASD Rule 1032(i), which establishes a new limited representative category—Limited Representative-Investment Banking—for persons whose activities are limited to investment banking and those who supervise such activities.[5] FINRA has developed the Series 79 program to ensure that persons associated with FINRA members seeking to register as investment banking representatives have attained specified levels of competence and knowledge. On July 28, 2009, FINRA filed with the Commission the Series 79 selection specifications and content outline.[6] The examination will be implemented on November 2, 2009.[7]

The proposed rule change would amend Section 4 of Schedule A to FINRA By-Laws to establish a fee of $265 for an associated person to take the Series 79 exam. The fee is the same as that for the General Securities Representative exam (''Series 7'')[8] and is based on the costs to FINRA to develop and administer the exam.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be November 2, 2009, to coincide with the implementation date of NASD Rule 1032(i).

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act,[9] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes the proposed rule change is designed to accomplish these ends by equitably assessing the costs associated with developing and administering the examination program.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and subparagraph (f)(2) of Rule 19b–4 thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 59757 (April 13, 2009), 74 FR 18268 (April 21, 2009) (Order Approving File No. SR–FINRA–2009–006).

[6] *See* Securities Exchange Act Release No. 60424 (August 4, 2009), 74 FR 39984 (August 10, 2009) (Notice of Filing and Immediate Effectiveness; File No. SR–FINRA–2009–049).

[7] *See Regulatory Notice* 09–41 (July 2009).

[8] Within the six-month period following the implementation of Rule 1032(i), individuals who are registered as a General Securities Representative and function in a member's investment banking business line as described in Rule 1032(i) may opt in to the Limited Representative-Investment Banking registration category. After the six-month opt-in period, individuals who perform the job functions set out in Rule 1032(i) will be required to pass the Series 79 exam in lieu of the General Securities Representative (''Series 7'') exam (or equivalent exams), unless subject to an exception in the Rule.

[9] 15 U.S.C. 78*o*–3(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2009–056 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–056. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–FINRA–2009–056 and should be submitted on or before October 7, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–22246 Filed 9–15–09; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60637; File No. SR–Phlx–2009–77]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Regarding Listing Certain Options at $1 Strike Price Intervals Below $200 and Listing Certain Options at $2.50 Strike Price Intervals Below $200

September 9, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4 [2] thereunder, notice is hereby given that on September 4, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rules 1012 (Series of Options Open for Trading) and 1101A (Terms of Option Contracts) regarding listing certain options at $1 strike price intervals below $200. The proposal also amends Rule 1101A regarding listing certain options on indexes at $2.50 strike price intervals below $200.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The rule changes proposed herein are consistent with existing rules and practices that allow Phlx and other options exchanges to list and trade Mini-NDX (MNX) and other index options at $1 strike price intervals,[3] and to trade index options at $2.50 strike price intervals.[4]

The purpose of the proposed rule change is to amend Phlx Rules 1012 and 1101A so that the Exchange may list eight index options at $1 strike price intervals below $200. The purpose is also to amend Rule 1101A so that the Exchange may list options on two indexes at $2.50 strike price intervals below $200.

The indexes underlying options in respect of which the Exchange is proposing $1 strike price intervals in this filing, which are also known as sector indexes, are: PHLX Gold/Silver Index (option symbol XAU), PHLX Housing Index (option symbol HGX), PHLX Oil Service Index (option symbol OSX), SIG Oil Exploration & Production Index™ (option symbol EPX℠),[5] PHLX Semiconductor Index (option symbol SOX), KBW Bank Index (option symbol BKX),[6] SIG Energy MLP Index℠ (option

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Regarding $1 strike price intervals for MNX, *see* Securities Exchange Act Release Nos. 58924 (November 10, 2008), 73 FR 68464 (November 18, 2008) (SR–CBOE–2008–96) (approval order); 58997 (November 21, 2008), 73 FR 72887 (December 1, 2008) (SR–ISE–2008–88) (notice of filing and immediate effectiveness); 59129 (December 22, 2008), 73 FR 79945 (December 30, 2008) (SR–BSE–2008–57) (notice of filing and immediate effectiveness); and 60156 (June 22. 2009), 74 FR 31077 (June 29, 2009) (SR–Phlx-2009–46) (notice of filing and immediate effectiveness). Regarding $1 and smaller strike price intervals for other index options, *see* Securities Exchange Act Release Nos. 39011 (September 3, 1997), 62 FR 47840 (September 11, 1997) (SR–CBOE–1997–26) (approval order regarding $0.50 strike price intervals for DJIA options); and 58207 (July 29, 2008), 73 FR 43963 (July 22, 2008) (SR–CBOE–2008–26) (approval order regarding $1 strike price intervals for BXM options).

[4] Regarding $2.50 strike price intervals, *see* Securities Exchange Act Release Nos. 35993 (July 19, 1995), 60 FR 38073 (July 25, 1995) (approving File Nos. SR–Phlx-95–08, SR–Amex-95–12, SR–PSE–95–07, SR–CBOE–95–19, and SR–NYSE–95–12 and approving the $2.50 pilot program); and 40662 (November 12, 1998), 63 FR 64297 (November 19, 1998) (approving File Nos. SR–Amex-98–21, SR–CBOE–98–29, SR–PCX–98–31, and SR–Phlx-98–26 and permanently approving the $2.50 pilot).

[5] The SIG Indexes noted herein are trademarks of SIG Indices, LLLP.

[6] The KBW Bank Index is also known as the PHLX/KBW Bank Index. *See* SR–Phlx-2009–58 (clarifying the name as KBW Bank Index).

symbol SVO™), and Reduced Value Russell 2000 ® Index (option symbol RMN) [7] (these eight indexes are together known as the ''$1 Indexes'' and individually as the ''$1 Index''). The indexes underlying options in respect of which the Exchange is proposing $2.50 strike price intervals are the NASDAQ China Index℠ (option symbol CNZ) and the Reduced Value Russell 2000® Index (option symbol RMN).

Strike price intervals for options on indexes are established in Rule 1101A(a) at three levels: (a) At no less than $5 generally, (b) at no less than $2.50 for options on indexes that are specifically listed in the rule; and (c) at no less than $1 for Reduced Value Nasdaq 100® Options (MNX), which are based on 1/10th the value of the Nasdaq 100® Index (NDX).[8] Thus, the $1 Indexes can be listed at $2.50 strike price intervals, as long as the strike price is below $200.[9]

The Exchange now proposes, in Commentary .03 to Rule 1101A, that the minimum strike price interval for $1 Indexes will be $1 or greater, as long as the strike price is below $200. The Exchange believes that $1 strike price intervals in these option series will provide investors with greater flexibility by allowing them to establish positions that are better tailored to meet their investment objectives.

For initial series, the Exchange would list at least two strike prices above and two strike prices below the current value of the $1 Index at or about the time a series is opened for trading on the Exchange. As part of this initial listing, the Exchange would list strike prices that are within five (5) points from the closing value of the $1 Index on the preceding day.

As for additional series, the Exchange would be permitted to add series when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the underlying $1 Index moves substantially from the initial exercise price or prices. To the extent that any additional strike prices are listed by the Exchange, such additional strike prices shall be within thirty percent (30%) above or below the closing value of the $1 Index. The Exchange would also be permitted to open additional strike prices that are more than 30% above or below the current $1 Index value provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-Makers trading for their own account would not be considered when determining customer interest. In addition to the initial listed series, the Exchange may list up to sixty (60) additional series per expiration month for each series in $1 Index options. In all cases, however, $1 strike price intervals may be listed on $1 Index options only where the strike price is less than $200.[10]

The Exchange confirms that it shall not list LEAPS on $1 Index options at intervals less than $2.50.[11]

The Exchange is also proposing to set forth a delisting policy with respect to $1 Index options. Specifically, for each $1 Index the Exchange will regularly review series that are outside a range of five (5) strikes above and five (5) strikes below the current value of the $1 Index and may delist series with no open interest in both the put and the call series having a: (i) Strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.

Notwithstanding the proposed delisting policy, customer requests to add strikes and/or maintain strikes in $1 Index options in series eligible for delisting may be granted.

The Exchange also proposes to clarify Commentary .09 to Rule 1012 with an internal cross reference stating that the intervals between strike prices for options on the Reduced Value Russell 2000® Index would be determined in accordance with proposed new Commentary .03 to Rule 1101A.[12]

Phlx has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with listing and trading $1 or greater strikes in $1 Index options.

The Exchange has received numerous requests this year from traders of the $1 Index options for trading in $1 strike price increments. The Exchange believes that allowing the listing of these options at $1 increments as proposed, particularly in the current economic climate with downward pressure on pricing of the $1 Indexes discussed herein,[13] should enable traders of such options and their customers to make more accurate and tailored trading and hedging decisions.[14]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [15] in general, and furthers the objectives of Section 6(b)(5) of the Act [16] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by allowing the Exchange to list $1 Index options at $1 or greater strike price intervals.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[7] Reduced Value Russell 2000® Options are also known as mini-Russell options. Russell 2000® is a trademark and service mark of the Frank Russell Company, used under license. Neither Frank Russell Company's publication of the Russell Indexes nor its licensing of its trademarks for use in connection with securities or other financial products derived from a Russell Index in any way suggests or implies a representation or opinion by Frank Russell Company as to the attractiveness of investment in any securities or other financial products based upon or derived from any Russell Index. Frank Russell Company is not the issuer of any such securities or other financial products and makes no express or implied warranties of merchantability or fitness for any particular purpose with respect to any Russell Index or any data included or reflected therein, nor as to results to be obtained by any person or any entity from the use of the Russell Index or any data included or reflected therein.

[8] Rule 1101A(b)(v) also discusses, among other things, that the strike prices of options pursuant to the Quarterly Options Series Program (''Quarterly Options Series'') will be fixed at a price per share, with at least two, but not more than five, strike prices above and at least two, but not more than five, strike prices below the value of the underlying security at the time that a Quarterly Options Series is opened for trading on the Exchange. For strike price intervals for non-index options, *see* Rule 1012.

[9] *See* subsections (v), (vi), (vii), (viii), (xxii), (xxiii), and proposed subsections (xxxii) and (xxxiv) of Rule 1101A(a).

[10] And, as noted, if the strike price is $200 or above, the Exchange may list Index options at $2.50 or higher strike prices. Rule 1101A.

[11] This is consistent with Rule 1101A(a).

[12] The language of proposed Commentary .09 to Rule 1012 and proposed subsection (xxxvi) of Rule 1101A(a) in respect of Nasdaq 100® Options is conformed.

[13] During the preceding year, each of the $1 Indexes have lost 50% or more in value, and four lost more than 65% in value. While there has been some recovery so that as of August 2009 the average overall value loss was around 23%, the significant losses continue, with two of the indexes continuing to show greater than 40% value losses.

[14] More than a decade ago, the Commission approved $1 strike price intervals for options on different products that are sometimes used by traders and their customers in lieu of options on index funds, namely options on Exchange Traded Fund Shares (''ETFs''). *See* Securities Exchange Act Release Nos. 40157 (July 1, 1998), 63 FR 37426 (July 10, 1998) (SR–Amex–96–44) (approval order regarding $1 strike price intervals for ETFs); 44055 (March 8, 2001), 66 FR 15310 (March 16, 2001) (notice of filing and immediate effectiveness). *See also* Commentary .05 to Rule 1012.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) By order approve such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2009–77 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2009–77. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2009–77 and should be submitted on or before October 7, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–22243 Filed 9–15–09; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 6762]

Additional Designation of Two Entities Pursuant to Executive Order 13382

AGENCY: Department of State.

ACTION: Designation of North Korea's General Bureau of Atomic Energy (GBAE) and Korea Tangun Trading Corporation (Tangun) Pursuant to Executive Order 13382.

SUMMARY: Pursuant to the authority in section 1(ii) of Executive Order 13382, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters'', the State Department, in consultation with the Secretary of the Treasury and the Attorney General, has determined that two North Korean entities, the General Bureau of Atomic Energy (GBAE) and Korea Tangun Trading Corporation, have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern.

DATES: The designation by the Under Secretary of State of the entities identified in this notice pursuant to Executive Order 13382 is effective on September 3, 2009.

FOR FURTHER INFORMATION CONTACT: Director, Office of Counterproliferation Initiatives, Bureau of International Security and Nonproliferation, Department of State, Washington, DC 20520, tel.: 202–647–5193.

Background:

On June 28, 2005, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 30, 2005. In the Order the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by,

[17] 17 CFR 200.30–3(a)(12).

or acting or purporting to act for or on behalf of, directly or indirectly, and person whose property and interests in property are blocked pursuant to the Order.

Information on the additional designees is as follows:

General Bureau of Atomic Energy (a.k.a. gBae, a.k.a. General Department of Atomic Energy), Haeudong, Pyongchen District, Pyongyang, Korea, North.

Korea Tangun Trading Corporation, Pyongyang, Korea North.

Dated: August 31, 2009.

Ellen O. Tauscher,

Under Secretary for Arms Control and International Security, Department of State.

[FR Doc. E9–22307 Filed 9–15–09; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Public Notice 6491]

Advisory Committee on International Economic Policy; Notice of Open Meeting

The Advisory Committee on International Economic Policy (ACIEP) will meet from 2 p.m. to 4 p.m. on Wednesday, September 30, 2009, at the U.S. Department of State, 2201 C Street NW., Room 1107, Washington, DC. The meeting will be hosted by the Acting Assistant Secretary of State for Economic, Energy, and Business Affairs David Nelson and Committee Chair Ted Kassinger. The ACIEP serves the U.S. Government in a solely advisory capacity, and provides advice concerning issues and challenges in international economic policy. The meeting will focus on a report from the Investment Subcommittee regarding its review of the U.S. Model Bilateral Investment Treaty.

This meeting is open to public participation, though seating is limited. Entry to the building is controlled; to obtain pre-clearance for entry, members of the public planning to attend should provide, by Friday, September 25, their name, professional affiliation, valid government-issued ID number (*i.e.*, U.S. Government ID [agency], U.S. military ID [branch], passport [country], or drivers license [state]), date of birth, and citizenship to Ronelle Jackson by fax (202) 736–7522, e-mail (*JacksonRS@state.gov*), or telephone (202) 647–9204. One of the following forms of valid photo identification will be required for admission to the State Department building: U.S. driver's license, U.S. Government identification card, or any valid passport. Enter the Department of State from the C Street lobby. In view of escorting requirements, non-Government attendees should plan to arrive 15 minutes before the meeting begins. Requests for reasonable accommodation should be made to Ronelle Jackson prior to Tuesday, September 22nd. Requests made after that date will be considered, but might not be possible to fulfill.

For additional information, contact Senior Coordinator Nancy Smith-Nissley, Office of Economic Policy Analysis and Public Diplomacy, Bureau of Economic, Energy and Business Affairs, at (202) 647–1682 or Smith-*NissleyN@state.gov*.

Dated: September 10, 2009.

Sandra E. Clark,

Office Director, Office of Economic Policy Analysis and Public Diplomacy, Department of State.

[FR Doc. E9–22308 Filed 9–15–09; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 6743]

Shipping Coordinating Committee; Notice of Meeting: Corrected Notice

In a **Federal Register** notice dated September 9, 2009 (74 FR 46476), the Shipping Coordinating Committee (SHC) announced a meeting to be held at 11 a.m. on Wednesday, September 23, 2009, in Room 1422 of the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593–0001. This notice corrects the title and the agenda only. This is a meeting of the advisory committee. The corrected agenda follows.

The primary purpose of the meeting is to prepare for the ninety-sixth Session of the International Maritime Organization (IMO) Legal Committee (LEG) to be held be held at the IMO Headquarters, United Kingdom, from October 5 to October 9, 2009.

The primary matters to be considered include:

—Provision of financial security;
—Fair treatment of seafarers in the event of a maritime accident;
—International Convention on Civil Liability for Bunker Oil Pollution; Damage, 2001: implementation of the Convention;
—Piracy: review of national legislation;
—Matters arising from the one hundred and second regular session of the Council;
—Technical co-operation activities related to maritime legislation;
—Review of the status of conventions and other treaty instruments adopted as a result of the work of the Legal Committee;
—Work programme.

Instructions to members of the public wishing to attend this meeting were included in the original Notice.

Additional information regarding this and other IMO SHC public meetings may be found at: *http://www.uscg.mil/hq/cg5/imo*.

Dated: September 10, 2009.

J. Trent Warner,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. E9–22310 Filed 9–15–09; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) During the Week Ending September 5, 2009

The following Applications for: Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2009–0206.

Date Filed: August 31, 2009.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 21, 2009.

Description: Application of Clairmonte Holdings d/b/a VI Airlink requesting a foreign air carrier permit and exemption authority to engage in charter foreign air transportation of persons, property and mail between points in the British Virgin Islands and the United States.

Docket Number: DOT–OST–2009–0214.

Date Filed: September 3, 2009.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 24, 2009.

Description: Application of Unijet requesting a foreign air carrier permit to enable it to engage in: (i) Foreign charter

air transportation of persons and property from any point or points behind any Member State of the European Union via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; (ii) foreign charter air transportation of persons and property between any point or points in the United States and any point or points in any member of the European Common Aviation Area; (iii) other charters pursuant to the prior approval requirements; and (iv) transportation authorized by any additional route rights made available to European Community carriers in the future. Unijet further requests exemption authority to the extent necessary to enable it to provide the services described above pending issuance of a foreign air carrier permit and such additional or other relief as the Department may deem necessary or appropriate.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E9–22330 Filed 9–15–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–57 (Sub-No. 57X)]

Soo Line Railroad Company d/b/a Canadian Pacific Railway Company—Abandonment Exemption—in Hennepin County, MN

Soo Line Railroad Company d/b/a Canadian Pacific Railway Company (CPR) has filed a verified notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 1710 +/- foot line of railroad between milepost 3.79 +/- (east of Girard) and milepost 4.09 +/- (west of Colfax), in Hennepin County, MN. The line traverses United States Postal Service Zip Code 55405.

CPR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) all overhead traffic can and has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 16, 2009, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 28, 2009. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 6, 2009, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CPR's representative: W. Karl Hansen, Leonard, Street and Deinard, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

CPR has filed environmental and historic reports that address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by September 21, 2009. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CPR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CPR's filing of a notice of consummation by September 16, 2010, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: September 10, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–22248 Filed 9–15–09; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,500. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2009–0047]

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 of the following new information collection: Over-the-Road Bus (OTRB) Accessibility Program (OMB Number 2132–NEW).

The information to be collected for this program will be used to determine the applicant's eligibility to receive the program funds and to manage the program. The **Federal Register** Notice with a 60-day comment period soliciting comments was published on June 29, 2009.

DATES: Comments must be submitted before October 16, 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: Over-the-Road Bus (OTRB) Accessibility Program.

Abstract: The OTRB Accessibility Program is authorized under Section 3038 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–85, as amended by the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users SAFETEA–LU), Public Law 109–059, August 10, 2005. OTRBs are used in intercity fixed-route service as well as other services, such as commuter, charter and tour bus services. These services are an important element of the U.S. transportation system. TEA–21 authorized FTA's OTRB Accessibility Program to assist OTRB operators in complying with the Department's OTRB Accessibility regulation, ''Transportation for Individuals with Disabilities'' (49 CFR part 37, Subpart H). The legislative intent of this grant program is to increase the number of wheelchair accessible OTRBs available to persons with disabilities throughout the country.

Estimated Total Annual Burden: 4,800 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: September 10, 2009.

Ann M. Linnertz,

Associate Administrator for Administration.

[FR Doc. E9–22321 Filed 9–15–09; 8:45 am]

BILLING CODE 4910–57–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011961–008.

Title: Maritime Credit Agreement.

Parties: Alianca Navegacao e Logistica Ltda. & Cia.; China Shipping Container Lines Co., Ltd.; CMA CGM S.A.; Companhia Libra de Navegacao; Companhia Libra de Navegacion Uruguay S.A.; Compania Sud Americana de Vapores, S.A.; COSCO Container Lines Company Limited; Dole Ocean Cargo Express; Hamburg-Süd; Hoegh Autoliners A/S; Independent Container Line Ltd.; Kawasaki Kisen Kaisha, Ltd.; Nippon Yusen Kaisha; Norasia Container Lines Limited; Safmarine Container Lines N.V.; Tropical Shipping & Construction Co., Ltd.; United Arab Shipping Company (S.A.G.); Wallenius Wilhelmsen Logistics AS; Yang Ming Marine Transport Corp.; Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would add Hyundai Merchant Marine Co., Ltd. as party to the Agreement.

Agreement No.: 201162–004.

Title: NYSA–ILA Assessment Agreement.

Parties: International Longshoremen's Association and New York Shipping Association.

Filing Parties: Donato Caruso, Esq.; The Lambos Firm; 29 Broadway, 9th Floor; New York, NY 10006 and Andre Mazzola, Esq.; Marrinan & Mazzola Mardon, P.C.; 26 Broadway, 17th Floor; New York, NY 10004.

Synopsis: The amendment updates assessments on vehicles and other operable, self-propelled machinery or equipment weighing more than 15,000 pounds.

By Order of the Federal Maritime Commission.

Dated: September 11, 2009.

Karen V. Gregory,

Secretary.

[FR Doc. E9–22304 Filed 9–15–09; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–1042X]

R.J. Corman Railroad Company/ Tennessee Terminal, LLC—Discontinuance of Service Exemption—in Shelby County, TN

R.J. Corman Railroad Company/ Tennessee Terminal, LLC (RJCK) has filed a verified notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over 2,084 feet of rail line owned by BNSF Railway Company (BNSF) and identified as Track A (1110) in the Airport Industrial Park tracks at Memphis, in Shelby County, TN. The line traverses United States Postal Service Zip Code 38118.[1]

RJCK has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted over other lines; −fnl;(3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.[2]

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 16, 2009, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA for continued rail service under 49

[1] RJCK leased this line and began operations in January 2006. *See R.J. Corman Railroad Company/ Tennessee Terminal, LLC—Lease and Operation Exemption—BNSF Railway Company,* STB Finance Docket No. 34772 (STB served Feb. 3, 2006).

[2] Because this is a discontinuance of service proceeding and not an abandonment, the proceeding is exempt from the requirements of 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), and 49 CFR 1105.11 (transmittal letter).

CFR 1152.27(c)(2)[3] must be filed by September 28, 2009.[4] Petitions to reopen must be filed by October 6, 2009, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to RJCK's representative: Ronald A. Lane, Fletcher & Sippel LLC, 29 N. Wacker Dr., Suite 920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 10, 2009.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–22263 Filed 9–15–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Intent To Prepare a Supplemental Draft Environmental Impact Statement for the Capitol Expressway Light Rail Project in the City of San Jose and County of Santa Clara, CA.

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of Intent to prepare a Supplemental Draft Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration and the Santa Clara Valley Transportation Authority (VTA) are planning to prepare a Supplemental Draft Environmental Impact Statement (EIS) for the proposed 2.3 mile extension of light rail along Capitol Expressway from the existing Alum Rock Station to Eastridge Transit Center in the City of San Jose. Pursuant to 23 C.F.R 771.129(a) and 771.130, the Supplemental Draft EIS will replace the Draft EIS that was made available for public review in April 2004. The Final EIS required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et. seq.*) (NEPA) was never completed for this project as a result of limited opportunities for securing federal funds at that time. Due to dramatic declines in local and state funding sources as a result of the global economic recession, VTA is now preparing a Supplemental Draft EIS in order to be eligible for federal funds for this project. A Supplemental Draft EIS is needed to address major changes to the project since April 2004.

The Supplemental Draft EIS will be prepared in accordance with regulations set by the NEPA as well as the provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users. The purpose of this Notice of Intent is to alert interested parties about the plan to prepare the Supplemental Draft EIS, to invite public participation in the scoping process and to announce that a public scoping meeting will be conducted.

DATES: Written comments on the scope of the Supplemental Draft EIS should be sent to Tom Fitzwater, VTA Environmental Programs and Resources Management Manager, by *October 19, 2009.* A Public scoping meeting will be held on *September 30, 2009* from 6 p.m. to 7:30 p.m. at the location indicated under **ADDRESSES** below.

ADDRESSES: Written comments on the scope of the Supplemental Draft EIS should be submitted via mail, e-mail, fax, or the project Web site, with attention to: Tom Fitzwater, Manager,VTA Environmental Programs and Resources Management, 3331 North First Street, Building B–2, San Jose, CA 95134–1927, *E-mail: Tom.Fitzwater@vta.org, Fax:* (408) 321–5787, *Project Web site: http://www.vta.org.*

Comments may also be offered at the public scoping meeting. The address for the public scoping meeting is in the Community Room on the second floor of Eastridge Shopping Center located at 2200 Eastridge Loop Road in San Jose California (Old Navy/JC Penney's entrance). The meeting facility will be accessible to persons with disabilities. If special translation or signing services or other special accommodations are needed, please contact VTA Customer Service five days prior to the meeting at (408) 321–2300, or e-mail *community.outreach@vta.org.*

FOR FURTHER INFORMATION CONTACT: For additional information about the proposed project, environmental review process, or to be placed on the project mailing list, contact Tom Fitzwater, VTA Environmental Programs and Resources Management, at VTA, 3331 North First Street, Building B–2, San Jose, CA 95134–2709, (408) 321–5789 or Eric Eidlin, Community Planner, at Federal Transit Administration, San Francisco Regional Office, 201 Mission Street, Room 1650, San Francisco, CA 94105–1926, (415) 744–2502.

SUPPLEMENTARY INFORMATION:

I. Scoping

Scoping is the process of determining the scope, focus and content of an EIS. FTA and VTA invite all interested individuals and organizations, public agencies, and Native American Tribes to comment on the scope of the Supplemental Draft EIS, including the project's purpose and need, the alternatives to be studied, the impacts to be evaluated, and the evaluation methods to be used. Comments should focus on: alternatives that may be less costly or have less environmental or community impacts while achieving similar transportation objectives, and the identification of any significant social, economic, or environmental issues relating to the alternatives.

NEPA ''scoping'' has specific and fairly limited objectives, one of which is to identify the significant issues associated with alternatives that will be examined in detail in the document, while simultaneously limiting consideration and development of issues that are not truly significant. It is in the NEPA scoping process that potentially significant environmental impacts—those that give rise to the need to prepare an environmental impact statement—should be identified; impacts that are deemed not to be significant need not be developed extensively in the context of the impact statement, thereby keeping the statement focused on impacts of consequence. Transit projects may also generate environmental benefits; these should be highlighted as well—the impact statement process should draw attention to positive impacts, not just negative impacts.

Once the scope of the environmental study, including significant environmental issues to be addressed, is settled, an annotated outline of the document will be prepared and shared with interested agencies and the public. The outline serves at least three worthy purposes, including (1) documenting the results of the scoping process; (2) contributing to the transparency of the process; and (3) providing a clear roadmap for concise development of the environmental document.

II. Description of Project Study Areas and Need

Purpose of the Supplemental Draft EIS: The original Notice of Intent to prepare a Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) was issued on September 18,

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

[4] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate.

2001. Following the circulation of the Draft EIS/EIR in April 2004, it was determined that the opportunity for securing federal funds at that time was limited. As a result, a Final EIS was never completed.

A Final EIR was prepared to comply with the state process (California Environmental Quality Act) and was certified by the VTA Board of Directors in May 2005. A Final Supplemental EIR was later prepared to address changes to the project and was certified by the VTA Board of Directors in August 2007.

Due to dramatic declines in local and state funding sources as a result of the global economic recession, a Supplemental Draft EIS will be prepared in order to be eligible for federal funds. The purpose of the Supplemental Draft EIS is to fully disclose the environmental consequences of building and operating the Project in advance of any federal decisions to commit substantial financial or other resources towards its implementation. The Supplemental Draft EIS explores the extent to which project alternatives and design options result in environmental impacts and will discuss actions to reduce or eliminate such impacts as required by current federal (NEPA) environmental laws and current Council on Environmental Quality and FTA guidelines.

Project Description: The proposed project will extend light rail along Capitol Expressway between the existing Alum Rock Light Rail Station and Eastridge Transit Center, a distance of approximately 2.3 miles. Light rail will operate primarily in the median of Capitol Expressway within exclusive and semi-exclusive rights-of-way. Property acquisition for the project will be minimized through the removal of two High Occupancy Vehicle (HOV) lanes on Capitol Expressway. The alignment will include an elevated section north of Capitol Avenue and south of Story Road, and an elevated crossing of Tully Road. The project will include new light rail stations at Story Road (aerial), Ocala Avenue (optional, at-grade) and Eastridge Transit Center (at-grade and aerial options). At Eastridge Mall, the existing transit center and park-and-ride lot will be modified and expanded to accommodate the project. The project will also include traction power substations at Ocala Avenue and Eastridge Transit Center. Approximately seven 115-kilovolt electrical transmission towers and two tubular steel poles (TSPs) will require relocation from the median of Capitol Expressway to the east side of Capitol Expressway in order to accommodate the project. While the project will cross over Silver Creek, no work is anticipated below the top of the bank.

Project Purpose and Need: The Capitol Expressway Light Rail Project is needed to:

- Improve public transit service in the Capitol Expressway Corridor by providing increased capacity and faster, convenient access to downtown San Jose and major employment and activity centers;
- make transit an attractive alternative to the automobile for travel along the expressway; enhance regional connectivity through expanded, interconnected transit services along some of the primary travel corridors in Santa Clara County, including U.S. 101 (Guadalupe Corridor) and I–680 (Tasman East, Capitol Avenue, and Capitol Expressway Corridors);
- improve regional air quality by reducing the growth in automobile emissions;
- improve mobility options to employment, education, medical and retail centers for all corridor residents and in particular, low-income, transit dependent, youth, elderly, disabled, and ethnic minority populations; and
- support local economic and land development goals.

III. Proposed Project Alternatives

The No-Build Alternative represents conditions that would be reasonably expected to occur in the foreseeable future if the proposed build alternative were not implemented. This includes existing transit conditions and programmed transportation projects that will be constructed by 2035. A Baseline Alternative representing the optimal level of bus service that could be provided in the corridor without an investment in major new infrastructure is not proposed. VTA is not only currently operating Line 522 Rapid Bus service in the Capitol Expressway Corridor, but is also proposing to improve this service with Bus Rapid Transit (BRT). BRT will provide more frequent headways, upgraded facilities, real-time information, transit priority, and specialized vehicles. VTA will also analyze any reasonable alternatives that are uncovered during public scoping.

IV. Probable Effects

The Supplemental Draft EIS will explore the extent to which project alternatives and design options result in environmental impacts and will discuss actions to reduce or eliminate such impacts. Environmental issues to be examined may include: Changes in the physical environment (natural resources, air quality, climate change, noise, water quality, geology, aesthetics); changes in the social environment (land use, business and neighborhood disruptions); changes in traffic and pedestrian circulation; changes in transit service and patronage; associated changes in traffic congestion; and impacts on parklands and historic resources. Impacts will be identified both for the construction period and for the long-term operation of the alternatives. *Based on the findings of the Final and Supplemental EIR, it is anticipated that the project will result in adverse noise, vibration, and traffic impacts.*

V. FTA Procedures

The regulations implementing NEPA, as well as provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), call for public involvement in the EIS process. Section 6002 of SAFETEA–LU requires that FTA and VTA do the following: (1) Extend an invitation to other Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project to become ''participating agencies;'' (2) provide an opportunity for involvement by participating agencies and the public to help define the purpose and need for a proposed project, as well as the range of alternatives for consideration in the EIS; and (3) establish a plan for coordinating public and agency participation in, and comment on, the environmental review process. An invitation to become a participating or cooperating agency, with scoping materials appended, will be extended to other Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project. It is possible that FTA and VTA will not be able to identify all Federal and non-Federal agencies and Native American tribes that may have such an interest. Any Federal or non-Federal agency or Native American tribe interested in the proposed project that does not receive an invitation to become a participating agency should notify at the earliest opportunity the Project Manager identified above under **ADDRESSES**.

A comprehensive public involvement program and a Coordination Plan for public and interagency involvement will be developed for the project and posted on *http://www.vta.org.* The public involvement program includes a full range of activities including the development and distribution of project newsletters, and outreach to local officials, community and civic groups, and the public. Specific activities or

events for involvement will be detailed in the public involvement program.

The Paperwork Reduction Act seeks, in part, to minimize the cost to the taxpayer of the creation, collection, maintenance, use, dissemination, and disposition of information. Consistent with this goal and with principles of economy and efficiency in government, it is FTA policy to limit insofar as possible distribution of complete printed sets of environmental documents. Accordingly, unless a specific request for a complete printed set of environmental documents is received (preferably in advance of printing), FTA and its grantees will distribute only the executive summary of the environmental document together with a Compact Disc of the complete environmental document. A complete printed set of the environmental document is available for review at the grantee's offices and elsewhere; an electronic copy of the complete environmental document is also available on *http://www.vta.org.*

The Supplemental Draft EIS will be prepared in accordance with NEPA and its implementing regulations issued by the Council on Environmental Quality (40 CFR parts 1500–1508) and with the FTA/Federal Highway Administration regulations ''Environmental Impact and Related Procedures'' (23 CFR part 771). In accordance with 23 CFR 771.105(a) and 771.133, FTA will comply with all Federal environmental laws, regulations, and executive orders applicable to the proposed project during the environmental review process to the maximum extent practicable. These requirements include, but are not limited to, the environmental and public hearing provisions of Federal transit laws (49 U.S.C. 5301(e), 5323(b), and 5324); the project-level air quality conformity regulation of the U.S. Environmental Protection Agency (EPA) (40 CFR part 93); the section 404(b)(1) guidelines of EPA (40 CFR part 230); the regulation implementing section 106 of the National Historic Preservation Act (36 CFR part 800); the regulation implementing section 7 of the Endangered Species Act (50 CFR part 402); section 4(f) of the Department of Transportation Act (23 CFR 771.135); and Executive Orders 12898 on environmental justice, 11988 on floodplain management, and 11990 on wetlands.

Related Documents: The Final Environmental Impact Report (April 2005), and the Final Supplemental Environmental Impact Report (April 2007) for the Capitol Expressway Corridor are available by contacting Tom Fitzwater at the address and phone number given above.

Issued on: September 9, 2009.

Raymond Sukys,

Acting Regional Administrator.

[FR Doc. E9–22322 Filed 9–15–09; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Issuance of Final Report of the 2008 Amateur-Built Aircraft Aviation Rulemaking Committee.

AGENCY: Federal Aviation Administration, DOT.

SUMMARY: This notice announces the issuance of the final report of the 2008 Amateur-Built Aircraft Aviation Rulemaking Committee (2008 ARC). The report provides the 2008 ARC's recommendations regarding the disposition of (1) public comments received on the proposed changes to Order 8130.2F and AC 20–27G; (2) the definition of ''fabrication'' as it differs from ''assembly'' within the scope of Title 14, Code of Federal Regulations (14 CFR) part 21, Certification Procedures for Products and Parts, § 21.191(g), Operating amateur-built aircraft; and (3) a process to minimize the impact of the proposed policy on amateur-built kits evaluated by the FAA before February 15, 2008.

FOR FURTHER INFORMATION CONTACT: Frank P. Paskiewicz, Manager, Production and Airworthiness Division, Aircraft Certification Service, AIR–200, Federal Aviation Administration, 950 L'Enfant Plaza, SW., 5th Floor, Suite 500, Washington, DC 20024; *telephone number:* (202) 385–6346. A copy of the final report may be obtained by accessing the FAA's Web site at *http://www.faa.gov/aircraft/gen_av/ultralights/amateur_built/media/ARC_FINAL_2008_report.pdf.*

SUPPLEMENTARY INFORMATION:

Background

On February 14, 2008, the 2006 Amateur-Built Aircraft Aviation Rulemaking Committee (ARC) published its Final Report. This report found that FAA directives setting policy for amateur-built aircraft ''do not adequately address the issue of commercial assistance,'' determined that the ''aircraft kit evaluation process is not standardized,'' and cited the need for additional training for inspectors to ''fully understand the FAA's expectations when determining an aircraft's eligibility for an amateur-built certificate.'' Based on the ARC's report, the FAA published a notice in the **Federal Register** on February 15, 2008,[1] temporarily suspending amateur-built aircraft kit evaluations. The FAA decided that its directives governing the amateur-built aircraft sector required review and revision.

Subsequently, the FAA published a notice in the **Federal Register** on July 15, 2008, announcing proposed changes to, and seeking public comments on (1) FAA Order 8130.2F, Airworthiness Certification of Aircraft and Related Products, Chapter 4, Special Airworthiness Certification, Section 9, Experimental Amateur-Built Airworthiness Certifications; and (2) AC 20–27G, Certification and Operation of Amateur-Built Aircraft.[2] The original comment period opened on July 15, 2008, and closed on August 15, 2008.

Upon request, the FAA extended the comment period to September 30, 2008,[3] and then reopened the comment period from October 31, 2008, through December 15, 2008.[4]

On November 4, 2008, the Amateur-Built ARC was rechartered with Order 1110.143A, Amateur-Built Aircraft Aviation Rulemaking Committee to advise the FAA on issues concerning disposition of the public comments, the enhanced definition of the term ''fabrication'' and grandfathering of FAA-listed amateur-built aircraft kits.

The 2008 ARC met in Washington, DC on January 27 through 29, 2009, to consider the items listed above; the ARC also—

- Reevaluated the 20/20/11 requirement; [5]
- Evaluated an updated FAA Form 8000–38, Fabrication/Assembly Operation Checklist;
- Discussed the creation of a National Kit Evaluation Team, consisting of FAA

[1] Notice of Temporary Suspension of Amateur-Built Aircraft Kit Evaluations Previously Conducted by the Federal Aviation Administration, Aircraft Certification Service (73 FR 8926, February 15, 2008).

[2] Notification of Policy Revisions, and Requests for Comments on the Percentage of Fabrication and Assembly that Must Be Completed by an Amateur Builder to Obtain an Experimental Airworthiness Certificate for an Amateur-Built Aircraft (73 FR 40652, July 15, 2008).

[3] *See* Notification of Policy Revisions, and Requests for Comments on the Percentage of Fabrication and Assembly That Must Be Completed by an Amateur Builder to Obtain an Experimental Airworthiness Certificate for an Amateur-Built Aircraft; Extension of Comment Period (73 FR 43278, July 24, 2008).

[4] The FAA reopened the comment period because the proposed Order 8130.2F and AC 20–27G had been inadvertently removed from the FAA Web site during the comment period. (*See* 73 FR 65007, October 31, 2008.)

[5] 20/20/11 was an FAA proposal requiring an amateur builder to fabricate a minimum 20 percent of an aircraft and assemble a minimum of 20 percent of the aircraft.

Aviation Safety Inspectors, to establish a standardized aircraft kit evaluation process; and

• Discussed the conversion of type-certificated aircraft into amateur-built aircraft.

The FAA will take the 2008 ARC's recommendations into consideration in the formulation of the final revisions to FAA Order 8130.2F, and AC 20–27G.

Dated: September 11, 2009.

Frank P. Paskiewicz,

Manager, Production and Airworthiness Division.

[FR Doc. E9–22339 Filed 9–15–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Membership in the National Parks Overflights Advisory Group Aviation Rulemaking Committee

ACTION: Notice.

SUMMARY: By **Federal Register** notices (See 74 FR 16442; April 10, 2009 and 74 FR 33014, July 9, 2009) the National Park Service (NPS) and the Federal Aviation Administration (FAA) invited interested persons to apply to fill vacant position on the National Parks Overflights Advisory Group (NPOAG) Aviation Rulemaking Committee (ARC). These notices invited interested persons to apply to fill two vacancies representing environmental and Native American tribal concerns due to the incumbent member's completion of their three-year term appointments on October 9, 2009. This notice informs the public of the persons selected to fill the vacancies on the NPOAG ARC.

FOR FURTHER INFORMATION CONTACT: Barry Brayer, Special Programs Staff, Federal Aviation Administration, Western-Pacific Region Headquarters, P.O. Box 92007, Los Angeles, CA 90009–2007, telephone: (310) 725–3800, e-mail: *Barry.Brayer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106–18 1. The Act required the establishment of the advisory group within 1 year after its enactment. The NPOAG was established in March 2001. The advisory group is comprised of a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator of the FAA and the Director of NPS (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairman of the advisory group.

In accordance with the Act, the advisory group provides ''advice, information, and recommendations to the Administrator and the Director—

(1) On the implementation of this title [the Act] and the amendments made by this title;

(2) On commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) On other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) At the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands.''

Membership

The current NPOAG ARC is made up of one member representing general aviation, three members representing the commercial air tour industry, four members representing environmental concerns, and two members representing Native American interests. Current members of the NPOAG ARC are as follows:

Claire Kultgen representing general aviation; Alan Stephen, Elling Halvorson, and Matthew Zuccaro representing commercial air tour operations; Chip Dennerlein. Greg Miller, Kristen Brengel, and Don Barger representing environmental interests; and Rory Majenty and Richard Deertrack representing Native American tribes.

Selection

Selected to fill the vacancy for environmental concerns, for an additional term, is returning member Chip Dennerlein. Selected to fill the vacancy for Native American tribal concerns is Ray Russell, who will replace Richard Deertrack. Both these terms begin on October 10, 2009. The term of service for NPOAG ARC members is 3 years.

Issued in Hawthorne, CA on September 8, 2009.

Barry Brayer,

Manager, Special Programs Staff, Western-Pacific Region.

[FR Doc. E9–22152 Filed 9–15–09; 8:45 am]

BILLING CODE M

DEPARTMENT OF TRANSPORTATION

Federal Maritime Commission

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Midacomp Corp., 2841 NW. 107th Ave., Miami, FL 33172. Officer: Fernando J. Diaz, Secretary/Director, (Qualifying Individual).

Unique Logistics International (ATL) Inc., 510 Plaza Drive, Ste. 2290, Atlanta, GA 30349, Officer: J.M. David Hickmott, Member/Manager, (Qualifying Individual).

Dated: September 11, 2009.

Karen V. Gregory,

Secretary.

[FR Doc. E9–22305 Filed 9–15–09; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Financial Crimes Enforcement Network; Proposed Collection; Comment Request; Renewal Without Change of the FinCEN/IRS Form 8300

AGENCY: Internal Revenue Service (IRS) and Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS and

the FinCEN are soliciting comments concerning Form 8300, Report of Cash Payments Over $10,000 Received in a Trade or Business.

DATES: Written comments should be received on or before November 16, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224; and The Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183. *Attention:* PRA Comments—Form 8300. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.gov* with the caption in the body of the text, ''Attention: PRA Comments—Form 8300.''

Inspection of comments. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (not a toll free call).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, *Allan.M.Hopkins@irs.gov,* or Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224; or Regulatory Policy and Programs Division Regulatory Helpline, (800) 949–2732 and select option 6. A copy of the form may be obtained through the Internet at *http://www.irs.gov* or *http://www.fincen.gov/forms.*

SUPPLEMENTARY INFORMATION:

Title: Report of Cash Payments Over $10,000 Received in a Trade or Business.

OMB Numbers: 1545–0892 (IRS) and 1506–0018 (FinCEN).

Form Number: 8300.

Abstract: Internal Revenue Code section 6050I requires any person in a trade or business who, in the course of the trade or business, receives more than $10,000 in cash or foreign currency in one or more related transactions to report it to the IRS and provide a statement to the payer. Form 8300 is used for this purpose.

Section 365 of the USA Patriot Act of 2001 (Pub. L. 107–56), adding new section 5331 to title 31 of the United States Code, authorized the Financial Crimes Enforcement Network to collect the information reported on Form 8300. In a joint effort to develop a dual use form, IRS and FinCEN worked together to ensure that the transmission of the data collected to FinCEN on Forms 8300 does not violate the provisions of section 6103. FinCEN makes the Forms 8300 available to law enforcement through its Bank Secrecy Act information sharing agreements.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, farms, and the Federal government.

Frequency: As required.

Estimated Number of Respondents: 46,800.

Estimated Time per Respondent: 1 hr., 22 min.

Estimated Total Annual Burden Hours: 63,539 [1].

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

In accordance with 31 CFR 103.30(e)(3) a person required to make a report under this section must keep a copy of each report filed for five years from the date of filing.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 10, 2009.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–22265 Filed 9–15–09; 8:45 am]

BILLING CODE 4830–01–P

[1] The burden for the information collection in 31 CFR 103.30 (also approved under control number 1506–0018) relating to the Form 8300, is reflected in the burden of the form.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Platinum Community Bank, Rolling Meadows, Illinois; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision (OTS) has duly appointed the Federal Deposit Insurance Corporation as sole Receiver for Platinum Community Bank, Rolling Meadows, Illinois (OTS No. 15590), on September 4, 2009.

Dated: September 9, 2009.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. E9–22156 Filed 9–15–09; 8:45 am]

BILLING CODE M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Vantus Bank Sioux City, IA; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision (OTS) has duly appointed the Federal Deposit Insurance Corporation as sole Receiver for Vantus Bank, Sioux City, Iowa (OTS No. 00190), on September 4, 2009.

Dated: September 9, 2009.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. E9–22159 Filed 9–15–09; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (26–8261a)]

Proposed Information Collection (Request for Certificate of Veteran Status) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine an applicant's eligibility for a reduced down payment when obtaining a loan insured by the Federal Housing Administration (FHA).

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 16, 2009.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–New (26–8261a)'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Certificate of Veteran Status, VA Form 26–8261a.

OMB Control Number: 2900–New (26–8261a).

Type of Review: New collection.

Abstract: The data collected on VA Form 26–8261a will be used to determine Veteran applicants' eligibility to receive a reduced down payment on a FHA backed loan.

Affected Public: Individuals or households.

Estimated Annual Burden: 17 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 100.

Dated: September 11, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–22295 Filed 9–15–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,
September 16, 2009

Part II

Department of Agriculture

Food Safety and Inspection Service

9 CFR Parts 321, 332, and 381

Cooperative Inspection Programs: Interstate Shipment of Meat and Poultry Products; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 321, 332, and 381

[Docket No. FSIS–2008–0039]

RIN 0583–AD37

Cooperative Inspection Programs: Interstate Shipment of Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing regulations to implement a new voluntary cooperative program under which State-inspected establishments with 25 or fewer employees will be eligible to ship meat and poultry products in interstate commerce. In participating States, State-inspected establishments selected to take part in this program will be required to comply with all Federal standards under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA), as well as with all State standards. These establishments will receive inspection services from State inspection personnel that have been trained in the enforcement of the FMIA and PPIA. Meat and poultry products produced under the program that have been inspected and passed by designated State personnel will bear an official Federal mark of inspection and will be permitted to be distributed in interstate commerce. FSIS will provide oversight and enforcement of the program.

FSIS is proposing these regulations in response to the Food, Conservation, and Energy Act, enacted on June 18, 2008. Section 11015 of the law amended the FMIA and PPIA to provide for these cooperative programs.

DATES: Submit comments on or before November 16, 2009.

ADDRESSES: FSIS invites interested persons to submit comments on this proposed rule. Comments may be submitted by either of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments.

Mail, including floppy disks or CD–ROM's, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 2–2127 George Washington Carver Center, 5601 Sunnyside Avenue, Beltsville, MD 20705.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2008–0039. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to: *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Philip Derfler, Assistant Administrator, Office of Policy and Program Development, Room 350–E, Jamie L. Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250; Telephone (202) 720–2709, Fax (202) 720–2025.

SUPPLEMENTARY INFORMATION:

I. Background

A. Federal-State Cooperative Inspection Programs

FSIS has been delegated the authority to carry out the functions of the Secretary of Agriculture as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged.

The FMIA and the PPIA (''the Acts'') provide for FSIS to cooperate with State agencies in developing and administering their own meat or poultry inspection programs (21 U.S.C. 661 and 454). The FMIA and the PPIA restrict each cooperative State meat or poultry products inspection program to the inspection and regulation of products that are produced and sold within the State (21 U.S.C. 661(a)(1) and 454(a)(1)). Under section 661 of the FMIA and section 454 of the PPIA, cooperative State inspection programs are required to operate in a manner and with authorities ''at least equal to'' the provisions set out in the Acts (21 U.S.C. 661(a)(1) and 454(a)(1)).

The Acts provide for FSIS to contribute up to 50 percent of the cost of the cooperative State inspection programs, as long as the State programs are effectively enforcing requirements that are ''at least equal to'' the Federal program (21 U.S.C. 661(a)(3) and 454(a)(3)). States that have enacted a mandatory State meat or poultry inspection law must apply to FSIS to enter into a cooperative State inspection program agreement with the Agency.

If a State is unable or unwilling to continue to operate a cooperative State inspection program on an ''at least equal to'' basis, FSIS designates the State as not having an ''at least equal to'' program by publishing this designation in the **Federal Register**. After the expiration of thirty days of such publication, the State establishments are subject to Federal inspection (21 U.S.C. 661(c)(1) and 454(c)(1)).

The Talmadge-Aiken Act authorizes the Secretary of Agriculture to enter into cooperative arrangements with State departments of agriculture and other State agencies to assist the Secretary in the enforcement of relevant Federal laws and regulations to the extent and in the manner appropriate to the public interest (7 U.S.C. 450). Pursuant to the Talmadge-Aiken Act, FSIS enters into a separate agreement with a State agency for the State program to conduct meat, poultry, or egg products inspection or other regulatory activities on behalf of FSIS. FSIS provides 50 percent funding to the State programs for these services.

B. The Food, Conservation, and Energy Act of 2008

On June 18, 2008, Congress enacted The Food, Conservation, and Energy Act of 2008 (also referred to as ''the 2008 Farm Bill'') (Pub. L. 110–246, 112 Stat. 1651). Section 11015 of Title XI of the 2008 Farm bill amended the FMIA to add a new title V—''Inspections by Federal and State Agencies,'' which contains a new section 501, ''Interstate Shipment of Meat Inspected by Federal and State Agencies for Certain Small Establishments (122 Stat. 2124; codified at 21 U.S.C. 683). Section 11015 also amended the PPIA to add a new section 31, ''Interstate Shipment of Poultry Inspected by Federal and State Agencies for Certain Small Establishments'' (122 Stat. 2127; codified at 21 U.S.C. 472). These new sections supplement the existing cooperative State meat and poultry inspection programs by establishing a new cooperative program under which certain State-inspected establishments would be permitted to ship meat and poultry products in interstate commerce.

The new law provides that the Secretary of Agriculture, ''in coordination with the appropriate State agency of the State in which the establishment is located,'' may select State-inspected establishments with 25 or fewer employees to ship meat and poultry products interstate (Sec. 501(b) and Sec. 31(b)). Inspection services for these establishments must be provided by State inspection personnel that have

''undergone all necessary inspection training and certification to assist the Secretary with the administration and enforcement of [the FMIA or PPIA]'' (Sec. 501(a)(2) and Sec. 31(a)(2)). Meat and poultry products inspected and passed by these State inspection personnel would bear a ''Federal mark, stamp, tag, or label of inspection'' (Sec. 501(b)(1) and Sec. 31(b)(1)). The law provides for the Secretary to ''designate an employee of the Federal government'' to ''provide oversight and enforcement'' of the program (Sec. 501(d)(1) and Sec. 31(d)(1)).

The law is to take effect ''on the date on which the Secretary * * * promulgates final regulations to carry out [section 11015]'' (Sec. 501(j)(1) and Sec. 31(i)(1)). The law requires that the Secretary promulgate final regulations ''not later than 18 months after the date of enactment'' (Sec. 501(j)(2) and Sec. 31(i)(2)).

FSIS is issuing this proposed rule to implement section 11015 of the 2008 Farm Bill. Following is a summary of the provisions of section 11015 that are addressed in this proposed rule.

Selected establishments. The law applies to certain establishments that are already operating under a cooperative State meat or poultry inspection program. The law defines an ''eligible establishment'' as ''an establishment that is in compliance with * * * the State inspection program of the State in which the establishment is located'' and the Acts, including the rules and regulations issued under the Acts (Sec. 501(a)(3) and Sec. 31(a)(3)). A ''selected establishment'' is defined as ''an establishment that is authorized by the Secretary, in coordination with * * * the appropriate State agency of the State in which the establishment is located * * * to ship [meat or poultry] items in interstate commerce'' (Sec. 501(a)(5) and Sec. 31(a)(5)).

The law prohibits the Secretary from selecting an establishment for interstate shipment that ''on average, employs more than 25 employees (including supervisory and nonsupervisory employees), as defined by the Secretary'' (Sec. 501(b)(2)(A) and Sec. 31(b)(2)(A)). The law also prohibits the selection of establishments that currently ship interstate, as well as certain former and future Federal establishments (Sec. 501(b)(2)(B), Sec. 501(b)(2)(C), Sec. 31(b)(2)(B), and Sec. 31(b)(2)(C)).

Transition to a Federal establishment. The law permits the Secretary to select establishments with ''more than 25 employees but less than 35 employees'' to participate in the program (Sec. 501(b)(3)(B)(i) and Sec. 31(b)(3)(B)(i)). However, if selected, these establishments must transition to Federal establishments ''beginning on the date that is 3 years after the effective date'' if they consistently employ, on average, more than 25 employees (Sec. 501(b)(3)(B)(ii) and Sec. 31(b)(3)(B)(ii)). The law authorizes the Secretary to develop a procedure to transition certain selected establishments to a Federal establishment (Sec. 501(b)(3)(A) and Sec. 31(b)(3)(A)). The law also requires that ''[a]ny selected establishment that the Secretary determines to be in violation of any requirement of the Act, be transitioned to a Federal establishment'' (Sec. 501(h) and Sec. 31(g)).

Federal-State coordination. Under the law, the Secretary is authorized to designate a Federal employee as ''State coordinator'' for each State to ''provide oversight and enforcement'' of the interstate shipment program and to ''oversee the training and inspection activities'' of the State personnel providing inspection services to selected establishments (Sec. 501(d)(1) and Sec. 31(d)(1)). The law provides that if the State coordinator determines that a selected establishment under the State coordinator's jurisdiction is in violation of the Acts, the State coordinator must ''immediately notify the Secretary of the violation'' and ''deselect the selected establishment or suspend inspection at the selected establishment'' (Sec. 501(d)(3)(C) and Sec. 31(d)(3(C)).

This proposed rule refers to the ''State coordinator'' established in section 11015 of the 2008 Farm Bill as the FSIS ''selected establishment coordinator'' to maintain consistency with the other terminology in this proposed rule and to make clear that the ''State coordinator'' is a Federal employee. The term ''State coordinator'' is often used to refer to a State employee under the Talmadge-Aiken program, so FSIS has tentatively decided not to use this term in these proposed regulations.

Federal reimbursement of State costs. The law requires that the Secretary ''reimburse a State for costs related to the inspection of selected establishments * * * in an amount of not less than 60 percent of eligible State costs'' (Sec. 501(c) and Sec. 31(c)).

Inspection training division. The law amended the FMIA to provide that not later than 180 days after the effective date of section 11015 of the 2008 Farm Bill, the Secretary shall establish in FSIS an inspection training division to provide outreach, education, and training to, and provide grants to appropriate State agencies to provide outreach, technical assistance, education, and training to small and very small establishments (as defined by the Secretary) (Sec. 501(f)). FSIS implemented this provision by establishing an Office of Outreach, Education and Training. A substantive part of the program's function is to provide training, education, and outreach services to small and very small plants.

Transition grants. The law permits the Secretary to provide grants to States to assist them in helping establishments operating under a cooperative State meat or poultry inspection program transition to selected establishments (Sec. 501(g) and Sec. 31(f)).

II. The Proposed Rule

A. General

FSIS is proposing to amend 9 CFR part 321 of the Federal meat inspection regulations and 9 CFR part 381, subpart R, of the poultry products inspection regulations to add new sections that describe the cooperative interstate shipment program established in section 11015 of the 2008 Farm Bill. FSIS is also proposing to add a new 9 CFR part 332 to the Federal meat inspection regulations and a new 9 CFR part 381, subpart Z, to the poultry products inspection regulations that prescribe the conditions under which States and establishments operating under a State-inspection program will be permitted to participate in a cooperative interstate shipment program.

When FSIS completes the rulemaking process and issues a final rule, the Federal meat and poultry products regulations will provide for three separate cooperative State meat and poultry products inspection programs: (1) Cooperative State meat or poultry products inspection programs under the FMIA and PPIA; (2) cooperative agreements for State programs to conduct meat or poultry products inspection or other regulatory activities on behalf of the Agency under the Talmadge-Aiken Act; and (3) cooperative programs for the interstate shipment of State-inspected meat and poultry products under the FMIA and PPIA as amended by section 11015 of the 2008 Farm Bill.

The proposed regulations to implement section 11015 are described in detail below.

B. Description of Cooperative Programs—9 CFR Part 321 and 9 CFR Part 381, Subpart R

9 CFR part 321 of the Federal meat inspection regulations and 9 CFR part 381, subpart R, of the poultry products inspection regulations describe

cooperative meat and poultry products inspection programs authorized under the FMIA, PPIA, and the Talmadge-Aiken Act. These regulations reference the legal authority for each cooperative inspection program and provide a general description of each program. FSIS is proposing to amend part 321 and part 381, subpart R, to add a new § 321.3 and a new § 381.187 to describe the cooperative interstate shipment program established under section 11015 of the 2008 Farm Bill.

The amendments to the FMIA in section 501 of section 11015 of the 2008 Farm Bill have been codified at 21 U.S.C. 683, and the amendments to the PPIA in section 31 have been codified at 21 U.S.C. 472 (122 Stat. 2124, 2127). Therefore, proposed § 321.3(a) provides that under 21 U.S.C. 683(b), FSIS is authorized to coordinate with States that have cooperative State meat inspection programs to select certain establishments operating under these programs to ship carcasses, parts of carcasses, meat, and meat food products in interstate commerce. Similarly, proposed § 381.187(a) provides that under 21 U.S.C. 472(b), FSIS is authorized to coordinate with States that have cooperative State poultry products inspection programs to select certain establishments operating under these programs to ship poultry products in interstate commerce. Proposed §§ 321.3(a) and 381.187(a) both explain that this type of cooperative program is called a ''cooperative interstate shipment program.''

Proposed §§ 321.3(b) and 381.187(b) contain a general description of the cooperative interstate shipment program and make clear that the Federal contribution for inspection services provided by States that have entered into such a program will be at least 60 percent of eligible State costs. Under the FMIA and PPIA, FSIS is required to contribute up to 50 percent of the cost of a cooperative State meat or poultry products inspection program (21 U.S.C. 661(a)(3) and 454(a)(3)). Thus, States that participate in the new cooperative interstate shipment program will receive additional reimbursement for costs related to inspection of selected establishments in the State.

As required under the statute, the Federal contribution for inspection services provided by States that enter into a cooperative interstate shipment program under this proposal will be at least 60 percent of eligible State costs. When the program is implemented, FSIS does not intend to reimburse States for more than 60 percent of their eligible costs unless Congress directs it, and provides the money for it, to do so.

To be reimbursed under this proposed rule, States will be expected to submit their budgets for their cooperative interstate shipment programs to FSIS for approval prior to receiving Federal funds. States will also be expected to submit a separate justification for any costs related to the cooperative interstate shipment program that were not included in their initial budget request. FSIS will also need to approve a State's request for additional funds before the Agency will reimburse the State for not less than 60% of the cost. FSIS has tentatively decided that, for purposes of this proposed rule, eligible State costs will be those costs that a State has justified and FSIS has approved as necessary for the State to provide inspection services to selected establishments in the State. The Agency requests comments on whether the final rule resulting from this proposal should codify this definition or any other requirements related to State reimbursement for eligible costs related to inspection of selected establishments.

Proposed §§ 321.3(c) and 381.187(c) identify 9 CFR part 332 and 9 CFR part 381, subpart Z, as the regulations that prescribe conditions under which States and establishments may participate in the cooperative interstate shipment program. Proposed §§ 321.3(d) and 381.187(d) provide that the Administrator will terminate an agreement for a cooperative interstate shipment program with a State if the Administrator determines that the State is not conducting inspection at selected establishments in a manner that complies with the Acts and their implementing regulations.

C. Requirements for a Cooperative Interstate Shipment Program—9 CFR Part 332 and 9 CFR 381 Subpart Z

1. General

FSIS is proposing to amend title 9, Chapter III, Subchapter A of the Code of Federal Regulations (CFR) to add a new part 332 titled ''Selected Establishments; Cooperative Program for Interstate Shipment of Carcasses, Parts of Carcasses, Meat, and Meat Food Products,'' and to add to part 381 a new subpart Z titled ''Selected Establishments; Cooperative Program for Interstate Shipment of Poultry Products.'' The regulations in the proposed new part 332 and the proposed new subpart Z prescribe the requirements for a cooperative interstate shipment program.

2. Definitions and Purpose

Proposed §§ 332.1 and 381.511 define the terms ''cooperative interstate shipment program,'' ''cooperative State meat inspection program,'' ''cooperative State poultry products inspection program,'' ''selected establishment,'' and ''designated personnel.'' Terms used in the proposed regulations that are defined in 9 CFR 301.2 and 9 CFR 381.1 retain their same meaning.

Under proposed §§ 332.1 and 381.511, ''cooperative interstate shipment program,'' ''cooperative State meat inspection program,'' and ''cooperative poultry products inspection program'' are defined by providing a cross-reference to the description of these cooperative programs in 9 CFR part 321 and 9 CFR part 381 subpart R, described above. Under this proposal, ''selected establishment'' is defined as ''an establishment operating under a State cooperative [meat or poultry products] inspection program that has been selected by the Administrator, in coordination with the State where the establishment is located, to participate in a cooperative interstate shipment program.''

FSIS is proposing to define ''designated personnel'' as ''State inspection personnel that have been trained in the enforcement of the Acts and any additional State program requirements in order to provide inspection services to selected establishments.''

In addition to proposing new definitions, proposed §§ 332.1 and 381.511 make clear that the term ''interstate commerce,'' as used in the proposed regulations has the same meaning as ''commerce'' under 9 CFR 301.2 and 381.1. The regulations in 9 CFR 301.2 and 381.1 define ''commerce'' as ''[c]ommerce between any State, any Territory, or the District of Columbia, and any place outside thereof * * *.'' Thus, under this proposal, State-inspected establishments that are selected to participate in a cooperative interstate shipment program will be permitted to distribute and sell meat or poultry products across State lines and to export these products to foreign countries.

Proposed §§ 332.2 and 381.512 state that the purpose of part 332 and part 381, subpart Z, is to prescribe the conditions under which States that administer cooperative State meat or poultry products inspection programs and establishments that operate under such programs may participate in a cooperative interstate shipment program.

3. Requirements for Establishments

The proposed regulations in §§ 332.3 and 381.513 prescribe conditions that establishments operating under a

cooperative State meat or poultry products inspection program must comply with in order to apply to participate in a cooperative interstate shipment program. Proposed §§ 332.3 and 381.513 also describe establishments that are ineligible to be selected for such a program.

Number of employees. Under proposed §§ 332.3(a)(1) and 381.513(a)(1), an establishment operating under a cooperative State meat or poultry products inspection program may apply to participate in a cooperative interstate shipment program if the establishment employs, on average, no more than 25 employees. Standards for determining the average number of employees for purposes of this proposal are described in proposed §§ 332.3(b) and 381.513(b) below.

Under proposed §§ 332.3(a)(2) and 381.513(a)(2), establishments that employed more than 25 but fewer than 35 employees as of June 18, 2008, are also permitted to apply for a cooperative interstate shipment program. However, §§ 332.3(a)(2) and 381.513(a)(2) provide, reflecting the amended FMIA and PPIA, that if selected, these establishments must employ, on average, 25 or fewer employees as of the date three years from the date that the final rule resulting from this proposal becomes effective. If they do not, proposed §§ 332.3(a)(2) and 381.513(a)(2) require that they be deselected from the program and transition to become official establishments.

Standards for determining number of employees. Proposed §§ 332.3(b) and 381.513(b) establish standards for determining whether an establishment employs, on average, 25 or fewer employees for purposes of this proposed rule. FSIS developed these proposed standards to carry out Congress' intent that ''[t]he term 'average' should be interpreted to provide some flexibility to these selected establishments that require seasonal employees for certain parts of the year, as long as the increase in employees are [sic] manageable by the establishment and the increase * * * does not undermine food safety standards'' (S. Rep. No. 220, 110th Cong., 1st Sess., at 211 (2007)).

For the most part, the proposed standards in §§ 332.3(b) and 381.513(b) reflect applicable methods used by the Small Business Administration (SBA) to calculate the number of employees of a business concern where the size standard is number of employees (13 CFR 121.105 and 121.106). In addition, as explained below, FSIS is also proposing to limit the total number of employees at any given time to 35 individuals. Under this proposal, the standards developed by FSIS will apply to the employees of an individual establishment. The proposed standards are as follows:

- All individuals, both supervisory and non-supervisory, employed by the establishment on a full-time, part-time, or temporary basis are to be counted when calculating the total number of employees;
- All individuals employed from a temporary employee agency, professional employee organization, or leasing concern are to be counted;
- The average number of employees is calculated for each of the pay periods for the preceding calendar year;
- Part-time and temporary employees are to be counted the same as full-time employees;
- If an establishment has not been in business for 12 months, the average number of employees is calculated for the pay periods in which the establishment has been in business;
- Volunteers who receive no compensation are not considered employees; and
- The total number of employees can never exceed 35 individuals at any given time, regardless of the average number of employees.

As noted above, the standard that limits the total number of employees on any given day to 35 individuals is not derived from SBA's methods for calculating the number of employees. FSIS is proposing to limit the number of individuals employed by a selected establishment at any given time to carry out Congress' intent that any increase in the number of employees be ''manageable by the selected establishment'' and that the increase ''does not undermine food safety standards.'' FSIS is proposing that this number never exceed 35 because section 11015 of the 2008 Farm Bill permits the Agency to select certain establishments that employ as many as 35 employees to participate in a cooperative interstate shipment program (Sec. 501(b)(3)(i) and Sec. 31(b)(3)(i)). Therefore, FSIS believes that a temporary increase in the number of employees of up to 35 individuals is likely to be considered ''manageable'' under the law, provided that the average number of employees remains at 25 or fewer.

FSIS requests comments on the proposed standards for determining an establishment's average number of employees. The Agency specifically requests comment on whether part-time and temporary employees should be counted the same as full-time employees.

Ineligible establishments. Proposed §§ 332.3(c) and 381.513(c) describe establishments that are ineligible to participate in a cooperative interstate shipment program. For the most part, these establishments reflect the ''prohibited establishments'' described in section 11015 of the 2008 Farm Bill (Sec. 501(b)(2) and 31(b)(2)). These establishments include:

- Establishments that employ more than 25 employees on average, with a limited exception for establishments that had between 25 and 35 employees as of June 18, 2008 and that have 25 or fewer employees as of the date three years from the date that the final rule resulting from this rule becomes effective;
- Establishments operating under a cooperative inspection program under the Talmadge-Aiken Act;
- Official establishments;
- Establishments that were official establishments as of June 18, 2008, but that were reorganized on a later date by the person that controlled the establishment as of June 18, 2008;
- State-inspected establishments that employed more than 35 employees as of June 18, 2008, but that were later reorganized by the person that controlled the establishment as of June 18, 2008;
- Establishments that are transitioning to become official establishments;
- Establishments that are in violation of the FMIA or PPIA; and
- Establishments located in a State without a cooperative meat or poultry products inspection program.

In addition, the proposed regulations also include among the establishments ineligible to participate in a cooperative interstate shipment programs, establishments located in a State whose agreement for an interstate shipment program was terminated by the Administrator.

Proposed §§ 332.3(d) and 381.513(d) provide that an eligible establishment may apply for selection into a cooperative interstate shipment program through the State where the establishment is located. FSIS is proposing that establishments apply for selection into a cooperative interstate shipment program through the State because the State will be responsible for providing inspection services to the establishment if the establishment is selected for the program. Thus, establishment participation in the cooperative interstate shipment program will depend on whether the State is able, and willing, to provide the necessary inspection services to the establishment. However, if a State enters into an agreement with FSIS for a cooperative interstate shipment

program, FSIS, in coordination with the State, will make the final determination on whether to select an establishment to participate in the program.

4. State Request for a Cooperative Interstate Shipment Program

Under this proposed rule, a State that does not have a cooperative interstate shipment program, but that is interested in establishing one, may submit a request for such a program to FSIS. Proposed §§ 332.4 and 381.514 prescribe the procedures for States to request an agreement for a cooperative interstate shipment program. Under this proposal, a State will submit the request through the FSIS District Office that covers the State. Proposed §§ 332.4(a) and 381.514(a) make clear that State participation in a cooperative interstate shipment program is limited to States that have cooperative State meat or poultry products inspection programs.

Required information. Proposed §§ 332.4(b) and 381.514(b) describe the information that States will need to include in their requests for an agreement for a cooperative interstate shipment program. Because a cooperative interstate shipment program requires participation from both States and establishments, the State's request for an agreement for a cooperative interstate shipment program must identify establishments in the State that have requested to be selected and that the State recommends for initial selection into the program (proposed §§ 332.4(b)(1) and 381.514(b)(1)). If FSIS and the State enter into an agreement for a cooperative interstate shipment program under this proposal, these establishments will be the first to be considered for the program. Other establishments operating under the State's meat or poultry products inspection program may apply to become selected establishments after the cooperative interstate shipment program has been implemented within the State.

A State's request for a cooperative interstate shipment program must also include documentation to demonstrate that the State is able to provide necessary inspection services to selected establishments in the State and conduct any related activities that would be required under a cooperative interstate shipment program (proposed §§ 332.4(b)(2) and 381.514(b)(2)). Under this proposal, this documentation would be similar to the documentation that States provide when they request an agreement for a cooperative State meat or poultry products inspection program. However, instead of demonstrating that the State's inspection program is ''at least equal to'' the Federal inspection program, the statute requires that the State demonstrate that inspection services provided to selected establishments will be ''the same as'' the inspection services provided under the Federal program.

Thus, to qualify for a cooperative interstate shipment program under this proposal, States will need to demonstrate, among other things, that they have the authority under State law to provide the same inspection services to selected establishments in the State as the inspection services that FSIS provides to official Federal establishments. States will also need to demonstrate that they have staffing sufficient to conduct the same inspection activities in selected establishments that FSIS conducts in official Federal establishments, and that designated personnel have been properly trained in Federal inspection methodology. FSIS currently offers training courses in Federal inspection methodology to State inspection personnel. Under this proposal, States that are interested in participating in a cooperative interstate shipment program will be responsible for making arrangements for their inspection personnel to attend these courses. FSIS will also expect States to demonstrate that they can provide the necessary equipment for State personnel to provide the same inspection services to selected establishments that FSIS provides to official Federal establishments, including computers and supplies for collecting product samples.

Because the statute requires compliance with all Federal standards, meat and poultry products produced in selected establishments will be subject to the same regulatory sampling programs as those established in the Federal inspection program. Thus, to be eligible to participate in a cooperative interstate shipment program, States will need to demonstrate that State personnel will collect the same number and type of regulatory product samples from selected establishments as are collected under FSIS's inspection sampling program.

In addition, the State will need to demonstrate that the laboratory services that it intends to use to analyze product samples from selected establishments are capable of conducting the same chemical, microbiological, physical, and pathology testing as are required under the Federal meat and poultry products inspection programs. FSIS's Office of Public Health Science will provide audit assistance to the State to verify that the methodologies used by a State's laboratory services to analyze samples from selected establishments are capable of producing the same results as the methodologies used by FSIS laboratories. FSIS will not enter into an agreement for a cooperative interstate shipment program with a State that does not meet the conditions described above.

Additional conditions. Proposed §§ 332.4(b)(3) and 381.514(b)(3) prescribe additional conditions that States applying for a cooperative interstate shipment program must agree to in order to qualify for the program. These proposed regulations provide that when a State submits a request to establish a cooperative interstate shipment program, the State must agree that, if it enters into an agreement with FSIS for such a program, that the State will:

- Provide FSIS with access to the results of all laboratory analyses conducted on product samples from selected establishments in the State;
- Notify the selected establishment coordinator (SEC) for the State of the results of any laboratory analyses that indicate that a product prepared or processed in a selected establishment may be adulterated or may otherwise present a food safety concern; and
- If necessary, cooperate with FSIS to transition selected establishments in the State that have been deselected from a cooperative interstate shipment program to become official establishments. FSIS will not enter into an agreement for a cooperative interstate shipment program if a State does not agree to these terms.

Qualified States. Under this proposal, after a State submits a request for a cooperative interstate shipment program, the FSIS Administrator will review the request and determine whether the State qualifies for such a program. If, based on the information submitted in the request the Administrator determines that a State is eligible to enter into a cooperative agreement for an interstate shipment program, the Administrator and the State will sign a cooperative agreement that sets forth the terms and conditions under which each party will cooperate to provide inspection services to selected establishments in the State (proposed §§ 331.4(c) and 381.514(c)). After the Administrator and a State have signed an agreement for a cooperative interstate shipment program, the Administrator will: (1) Appoint an FSIS employee as the selected establishment coordinator (SEC) for the State and (2) coordinate with the State to select the establishments that will participate in the program (proposed §§ 332.4(d) and 381.514(d)).

Summary of actions needed to establish a cooperative interstate shipment program under the proposed regulations.

The proposed regulations discussed above describe conditions that both establishments and States must meet to participate in a cooperative interstate shipment program. If FSIS adopts these proposed regulations in a final rule, the steps for establishing a new cooperative interstate shipment program will be the following.

- An establishment that is eligible for the interstate shipment program, and that is interested in participating in the program, will apply for the program through the State agency that administers the State meat and poultry products inspection program under which the establishment operates. States will develop their own application procedures.
- The State will then evaluate the establishment's application to determine whether the State will recommend the establishment for selection into the cooperative interstate shipment program.
- If the State determines that an establishment qualifies for selection into the program, and the State is able, and willing, to provide the necessary inspection services to the establishment, the State will recommend the establishment for selection into the program. The State will need to submit its recommendation through the FSIS District Office whose jurisdiction includes the State.
- If the State has not entered into an agreement with FSIS for a cooperative interstate shipment program, but is qualified to participate in such a program, it will need to submit a request for a cooperative agreement for the program to the FSIS District Office that covers the State.
- In its request for a cooperative interstate shipment program, a State will need to: (1) Identify those establishments that have submitted a request for, and that the States recommends for, initial selection into the program and (2) demonstrate that it is able to provide the necessary inspection services to these establishments if they are selected for the program. The State will also need to agree to comply with certain conditions associated with FSIS oversight and enforcement of the program.
- After a State submits a request for a cooperative interstate shipment program, the FSIS Administrator will evaluate the request and determine whether the State qualifies for the program.
- If the Administrator determines that the State qualifies for the cooperative interstate shipment program, the Administrator and the State will sign a cooperative agreement that sets forth the terms and conditions under which each party will cooperate to provide inspection services to selected establishments in the State.
- The Administrator will then appoint an SEC for the State, and the Administrator, in coordination with the State, will begin selecting establishments for participation in the program.

5. Selection of Establishments

As discussed above, under this proposal, State-inspected establishments that are interested in participating in a cooperative interstate shipment program will apply for selection into the program through the State agency that administers the State's meat or poultry products inspection program. When, and if, an establishment applies to participate in a cooperative interstate shipment program, the State will evaluate the establishment to determine whether it qualifies to become a selected establishment. Proposed §§ 332.5(a) and 381.515(a) provide that a State-inspected establishment will qualify for selection into a cooperative interstate shipment program if the establishment:

- Has submitted a request to the State to be selected for the program;
- Has the appropriate number of employees;
- Is not ineligible for a cooperative interstate shipment;
- Is in compliance with all requirements under the State inspection program; and
- Is in compliance with the all Federal meat or poultry products inspection requirements.

Establishments that do not meet all of these criteria will not qualify, and will not be selected, for the program. To participate in a cooperative interstate shipment program, an establishment that qualifies for such a program must be selected by the Administrator, in coordination with the State where the establishment is located (proposed §§ 332.5(b) and 381.515(b)).

Thus, under this proposal, if a State determines that an establishment operating under the State's meat or poultry products inspection program qualifies for selection into a cooperative interstate shipment program, and the State is able, and willing, to provide the necessary inspection services to the establishment, the State is to submit its evaluation of the establishment through the FSIS District Office that covers the State. The FSIS Administrator, in coordination with the State, will decide whether to select the establishment for the program. When deciding whether to select and establishment for the program, the Administrator will consider whether the establishment meets the criteria needed to qualify for the program and whether the Agency has the resources that it needs to provide the required oversight of the establishment if it is selected for the program.

As stated above, to qualify to participate in a cooperative interstate shipment program, an establishment must be in compliance with all Federal inspection requirements under the FMIA, PPIA, and their implementing regulations in title 9, chapter III, of the CFR. Thus, as part of the selection process, the SEC, in coordination with the State, will verify that each establishment that has applied to participate in a cooperative interstate shipment program: (1) Meets the Federal regulatory performance standards established in 9 CFR 416.1 through 416.6; (2) has submitted all labeling material to the State for approval, and that the materials meet all Federal requirements in 9 CFR parts 316, 317, and 319 and Part 381, subparts M, N, and P; (3) has obtained the same water source and sewage system approval that FSIS requires for official establishments; (4) has developed Sanitation Standard Operating Procedures (Sanitation SOPs) that comply with 9 CFR 416.11–416.17; and (5) has conducted a hazard analysis and developed a validated Hazard Analysis and Critical Control Points (HACCP) plan that complies with 9 CFR part 417.

These criteria reflect the standards that meat and poultry products establishments are required to meet to obtain a Federal grant of inspection under 9 CFR part 304 and 9 CFR part 381. Establishments that do not meet all of these requirements are not in compliance with all Federal standards and thus will not be selected for the program.

If an establishment qualifies for, and is selected to participate in, a cooperative interstate shipment program under this proposed rule, proposed §§ 332.5(c) and 381.515(c) provide that the State is to assign the establishment an official number that reflects the fact that the establishment is a participant in the cooperative interstate shipment program. These proposed regulations provide that the State is to advise the SEC of the number assigned to each selected establishment in the State. Proposed §§ 332.5(c) and 381.515(c) go on to state that the official numbers

assigned to selected establishments need to contain the suffix ''SE'' to identify the establishments as selected establishments. FSIS is proposing this requirement to ensure that establishments participating in the cooperative interstate shipment program can be identified by reference to their establishment number. It will also ensure that meat and poultry products prepared in selected establishments are identified as articles produced under a cooperative interstate shipment program.

Proposed §§ 332.5(c) and 381.515(c) also provide that the selected establishment numbers must include, as a suffix, the abbreviation for the State in which the establishment is located. In addition, proposed § 381.515(c) provides that the suffix of the number for a selected poultry products establishments needs to contain the letter ''P'' to identify the establishment as one that processes poultry products. Thus, under this proposal, an official number for a selected establishment in Texas that prepares meat products would contain the suffix ''SETX,'' while an official number for an establishment in North Dakota that process poultry products would contain the suffix ''SEPND.''

As discussed below, articles that have been inspected and passed in a selected establishment will bear an official USDA mark, stamp, tag, or label of inspection.

Finally, proposed §§ 332.5(d) and 381.515(d) provide that failure of a State to comply with §§ 332.5(c) and 381.515(c) will disqualify that State from participation in a cooperative interstate shipment program. Full compliance by a State with these provisions is essential if the program is to succeed.

6. Inspection at Selected Establishments, Official Mark, and Interstate Shipment

Proposed §§ 332.6(a) and 381.516(a) provide that a cooperative interstate shipment program will commence when the Administrator, in coordination with a State that has entered into an agreement for a cooperative meat or poultry products inspection program, have selected establishments in the State to participate in the program.

Proposed §§ 332.6(b) and 381.516(b) provide that inspection services for selected establishments participating in a cooperative interstate shipment program must be provided by designated personnel, who will be under the direct supervision of a State employee. As discussed below, the FSIS SEC will oversee the inspection activities of the designated personnel.

Proposed §§ 332.6(c) and 381.516(c) provide that articles prepared or processed in a selected establishment that have been inspected and passed by designated personnel must bear an official USDA mark, stamp, tag, or label of inspection as specified in 9 CFR 312.2 or 9 CFR 381.96. 9 CFR 312.2 and 9 CFR 381.96 are the regulations that prescribe the appropriate wording and form for use of the official Federal inspection legend on meat or poultry products. In addition, the establishment number contained in the Federal mark, stamp, tag, or label of inspection must comply with all the conditions proposed in §§ 332.5(c) or 381.515(c).

Under proposed §§ 332.6(d) and 381.516(d) meat or poultry products prepared in selected establishments may be shipped in interstate commerce if they have been inspected and by selected State personnel and bear the Federal mark of inspection.

7. Federal Oversight of Cooperative Interstate Shipment Programs

Section 11015 of the 2008 Farm Bill requires that the Secretary designate an employee of the Federal government as a ''State coordinator'' for each State that has a cooperative State meat or poultry products inspection program (Sec. 501(d) and Sec. 31(d)). The State coordinator is required to ''provide oversight and enforcement'' of the program and ''to oversee the training and inspection activities'' of State personnel designated to provide inspection services to selected establishments (Sec. 501(d)(1) and Sec. 31(d)(1)). As noted above, when, and if, a State qualifies to participate in a cooperative interstate shipment program, proposed §§ 332.4(c)(1) and 381.514(c)(1) provide that the Administrator will appoint an FSIS employee as the FSIS SEC for the State. The SEC is the ''State coordinator'' prescribed by the statute.

FSIS has tentatively decided that the SEC will be an employee of the FSIS Office of Field Operations (OFO) and will be assigned to an FSIS District Office. The SEC will likely be under the direct supervision of an FSIS District Manager. The number of States in an FSIS district assigned to an SEC will likely depend on several factors, including, but not limited to: (1) The number of States and selected establishments, if any, that participate in the cooperative interstate shipment program; (2) the location of each selected establishment; (3) the number of State inspection personnel providing inspection services to selected establishments in a State; (4) the complexity of the operations conducted at each selected establishment; and (5) the schedule of operations for each selected establishment. The number of States assigned to an SEC would also need to be based on consideration of the most effective allocation of available Agency resources.

SEC initial responsibilities. One of the SEC's initial responsibilities will be, in conjunction with the District Office, to coordinate with the State to select establishments to participate in the program. The SEC will coordinate with the State to verify that all State personnel selected to provide inspection services to these establishments have successfully completed the same training in the fundamentals of meat and poultry inspection, covering the Sanitation Performance Standards, Sanitation Standard Operating Procedures (SOPs), HACCP, and enforcement procedures, that is required for FSIS inspection personnel. The SEC will also coordinate with the State to verify that designated personnel have successfully completed the appropriate customized food safety training required for FSIS inspection personnel based on the types of products being produced at the establishments where designated personnel are assigned.

SEC's oversight responsibilities. Proposed §§ 332.7 and 381.517 prescribe how the FSIS SEC is to provide Federal oversight of the cooperative interstate shipment program.

Proposed §§ 332.7(a) and 381.517(a) provide that the SEC is to visit each selected establishment in the State on a regular basis to verify that these establishments are operating in a manner that is consistent with the Acts and the implementing regulations in title 9, chapter III, of the CFR. The SEC's frequency of visits and oversight activities for each selected establishment will need to reflect the type of operations conducted by a selected establishment, as well as the establishment's production processes. FSIS requests comments on how frequently the SEC should visit each establishment under his or her jurisdiction. Proposed §§ 332.7(a) and 381.517(a) also provide that if necessary, the SEC, in consultation with the District Manager that covers the State, may designate qualified FSIS personnel to visit a selected establishment on behalf of the SEC.

Under proposed §§ 332.7(b) and 381.517(b), the SEC, in coordination with the State, will verify that selected establishments in the State are receiving the necessary inspection services from

designated personnel, and that these establishments are eligible, and remain eligible, to participate in the cooperative interstate shipment program. These proposed regulations provide that the SEC's verification activities may include:

- Verifying that each selected establishment in the State employs, and continues to employ, 25 or fewer employees on average, unless the establishment is transitioning to become an official establishment;
- Verifying that the designated personnel are providing inspection services to selected establishments in an manner that complies with the Acts and implementing regulations;
- Verifying that the State staffing levels for each selected establishment are appropriate to carry out the required inspection activities; and
- Assessing each selected establishment's compliance with the Acts and implementing regulations under title 9, chapter III, of the CFR.

To verify that designated personnel are providing inspection services in compliance with the Acts, the SEC for the establishment, in coordination with the State, will verify that the designated personnel are correctly applying Federal inspection methodology, making decisions based upon the correct application of this methodology, accurately documenting their findings, and, when authorized to do so, implementing enforcement actions in accordance with the FSIS Rules of Practice in 9 CFR part 500.

To assess each selected establishment's compliance with Federal food safety standards, the SEC will observe the condition of the establishment, observe establishment employees performing their duties, review the establishment's records, and submit product samples for analysis to determine that product produced by the establishment meets Federal food safety standards.

The SEC will have discretion to increase the frequency of visits to a selected establishment if the SEC, in consultation with the District Manager for the State where the selected establishment is located, determines that such action is necessary to ensure that the establishment is operating in a manner consistent with the Acts. The SEC will also be authorized to conduct a comprehensive food safety assessment (FSA) for a selected establishment, or to request that an FSIS Enforcement, Investigation, and Analysis Officer (EIAO) conduct an FSA, if the SEC, in consultation with the District Manager, determines that such action would help determine whether the establishment is operating in compliance with the Acts. A comprehensive food safety assessment is an assessment that considers all the food safety aspects that relate to an establishment and all the products the plant produces.

If the SEC determines that designated personnel are not providing inspection services to selected establishments in a manner that complies with the Acts, proposed §§ 332.7(c) and 381.517(c) provide that FSIS will provide an opportunity consistent with these regulations for the State to develop and implement a corrective action plan to address inspection deficiencies identified by the SEC. These proposed regulations also provide that if the State fails to develop a corrective action plan, or if the SEC determines that the State's corrective action plan is inadequate, the Administrator will terminate the cooperative agreement with the State.

As discussed above, selected establishments in a State whose agreement for a cooperative interstate shipment program has been terminated by the Administrator are among the establishments that are ineligible to participate in the program. As such, these establishments will be deselected from the program and transitioned to become Federal establishments as described below.

Quarterly reports. As required under section 11015 of the 2008 Farm Bill (Sec. 501(d)(3)(b) and Sec. 31(d)(3)(b)), the SEC is to prepare a report on a quarterly basis that describes the status of each selected establishment under the SEC's jurisdiction (proposed §§ 332.8(a) and 381.518(a)).

The SEC's quarterly report will include the SEC's assessment of the performance of the designated personnel in conducting inspection activities (proposed §§ 332.8(b)(1) and 381.518(b)(1)). The quarterly report will also identify the selected establishments that the SEC has verified are in compliance with all Federal requirements, those that have been deselected, and those that are transitioning to become Federal establishments (proposed §§ 332.8(b)(1) and 381.518(b)(1)). The SEC will submit the report to the Administrator through the District Manager for the State in which the selected establishments identified in the report are located (proposed §§ 332.8(c) and 381.518(c)).

Enforcement. Section 11015 of the 2008 Farm Bill provides that if the SEC determines that any selected establishment is in violation of any requirement of the Acts, the SEC is required to: (1) Immediately notify the Secretary (the FSIS Administrator by delegation) of the violation and (2) ''deselect'' the establishment or suspend inspection at the establishment (Sec. 501(d)(3)(C) and Sec. 31(d)(3)(C)). In adopting this language, Congress intended that the SEC ''* * * shall be provided all the tools necessary under the Secretary to prevent or control any food safety issue that would harm human health'' (S. Rep. No. 220, 110th Cong., 1st Sess., at 211 (2007)).

Because many of the SEC's verification and enforcement activities require that the SEC have access to a selected establishment's records, proposed §§ 332.9(a) and 381.519(a) provide that to facilitate oversight and enforcement of the cooperative interstate shipment program, selected establishments must, upon request, give SECs or other FSIS officials access to all establishment records required under the FMIA, PPIA, and the implementing regulations in title 9, chapter III, of the CFR. These proposed regulations go on to state that FSIS will move to deselect an establishment that does not comply with this requirement.

Under proposed §§ 332.9(b) and 381.519(b), the SEC is authorized to initiate any appropriate enforcement action provided for in the FSIS rules of practice in 9 CFR part 500 if he or she determines that a selected establishment under his or her jurisdiction is operating in a manner that is inconsistent with the Acts or their implementing regulations. Such actions include, among others, regulatory control actions, withholding actions, and suspensions. The proposed regulations provide that selected establishments participating in a cooperative interstate shipment program are subject to the notification and appeal procedures set out in part 500 (proposed §§ 332.9(b) and 381.519(b)).

Proposed §§ 332.9(c) and 381.519(c) provide that if inspection at a selected establishment is suspended for any of the reasons specified in 9 CFR 500.3 or 9 CFR 500.4, FSIS will provide an opportunity for the establishment to implement corrective actions and remain in the cooperative interstate shipment program, or the Agency will move to deselect the establishment. The decision to deselect a selected establishment under a suspension will be made on a case-by-case basis (proposed §§ 332.9(d) and 381.519(d)). In making this decision, the Administrator, in consultation with the State where the selected establishment is located, will consider, among other factors: (1) The non-compliance that led to the suspension; (2) the selected establishment's compliance history, which will be documented in non-compliance reports prepared by the designated personnel and the SEC's

quarterly reports; and (3) the corrective actions proposed by the establishment (proposed §§ 332.9(d) and 381.519(d))

The Administrator will have the discretion to allow a selected establishment that has been suspended to remain in the program if the establishment implements corrective actions to address any non-compliance. The Administrator will consider the criteria described above in determining whether to provide an opportunity for corrective actions. Establishments that are given an opportunity to take corrective actions but that are unable to effectively implement these actions will be deselected.

FSIS will also consider the State's recommendation as to whether a selected establishment in the State should be deselected. However, the final decision to deselect an establishment for violations of the FMIA or PPIA will be made by FSIS. As discussed below, consistent with the law, this proposed rule requires that deselected establishments be transitioned to become official establishments.

8. Deselection

There may be circumstances in which an establishment that initially qualifies to be selected to participate in a cooperative interstate shipment program later acquires characteristics that would cause it to become ineligible for the program. For example, an establishment may hire additional employees after it has been selected, or, as discussed above, FSIS may determine that a selected establishment is in violation of the Acts. Therefore, proposed §§ 332.10(a) and 381.520(a) provide that the Administrator will deselect an establishment that becomes ineligible to participate in a cooperative interstate shipment program. Proposed §§ 332.10(b) and 381.520(b) provide that an establishment that has been deselected from a cooperative interstate shipment program must be transitioned to become an official establishment.

FSIS is proposing to require that deselected establishments be transitioned to become official Federal establishments as provided for in the law. Section 11015 of the 2008 Farm Bill allows the Agency to establish a procedure to transition selected establishments that employ, on average, more than 25 employees to become Federal establishments, and it requires that selected establishments that the Administrator determines to be in violation of any provision of the Acts, be transitioned to Federal establishments in accordance with the procedure developed for establishments that employ more than 25 employees (Sec. 501(b)(3), 501(h), 31(b)(3) and 31(g)).

Thus, as required by the law, under this proposal, establishments that become ineligible to participate in the cooperative interstate shipment program because they violated Federal food safety standards will not permitted to avoid implementing appropriate corrective actions by withdrawing from the cooperative interstate shipment program and reverting back to the State inspection program. In addition, requiring that deselected establishments transition to become official Federal establishments will help to ensure that the resources that FSIS and the States provide to establish and maintain a cooperative interstate shipment program are used most effectively to provide inspection services to establishments that are committed to maintaining Federal food safety standards.

9. Transition Procedures for Deselected Establishments

As discussed above, under the law, FSIS is authorized to develop a procedure to transition selected establishments to become official establishments if they employ more than 25 employees on average, or if the Agency determines that they are in violation of any provision of the Acts (Sec 501(b), Sec. 501(h), Sec. 31(b) and Sec. 31(g)). At a minimum, a procedure to transition a selected establishment to an official establishment would include: (1) Adding the establishment to an FSIS circuit within the FSIS District that covers the State where the establishment is located; (2) replacing the establishment's State establishment number with a Federal establishment number, and (3) replacing the designated personnel with FSIS inspection personnel. Other actions needed to successfully transition a selected establishment to become an official establishment are likely to depend on the reason the establishment was deselected. For example, an establishment that was deselected from a cooperative interstate shipment program for violating provisions of the Acts would likely need to develop a corrective action plan as part of its process to transition to an official establishment, while an establishment that was deselected for hiring additional employees would not.

Therefore, instead of prescribing a specific procedure to transition selected establishments to official establishments, proposed §§ 332.11 and 381.521 provide that if a selected establishment is deselected, FSIS will coordinate with the State where the establishment is located to develop and implement a plan to transition the establishment to become an official establishment. The SEC with jurisdiction over the deselected establishment will likely be charged with coordinating with the State and the FSIS District Office to develop and implement the transition plan.

10. Technical Assistance Division and Transition Grants

Section 11015 of the 2008 Farm Bill amended the FMIA to require that FSIS establish a ''technical assistance division'' to coordinate the initiatives of other USDA agencies to provide ''outreach, education, and training to certain small and very small establishments'' and to provide ''grants to States to provide outreach, technical assistance, education, and training to certain small and very small establishments'' (Sec. 501(f)). As noted earlier in this document, FSIS fulfilled this requirement by establishing the Office of Outreach Employee Education and Training (OOEET).

OOEET is responsible for directing outreach, education, and training programs for FSIS to ensure public health and food safety through both inspection and enforcement activities. OOEET is also responsible for coordinating with other USDA agencies, such as the Rural Development Mission Area and the Cooperative State Research, Education, and Extension Service.

The OOEET State Outreach and Technical Assistance Division promotes State programs and activities to achieve national food safety, food security, and other consumer protection goals by planning, organizing, coordinating, and supporting FSIS cooperative activities with State agencies with responsibility for State meat, poultry and egg product public health assurance inspection programs. It also provides technical expertise, information, and advice to small and very small plant owners and operators on the interpretation, application, implementation and enforcement of the statutes and regulations that FSIS implements.

Transition grants. In addition to requiring that FSIS establish a ''technical assistance division'' to coordinate the initiatives of other USDA agencies to provide grants to States, section 11015 of the 2008 Farm Bill authorizes FSIS to provide ''transition grants'' to States to assist the States in helping State-inspected establishments transition to selected establishments (Sec. 501(g) and Sec. 31(f)). The Agency has tentatively decided to use this authority, subject to the availability of funds, to grant funds to States that

participate in a cooperative interstate shipment program to reimburse selected establishments in the State for their costs to train one individual in HACCP and associated training in Sanitation SOP requirements.

The regulations that prescribe conditions for receiving Federal inspection, which represent the conditions that selected establishments must meet to be in compliance with Federal standards, require that an establishment develop written Sanitation SOPs as required by 9 CFR part 416, and that it have conducted a hazard analysis and developed and validated a HACCP plan as required in 9 CFR 417.2 and 417.4 (9 CFR 304.3 and 381.22). Under 9 CFR 417.7 of the HACCP regulations, the individual that develops the HACCP plan for an establishment must have successfully completed a course of instruction in the application of the seven HACCP principles to meat or poultry product processing, including a segment on the development of a HACCP plan for a specific product and on record review.

State-inspected establishments that apply to participate in a cooperative interstate shipment program will be required to have an individual trained in HACCP in order to transition to a selected establishment. Therefore, for purposes of this proposed rule, FSIS has tentatively concluded that it is appropriate to provide funds to a State for the purpose of reimbursing selected establishments for the cost of this training. Accordingly, proposed §§ 332.12(a) and 381.522(a) provide that these ''transition grants'' are funds that a State participating in a cooperative interstate shipment program must use to reimburse selected establishments in the State for the cost to train one individual in the HACCP principles applicable to meat or poultry processing as required under 9 CFR 417.7 and associated training in the development of Sanitation SOPs required under 9 CFR part 416.

Proposed §§ 332.12(b) and 381.522(b) make clear that States must use transition grants only for this described purpose. Once a selected establishment receives such funding from the State, the State may not use additional transition grant funds to reimburse that establishment's training costs in the future.

Under this proposal, establishments that train an individual in HACCP or Sanitation SOP requirements as part of their transition to become selected establishments may request reimbursement for these training costs through the State agency that administers the State's cooperative interstate shipment program. These selected establishments will need to submit a training certificate or other documentation to demonstrate that an individual completed the appropriate training. The State would then submit the documentation to FSIS, and request a ''transition grant'' to reimburse the establishment for its training costs.

Executive Order 12866 and Regulatory Flexibility Act:

This proposed rule has been reviewed under Executive Order 12866. It has been determined to be significant, but not economically significant for purposes of E.O. 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Currently, 27 States administer cooperative State meat or poultry inspection programs. These States have approximately 1,873 establishments that would be eligible to apply for selection into the new cooperative interstate shipment program. However, because participation in the new program will be voluntary, FSIS will not know how many States and establishments will apply to participate until final implementing regulations become effective and establishments are selected for the program. Information obtained through the Agency's outreach activities indicates that, as of July 2008, about 170 establishments in sixteen States have approached the State Meat and Poultry programs to indicate that they are interested in the new program. These sixteen States have in total 1,133 establishments that could potentially be eligible for the new program.

Expected Benefits of the Proposed Action: State-inspected establishments selected to participate in the new cooperative interstate shipment program will be permitted to ship and sell their meat and poultry products in interstate and foreign commerce. Thus, the proposed action would benefit these establishments by opening new markets for their products.

The proposed action would also benefit consumers by generating more product choices, as more products can be shipped to new markets. In addition, the Federal inspection legend and official State establishment inspection number may facilitate traceback of these products if such products are ever the subject of an investigation or recall.

States that participate in the program would benefit because FSIS would reimburse them for at least 60% of their costs related to inspection of selected establishments in the State. FSIS provides up to 50% of the costs of existing cooperative State inspection programs. The Agency has tentatively concluded that most States will benefit from the 10% increase in reimbursement for the cooperative interstate shipment program because, as explained below, for many States, the costs to administer the new program are not expected to exceed the costs to administer the State meat and poultry inspection programs.

Expected Costs of the Proposed Action:

Costs to the participating establishments. To be eligible to participate in the cooperative interstate shipment program, a State-inspected establishment must be in compliance with: (1) The State-inspection program of the State in which the establishment is located and (2) the FMIA or PPIA, and their implementing regulations. Before State-inspected establishments can be selected to participate in a cooperative interstate shipment program, they will need to apply for selection into the program and demonstrate that they comply with both State and Federal requirements.

Thus, an establishment that chooses to apply for selection into the program will incur one-time start-up costs associated with filing an application, training employees, meeting regulatory performance standards, obtaining label approval, and implementing a food safety system that complies with all Federal requirements (*e.g.,* Sanitation SOP and HACCP requirements).

In addition, to qualify for a cooperative interstate shipment program, some State-inspection establishments may need to invest in structural modifications to their facilities in order to comply with Federal standards. Based on information obtained through FSIS' outreach activities with the States, the Agency estimates that the cost for State-inspected establishments to fully comply with Federal standards, as required by the law, will range from $1,500 to $50,000. According to most State Directors, the cost to very small establishments that do not need to make structural modifications to their facilities is likely to be in the range of $5,000 to $10,000. On the other hand, if the establishments need to make structural modifications or perform new construction then the range would be about $15,000 to $30,000.[1] However, because this is a voluntary program, establishments that choose to incur the costs associated with participating in the program will most likely do so because they anticipate that such

[1] Note that under this proposed rule, establishments selected for the program will be eligible to be reimbursed the cost to train one employee in HACCP and Sanitation SOPs.

participation will provide an overall net benefit for them. The Agency welcomes comments on these estimates.

Looking at the potential for the establishments to experience new (incremental) burden or expenses due to State inspection under the proposed cooperative interstate shipment program, FSIS believes that there will be essentially no change. FSIS is aware that the cooperative State meat and poultry products inspection programs are not identical to Federal inspection, as they must be under the cooperative interstate shipment program. So FSIS anticipates that State inspection procedures will need to be changed somewhat to comply with the requirements of the cooperative interstate shipment program. However, since the State programs are required to be equal to the Federal inspection programs now, FSIS anticipates that changes will largely be procedural, and there will not be any particular increase or decrease in overall State effort that would change the burden of the inspection regimen on the establishments.

Costs to the participating States. States that choose to participate in the program will be required to pay 40 percent of the eligible costs related to inspection of establishments in the State that are selected for the program. Under the current cooperative program, the States are paying 50 percent of the eligible inspection costs. Although the inspection costs under the new program may be different from the costs under the existing program, the States' share of 40 percent or less is unlikely to be higher than its current share.

States that choose to participate in the interstate shipment program may need to make certain modifications to their State inspection programs to provide inspection services to selected establishments in a manner that is the same as the Federal inspection program. However, most States that have implemented State meat and poultry products inspection (MPI) programs have incorporated the Federal requirements into their programs.[2] Thus, State costs to train State personnel are likely to be minimal because many State personnel have received training in Federal inspection methodology as part of the State MPI program.

States may incur some costs associated with the processing and evaluation of applications submitted by establishments requesting to be selected for the cooperative interstate shipment program. However, because the States will develop their own application procedures, FSIS is unable to estimate these costs with any certainty. The Agency requests comments on potential State costs associated with the processing and evaluation of these applications.

FSIS anticipates that State inspection procedures will need to be changed somewhat to comply with the requirements of the proposed cooperative interstate shipment program. However, since the State programs are required to be at least equal to the Federal inspection programs now, FSIS anticipates that changes will largely be procedural, and there will not be any particular increase or decrease in overall State effort or cost. FSIS has no basis on which to assume anything else. FSIS requests input from State Program officials that might be useful to refine this estimate.

Expected FSIS Budgetary Effects:

The new Federal-State cooperative inspection program option which section 11015 of the 2008 Farm Bill requires the Secretary to create and which we propose to implement via this regulatory action is expected to have budgetary effects on FSIS to support about 16 full-time equivalent new staff. This section discusses the baseline costs and activities, *i.e.,* what is happening now before the cooperative interstate shipment program option is available, and then lays out the incremental effects on FSIS. FSIS staff have worked with the 27 directors of the Federal-State meat and poultry inspection program to gauge the level of interest at the State and establishment level. Their input has been incorporated into the assumptions here.

Baseline:

Federal-State cooperative inspection programs operated in 27 States and 1,873 establishments in FY 2008, the baseline year for this analysis. Actual Federal spending for the Federal-State cooperative inspection programs was $63,959,709 for FY 2008 as reported in the FY 2010 President's Budget, which also projected $64,703,000 for FY 2009 and $65,654,000 for FY 2010. By statute, the States may be reimbursed for up to 50 percent of the cost of their State cooperative inspection programs. Federal reimbursements to State programs reported in the FY 2010 budget, included in the above figures, are $49,061,068 for FY 2008, $50,332,000 for FY 2009, and $50,332,000 for FY 2010. In fact, actual total State spending for the Federal-State cooperative inspection programs for FY 2008 was $104 million with $49 million of that reimbursed by FSIS, as noted above.

FSIS extends these figures into years 2010 through 2014, see table below, the 5-year analysis period for this rule, by assuming that, had the cooperative interstate shipment program option not been enacted, State cooperative programs operations would continue through the period on a generally stable basis. The Agency assumes that the same 27 States would continue to participate and the program would inspect about the same number of establishments as were inspected in FY 2008, *i.e.,* 1,873. This appears reasonable because, among the 27 States in the program the number of establishments has been relatively stable. Since the number of establishments and States is assumed to remain unchanged, and no significant changes in program requirements are expected, baseline program costs are assumed to change only with the cost of inflation.

Turning to FSIS administrative costs, we note that FSIS staffing has been stable in the 28 to 33 person range for the past decade, and is expected to remain at 29 for the foreseeable future. Consistent with State level activities, since the number of States is expected to remain the same with no particular change in the number of establishments, and since no significant changes in program requirements are expected, FSIS administrative costs are expected to change consistent with the cost of inflation, *i.e.,* the Agency anticipates no significant increase or decrease in FSIS administrative activity during the five years in the baseline scenario (*i.e.,* the baseline assumes no cooperative interstate shipment program). FSIS spending to administer Federal-State cooperative inspection programs, excluding the reimbursement costs, was $14,898,641 for FY 2008 as reported in the FY 2010 budget, and is projected at $14,371,000 for FY 2009 and $15,322,000 for FY 2010. For the years out to 2014, these costs would change with inflation and are shown in the following table.

[2] Based on Agency's most recent (FY 2008) review of the 27 States' self-assessment reports (including the State Laboratory Activity Tables) by the Federal State Audit Branch, Internal Control and Audit Division of the Office of Program Evaluation, Enforcement, and Review.

TABLE 1—BASELINE: COST FEDERAL-STATE COOP PROGRAM WITH NO CHANGE

FSIS Level Costs, Fiscal Year	2010 (Budget)	2011	2012	2013	2014	Total 5-year
FSIS costs	$15.3	$15.9	$16.5	$17.1	$17.8	$82.5
Reimburs. to States	50.3	52.1	54.1	56.2	58.4	271.1
Total	65.7	68.0	70.5	73.3	76.1	353.6
FSIS Staff Years	29	29	29	29	29	.....

State Level Costs, Fiscal Year	2010 (Budget)	2011	2012	2013	2014	Total 5-year
Federal reimbursement	$50.3	$52.1	$54.1	$56.2	$58.4	$271.1
State program spending	50.3	52.1	54.1	56.2	58.4	271.1
Total MPI program	100.7	104.2	108.1	112.4	116.7	542.1
Number of plants	1,873	1,873	1,873	1,873	1,873	.....
Economic Assumptions From OMB for the 2010 Budget						
State & Local Exp, %	3.1	3.5	3.8	3.9	3.9	.....
FSIS civilian pay, %	5.1	4.1	4.1	4.1	4.1	.....
Non-Pay Expenditure, %	0.8	1.2	1.4	1.6	1.6	.....

Interstate Scenario:

To evaluate this scenario, we must estimate the number of establishments and States that will seek to participate and be selected for the new cooperative interstate shipment program. Then we will discuss the likely incremental changes in activity that could reasonably suggest any changes in cost or burden for FSIS, the States, or establishments.

Here is how we determined the number of establishments that are likely to participate in the proposed cooperative interstate shipment program. The first cut is to look at all establishments and determine the number with fewer than 25 employees. The statute limits participation to these smaller establishments. Of the total 1,873 plants in the current Federal-State cooperative inspection program there are 1,811 that meet the size criterion for eligibility for the cooperative interstate shipment program. However, as noted earlier, sixteen States have expressed an interest in the new cooperative interstate shipment program, and these States have a total of 1,133 establishments that could potentially be eligible for the new program. The eleven States that have not indicated an interest in the cooperative interstate shipment program include all nine States that have establishments operating under the Talmadge-Aiken (TA) program. The TA States account for the remaining 678 eligible establishments.

Because participation in the cooperative interstate shipment program is voluntary, the Agency cannot estimate with certainty the number of eligible establishments that will choose to participate. Therefore, for illustration purposes, and to obtain a reasonable range of possible budget impacts, given the uncertainty, the Agency estimated the costs for three scenarios: 200, 400 and 600 establishments. A five-year cost estimate was completed covering the FY 2010 through FY 2014. We further assume that the participating establishments will be evenly distributed among the participating States and, just as the baseline assumes, we anticipate no particular change in the numbers of establishments in the overall program over the 5 years and no change in the cooperative interstate shipment program establishments.

At this time, we turn to the change in Federal costs for the program caused by the new statutory reimbursement level. For the cooperative interstate shipment program the law requires that FSIS reimburse State for costs related to the inspection of selected establishments in an amount not less than 60 percent of eligible State costs, as opposed to current law which allows reimbursement of up to 50 percent of costs for the regular, and continuing, Federal-State cooperative inspection program. This analysis projects the effects of the different reimbursement rate on FSIS fiscal requirements assuming no change in State level activity over the baseline. FSIS assumes that States will not change their level of activity associated with selected establishments in the cooperative interstate shipment program as discussed above. FSIS determined that Agency reimbursements to States would increase by about $2.2 million in a fully operational cooperative interstate shipment program in FY 2011 (not all plants will be in the cooperative interstate shipment program for all of FY 2010).

In all years, the amount of increase in this component of Federal reimbursement would offset State spending by the same amount. (FY 2011 is used because it is the first, fully operational year, explained further below.) To calculate this figure, FSIS estimated average per establishment spending for the Federal-State Cooperative Inspection Program by States for the 1,873 establishments in the baseline scenario. For FY 2011, the average per establishment is $55,626, including State and Federal reimbursement. Reviewing the budget for FY 2008 and 2009, we see that average Federal reimbursement is currently running about 50 percent of total State costs. The reimbursement ratio is expected to remain stable for the 5-year period both for inspecting establishments in the baseline scenario, and for inspecting establishments that stay with the existing program, while 400 establishments seek and are selected to operate with the cooperative interstate shipment program. Reimbursement will increase to 60 percent for inspection services to the 400 establishments that move into the

cooperative interstate shipment program option. So, for example, FY 2011 State reimbursement for inspection of the average Interstate establishment would change from the average $27,813 it would receive for an establishment continuing in the regular Federal-State cooperative inspection programs, to $33,376 per establishment for inspection of an Interstate plant, an increase of $5,563 per plant, which yields $2.2 million for the 400 establishments. This and analogous figures are reflected in the tables below in the ''Total grants to States'' line for the 200, 400 and 600 establishment scenarios.

Under section 11015 of the Farm Bill, in addition to the increased reimbursement rates that will increase the grants to States for inspection of establishments participating in the cooperative interstate shipment program, FSIS is required to oversee the State inspectors doing the inspections for the cooperative interstate shipment program more intensively than the Agency typically does for the current, and the continuing MPI program. FSIS also expects to incur new costs for outreach and training. This will result in increased demand for FSIS staff and resources. In summary, this includes state coordinators, Deputy District Managers (DDM), outreach and training staff, and lab analysts to certify State laboratories, transition grants to hone establishment staff skills with HACCP and SOPs and associated operating expenses and travel expenses.

The statute requires FSIS to appoint a Federal employee to be a State Coordinator. As explained earlier in this document, the State Coordinator prescribed by the statute is referred to as the ''selected establishment coordinator'' (SEC) in this proposed rule. The SEC is required by statute to visit selected establishments with a frequency that is appropriate to ensure that such establishments are operating in a manner that is consistent with the FMIA and PPIA, including regulations and policies there under and to: (1) Provide oversight and enforcement of the program, and (2) to oversee the training and inspection activities of State-personnel designated to provide inspection services to the selected establishments. SECs will further provide quarterly reports on each selected establishment under his or her jurisdiction to document their level of compliance with the requirements of the Acts.

We estimate that a total of 13 full time equivalent FSIS employees will be able to perform the SEC functions for the 16 States expected to participate in the cooperative interstate shipment program. We anticipate that about one-quarter of the total establishments will enter the cooperative interstate shipment program each quarter during FY 2010, reaching the full complement toward the end of that year. So, for example, in the 400 establishment scenario, 100 establishments will initiate inspection under a cooperative interstate shipment program sometime in the first quarter, another 100 in the second quarter, another in the third quarter, and the final group of 100 in the fourth quarter. It is expected that early in 2010 SEC time will initially focus on outreach and start-up activities (including establishment selection) and shift over until it is more completely the oversight activities stipulated in the Acts. While there may be one SEC per State from the beginning, we believe that contiguous States and establishments that are in relative close proximity could make it appropriate to have less than 16 full time equivalent SECs. Note that if 400 establishments convert into the cooperative interstate shipment program in FY 2010 and continue in the following years, each SEC will be responsible for 31 establishments in a geographically-limited area. This is approximately equal to the number of Federal establishments over which frontline FSIS supervisors have oversight responsibilities.

In the start-up period, in FY 2009 and FY 2010, the first year of the cooperative interstate shipment program, in addition to SEC outreach efforts, FSIS expects to incur costs for outreach and training, and administration from OOEET for the small and very small establishments that are considering the cooperative interstate shipment program, that decide to apply for the program, and for those who are selected to participate in the program. OOEET will conduct face-to-face workshops in every State to provide information to establishment owners and operators about the requirements of the new cooperative interstate shipment program. These workshops will not only educate the interested owners and operators about the requirements, they will also help them meet the requirements. This allocation will cover the cost of developing, printing, and shipping the workshop materials, as well as the cost of traveling Agency personnel to conduct the workshops, and the cost of meeting space. The cost is reflected in the tables below in the ''Training/Outreach'' line. The reason these costs do not change in the various scenarios—200, 400 or 600 establishments—is because the information will be provided in a classroom. Costs are expected to be largely the same whether attendance is high or low. Also note that these costs drop sharply for each subsequent year as the cooperative interstate shipment program specific effort changes to operating training for establishments selected to participate in the program.

In the start-up period, transition grant authority under 9 CFR 332.12 and 9 CFR 381.522 will be used to provide States funds to reimburse selected establishments in the State for their costs to train one individual in HACCP and associated training in Sanitation SOP requirements. The Agency estimates that the cost of training each establishment specialist will average about $5,000, including staff time and travel necessary for the training. Since this is a new expense necessary to implement the cooperative interstate shipment program and since statute authorizes it without State matching funds, these costs will be entirely new costs for FSIS that are part of ''Total grants to States'' in FY 2010 in Table 2 below. Thus, the cost to FSIS will total about $1 million, $2 million and $3 million for the 200, 400 and 600 establishment scenarios respectively. This training will only be needed in the start-up period and, accordingly, appears only in FY 2010 in Table 2.

SECs are likely to be supervised by Deputy District Managers (DDMs) at the equivalent of about 1 DDM per 300 establishments. This is similar to the ratio of DDM effort used to manage frontline FSIS supervisors in the Federal programs. For the three establishment levels, this would mean 1 DDM for 200 establishments and 2 DDMs for 400 or 600 establishments. This is reflected in the ''DDM'' line of the tables below.

FSIS estimates that two laboratory staff will be needed to complete periodic audits of the State inspection program laboratory systems and otherwise coordinate with the laboratories to ensure the sampling and testing programs are equivalent to the Federal program. It is anticipated that the two lab staff will be needed regardless of whether 200, 400 or 600 establishments eventually participate since the same number of State labs will need to be reviewed regardless of the volume of work they do under the cooperative interstate shipment program. This is reflected in the ''Lab staff'' line of the tables below.

Travel costs are included on the ''Travel—SC & lab staff'' line in the tables below. The SECs will need to travel a fair amount to complete their duties and the lab staff will need to travel some. Travel for SECs and lab

staff starts in FY 2010 and will run higher for the first year, after which time the start-up effort will diminish. Since we are assuming the selected establishments are evenly distributed in the participating States, we anticipate that the number of participating establishments would only have slight impact on the cost of travel for each SEC. We project about $6,150 for training and travel for each SEC in the first and $630 for subsequent years.

For the lab staff we based our trips to the State program laboratories on one audit of each laboratory to make an initial assessment, so that would be one trip to the labs for each of the 27 eligible States. Because most of the labs typically have a chemistry residue program and a microbiology program, two lab-auditors will go on each trip—one chemist and one microbiologist. These labs would also need a follow-up the next year and then we would make a judgment as to whether there needed to be annual visits after that. The audit will be based on the program that FSIS developed several years ago, which is similar to the program that the Agency uses to assess the Pasteurized Egg Product Recognized Laboratory program. We based the number of audits on the figures that we had regarding the number of states that will participate, 16. Each trip ran about $1,500 for each auditor.

Finally, there are the normal operating expenses associated with field operations including office space, communications costs, information technology costs (such as laptop computers), other equipment, office supplies, etc. FSIS estimates $3,500 per new staff for laptop, LincPass, Black Berries, etc. These costs are generally stable over time, although they inflate and, of course, are a little higher in the start-up year. These costs are found in the ''Equipment and admin'' line of the tables below.

Table 2, below, summarizes the incremental costs to FSIS to operate the new cooperative interstate shipment program in the three scenarios 200, 400 and 600 establishments, with the 400 establishment level assumed to be the likely level.

TABLE 2—COOPERATIVE INTERSTATE SHIPMENT PROGRAM COST ESTIMATES—THREE SCENARIOS

Interstate Program—Summary of Incremental Cost Estimates ($ Millions)

Fiscal Year	2009	2010	2011	2012	2013	2014	5-Year
Costs if 200 establishments	$1.93	$5.55	$4.07	$4.22	$4.40	$4.58	$22.83
Costs if 400 establishments	1.93	7.11	5.34	5.55	5.77	6.00	29.77
Costs if 600 establishments	1.93	8.79	6.53	6.79	7.06	7.33	36.50

Interstate Program with 200 Establishments ($ Millions)

Fiscal Year	2009	2010	2011	2012	2013	2014	5-Year
Number of establishments*		200	200	200	200	200	
Total grants to States**		$1.54	$1.11	$1.15	$1.20	$1.25	
Total salaries & benefits		2.20	2.17	2.25	2.35	2.45	
DDM		0.15	0.16	0.16	0.17	0.18	
State coordinator (SC)		1.69	1.76	1.83	1.91	1.98	
Lab staff		0.24	0.25	0.26	0.27	0.29	
Operating expenses		1.81	0.79	0.82	0.85	0.89	
Travel-SC & lab staff		0.16	0.09	0.09	0.10	0.10	
Training/Outreach	1.43	1.25	0.35	0.36	0.38	0.39	
Equipment and admin	0.50	0.40	0.35	0.36	0.38	0.39	
Total	1.93	5.55	4.07	4.22	4.40	4.58	22.83

Interstate Program with 400 Establishments ($ Millions)

Fiscal Year	2009	2010	2011	2012	2013	2014	5-Year
Number of establishments*		400	400	400	400	400	
Total grants to States**		$3.07	$2.23	$2.31	$2.40	$2.49	
Total salaries & benefits		2.23	2.32	2.42	2.52	2.62	
DDM		0.30	0.31	0.33	0.34	0.35	
State coordinator (SC)		1.69	1.76	1.83	1.91	1.98	
Lab staff		0.24	0.25	0.26	0.27	0.29	
Operating expenses		1.81	0.79	0.82	0.85	0.89	
Travel-SC & lab staff		0.16	0.09	0.09	0.10	0.10	
Training/Outreach	1.43	1.25	0.35	0.36	0.38	0.39	
Equipment and admin	0.50	0.40	0.35	0.36	0.38	0.39	
Total	1.93	7.11	5.34	5.55	5.77	6.00	29.77

Interstate Program with 600 Establishments ($ Millions)

Fiscal Year	2009	2010	2011	2012	2013	2014	5-Year
Number of establishments*		600	600	600	600	600	
Total grants to States**		$4.67	$3.34	$3.46	$3.60	$3.74	
Total salaries & benefits		2.23	2.32	2.42	2.52	2.62	
DDM		0.30	0.31	0.33	0.34	0.35	
State coordinator (SC)		1.69	1.76	1.83	1.91	1.98	
Lab staff		0.24	0.25	0.26	0.27	0.29	
Operating expenses		1.89	0.87	0.90	0.94	0.97	

TABLE 2—COOPERATIVE INTERSTATE SHIPMENT PROGRAM COST ESTIMATES—THREE SCENARIOS—Continued

Travel-SC & lab staff	.....	0.24	0.17	0.18	0.18	0.19	.....
Training/Outreach	1.43	1.25	0.35	0.36	0.38	0.39	.....
Equipment and admin	0.50	0.40	0.35	0.36	0.38	0.39	.....
Total	1.93	8.79	6.53	6.79	7.06	7.33	36.50
Economic Assumptions from OMB for the 2010 Budget							
State & Local Exp, %	.....	3.1	3.5	3.8	3.9	3.9	.....
FSIS Civilian pay, %	.....	5.1	4.1	4.1	4.1	4.1	.....
Non-Pay Expenditure, %	.....	0.8	1.2	1.4	1.6	1.6	.....
State Grant Incremental Increase in FSIS Reimbursement to the State							
Per Establishment	.....	$5,374	$5,563	$5,774	$5,999	$6,233	.....

* Note that in FY 2010 about one quarter of establishments are expected to enroll each quarter. In subsequent fiscal years, all establishments will be in the program for the full year.

** Note ''Total grants to States'' includes funding for Transition Grants in 2010 for States to use to help plants train one person in HACCP and SOPs per § 332.12 and § 381.522.

Effect on Small Entities

This proposed action will primarily affect very small and certain small establishments that operate under cooperative State meat or poultry inspection programs. Under section 11015, State-inspected establishments that employ on average 25 or fewer employees would be permitted to be selected to participate in a cooperative interstate shipment program. The law also permits the Secretary to select State-inspected establishments that employ, on average, more than 25 but less than 35 employees to participate in the program. However, to remain in the program, these establishments must employ, on average, 25 or fewer employees three years after the regulations implementing the new cooperative interstate shipment program become effective. FSIS provides for the selection of State-inspected establishments that employ, on average, more than 25 but fewer than 35 employees in the proposed implementing regulations. Thus, this proposed rule will benefit these very small and small State-inspected establishments by allowing them to ship meat and poultry products in interstate and foreign commerce, thereby opening new markets for their products.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this proposed rule, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/Regulations_&_Policies/2009_Proposed_Rules_Index/index.asp.* FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995, the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB).

Title: ''Cooperative Inspection Programs: Interstate Shipment of Meat and Poultry Products''

Type of collection: New.

Abstract: FSIS has reviewed the paperwork and recordkeeping requirements in this proposed rule in accordance with the Paperwork Reduction Act. Under this proposed rule, FSIS is requiring certain information collection and recordkeeping activities.

FSIS is proposing that States that are interested in participating in the cooperative interstate shipment program submit a request for an agreement to establish such a program through the appropriate FSIS District Office. In their requests, States must: (1) Identify establishments in the State that the State recommends for initial selection into the program; (2) include documentation to demonstrate that the State is able to provide necessary inspections services to selected establishments in the State and conduct any related activities that would be required under a cooperative interstate shipment program; and (3) agree to comply with certain conditions to assist with enforcement of the program. FSIS is also proposing that States that have entered into an agreement with FSIS for a cooperative interstate shipment program submit, through the FSIS District Office, an evaluation of each State-inspected establishment that has applied, and that the State recommends be selected, for the cooperative interstate shipment program.

Under this proposal, State inspected establishments selected to participate in the cooperative interstate shipment program will be required to develop and maintain the same records that are required under the Acts and their implementing regulations. Selected

establishment will also be required to give the FSIS selected establishment coordinator (SEC) access to all establishment records required under the Acts and implementing regulations. Most States that have cooperative State meat or poultry products inspection programs have incorporated the Federal standards into their programs. Thus, most establishments selected to participate in the interstate shipment program are currently required to maintain records that comply with Federal standards. However, establishments located in States that have implemented recordkeeping requirements that are ''at least equal to'' but not identical to Federal requirements will need to modify their recordkeeping procedures to comply with Federal standards. All selected establishments will be required to give the FSIS SEC access to their records upon request.

Estimate of Burden: FSIS estimates that 16 of the 27 States that currently have agreements for cooperative State meat or poultry products inspection programs will prepare and submit a request to FSIS to establish a cooperative interstate shipment program. The Agency also estimates that approximately 400 establishments will apply for the program. Thus, FSIS estimates that each of the 16 States mentioned above will need to prepare and submit, on average, 25 evaluations for the State-inspected establishments that have applied for, and that the State recommends, for selection into the program, for an estimated total of 400 evaluations.

FSIS estimates that it will take approximately 40 hours for each State to prepare and submit a request to establish a cooperative interstate shipment program, for a total burden of 640 hours. The Agency estimates that it will take each State approximately 24 hours to prepare an evaluation of a State-inspected establishment's qualifications to be selected for a cooperative interstate shipment program, for a total burden of 9,600 hours.

FSIS estimates that if all of the 400 establishments that apply are selected for the program, approximately 100 of these establishments will need to modify their recordkeeping procedures to come into compliance with Federal standards. The extent to which these establishments will need to modify their recordkeeping procedures will depend on requirements under the State inspection program. Because recordkeeping requirements under the State inspection program must be ''at least equal to'' the Federal requirements, these modifications should be minor. FSIS estimates that it will take approximately 16 hours for each establishment that is currently maintaining records under State standards to review and revise its recordkeeping procedures, and about 5 minutes for each establishment to file these records, for a total burden of approximately 1,608.3 hours.

All of the estimated 400 establishments that participate in the program will be required to give the SEC access to all records required under the Federal Acts. FSIS estimates that it will take each establishment approximately 15 minute to assist the SEC to locate the necessary records for review on the initial visit, for a total burden of 100 hours. FSIS estimates that these establishments will need to spend and approximately 5 minute to assist the SEC locate records for review for each subsequent visit. If the SEC visits each selected establishment at least one a month, the total burden per establishment per year will be 1 hour, for a total estimated annual burden of 400 hours.

Respondents: State agencies that administer cooperative State meat and poultry products inspection programs and State-inspected establishments selected to participate in a cooperative interstate shipment program.

Estimated number of respondents: 416 (16 States and 400 State-inspected establishments).

Estimated number of responses per respondent: One request to establish a cooperative interstate shipment program per State and 25 evaluations of State-inspected establishments per State, on average.

A one-time modification of records for each selected establishment whose recordkeeping does not comply with all Federal standards. One initial SEC visit in which each selected establishment will need to provide the SEC with access to all required records. Each establishment selected for the program will need to provide the FSIS access to its records on an ongoing basis.

Estimated Total Annual Burden on Respondents: 12,348.3 hours to establish and implement the cooperative interstate shipment program in 16 States. Once the program has been implemented, an estimated annual burden of 400 hours for selected establishments to provide the SEC access to establishment records on-going basis.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue, SW., Room 3532 South Building, Washington, DC 20250.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' 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; 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.

Comments may be sent to both John O'Connell, Paperwork Reduction Act Coordinator, at the address provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

To be most effective, comments should be sent to OMB within 60 days of the publication date of this proposed rule.

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or record keeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB).

Proposed Regulations

List of Subjects

9 CFR Part 321

Grant programs—agriculture, Intergovernmental relations, Meat inspection.

9 CFR Part 332

Grant programs—agriculture, Intergovernmental relations, Meat inspection.

9 CFR Part 381

Grant programs—agriculture, Intergovernmental relations, Poultry and poultry products.

For the reasons discussed in the preamble, FSIS is proposing to amend 9 CFR Chapter III as follows:

PART 321—COOPERATION WITH STATES AND TERRITORIES

1. The authority citation for part 321 is revised to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

2. A new § 321.3 is added to read as follows:

§ 321.3 Cooperation of States for the interstate shipment of carcasses, parts of carcasses, meat, and meat food products.

(a) The Administrator is authorized under 21 U.S.C. 683(b) to coordinate with States that have meat inspection programs as provided in § 321.1 of this part to select certain establishments operating under these programs to participate in a cooperative program to ship carcasses, parts of carcasses, meat, and meat food products in interstate commerce. A cooperative program for this purpose is called a ''cooperative interstate shipment program.''

(b) Establishments selected to participate in a cooperative interstate shipment program described in this section must receive inspection services from designated State personnel that have been trained in the enforcement of the Act. If the designated personnel determine that the carcasses, parts of carcasses, meat, and meat food products prepared in establishments selected to participate in the cooperative interstate shipment program comply with all requirements under the Act, these items will bear an official Federal mark of inspection and may be shipped in interstate commerce. The Administrator will assign an FSIS ''selected establishment coordinator,'' who will be an FSIS employee, to each State that participates in a cooperative interstate shipment program to provide Federal oversight of the program and enforcement of the program's requirements. The Federal contribution for inspection services provided by States that enter into a cooperative interstate shipment program under this section will be at least 60 percent of eligible State costs.

(c) Part 332 of this subchapter prescribes conditions under which States and establishments may participate in the cooperative interstate shipment program.

(d) The Administrator will terminate a cooperative interstate shipment agreement with a State if the Administrator determines that the State is not conducting inspection at selected establishments in a manner that complies with the Act and the implementing regulations in this chapter.

3. A new Part 332 is added to read as follows:

PART 332—SELECTED ESTABLISHMENTS; COOPERATIVE PROGRAM FOR INTERSTATE SHIPMENT OF CARCASSES, PARTS OF CARCASSES, MEAT, AND MEAT FOOD PRODUCTS

Sec.

332.1 Definitions.
332.2 Purpose.
332.3 Requirements for establishments; ineligible establishments.
332.4 State request for cooperative agreement.
332.5 Establishment selection; official number for selected establishments.
332.6 Commencement of a cooperative interstate shipment program; inspection by designated personnel and official mark.
332.7 Federal oversight of a cooperative interstate shipment program.
332.8 Quarterly reports.
332.9 Enforcement authority.
332.10 Deselection of ineligible establishments.
332.11 Transition to official establishments.
332.12 Transition grants.

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

§ 332.1 Definitions.

The following definitions apply to the regulations in this part:

Cooperative interstate shipment program. A cooperative meat inspection program described in § 321.3 of this subchapter.

Cooperative State meat inspection program. A cooperative State-Federal meat inspection program described in § 321.1 of this subchapter.

Designated personnel. State inspection personnel that have been trained in the enforcement of the Act and any additional State program requirements in order to provide inspection services to selected establishments.

Interstate commerce. ''Interstate commerce'' has the same meaning as ''commerce'' under § 301.2 of this subchapter.

Selected establishment. An establishment operating under a State cooperative meat inspection program that has been selected by the Administrator, in coordination with the State where the establishment is located, to participate in a cooperative interstate shipment program.

§ 332.2 Purpose.

This part prescribes the conditions under which States that administer cooperative State meat inspection programs and establishments that operate under such programs may participate in a cooperative interstate shipment program.

§ 332.3 Requirements for establishments; ineligible establishments.

(a) An establishment that operates under a cooperative State meat inspection program may apply to participate in a cooperative interstate shipment program under this part if:

(1) The establishment employs on average no more than 25 employees based on the standards described in paragraph (b) of this section, or

(2) The establishment employed more than 25 employees but fewer than 35 employees as of June 18, 2008. If selected to participate in a cooperative interstate shipment program, an establishment under this paragraph must employ on average no more than 25 employees as of [insert date 3 years after effective date of final rule] or it must transition to become an official establishment as provided in § 332.11 of this part.

(b) An establishment that has 25 or fewer employees based on the following standards is considered to have 25 or fewer employees on average for purposes of this part.

(1) All individuals, both supervisory and non-supervisory, employed by the establishment on a full-time, part-time, or temporary basis are counted when calculating the total number of employees.

(2) All individuals employed by the establishment from a temporary employee agency, professional employee organization, or leasing concern are counted when calculating the total number of employees.

(3) The average number of employees is calculated for each of the pay periods for the preceding 12 calendar months.

(4) Part-time and temporary employees are counted the same as full-time employees.

(5) If the establishment has not been in business for 12 months, the average number of employees is calculated for each of the pay periods in which the establishment has been in business.

(6) Volunteers who receive no compensation are not considered employees.

(7) The total number of employees can never exceed 35 individuals at any given time, regardless of the average number of employees.

(c) The following establishments are ineligible to participate in a cooperative interstate shipment program:

(1) Establishments that employ more than 25 employees on average (except as provided under paragraph (a)(2) of this section);

(2) Establishments operating under a Federal-State program as provided in § 321.2 of this subchapter as of June 18, 2008;

(3) Official establishments;

(4) Establishments that were official establishments as of June 18, 2008, but that were re-organized on a later date by the person that controlled the establishment as of June 18, 2008;

(5) Establishments operating under a cooperative State meat inspection that employed more than 35 employees as of June 18, 2008, that were reorganized on a later date by the person that controlled the establishment as of June 18, 2008;

(6) Establishments that are the subject of a transition under § 332.11 of this part;

(7) Establishments that are in violation of the Act;

(8) Establishments located in States without a cooperative State meat inspection program; and

(9) Establishments located in a State whose agreement for a cooperative interstate shipment program was terminated by the Administrator as provided in § 321.3(d) of this subchapter.

(d) An establishment that meets the conditions in paragraph (a) of this section and that is not an ineligible establishment under paragraph (c) of this section may apply for selection into a cooperative interstate shipment program through the State in which the establishment is located.

§ 332.4 State request for cooperative agreement.

(a) State participation in a cooperative interstate shipment program under this part is limited to States that have implemented cooperative State meat inspection programs.

(b) To request an agreement for a cooperative interstate shipment program under this part, a State must submit a written request to the Administrator through the FSIS District Office for the FSIS District in which the State is located. In the request the State must:

(1) Identify establishments in the State that have requested to be selected for the program that the State recommends for initial selection into the program;

(2) Demonstrate that the State is able to provide the necessary inspection services to selected establishments in the State and conduct any related activities that would be required under a cooperative interstate shipment program established under this part; and

(3) Agree that, if the State enters into an agreement with FSIS for a cooperative interstate shipment program, that the State will:

(i) Provide FSIS with access to the results of all laboratory analyses conducted on product samples from selected establishments in the State;

(ii) Notify the selected establishment coordinator for the State of the results of any laboratory analyses that indicate that a product prepared in a selected establishment may be adulterated or may otherwise present a food safety concern; and

(iii) When necessary, cooperate with FSIS to transition selected establishments in the State that have been deselected from a cooperative interstate shipment program to become official establishments.

(c) If the Administrator determines that a State that has submitted a request to participate in a cooperative interstate shipment program qualifies to enter into a cooperative agreement for such a program, the Administrator and the State will sign a cooperative agreement that sets forth the terms and conditions under which each party will cooperate to provide inspection services to selected establishments located in the State.

(d) After the Administrator and a State have signed an agreement for a cooperative interstate shipment program as provided in paragraph (c) of this section, the Administrator will:

(1) Appoint an FSIS employee as the FSIS selected establishment coordinator for the State and

(2) Coordinate with the State to select establishments to participate in the program as provided in § 332.5(b) of this part.

§ 332.5 Establishment selection; official number for selected establishments.

(a) An establishment operating under a cooperative State meat inspection program will qualify for selection into a cooperative interstate shipment program if the establishment:

(1) Has submitted a request to the State to be selected for the program;

(2) Has the appropriate number of employees under § 332.3(a) of this part;

(3) Is not ineligible to participate in a cooperative interstate shipment program under § 332.3(c) of this part;

(4) Is in compliance with all requirements under the cooperative State meat inspection program; and

(5) Is in compliance with all requirements under the Act and the implementing regulations in this chapter.

(b) To participate in a cooperative interstate shipment program, an establishment that meets the conditions in paragraph (a) of this section must be selected by the Administrator, in coordination with the State where the establishment is located.

(c) If an establishment is selected to participate in a cooperative interstate shipment program as provided in paragraph (b) of this section, the State is to assign the establishment an official number that reflects the establishment's participation in the cooperative interstate shipment program and advise the FSIS selected establishment coordinator for the State of the official number assigned to each selected establishment in the State. The official number assigned to every selected establishment must contain a suffix, *e.g.,* ''SE,'' that identifies the establishment as a selected establishment and that identifies the State, *e.g.,* ''SETX,'' for ''selected establishment Texas.''

(d) Failure of the State to comply with paragraph (c) of this section will disqualify the State from participation in the cooperative interstate shipment program.

§ 332.6 Commencement of a cooperative interstate shipment program; inspection by designated personnel and official mark.

(a) A cooperative interstate shipment program will commence when the Administrator, in coordination with the State, has selected establishments in the State to participate in the program.

(b) Inspection services for selected establishments participating in a cooperative interstate shipment program must be provided by designated personnel, who will be under the direct supervision of a State employee.

(c) Carcasses, parts of carcasses, meat, and meat food products prepared in a selected establishment and inspected and passed by designated State personnel must bear an official Federal mark, stamp, tag, or label of inspection in the appropriate form prescribed in part 312 of this subchapter that includes the information specified in § 332.5(c) of this part.

(d) Carcasses, parts of carcasses, meat, and meat food products prepared in a selected establishment that comply with the conditions in paragraph (c) of this section may be distributed in interstate commerce.

§ 332.7 Federal oversight of a cooperative interstate shipment program.

(a) The FSIS selected establishment coordinator for a State that has entered into an agreement for a cooperative interstate shipment program will visit each selected establishment in the State on a regular basis to verify that the establishment is operating in a manner that is consistent with the Act and the implementing regulations in this chapter. If necessary, the selected establishment coordinator, in consultation with the District Manager that covers the State, may designate qualified FSIS personnel to visit a

selected establishment on behalf of the selected establishment coordinator.

(b) The selected establishment coordinator, in coordination with the State, will verify that selected establishments in the State are receiving the necessary inspection services from designated personnel, and that these establishments are eligible, and remain eligible, to participate in a cooperative interstate shipment program.

The selected establishment coordinator's verification activities may include:

(1) Verifying that each selected establishment employs, and continues to employ, 25 or fewer employees, on average, as required under § 332.3(a) of this part, unless the establishment is transitioning to become an official establishment;

(2) Verifying that the designated personnel are providing inspection services to selected establishments in a manner that complies with the Act and the implementing regulations in this chapter;

(3) Verifying that that State staffing levels for each selected establishments are appropriate to carry out the required inspection activities; and

(4) Assessing each selected establishment's compliance with the Act and implementing regulations under this chapter.

(c) If the selected establishment coordinator determines that designated personnel are providing inspection services to selected establishments in the State in a manner that is inconsistent with the Act and the implementing regulations in this chapter, the Administrator will provide an opportunity for the State to develop and implement a corrective action plan to address inspection deficiencies identified by the selected establishment coordinator. If the State fails to develop a corrective action plan, or the selected establishment coordinator for the State determines that the corrective action plan is inadequate, the Administrator will terminate the agreement for the cooperative interstate shipment program as provided in § 321.3(d) of this chapter.

§ 332.8 Quarterly reports.

(a) The selected establishment coordinator will prepare a report on a quarterly basis that describes the status of each selected establishment under his or her jurisdiction.

(b) The quarterly report required in paragraph (a) of this section will:

(1) Include the selected establishment coordinator's assessment of the performance of the designated personnel in conducting inspection activities at selected establishments and

(2) Identify those selected establishments that the selected establishment coordinator has verified are in compliance with the Act and implementing regulations in this chapter, those that have been deselected under § 332.10 of this part, and those that are transitioning to become official establishments under § 332.11 of this part.

(c) The selected establishment coordinator is to submit the quarterly report to the Administrator through the District Manager for the State where the selected establishments identified in the report are located.

§ 332.9 Enforcement authority.

(a) To facilitate oversight and enforcement of this part, selected establishments operating under a cooperative interstate shipment program must, upon request, give the FSIS selected establishment coordinator or other FSIS officials access to all establishment records required under the Act and the implementing regulations in this chapter. The Administrator may deselect any selected establishment that refuses to comply with this paragraph.

(b) Selected establishment coordinators may initiate any appropriate enforcement action provided for in part 500 of this chapter if they determine that a selected establishment under their jurisdiction is operating in manner that is inconsistent with the Act and the implementing regulations in this chapter. Selected establishments participating in a cooperative interstate shipment program are subject to the notification and appeal procedures set out in part 500 of this chapter.

(c) If inspection at a selected establishment is suspended for any of the reasons specified in § 500.3 or § 500.4 of this chapter, FSIS will:

(1) Provide an opportunity for the establishment to implement corrective actions and remain in the cooperative interstate shipment program, or

(2) Move to deselect the establishment as provided in § 332.10 of this part.

(d) The decision to deselect a selected establishment under a suspension will be made on a case-by-case basis. In making this decision, FSIS, in consultation with the State where the selected establishment is located, will consider, among other factors:

(1) The non-compliance that led to the suspension;

(2) The selected establishment's compliance history; and

(3) The corrective actions proposed by the selected establishment.

§ 332.10 Deselection of ineligible establishments.

(a) The Administrator will deselect a selected establishment that becomes ineligible to participate in a cooperative interstate shipment program for any reason listed under § 332.3(c) of this part.

(b) An establishment that has been deselected must transition to become an official establishment as provided in § 332.11 of this part.

§ 332.11 Transition to official establishment.

If an establishment is deselected from a cooperative interstate shipment program as provided in § 332.10 of this part, FSIS, in coordination with the State where the establishment is located, will develop and implement a plan to transition the establishment to become an official establishment.

§ 332.12 Transition grants.

(a) Transition grants are funds that a State participating in a cooperative interstate shipment program under this part may apply for to reimburse selected establishments in the State for the cost to train one individual in the seven HACCP principles for meat or poultry processing as required under § 417.7 of this chapter and associated training in the development of sanitation standard operating procedures required under part 416 of this chapter.

(b) A State participating in a cooperative interstate shipment program that receives a transition grant must use grant funds to reimburse the training costs of one employee per each selected establishment in the State. Any other use of such funds is prohibited.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

4. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.7, 2.18, 2.53.

5. A new § 381.187 is added to subpart R to read as follows:

§ 381.187 Cooperation of States for the interstate shipment of poultry products.

(a) The Administrator is authorized under 21 U.S.C. 472(b) to coordinate with States that have poultry products inspection programs as provided in § 381.185 of this subpart to select certain establishments operating under these programs to participate in a cooperative program to ship poultry products in interstate commerce. A cooperative program for this purpose is called a ''cooperative interstate shipment program.''

(b) Establishments selected to participate in a cooperative interstate shipment program described in this section must receive inspection services from designated State personnel that have been trained in the enforcement of the Act. If the designated personnel determine that the poultry products prepared in establishments selected to participate in the cooperative interstate shipment program comply with all requirements under the Act, these items will bear an official Federal mark of inspection and may be shipped in interstate commerce. The Administrator will assign an FSIS ''selected establishment coordinator,'' who will be an FSIS employee, to each State that participates in a cooperative interstate shipment program to provide Federal oversight of the program and enforcement of the program's requirements. The Federal contribution for inspection services provided by States that enter into a cooperative interstate shipment program under this section will be at least 60 percent of eligible State costs.

(c) Subpart Z, of this part 381 prescribes conditions under which States and establishments may participate in the cooperative interstate shipment program.

(d) The Administrator will terminate a cooperative interstate shipment agreement with a State if the Administrator determines that the State is not conducting inspection at selected establishments in a manner that complies with the Act and the implementing regulations in this chapter.

5. A new subpart Z is added to part 381 to read as follows:

Subpart Z—Selected Establishments; Cooperative Program for Interstate Shipment of Poultry Products

Sec.

381.511 Definitions.
381.512 Purpose.
381.513 Requirements for establishments; ineligible establishments.
381.514 State request for cooperative agreement.
381.515 Establishment selection; official number for selected establishments.
381.516 Commencement of a cooperative interstate shipment program; inspection by designated personnel and official mark.
381.517 Federal oversight of a cooperative interstate shipment program.
381.518 Quarterly reports.
381.519 Enforcement authority.
381.520 Deselection of ineligible establishments.
381.521 Transition to official establishment.
381.522 Transition grants.

Subpart Z—Selected Establishments; Cooperative Program for Interstate Shipment of Poultry Products

§ 381.511 Definitions.

The following definitions apply to the regulations in this part:

Cooperative interstate shipment program. A cooperative poultry products inspection program described in § 381.187 of this part.

Cooperative State poultry products inspection program. A cooperative State-Federal poultry products inspection program described in § 381.185 of this part.

Designated personnel. State inspection personnel that have been trained in the enforcement of Act and any additional State program requirements in order to provide inspection services to selected establishments.

Interstate commerce. ''Interstate commerce'' has the same meaning as ''commerce'' under § 381.1 of this part.

Selected establishment. An establishment operating under a State cooperative poultry products inspection program that has been selected by the Administrator, in coordination with the State where the establishment is located, to participate in a cooperative interstate shipment program.

§ 381.512 Purpose.

This subpart Z prescribes the conditions under which States that administer cooperative State poultry products inspection programs and establishments that operate under such programs may participate in a cooperative interstate shipment program.

§ 381.513 Requirements for establishments; ineligible establishments.

(a) An establishment that operates under a cooperative State poultry products inspection program may apply to participate in a cooperative interstate shipment program under this subpart if:

(1) The establishment employs on average no more than 25 employees based on the standards described in paragraph (b) of this section, or

(2) The establishment employed more than 25 employees but fewer than 35 employees as of June 18, 2008. If selected to participate in a cooperative interstate shipment program, an establishment under this paragraph must employ on average no more than 25 employees as of [insert date 3 years after effective date of final rule] or it must transition to become an official establishment as provided in § 381.521 of this subpart.

(b) An establishment that has 25 or fewer employees based on the following standards is considered to have 25 or fewer employees on average for purposes of this subpart.

(1) All individuals, both supervisory and non-supervisory, employed by the establishment on a full-time, part-time, or temporary basis are counted when calculating the total number of employees.

(2) All individuals employed by the establishment from a temporary employee agency, professional employee organization, or leasing concern are counted when calculating the total number of employees.

(3) The average number of employees is calculated for each of the pay periods for the preceding 12 calendar months.

(4) Part-time and temporary employees are counted the same as full-time employees.

(5) If the establishment has not been in business for 12 months, the average number of employees is calculated for each of the pay periods in which the establishment has been in business.

(6) Volunteers who receive no compensation are not considered employees.

(7) The total number of employees can never exceed 35 individuals at any given time, regardless of the average number of employees.

(c) The following establishments are ineligible to participate in a cooperative interstate shipment program:

(1) Establishments that employ more than 25 employees on average (except as provided under paragraph (a)(2) of this section);

(2) Establishments operating under a Federal-State program as provided in § 381.186 of this part as of June 18, 2008;

(3) Official establishments;

(4) Establishments that were official establishments as of June 18, 2008, but that were re-organized on a later date by the person that controlled the establishment as of June 18, 2008;

(5) Establishments operating under a cooperative State poultry products inspection program that employed more than 35 employees as of June 18, 2008, that were reorganized on a later date by the person that controlled the establishment as of June 18, 2008;

(6) Establishments that are the subject of a transition under § 381.521 of this subpart;

(7) Establishments that are in violation of the Act; and

(8) Establishments located in States without a cooperative State poultry products inspection program.

(9) Establishments located in a State whose agreement for a cooperative interstate shipment program was terminated by the Administrator as provided in § 381.187(d) of this part.

(d) An establishment that meets the conditions in paragraph (a) of this section and that is not an ineligible establishment under paragraph (c) of this section may apply for selection into a cooperative interstate shipment program through the State in which the establishment is located.

§ 381.514 State request for cooperative agreement.

(a) State participation in a cooperative interstate shipment program under this subpart is limited to States that have implemented cooperative State poultry products inspection programs.

(b) To request an agreement for a cooperative interstate shipment program under this subpart, a State must submit a written request to the Administrator through the FSIS District Office for the FSIS District in which the State is located. In the request the State must:

(1) Identify establishments in the State that have requested to be selected for the program that the State recommends for initial selection into the program;

(2) Demonstrate that the State is able to provide the necessary inspection services to selected establishments in the State and conduct any related activities that would be required under a cooperative interstate shipment program established under this subpart; and

(3) Agree that, if the State enters into an agreement with FSIS for a cooperative interstate shipment program, that the State will:

(i) Provide FSIS with access to the results of all laboratory analyses conducted on product samples from selected establishments in the State;

(ii) Notify the selected establishment coordinator for the State of the results of any laboratory analyses that indicate that a product prepared in a selected establishment may be adulterated or may otherwise present a food safety concern; and

(iii) When necessary, cooperate with FSIS to transition selected establishments in the State that have been deselected from a cooperative interstate shipment program to become official establishments.

(c) If the Administrator determines that a State that has submitted a request to participate in a cooperative interstate shipment program qualifies to enter into a cooperative agreement for such a program, the Administrator and the State will sign a cooperative agreement that sets forth the terms and conditions under which each party will cooperate to provide inspection services to selected establishments located in the State.

(d) After the Administrator and a State have signed an agreement for a cooperative interstate shipment program as provided in paragraph (c) of this section, the Administrator will:

(1) Appoint an FSIS employee as the FSIS selected establishment coordinator for the State and

(2) Coordinate with the State to select establishments to participate in the program as provided in § 381.515(b) of this subpart.

§ 381.515 Establishment selection; official number for selected establishments.

(a) An establishment operating under a cooperative State poultry products inspection program will qualify for selection into a cooperative interstate shipment program if the establishment:

(1) Has submitted a request to the State to be selected for the program;

(2) Has the appropriate number of employees under § 381.513(a) of this subpart;

(3) Is not ineligible to participate in a cooperative interstate shipment program under § 381.513(c) of this subpart;

(4) Is in compliance with all requirements under the cooperative State poultry products inspection program; and

(5) Is in compliance with all requirements under the Act and the implementing regulations in this chapter.

(b) To participate in a cooperative interstate shipment program, an establishment that meets the conditions in paragraph (a) of this section must be selected by the Administrator, in coordination with the State where the establishment is located.

(c) If an establishment is selected to participate in a cooperative interstate shipment program as provided in paragraph (b) of this section, the State is to assign the establishment an official number that reflects the establishment's participation in the cooperative interstate shipment program and advise the FSIS selected establishment coordinator for the State of the official number assigned to each selected establishment in the State. The official numbers assigned to every selected establishment must contain a suffix, *e.g.,* ''SE,'' that identifies the establishment as a selected establishment; that includes the letter ''P,'' which identifies the establishment as a poultry establishment; and that identifies the State, *e.g.,* ''SEPND,'' for ''selected establishment poultry North Dakota.''

(d) Failure of a State to comply with paragraph (c) of this section will disqualify the State from participation in the cooperative interstate shipment program.

§ 381.516 Commencement of a cooperative interstate shipment program; inspection by designated personnel and official mark.

(a) A cooperative interstate shipment program will commence when the Administrator, in coordination with the State, has selected establishments in the State to participate in the program.

(b) Inspection services for selected establishments participating in a cooperative interstate shipment program must be provided by designated personnel, who will be under the direct supervision of a State employee.

(c) Poultry products processed in a selected establishment and inspected and passed by designated State personnel must bear an official Federal mark, stamp, tag, or label of inspection in the appropriate form prescribed in subpart M of this part that includes the information specified in § 381.515(c) of this subpart.

(d) Poultry products processed in a selected establishment that comply with the conditions in paragraph (c) of this section may be distributed in interstate commerce.

§ 381.517 Federal oversight of a cooperative interstate shipment program.

(a) The FSIS selected establishment coordinator for a State that has entered into an agreement for a cooperative interstate shipment program will visit each selected establishment in the State on a regular basis to verify that the establishment is operating in a manner that is consistent with the Act and the implementing regulations in this chapter. If necessary, the selected establishment coordinator, in consultation with the District Manager that covers the State, may designate qualified FSIS personnel to visit a selected establishment on behalf of the selected establishment coordinator.

(b) The selected establishment coordinator, in coordination with the State, will verify that selected establishments in the State are receiving the necessary inspection services from designated personnel, and that these establishments are eligible, and remain eligible, to participate in a cooperative interstate shipment program. The selected establishment coordinator's verification activities may include:

(1) Verifying that each selected establishment employs, and continues to employ, 25 or fewer employees, on average, as required under §§ 381.513(a) of this part, unless the establishment is transitioning to become an official establishment;

(2) Verifying that the designated personnel are providing inspection services to selected establishments in a manner that complies with the Act and the implementing regulations in this chapter;

(3) Verifying that that State staffing levels for each selected establishment are appropriate to carry out the required inspection activities; and

(4) Assessing each selected establishment's compliance with the Act and implementing regulations in this chapter.

(c) If the selected establishment coordinator determines that designated personnel are providing inspection services to selected establishments in the State in a manner that is inconsistent with the Acts and the implementing regulations in this chapter, the Administrator will provide an opportunity for the State to develop and implement a corrective action plan to address inspection deficiencies identified by the selected establishment coordinator. If the State fails to develop a corrective action plan, or the selected establishment coordinator for the State determines that the corrective action plan is inadequate, the Administrator will terminate the agreement for the cooperative interstate shipment program as provided in § 381.187(d) of this part.

§ 381.518 Quarterly reports.

(a) The selected establishment coordinator will prepare a report on a quarterly basis that describes the status of each selected establishment under his or her jurisdiction.

(b) The quarterly report required in paragraph (a) of this section will:

(1) Include the selected establishment coordinator's assessment of the performance of the designated personnel in conducting inspection activities at selected establishments and

(2) Identify those selected establishments that the selected establishment coordinator has verified are in compliance with the Act and implementing regulations in this chapter, those that have been deselected under § 381.520 of this subpart, and those that are transitioning to become official establishments under § 381.521 of this subpart.

(c) The selected establishment coordinator is to submit the quarterly report to the Administrator through the District Manager for the State where the selected establishments identified in the report are located.

§ 381.519 Enforcement authority.

(a) To facilitate oversight and enforcement of this subpart, selected establishments operating under a cooperative interstate shipment program must, upon request, give the FSIS selected establishment coordinator or other FSIS officials access to all establishment records required under the Act and the implementing regulations in this chapter. The Administrator may deselect any selected establishment that refuses to comply with this paragraph.

(b) Selected establishment coordinators may initiate any appropriate enforcement action provided for in part 500 of this chapter if they determine that a selected establishment under their jurisdiction is operating in manner that is inconsistent with the Act and the implementing regulations in this chapter. Selected establishments participating in a cooperative interstate shipment program are subject to the notification and appeal procedures set out in part 500 of this chapter.

(c) If inspection at a selected establishment is suspended for any of the reasons specified in § 500.3 or § 500.4 of this chapter, FSIS will:

(1) Provide an opportunity for the establishment to implement corrective actions and remain in the cooperative interstate shipment program, or

(2) Move to deselect the establishment as provided in § 381.520 of this subpart.

(d) The decision to deselect a selected establishment under a suspension will be made on a case-by-case basis. In making this decision, FSIS, in consultation with the State where the selected establishment is located, will consider, among other factors:

(1) The non-compliance that led to the suspension;

(2) The selected establishment's compliance history; and

(3) The corrective actions proposed by the selected establishment.

§ 381.520 Deselection of ineligible establishments.

(a) The Administrator will deselect a selected establishment that becomes ineligible to participate in a cooperative interstate shipment program for any reason listed under § 381.513(c) of this subpart.

(b) An establishment that has been deselected must transition to become an official establishment as provided in § 381.521 of this subpart.

§ 381.521 Transition to official establishment.

If an establishment is deselected from a cooperative interstate shipment program as provided in § 381.520 of this subpart, FSIS, in coordination with the State where the establishment is located, will develop and implement a plan to transition the establishment to become an official establishment.

§ 381.522 Transition grants.

(a) Transition grants are funds that a State participating in a cooperative interstate shipment program under this subpart may apply for to reimburse selected establishments in the State for the cost to train one individual in the seven HACCP principles for meat or poultry processing as required under § 417.7 of this chapter and associated training in the development of sanitation standard operating procedures required under part 416 of this chapter.

(b) A State participating in a cooperative interstate shipment program that receives a transition grant must use grant funds to reimburse the training costs of one employee per each selected establishment in the State. Any other use of such funds is prohibited.

Done at Washington, DC, on September 7, 2009.

Alfred V. Almanza,

Administrator.

[FR Doc. E9–21952 Filed 9–14–09; 11:15 am]

BILLING CODE 3410–DM–P

Federal Register

Wednesday,
September 16, 2009

Part III

Department of Homeland Security

Transportation Security Administration

49 CFR Parts 1515, 1520, 1522, et al.
Air Cargo Screening; Interim Final Rule

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Parts 1515, 1520, 1522, 1540, 1544, 1546, 1548, and 1549

[Docket No. TSA–2009–0018; Amendment Nos. 1515–1, 1520–8, 1522–New, 1540–10, 1544–9, 1546–5, 1548–5, 1549–New]

RIN 1652–AA64

Air Cargo Screening

AGENCY: Transportation Security Administration, DHS.

ACTION: Interim final rule; request for comments.

SUMMARY: This rule codifies a statutory requirement of the Implementing Recommendations of the 9/11 Commission Act that the Transportation Security Administration (TSA) establish a system to screen 100 percent of cargo transported on passenger aircraft by August 3, 2010. To assist in carrying out this mandate, this rule establishes a program under which TSA will certify cargo screening facilities located in the U.S. that volunteer to screen cargo prior to tendering it to aircraft operators for carriage on passenger aircraft. This rule requires affected passenger aircraft operators to ensure that either an aircraft operator or certified cargo screening facility that does so in accordance with TSA standards, or TSA itself, screens all cargo loaded on passenger aircraft.

TSA will require certified cargo screening facilities (CCSFs) to screen cargo using TSA-approved methods and implement chain of custody measures to ensure the security of the screened cargo throughout the air cargo supply chain prior to tendering it for transport on passenger aircraft. CCSF personnel must successfully undergo a TSA-conducted security threat assessment (STA) and pay a fee for that assessment. TSA proposes a fee to cover the Government's costs in conducting the STA and requests comment on the fee and the methodology used to develop the fee.

Before being certified and periodically thereafter, the CCSF must undergo examination by a TSA-approved validator. Validators must have specified qualifications, complete training regarding the certified cargo screening program (CCSP), and successfully undergo a TSA-conducted STA as described in the discussion of part 1540 in this preamble, and pay a fee for that assessment.

DATES: *Effective Date:* This rule is effective November 16, 2009.

Comment Date: Comments must be received by November 16, 2009.

ADDRESSES: You may submit comments, identified by the TSA docket number to this rulemaking, to the Federal Docket Management System (FDMS), a government-wide, electronic docket management system, using any one of the following methods:

Electronically: You may submit comments through the Federal eRulemaking portal at *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Mail, In Person, or Fax: Address, hand-deliver, or fax your written comments to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Fax 202–493–2251. The Department of Transportation (DOT), which maintains and processes TSA's official regulatory dockets, will scan the submission and post it to FDMS.

See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT: Tamika McCree, Manager, Air Cargo Stakeholder Relations, Air Cargo Security, TSA–28, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6028; telephone (571) 227–2632; facsimile (571) 227–1947; e-mail *AirCargoScreeningCommentsIFR@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

TSA adopts this interim rule without prior notice and prior public comment. In this rule, however, TSA seeks prior public comment on our proposed fee to cover the cost of the STAs. To the maximum extent possible, DHS provides an opportunity for public comment on regulations issued without prior notice. Accordingly, TSA invites interested persons to participate in this rulemaking by submitting written comments, data, or views on the proposed fee for the STA, as well as all other aspects of this rule. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from this rulemaking action. *See* **ADDRESSES** above for information on where to submit comments.

With each comment, please identify the docket number at the beginning of your comments. TSA encourages commenters to provide their names and addresses. The most helpful comments reference a specific portion of the rulemaking, explain the reason for any recommended change, and include supporting data. You may submit comments and material electronically, in person, by mail, or fax as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you would like TSA to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

TSA will file in the public docket all comments received by TSA, except for comments containing confidential information and sensitive security information (SSI),[1] TSA will consider all comments received on or before the closing date for comments and will consider comments filed late to the extent practicable. The docket is available for public inspection before and after the comment closing date.

Handling of Confidential or Proprietary Information and Sensitive Security Information (SSI) Submitted in Public Comments

Do not submit comments that include trade secrets, confidential commercial or financial information, or SSI to the public regulatory docket. Please submit such comments separately from other comments on the rulemaking. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the address listed in **FOR FURTHER INFORMATION CONTACT** section.

Upon receipt of such comments, TSA will not place the comments in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold documents containing SSI, confidential business information, or trade secrets in a separate file to which the public does not have access, and place a note in the public docket that TSA has received such materials from the commenter. If TSA determines, however, that portions of these comments may be made publicly available, TSA may include a redacted

[1] ''Sensitive Security Information'' or ''SSI'' is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

version of the comment in the public docket. If TSA receives a request to examine or copy information that is not in the public docket, TSA will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the FOIA regulation of the Department of Homeland Security found in 6 CFR part 5.

Reviewing Comments in the Docket

Please be aware that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual who submitted the comment (or signed the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the applicable Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477) and modified on January 17, 2008 (73 FR 3316).

You may review TSA's electronic public docket on the Internet at *http://www.regulations.gov*. In addition, DOT's Docket Management Facility provides a physical facility, staff, equipment, and assistance to the public. To obtain assistance or to review comments in TSA's public docket, you may visit this facility between 9 a.m. to 5 p.m., Monday through Friday, excluding legal holidays, or call (202) 366–9826. This docket operations facility is located in the West Building Ground Floor, Room W12–140 at 1200 New Jersey Avenue, SE., Washington, DC 20590.

Availability of Rulemaking Document

You can get an electronic copy using the Internet by—

(1) Searching the electronic Federal Docket Management System (FDMS) Web page at *http://www.regulations.gov*;

(2) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*; or

(3) Visiting TSA's Security Regulations Web page at *http://www.tsa.gov* and accessing the link for ''Research Center'' at the top of the page.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within TSA's jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT**. Persons can obtain further information regarding SBREFA on the Small Business Administration's Web page at *http://www.sba.gov/advo/laws/law_lib.html*.

Abbreviations and Terms Used in This Document

CBP U.S. Customs and Border Protection
CCSF Certified Cargo Screening Facility
CCSP Certified Cargo Screening Program
CFR Code of Federal Regulations
CHRC Criminal History Records Check
DHS Department of Homeland Security
FSD Federal Security Director
IAC Indirect Air Carrier
IED Improvised Explosive Device
MSP Model Security Program
SIDA Security Identification Display Area
SSI Sensitive Security Information
STA Security Threat Assessment
TSA Transportation Security Administration

Outline of Interim Final Rule

I. Summary of Rule
II. Background
A. Current Air Cargo Screening
B. 9/11 Act Requirements
C. Development of the Certified Cargo Screening Program
D. Certified Cargo Screening Pilot Programs
III. TSA's Program for Achieving the Statutory Mandates for Cargo Loaded Domestically
IV. Organization of the Rule
V. Section-by-Section Analysis
VI. Good Cause for Immediate Adoption
VII. Paperwork Reduction Act
VIII. Economic Impact Analyses
A. Regulatory Evaluation Summary
B. Executive Order 12866 Assessment
C. Regulatory Flexibility Act Assessment
D. International Trade Impact Assessment
E. Unfunded Mandates Assessment
IX. Executive Order 13132, Federalism
X. Environmental Analyses
XI. Energy Impact Analysis
List of Subjects
The Amendments

I. Summary of Rule

This rule provides that affected U.S. aircraft operators and foreign air carriers [2] must have screened at least 50 percent of its cargo transported on passenger aircraft by February 3, 2009, and must screen 100 percent of cargo by August 3, 2010, to carry out sec. 1602 of the Implementing the Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110–53, 121 Stat. 266, 478, Aug. 3, 2007) (9/11 Act). The rule applies to certain commercial passenger operations, and applies to foreign air carriers the same standards that apply to U.S. aircraft operators, for the same types of flights. This rule applies only to cargo loaded in the United States. It does not apply to either U.S. aircraft operators or foreign air carriers when they load cargo outside the U.S. and transport it into the U.S., nor to U.S. or foreign all-cargo operations. This rule will not cover general aviation operations.

The Transportation Security Administration (TSA) concluded that this mandate could not be achieved by relying solely on U.S. aircraft operators and foreign air carriers to conduct screening. Aircraft operators do not have the capacity to screen the approximately 12 million pounds of cargo that is now transported on passenger aircraft daily. Requiring passenger aircraft operators to screen 100 percent of air cargo would result in carrier delays, backlogs of unscreened cargo, and missed flights, which could significantly impede the flow of commerce.

Accordingly, TSA will establish the certified cargo screening program (CCSP) to allow entities other than aircraft operators to conduct screening off-airport. Under the CCSP, facilities upstream in the air cargo supply chain, such as shippers, manufacturers, warehousing entities, distributors, third party logistics companies, and Indirect Air Carriers (IACs) that are located in the U.S., may apply to TSA to become certified cargo screening facilities (CCSFs). Aircraft operators that screen cargo off-airport must also become CCSFs in order to screen cargo for transport on passenger aircraft. These applicants must submit to TSA an application for certification of a single facility, including a TSA-approved validator's evaluation of the applicant's security measures. Once certified, the CCSF must—

- Implement the certified cargo screening standard security program that TSA develops and any amendments to it;
- Appoint security coordinators at the corporate and facility levels and alternates to be available 24 hours per day, 7 days per week;
- Ensure that the following individuals successfully undergo a TSA-conducted STA: (1) Each employee and authorized representative who screens cargo or has unescorted access to screened cargo, and (2) each security coordinator and alternate, senior manager of the facility, and other individual who implements the cargo screening program;

[2] The affected aircraft operators are U.S. aircraft operators with full programs under 49 CFR 1544.101(a) and foreign air carriers with security programs under 49 CFR 1546.101(a) or (b). This includes aircraft operators with scheduled or public charter operations with an aircraft having a passenger seating configuration of 61 or more seats, and those operating smaller aircraft when passengers are enplaned from or deplaned into a sterile area.

• Adhere to strict physical and access control measures for the storage, handling, and screening of cargo;

• Screen cargo using TSA-approved methods;

• Implement chain of custody requirements, including the use of tamper evident technology, which must begin when the cargo is screened and remain intact until the cargo is tendered to the aircraft operator for transport on a passenger aircraft; and

• Apply for recertification, including a new examination by a TSA-approved validator, every 36 months.

TSA believes that it is important for CCSFs to submit to a recertification assessment of their security programs every three years in order to maintain good standing in the CCSP. Within the 36 month period, TSA will inspect the CCSF for compliance and the CCSFs will conduct quarterly self-audits. TSA based the 36-month cycle on a similar program in the United Kingdom, the Known Consignor program discussed in section II.C. below.

This rule establishes procedures under which firms may apply for TSA's approval to conduct validation assessments of CCSF facilities. Approved validation firms must hold and carry out a TSA-approved security program, must have security coordinators to be the primary point of contact for security at the facility, and must ensure that individuals conducting assessments have professional qualifications, receive training, do not have conflicts of interest with facilities to be assessed, and conduct assessments impartially. The rule requires validators and their supervisors and validation firm security coordinators and their alternates to successfully undergo a TSA-conducted STA. Individuals conducting validation assessments must—

• Be a citizen or national of the United States or be a lawful permanent resident alien;

• Hold a certification or accreditation from a TSA-recognized organization qualified to certify or accredit a validator;

• Have at least five years of experience in inspection or validating compliance with certain government and industry organizations;

• Have sufficient knowledge of certain regulations, policies, and security programs and be able to determine compliance;

• Have sufficient knowledge of the CCSP; and

• Conduct no more than two assessments of a facility seeking approval, unless TSA authorizes otherwise.

This rule also amends the threat assessment provisions that currently exist in 49 CFR part 1540, subpart C, for individuals who work in the air cargo sector to enhance TSA's ability to effectively conduct STAs.

II. Background

A. Current Air Cargo Screening

Since 2002, TSA has implemented a multilayered, risk-based system for securing cargo transported on passenger aircraft. U.S. aircraft operators and foreign air carriers must ensure that cargo transported on passenger aircraft is screened or inspected as set forth in their security programs. 49 CFR 1544.205, 1546.205. IACs must screen a certain percentage of cargo prior to tendering the cargo for transport or take other security measures as required in the applicable Security Directives and in their security programs.[3] U.S. aircraft operators, foreign air carriers, and IACs must screen 100 percent of cargo considered to present an ''elevated risk,'' and TSA screens 100 percent of all cargo transported on passenger aircraft at Category II–IV airports.[4]

Currently, aircraft operators conduct screening of most cargo at the airports. Generally applicable TSA-approved methods of screening include x-ray, explosives trace detection (ETD), explosive detection systems (EDS), explosives detection canine teams, and physical inspection along with verification of the description of the cargo on the shipping manifest. There are certain categories of cargo for which these generally applicable methods of screening may not be effective or feasible, so the aircraft operators and IACs use TSA-approved alternative methods of screening.

B. 9/11 Act Requirements

The 9/11 Act amended 49 U.S.C. 44901(g)(1), which provides, in pertinent part:

> Not later than 3 years after the date of enactment of the [9/11 Act], the Secretary of Homeland Security shall establish a system to screen 100 percent of cargo transported on passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation to ensure the security of all such passenger aircraft carrying cargo.

As amended by the 9/11 Act, 49 U.S.C. 44901(g)(2) provides that the system used to screen cargo on passenger aircraft shall provide a level of security ''commensurate with the level of security for the screening of passenger checked baggage'' and directs that—

• Fifty percent of such cargo must be screened not later than February 3, 2009; and

• One hundred percent of such cargo must be screened not later than August 3, 2010.

Section 44901(g)(3)(B) explicitly authorizes TSA to issue an interim final rule (IFR) to implement the requirements. If TSA issues an IFR, TSA must issue a final rule not later than one year after the effective date of the IFR.

The 9/11 Act defines the term ''screening'' in sec. 44901(g)(5) to mean ''a physical examination or non-intrusive method of assessing whether cargo poses a threat to transportation security. Methods include x-ray systems, explosives detection systems, explosives trace detection, explosives detection canine teams certified by TSA or a physical search together with manifest verification.'' This section further provides that TSA may approve additional methods to ensure that the cargo does not pose a threat to transportation security and to assist in meeting the requirements of the 9/11 Act. TSA will continue to consider different technologies or methods for screening cargo transported on passenger or cargo flights. TSA would approve these additional methods and technologies based on their applicability and effectiveness in screening specific commodities.

C. Development of the Certified Cargo Screening Program

TSA recognized that it needed to develop a program that could achieve the 9/11 Act's requirement for 100 percent screening while still allowing for the flow of commerce. Approximately 12 million pounds of cargo are transported on passenger aircraft in the United States each day. In evaluating the practical implications of 100 percent screening, the Congressional Research Service has stated that ''* * * given the sheer volume of cargo that must be expediently processed and loaded on aircraft * * * full screening of air cargo, as is now required of checked passenger baggage, is likely to present significant logistic and operational challenges.'' CRS Report for Congress, Air Cargo Security, Updated July 30, 2007, CRS–2.

---

[3] Security Directives and security programs are SSI and the details are non-public information. *See* footnote 1.

[4] There are several categories of airport designations that are based largely on the number of enplanements. Category II–IV airports include those with less than five million annual domestic enplanements or with five million or more annual domestic enplanements, but less than one million international enplanements. Overall, approximately 99 percent of cargo loaded on passenger aircraft in the United States is loaded at Category X and I airports.

TSA has developed the CCSP by working closely with U.S. and international agencies and associations to incorporate key aspects of similar security programs in other countries and in the United States. In particular, TSA studied the Known Consignor programs in Great Britain and Ireland. Such programs have been in effect for several years and operate successfully. TSA also examined the security measures of the Customs-Trade Partnership Against Terrorism (C–TPAT), a U.S. Customs and Border Protection (CBP) program. Like the programs in Great Britain and Ireland, CBP's C–TPAT program adopts the concept of supply chain security in its voluntary program under which participants benefit from expedited CBP processing.

The United Kingdom (UK) Known Consignor program has key features that TSA has incorporated into the CCSP. First, like the CCSP, the UK Known Consignor program relies on authorized entities to augment air carriers' screening of cargo. Both programs rely on a chain of custody concept, requiring verification that no tampering has occurred between the time of screening and the time the cargo is tendered to the air carrier.

Second, the UK Known Consignor program requires approved validators to assess Known Consignors and requires Known Consignors to pay a fee for these assessments. TSA based the validator requirements in this IFR, in part, on the UK program. In both programs, entities wishing to serve as validators seek approval from the government regulatory agency. In both programs, the government reviews the validators' assessments and, where appropriate, government agents may conduct inspections to determine if enforcement action is necessary.

In addition to these structural similarities, some of the methods to secure cargo will be similar in the two programs. For example, the UK program makes use of tamper-resistant seals, tamper evident tape, and procedures to document that the cargo is not subject to unauthorized access from the time the cargo is screened until it is tendered to an aircraft operator for transport on a passenger aircraft. These are key elements in the CCSP ''chain of custody'' framework.

The UK program has been in place since 2003 and has achieved the benefits TSA seeks to gain from the CCSP. Known consignors screen close to 50 percent of cargo that otherwise would be screened by aircraft operators and foreign air carriers on airports; the rest of the cargo is screened by air carriers. Having aircraft operators and foreign air carriers screen all cargo at airports could result in delays in flights and backlogs of cargo to be screened. The UK program significantly reduces potential adverse impacts on the flow of commerce that otherwise could result if aircraft operators and foreign air carriers were required to screen all cargo. The same concerns exist for screening cargo at U.S. airports.

D. Certified Cargo Screening Pilot Programs

TSA is testing the concept of screening earlier in the supply chain by conducting two parallel pilot programs: (1) The CCSP pilot involving shippers and other entities, such as manufacturers, distributors, and third party logistics companies, and (2) the IAC technology pilot. The CCSP pilots began at the following major gateway airports representing over 65% of all air cargo loaded on passenger flights: San Francisco (SFO), Chicago (ORD), Philadelphia (PHL), Seattle (SEA), Los Angeles (LAX), Dallas-Fort Worth (DFW), Miami (MIA), Atlanta (ATL), and New York/Newark (JFK/EWR). The IAC pilot is now in effect at all U.S. airports.

Over 65 percent of all cargo transported on passenger aircraft is carried on wide-body passenger aircraft, such as a B–767, from the airports listed above. Approximately 43 percent of cargo transported on wide-body aircraft originates in 6 of these airports. Thus, TSA focused its outreach for the pilot programs on the entities using the airports with the highest volume of cargo transported on wide body passenger aircraft. Industry agreed to participate in the pilots.

TSA conducted outreach for the CCSP pilot program by contacting 120 shippers and other entities in 9 major cities. The CCSP pilot focuses on the ability of these entities to screen cargo according to methods approved by TSA, primarily by physical search of the shipping box before it is closed, sealed, and leaves the facility using a secure chain of custody. Shippers, manufacturers, distributors, and third-party logistics companies are in the best position to screen the contents of the box before it leaves their facility, as they know what should be in the box and can spot anomalies quickly. As long as the screening is conducted in accordance with TSA procedures and the chain of custody remains intact when the cargo is loaded on passenger aircraft, the cargo does not have to be rescreened.

The IAC technology pilot is evaluating the effectiveness of cargo screening technology and processes recommended by TSA by commodity class at each participant's consolidation facility. Congressional appropriations provided TSA with funds for the screening of air cargo. TSA is using these funds in part to assist in the deployment of appropriate screening technology for use in the IAC pilot. The IAC technology pilot participants must use either x-ray or Explosive Trace Detection (ETD) equipment during the screening process. This pilot is also evaluating the IAC community's ability to screen cargo volumes, and the use of chain of custody procedures.

When the IFR becomes effective, the CCSP pilot program will end. Participants will become CCSFs under the IFR. The IACs in the IAC technology pilot will continue to collect and submit information to TSA regarding the cargo screening technology until August 2010. TSA will collect information after the IFR becomes effective under OMB's Paperwork Reduction Act approval for the IFR; this information will include the data collected during the IAC technology pilot. After the completion of the IAC technology pilot, DHS will conduct an evaluation of the pilot.

III. TSA's Program for Achieving the Statutory Mandates for Cargo Loaded Domestically

With respect to cargo loaded within the United States, TSA implemented two measures that assisted industry in achieving the requirement that 50 percent of cargo transported on passenger aircraft be screened by February 3, 2009. First, on August 1, 2008, TSA issued an amendment to the Aircraft Operator Standard Security Program that requires 100 percent screening of cargo transported on narrow-body passenger aircraft. Narrow-body aircraft represent 96 percent of all domestic passenger flights, and approximately one-quarter of all cargo on passenger aircraft travels on narrow-body aircraft. TSA has required that all cargo on narrow-body passenger aircraft, such as a B–737, must be screened. This requirement was a key component of achieving the 9/11 Act's requirement to ensure that 50 percent of cargo on passenger aircraft was screened by February 2009. The second key component was to have IACs participating in the pilot program at the major gateway airports screen cargo prior to their consolidating the cargo for the airlines. Data from the pilot programs, as well as inspections by TSA Inspectors, demonstrates that industry has achieved the 50 percent milestone of the 9/11 Act.

This rule is a key component of our strategy to maintain 50 percent screening as of February 3, 2009, and to

achieve 100 percent screening by August 3, 2010. The rule will allow shippers to screen their cargo prior to tendering it to the airlines. We have developed this IFR implementing the permanent CCSP based on lessons learned in the CCSP pilot program. We estimate that, at full implementation, certified cargo screening facilities and aircraft operators will screen cargo traveling on passenger aircraft as follows:

- Of the 4.3 billion pounds of cargo shipped on passenger aircraft annually, aircraft operators will screen 30 percent of the cargo or 1.3 billion pounds;
- CCSFs using screening equipment will screen 38 percent of the cargo or 1.6 billion pounds; and
- CCSFs using physical search methods to screen will screen 32 percent of the cargo or 1.4 billion pounds.

IV. Organization of the Rule

The section-by-section analysis below is organized sequentially to follow the CFR numbering. This rule amends a number of TSA's existing regulations and adds several new parts to the CFR. Briefly, these changes include the following:

- The rule expands 49 CFR part 1515 to provide redress procedures for individuals who undergo STAs in connection with their air cargo work for aircraft operators, certified cargo screening facilities, and validation firms, if they receive an adverse decision from TSA.
- The rule amends 49 CFR part 1520, the regulations governing sensitive security information (SSI), requiring these newly-regulated populations, such as CCSFs and validators, to protect such information from disclosure.
- The rule adds a new 49 CFR part 1522, establishing a system to authorize TSA-approved validators to perform assessments of CCSFs. It also provides a framework for potential future use in other TSA programs.
- The rule amends the existing STA regulations in 49 CFR part 1540, subpart C, to encompass newly-required STAs for certain personnel of certified cargo screening facilities and approved validation firms. Also, the rule amends the list of biographic information that applicants and operators must provide TSA, so that TSA can conduct more efficient threat assessments. In addition, the rule adds provisions to facilitate the use of comparable threat assessments in place of the assessments that TSA requires in subpart C of part 1540.
- The rule amends 49 CFR parts 1544 and 1546 to impose new requirements on U.S. aircraft operators and foreign air carriers with respect to the cargo screening and acceptance of cargo from CCSFs.
- The rule also amends 49 CFR parts 1544, 1546, and 1548 to clarify which individuals are subject to the STA requirements and to better reflect current TSA requirements in the standard security programs for U.S. aircraft operators, foreign air carriers, and IACs.
- The rule adds a new 49 CFR part 1549, which provides the regulatory requirements for facilities participating in the CCSP. Requirements include qualifications of screening personnel, STAs, adoption of security programs, and cargo screening procedures.

V. Section-by-Section Analysis

Part 1515—Appeal and Waiver Procedures for Security Threat Assessments for Individuals

Section 1515.1—Scope

In part 1515, TSA sets forth redress procedures for many of the transportation workers who must successfully complete an STA. These STAs are described more fully in the Section-by-Section analysis for part 1540, subpart C. The redress procedures include administrative appeals, requests for waivers, and review of certain cases by administrative law judges. This rule amends § 1515.1 to expand the scope of part 1515 to include applicants engaged in air cargo operations who work for certified cargo screening facilities or validation firms who have applied for an STA and wish to appeal an Initial Determination of Threat Assessment or an Initial Determination of Threat Assessment and Immediate Revocation.

Section 1515.9—Appeal of Security Threat Assessment Based on Other Analyses

This rule revises § 1515.9 to expand its scope to allow applicants engaged in air cargo operations who work for certified cargo screening facilities or validation firms to appeal an Initial Determination of Threat Assessment in which TSA has determined that the applicants pose a security threat under 49 CFR 1549.107.

Section 1515.11—Review by Administrative Law Judge and TSA Final Decision Maker

This rule revises § 1515.11 to allow applicants engaged in air cargo operations who work for certified cargo screening facilities or validation firms and who have received Final Determinations of Threat Assessment after appeals as described in § 1515.9 to obtain review of these determinations by an administrative law judge and the TSA Final Decision Maker.

Part 1520—Protection of Sensitive Security Information

Implementation of this rule will create new types of sensitive security information (SSI) and new populations of persons with access to, and responsibilities for, protecting all SSI. *See* Footnote 1. Therefore, TSA is making the following changes to part 1520, which implements the SSI program.

Section 1520.5—Sensitive Security Information

This rule amends the list of information constituting SSI in § 1520.5 to include the SSI to be created under this rule. Specifically, TSA adds ''air cargo'' to paragraph (b)(1)(i) of this section, which contains the listing of security programs that constitute SSI. Such programs include those for IACs as well as for CCSFs and validation firms. TSA has determined that validation firm security programs (operating under part 1522) and CCSF security programs (operating under part 1549) to be SSI because they will contain specific information about how the operation will implement measures for personnel security, physical security, chain-of-custody controls, and other measures that—if publicly disclosed—would allow a terrorist or other person with malicious intent to jeopardize air cargo security.

In a related, clarifying change, this rule amends § 1520.3 to remove the definition of ''security program.'' This definition, which is only used in § 1520.5, is unnecessary, because it only describes which security programs are SSI, a subject which is entirely covered in § 1520.5. Removing this duplicative provision will preclude possible confusion. TSA moved the phrase ''including any comments, instructions, or implementing guidance'' from the definition of security program to § 1520.5(b)(1) to make clear that comments, instructions, and implementing guidance for security programs are protected in the same way as the security programs themselves.

Section 1520.7—Covered Persons

This rule also amends the definition of ''covered person'' in § 1520.7 to include personnel of certified cargo screening facilities and of validation firms. These persons will have access to SSI, including security programs and applicable security directives and orders. Including these persons as ''covered individuals'' brings them within the scope of the responsibilities

for protecting SSI that are contained in 49 CFR 1520.9. These include the duty to protect SSI from disclosure and to report incidents of unauthorized disclosure to TSA.

Part 1522—TSA-Approved Validation Firms and Validators

The provisions of part 1522 establish a system in which TSA approves validation firms; these firms are responsible for hiring individuals, called validators, who must have specific qualifications. These validators are responsible for conducting the assessments of the facility seeking certification or recertification as a CCSF operating under part 1549. The CCSF applicants (whether they are individual companies or IACs) will pay the validation firm for the validation assessment. TSA will not charge or establish a fee for that purpose.

Firms that seek to perform the functions of validation firms for purposes of the CCSP must apply to TSA for approval and, once approved, must perform the functions in accordance with TSA's requirements. The criteria for approval and the performance requirements are set forth in part 1522 and described below. Part 1522 also addresses the qualifications and responsibilities of individual validators, who, on behalf of a validation firm, actually perform the assessments of persons, operations, or facilities regulated under this chapter.

Section 1522.1—Scope and Terms Used in This Part

Section 1522.1(a) explains that part 1522 governs the use of private firms employing individual validators to assess whether certain persons regulated by TSA are complying with security programs applicable to those persons and other TSA requirements.

Paragraph (b) of § 1522.1 defines the terms used in part 1522. The rule defines ''TSA-approved validation firm'' or ''validation firm'' as a firm that has received TSA's approval to make such assessments on whether regulated persons have complied with security programs and other TSA requirements applicable to those persons. The rule defines ''applicant'' as a firm seeking to become a TSA-approved validation firm. The rule's definition of ''firm'' includes business enterprises, including individuals operating as a business, as well as other non-governmental organizations, such as non-profit corporations. The term ''validator'' means the particular individual assigned by the validation firm to perform a given assessment; thus, the terms ''validation firm'' and ''validator'' are not synonymous. The term ''assessment'' as defined in § 1522.1, refers to the validator's evaluation of compliance with the relevant requirements of a security program.

The rule also defines the term ''national of the United States.'' For purposes of this rule, 'national' means a citizen of the United States, or a person who, though not a citizen, owes permanent allegiance to the United States, as defined in 8 U.S.C. 1101(a)(22), and includes American Samoa and Swains Island. It is consistent with the definition of the same term (49 CFR 1570.3) in the Maritime and Land Transportation Security regulations and with the definition in 8 U.S.C. 1101(a)(22).

Validation firms and validators must be free of conflicts of interest to perform assessments for TSA programs. Section 1522.129(a) requires validation firms to maintain records demonstrating compliance with this regulation, including the conflict-of-interest requirements. As part of the inspection process, TSA may review records concerning a facility's compliance with conflict of interest provisions.

Section 1522.1(b) defines ''conflict of interest'' as a situation in which a relationship with, or a financial interest in, the person being assessed may adversely affect the impartiality of the assessment. This definition encompasses the validation firm as an entity, as well as the individuals of the firm who will be conducting, or assisting in conducting, the assessment, and their immediate family members. This definition is derived in part from the Government Auditing Standards established by the Government Accountability Office (GAO) for ensuring that Government auditors or their employees do not have business or personal impairments that would interfere with their ability to maintain their independence. *See* GAO, Government Auditing Standards (July 2007), ch. 3. The definition is also derived, in part, from the post-governmental employment restrictions applicable to Federal employees.

The definition of ''conflict of interest'' in § 1522.1(b) contains several examples. It includes examples of conflict-of-interest situations applicable to a validation firm as an entity, such as parent-subsidiary relationships and common management or organizational governance (for example, interlocking boards of directors). It also includes an example of a conflict of interest situation in which the validation firm, or validator, or the individual assisting the validator, or his or her immediate family member as an individual, is a creditor or debtor of the person being assessed. It also lists examples of conflicts of interest related to financial interests, such as investments in debt and equity, in the person being assessed.

The other examples of conflict of interest in the definition address situations in which the validator or an individual assisting the validator, or his or her immediate family member, is a former employee, officer, or contractor including a consultant of the person being assessed. If the former duties and responsibilities of the validator or individual assisting the validator involved the operations or functions to be assessed, he or she has a permanent conflict of interest; such an individual may never conduct or assist in conducting an assessment of an operation or function with respect to which he or she had duties or responsibilities. If the former duties and responsibilities of the validator or individual assisting the validator did not involve the operations or functions to be assessed, he or she must observe a two-year ''cooling-off period'' during which he or she may not conduct assessments of his or her former employer. These concepts are consistent with the post-employment restrictions applicable to governmental employees found at 18 U.S.C. 207. Individuals who are former employees of the person being assessed who will not be conducting or assisting in the assessment do not create a conflict of interest if they are segregated from the assessment work.

Section 1522.3—Fraud and Intentional Falsification of Records

Section 1522.3 includes provisions that prohibit any person, whether the validation firm, the validator, or another individual, from making or providing any fraudulent or intentionally false statements, reports, records, access mediums, or identification. The same prohibitions apply to persons regulated under TSA's Civil Aviation Security regulations; *see* 49 CFR 1540.103, on which this section is based. Any intentional falsification or fraud may constitute a basis for TSA to withdraw the validator's approval. In addition, any intentional falsification or fraud may constitute a violation of certain criminal laws such as 18 U.S.C. 1001. In appropriate cases TSA will refer potential criminal violations to the U.S. Attorney for investigation.

Section 1522.5—TSA Inspection Authority

Section 1522.5 sets out TSA's broad authority to inspect a validation firm

and a validator, including on-site inspections and the copying of records. TSA needs such broad authority to perform its role in monitoring compliance with this part. Paragraph (a) requires each validation firm to allow TSA to enter the facility to make inspections or tests, including copying records. A validation firm's operations are unlikely to give rise to the kinds of emergencies that would require after-hours inspections, so this paragraph only refers to TSA inspections during normal business hours. This paragraph also provides that the inspection may be without advance notice. While TSA expects often to provide advance notice of an inspection, we must have the ability to do so unannounced to verify compliance by the validation firm and its personnel and to otherwise assess security. The inspections referred to in paragraph (a) include inspections for compliance with the statute and TSA rules, and includes inspections that TSA may make to carry out duties assigned to TSA in 49 U.S.C. 114(f), as set out in § 1522.5(a)(2).

Section 1522.5(b) provides that at the request of TSA each validation firm and validator must provide evidence of compliance with the TSA regulations, which are located in 49 CFR chapter XII, including parts 1500–1699. This may include providing records to TSA or other evidence to show compliance. Paragraph (c) provides that TSA and DHS officials working with TSA may conduct inspections without access media issued or approved by a validation firm or other person. This is to facilitate the inspection process and make it possible for TSA to conduct unannounced inspections. It is based on a similar provision in § 1542.5(e) that applies to airport operators. Taken as a whole, this section will allow TSA to evaluate the validation firm's and the validator's respective performance, and to evaluate the reliability of the validator's assessments.

Section 1522.101—Applicability

Subpart B, which begins at § 1522.101, applies specifically to the use of TSA-approved validation firms and validators in the context of the CCSP. Each facility that seeks to be a CCSF will need to engage a validation firm to assess whether that facility complies with the security program that TSA requires under 49 CFR 1549.5.

Section 1522.103—Requirements for Validation Firms

Section 1522.103 establishes the general requirements for validation firms. Paragraph (a) states the fundamental requirement, which is that the firm must have the necessary facilities, resources, and personnel to conduct assessments. Among other things, this requirement entails the demonstrated capability to define, execute, and document standardized business processes. The validation firm must also demonstrate its capability to hire and train personnel to perform operations similar to the assessments required under this subpart and part 1549. The purpose of this requirement is to establish a basis on which TSA may evaluate whether a firm has the experience and capabilities to perform as a validation firm.

Paragraph (b) provides that each validation firm must have a Security Coordinator and one or more alternates. This provision is based on the concept of Security Coordinator for IACs as implemented in 49 CFR 1548.13. These individuals must be senior officers or employees to ensure that they have the authority necessary to fulfill their functions. They serve as the validation firm's primary point of contact with TSA on security-related matters. Because a validation firm has a support (as opposed to an operational) role in the certified cargo security program, the Security Coordinator or an alternate must be available during regular business hours (rather than on a 24-hour basis). Also, the Security Coordinator and alternates bear the responsibility of immediately initiating corrective action if the firm discovers an instance of non-compliance with any applicable TSA security requirement. These requirements ensure that each validation firm has at least one readily available and accountable individual with adequate authority to monitor security-related matters.

Under paragraph (c) of § 1522.103, the validation firm must hold and carry out a TSA-approved security program. This topic is covered in more detail in the discussion of § 1522.105, below.

Paragraph (d) of § 1522.103 imposes an affirmative obligation on the validation firm to ensure that its personnel carry out the requirements of TSA's regulations and the security program. ''Personnel'' includes direct employees, contractors, agents, and other persons acting on behalf of the validation firm.

Finally, paragraph (e) requires the validation firm to notify TSA of all pertinent changes in information that the validation firm must submit to TSA. Examples of such information include changes of address, changes in the identity of the Security Coordinator or alternates, and significant changes in the ownership of the firm. A significant change in the ownership would include, for example, acquisition of the firm by another business entity, or the form of the firm's organization, for example, incorporation. It would not include a minor change in the identity of shareholders.

Section 1522.105—Adoption and Implementation of the Security Program

Paragraph (a) of § 1522.105 provides that a validation firm must hold and carry out an approved security program in order to operate as a validation firm. Paragraph (b) outlines the requirements for the content of the validation firm standard security program. These requirements are generally consistent with the similar requirement for IACs in part 1548.

Paragraph (b)(1) states the fundamental purpose of the security program, which is to provide for the security of aircraft and protect against threats to air security. Paragraph (b)(1) thus establishes that validation firms, even though they serve a supporting role, are important components in the overall certified cargo security program.

Key among these requirements for security programs is that the programs must specify the processes and procedures that the firm will use to maintain the qualifications of its validators and its personnel assisting validators with assessments. This is important, because the quality of the validation firm's operational performance depends primarily on the expertise of its personnel, especially the validators. Thus, the security program must describe in detail how the validation firm will maintain the current qualifications, accreditations, credentials, training, and STAs for its relevant personnel.

The security program must also include provisions for a Security Coordinator, as well as for setting managerial responsibilities for ensuring that the firm's personnel carry out their responsibilities under TSA regulations and the security program.

Paragraph (c) of § 1522.105 sets out procedures by which an applicant or a validation firm may request amendments to a security program. Paragraph (d) sets out the process by which TSA will initiate amendment of a security program. Paragraph (e) covers emergency amendments, which TSA may make without prior notice and which take effect immediately. The provisions of paragraphs (c), (d), and (e) are analogous to similar provisions relating to IAC security programs (49 CFR 1548.7), which provides that TSA may issue emergency amendments to aircraft operators if there is an emergency requiring immediate action

with respect to safety in air transportation or in air commerce that makes procedures in § 1522.105 contrary to the public interest; such provisions establish an orderly process for revising security programs when circumstances change. Similar provisions exist in 49 CFR 1542.105(d) (airport operators), 1544.105(d) (aircraft operators), 1546.105(d) (foreign air carriers), and 1548.7(e) (indirect air carriers). Paragraph (f), parallel with 49 CFR 1548.5(d), provides basic requirements on availability of the security program to the firm's personnel and to TSA and requires measures to protect it as SSI.

Section 1522.107—Application

Section 1522.107 sets out the procedures by which a firm may apply for approval to operate as a validation firm. TSA will prescribe the form and manner of the application, which must be in writing and submitted at least 90 days in advance.

Paragraph (a) enumerates the required items that applicants must include in their applications. Among other items, applicants must include a statement declaring whether the applicant is a small business; the collection of this information assists TSA in developing appropriate civil penalty formulas.

Paragraph (b) of § 1522.107 discusses the next step in the application process. After TSA receives the initial application specified in paragraph (a), and after the applicant's Security Coordinator has successfully completed a STA, TSA will send the validation firm, via the Security Coordinator, a copy of the Validation Firm Standard Security Program. TSA anticipates that all information will be sent to participants via electronic means in a password protected mode. TSA also plans to develop a secure Web address that will be available to the participating validation firms to obtain copies of the security program. The validation firm must also submit a supplement to its security plan that specifies processes and procedures that the firm will use to maintain the qualification of its validators and its personnel assisting validators with assessments to the designated TSA official for approval. This provision establishes a baseline of standardization, while allowing for flexibility in appropriate circumstances. TSA will seek comment on the validation firm security program from applicants as part of the application process. Thereafter, any approved validation firm may request amendments to its security program.

Section 1522.109—TSA Review and Approval

Paragraph (a) of § 1522.109 lists the criteria that TSA will employ in reviewing an application submitted under § 1522.107. As provided in paragraph (b), TSA will approve or disapprove the application based on these criteria. In either case, TSA will provide written notice to the applicant. In the case of an approval, TSA may approve or require modifications to the security program applicable to the applicant. The validation firm will also demonstrate to TSA how the validators employed by the firm will meet TSA qualifications. In the case of a disapproval, TSA will state the basis for the disapproval in writing.

Under paragraphs (b)(1) and (2), a validation firm may commence operations only after it receives approval of its security program and approval to operate as a validation firm, and after the relevant personnel have completed all required training and STAs. These paragraphs make it clear that the validation firm must satisfy all of these elements before the validation firm may conduct assessments.

As provided in paragraph (c), the duration of an approval granted under this section is 12 months.

The following table demonstrates the certification and training cycles for CCSFs and validation firms.

	IAC operating certificate (renewal application)	Validation firm operating approval	Certification	Recurrent training
Shipper/CCSF	N/A	N/A	Every three years	Annually.
IAC/CCSF	Annually	N/A	Every three years	Annually.
Validation Firm/Validator	N/A	Annually	N/A	Annually.

Section 1522.111—Reconsideration of Disapproval of an Application

Section 1522.111 describes the review and petition process for TSA's reconsideration of disapproval of the validator's application. If an applicant challenges the disapproval, the applicant must submit a written petition for reconsideration within 30 days of receipt of the notice of disapproval. The petition must include a statement, with supporting documentation, explaining why the applicant believes the application meets the criteria of § 1522.103. Reconsideration may result in confirmation of the disapproval or in an approval. Disposition pursuant to this section constitutes a final agency action for purposes of review under 49 U.S.C. 46110.

Section 1522.113—Withdrawal of Approval

Section 1522.113 establishes procedures by which TSA may withdraw a previously-granted approval of a validation firm. This may occur if the validation firm no longer meets the qualification standards, if the validation firm fails to conduct assessments in compliance with TSA's requirements, or if withdrawal is in the interest of security or the public. 49 CFR 1522.113(a). If TSA withdraws a validation firm's approval, the validation firm must immediately stop performing any and all activities related to assessments. In determining whether withdrawal is appropriate, TSA considers the number, frequency, and severity of security violations committed by a regulated party. If TSA determines withdrawal is appropriate, TSA will remove the validation firm from the list of approved validation firms.

Under paragraph (b) of § 1522.113, TSA will provide the validation firm with a written notice of proposed withdrawal of approval that will include a statement of the basis for the proposed withdrawal of approval. Paragraph (c) provides for immediate withdrawal of approval in emergency circumstances. Upon receipt of a notice of emergency withdrawal under paragraph (c), the validation firm must immediately stop performing assessments, and must discontinue any assessments in progress. Paragraphs (d) and (e) provide a reconsideration procedure that may result in confirmation of the withdrawal of approval or in a decision to allow the validation to retain (or regain) its approval. Disposition pursuant to this section constitutes a final agency action

for purposes of review under 49 U.S.C. 46110.

Section 1522.115—Review of TSA Approval

It is important that validation firms meet TSA's standards both before and after they begin performing validations. TSA will actively monitor validations through a process of initial and recurrent reviews. Approved validation firms must apply for renewal of approval annually. During these reviews, TSA will examine, among other things, whether the validation firm's personnel have received required training and whether the relevant personnel have maintained the required accreditations and/or certifications. The review will also focus on the firm's compliance with part 1522 and with its security program.

Section 1522.117—Qualifications for Validators

Section 1522.117 prescribes the necessary qualifications for individuals selected by validation firms to serve as validators for particular assessments. The requirements establish minimum levels of expertise and experience that an individual must have before he or she may be employed as a validator. As explained in the discussion of § 1522.123 below, a properly qualified validator must be directly responsible for the conduct of each assessment. A validation firm may assign an individual to be a validator with direct responsibility for an assessment only if the individual meets the qualifications specified in § 1522.117(a)(1)–(5) described below. The validation firm will be responsible for determining whether an individual has the appropriate qualifications to serve as a validator, and TSA will inspect for compliance with these requirements.

Pursuant to paragraph (a)(1) of § 1522.117, an individual must be a U.S. citizen or national, or be an alien lawfully admitted to the United States as a Lawful Permanent Resident (LPR) in order to function as a validator. For aliens to become LPRs (commonly referred to as ''green card'' holders), the U.S. Government must have determined that they are admissible to the United States as immigrants; that determination requires security and criminal checks. TSA will allow LPRs to function as validators based on the fact that the U.S. Government has already performed security and criminal checks on these individuals.

Validators must have extensive experience in conducting assessments, inspections, or audits before undertaking duties under this part. Paragraph (a)(2) identifies two bases on which individuals can establish they possess the appropriate level of experience. Under the first basis, he or she must have an accreditation or certification from an organization that TSA recognizes as qualified to certify or accredit a validator assessing facilities, such as certified cargo screening facilities, or the individual must have five years or more experience in conducting inspections under State or Federal regulatory programs in the security industry, the aviation industry, or other government programs. TSA will review the accreditation of a validator when the validation firm submits a plan to TSA demonstrating how the firm will ensure that the validators in the firm meet TSA qualifications. If a validator does not meet the accreditation standards, TSA may deny approval to the validation firm or may approve the firm but direct that the individual without the necessary accreditation not be used for the CCSP program.

Examples of an organization qualified to accredit a validator would include the International Standards Organization and ASIS International. TSA will make publicly available on the TSA public Web site a list of acceptable accreditation or certification organizations. The individual must have had this experience within the past ten years. Under the second basis, he or she must show relevant experience and expertise by having been employed by a Federal or State government agency as an inspector, assessor, or auditor in assessment or inspection tasks similar to the assessments under this part. Inspectors for governmental agencies receive thorough training and are subject to rigorous qualification standards. For example, a former Department of Transportation safety inspector would presumably have this kind of experience.

Under paragraph (a)(3), the individual must have three current professional references. The purpose of this requirement, which is related to the requirements of paragraph (a)(2), is to allow the validation firm and TSA to further verify the experience and expertise of the validator.

The expertise and experience of the validators is a critical component of this program. Paragraph (a)(4) states the requirement that validators must understand the requirements of the program in order to perform their functions. A validation firm must be able to demonstrate that each of its validators has this understanding. Although a validator's successful completion of the training required in § 1522.119 will demonstrate initial understanding, a validator must also demonstrate the necessary knowledge and its practical application when the validator conducts assessments under this program.

Section 1522.119—Training

As stated above, validators must understand the requirements of the program and applicable technologies and practices before they begin conducting assessments. The validation firm must ensure that all employees associated with the assessment process complete training to ensure that they are capable of effective performance of their duties, and are knowledgeable about their security responsibilities. This is consistent with training requirements in other TSA regulatory programs. TSA plans to make a training program available for the validation firms. As program requirements change and technologies and practices improve, validators will need to keep up-to-date. Therefore, § 1522.119 requires validators and other individuals who assist in conducting assessments to complete initial and annual recurrent training provided by TSA. Under § 1522.119(a), the relevant individuals must complete initial TSA training on the standards, procedures, and forms prescribed by TSA for assessments of a CCSF before undertaking an assessment under subpart B. Under § 1522.119(b), validators and other relevant individuals must complete annual training; the training will include current information and will confirm that the validators and other individuals have maintained the necessary expertise to continue to perform assessments. Paragraph (c) outlines the general requirements for the content of the training; this outline is not exhaustive. Section 1522.119(c) provides that the ''training required by this section will include coverage of the applicable provisions of this chapter, including this part, part 1520, and section 1540.105.'' (Part 1520 covers Sensitive Security Information (SSI), and § 1540.105 covers security responsibilities of employees and other persons.) TSA intends to specify more detailed training requirements in the applicable security programs.

Section 1522.121—Security Threat Assessments for Personnel of TSA-Approved Validators

This section requires individuals supervising, performing, or assisting in the performance of validation assessments, and the validation firm's Security Coordinator and alternates, to successfully undergo a STA conducted by TSA under 49 CFR part 1540, subpart

C, or an STA that TSA deems comparable. *See* the discussion of 49 CFR part 1540, subpart C for a full description of those requirements.

Section 1522.123—Conduct of Assessments

Section 1522.123(a) establishes the general rule that a validator must conduct each assessment of a CCSF under this part in a form and manner to be prescribed by TSA. The provision will increase the standardization of assessments across the program, promoting security and fairness. While other individuals may assist a validator, the validator must be directly responsible for the assessment and must sign the assessment report required by part 1522. This provision emphasizes the authority and accountability of the validator within the overall regulatory scheme.

Section 1522.123(b) provides that validators may not undertake an assessment in which the validator, the validation firm for which he or she works, or any other individual who would work on the assessment, has a conflict of interest as defined in § 1522.1.

Section 1522.123(c) applies when a validator, while conducting an assessment, learns that there is or may be an instance of noncompliance with TSA's requirements that presents an imminent threat to transportation security or public safety. In such a situation, the validator must report the noncompliance to TSA, through the Security Coordinator immediately. The purpose of this provision is to allow TSA the opportunity to address and correct potentially dangerous situations promptly.

Section 1522.123(d) provides that neither a validation firm nor a validator may require the CCSF being assessed to take remedial action. While a validator may suggest ''on the spot'' remedial actions in the course of conducting an assessment, the validator does not have the authority to require such remedial action. The validator will, of course, include in the report to TSA any matters that he or she believes are not in compliance with TSA requirements. The rule also clarifies that the validation firm and validator may not take disciplinary or enforcement action against a facility it has assessed. Only TSA may take disciplinary action against the CCSF. If the validator reports non-compliance, TSA will evaluate all the facts and circumstances, likely will conduct an inspection, and determine whether to take action.

Section 1522.123(e) provides that a validator must not conduct more than two consecutive assessments of a given facility seeking approval, or renewal of approval, to operate a CCSF. Under § 1549.7(b) each CCSF must apply for renewal every three years. Thus, if a validator has conducted the initial assessment and the first renewal assessment, or two consecutive renewal assessments, for a given CCSF, that validator may not conduct the next assessment on that CCSF. The purposes of this requirement are to maximize the objectivity of the validator and to assure a fresh assessment for each CCSF every few years.

Section 1522.125—Protection of Information

Section 1522.125(a) specifies that validation firms must comply with TSA's regulations (49 CFR part 1520) for identifying, handling, and protecting SSI. Under paragraph (b) of § 1522.125, validation firms may not disclose any proprietary information that is disclosed to the validator during the assessment. This provision is intended to protect the facilities being assessed and to encourage their full cooperation with the validators.

Section 1522.127—Assessment Report

Section 1522.127 requires a validator to prepare an assessment report that must include information about the assessment process and the validator's assessment of the CCSF's compliance with applicable TSA requirements. The validator must submit the assessment report within 30 days after completing the assessment. The validator must attest that he or she performed the assessment professionally and impartially. TSA will use the assessment report to determine whether additional TSA action, such as further inspection by TSA personnel, is required. The assessment report must contain the information specified in § 1522.127(b).

Section 1522.129—Recordkeeping Requirements

Section 1522.129(a) requires validation firms to maintain records demonstrating compliance. Paragraph (b) requires the firms to retain records pertaining to individuals, including training, STAs, and qualification of validators (including conflicts of interest), until the 180th day after the individual leaves the employment of the validation firm. The retention period parallels the record retention requirements related to STAs under part 1540.

Paragraph (c) covers records about the validation firms' approvals from TSA, which each validation firm must retain until completion of the validation firm's next review under § 1522.115. This retention period should help ensure that TSA has the necessary documentation with which to complete the review.

Paragraph (d) covers assessment reports and back-up documentation, which includes working papers and interview notes, pertaining to particular assessments conducted by the validation firm. Validation firms must retain records covered under this paragraph for 42 months after completion of the assessment. This retention period should assure that the materials will be available at least until the CCSF's next recertification.

With respect to each of the record retention periods specified in § 1522.129, the validation firm may destroy a record upon the expiration of the period, unless TSA instructs the firm to retain the record longer.

Part 1540—Civil Aviation Security: General Rules

Section 1540.5—Terms Used in This Subchapter

This rule amends § 1540.5 to add definitions of the terms ''certified cargo screening program'' and ''certified cargo screening facility.'' ''Certified cargo screening program'' means the program, established under 49 CFR part 1549, under which TSA authorizes facilities to screen cargo to be offered for transport on certain passenger aircraft. A ''certified cargo screening facility'' is a facility that TSA certifies to screen this cargo and perform the other functions required by part 1549. As used in this chapter, ''certified cargo screening facility'' refers to the legal entity that operates a CCSF at a particular location.

Part 1540—Civil Aviation Security: General Rules

Subpart C—Security Threat Assessments

This subpart covers the STAs that are required throughout the aviation security rules, including those for certain aircraft operator, foreign air carrier, and IAC personnel. This rule expands the subpart to include CCSF and TSA-approved validation firm personnel.

The STA process works as follows. First, the CCSF employee submits the biographic data for their STA application through secure, Web-based tool. Required biographic data includes:

- Legal name;
- Current mailing address;
- Gender;
- Date and place of birth;
- Social security number;
- Citizenship status;

- Alien registration number if employee is not a U.S. citizen;
- Daytime phone number; and
- Name, address, and telephone number of individual's employer.

Next, TSA sends the STA application data to an automated vetting engine where a name-based terrorism check is performed. The name-based terrorism check consists of matching against the Terrorist Screening Database (TSDB), which includes the No-fly list and Selectee list.

If TSA determines that the individual poses a security threat, TSA issues an Initial Determination of Threat Assessment (IDTA) to the individual. The determination includes a statement that explains why TSA believes the individual is not eligible or may pose a security threat and the process by which the individual may appeal the determination. All STA results, favorable or unfavorable, are communicated to the CCSF though the TSNM STA Tool.

Section 1540.201—Applicability and Terms Used in This Subpart

This rule amends § 1540.201 to provide that the STA requirements in subpart C on part 1540 ''Security Threat Assessments'' now apply to validation firms and facilities participating in the CCSP. Paragraphs (a)(6) through (a)(12) list persons who must comply with this subpart, which includes entities that are subject to the subpart and the specific individuals in the CCSP who must undergo STAs in accordance with subpart C:

- Each CCSF;
- Individuals at CCSFs performing or supervising screening;
- Individuals at CCSFs with unescorted access to screened cargo;
- The senior manager or representative in control of the operations of a CCSF;
- Employees of validation firms supervising, performing, or assisting in validations under 49 CFR part 1522; and
- Security coordinators and alternates of certified cargo screening facilities and validation firms.

These individuals must successfully complete STAs, because they will have unescorted access to cargo and, thus, the opportunity to compromise the security and safety of the process. In this rule, TSA requires these individuals to complete the name-based check of relevant domestic and international watch lists, which also includes a limited immigration check. In the future, TSA may propose rules to require these individuals to also complete a fingerprint-based criminal history records check (CHRC) and a more thorough immigration status check. However, TSA has not yet developed the enrollment system necessary to gather fingerprints from these applicants. These individuals play important roles in securing cargo transported on certain passenger aircraft and would have the opportunity to contaminate cargo if they so desired. Therefore, it is critical that TSA vet them to determine whether they may pose a threat to national or transportation security before allowing them access to the cargo screening system.

TSA is also expanding the definition of ''operator'' in paragraph (b) to include CCSFs and validators.

Section 1540.203—Security Threat Assessment

We revise § 1540.203(a) to include the new individuals who must successfully complete an STA, listed above in §§ 1540.201(a)(6)–(12).

We revise the identity and work authorization requirements in paragraph (b) of this section. Former paragraph (b) required operators to authenticate an applicant's identity by reviewing two forms of identification, one of which must be a government-issued picture identification. Amended paragraph (b) requires operators to verify the identity and work authorization of each applicant by examining standard identity and work authorization documents and examine the documents to determine whether they appear to be genuine and relate to the applicant presenting them. TSA recommends that operators use the identity and work authorization documents approved for such use by the U.S. Citizenship and Immigration Services (USCIS) in the ''Form I–9, Employment Eligibility Verification, List of Acceptable Documents'' to meet the identity and work authorization verification. *See http://www.uscis.gov/files/form/I-9.pdf* for the most current list of documents approved by USCIS for identity and work authorization verification. Also, we now require operators to retain a copy of the document(s) used to verify identity and work authorization for at least 180 calendar days after the applicant is no longer employed by the operator. 49 CFR 1540.201(d). This will enable the TSA to conduct periodic document inspections to verify that operators are satisfying the requirements.

Identity verification and confirmation that an individual is authorized to work in the United States are critical steps in the STA process. If an individual presents fraudulent documents with an incorrect name, date of birth, country of citizenship, or other data, TSA's STA will be flawed at inception. Companies with more sophisticated personnel systems may opt to scan the identity and work authorization documents electronically and use fraud detection software to ''score'' the documents for authenticity. These software programs are becoming economically and operationally desirable as a standard process in many industries, and TSA uses these systems in other vetting programs where TSA is responsible for enrolling applicants.

Paragraph (c) of this section describes the information operators must collect from applicants and transmit to TSA for the STA. The rule amends this list in some respects to ensure that we have the best information on which to base an accurate STA and that TSA can easily contact the applicant if we need to resolve incomplete or conflicting information. The rule now requires submission of the applicant's daytime phone number and the name, address, and telephone number of the applicant's employer. TSA has found that this information is very helpful in the adjudication process when we need additional information to determine the outcome of the STA. TSA's adjudicators often contact applicants by telephone with questions, and this step typically saves time and expense for the applicant and TSA by resolving issues immediately.

The Privacy Act Notice that operators must provide to applicants when they begin the STA process is set out in the next paragraph. In the Privacy Act Notice, TSA explains why TSA collects personal information from the applicant and how TSA may use the information. We amend the Notice to include an acknowledgement that TSA may notify the applicant's employer if TSA or other law enforcement agency becomes aware that the applicant poses an imminent security threat. TSA does not anticipate that it will be necessary to notify an employer often, but we believe all applicants should be aware that this notification may take place. In addition, we amend the Notice to state that TSA may transmit the applicant's fingerprint information to the DHS' Automated Biometrics Identification System (IDENT) and Social Security Number to the Social Security Administration (SSA). Using IDENT and SSA data are additional tools TSA has available to aid the STA process, and applicants should be aware that we may use those tools in the future. The Privacy Act notice is provided below but may be updated in the future:

Privacy Act Notice: Authority: The authority for collecting this information is 49 U.S.C. 114, 40113. *Purpose:* This information is needed to verify your identity and to conduct a security threat assessment to evaluate your suitability for completing the functions required by this position. Failure to furnish this information, including your Social Security Number (SSN), will result in delays in processing your application and may prevent completion of your security threat assessment. DHS will use the biographic information to conduct a security threat assessment and where applicable, will forward any fingerprint information to the Federal Bureau of Investigation to conduct a criminal history records check. DHS may also transmit the fingerprint information into the US–VISIT's Automated Biometrics Identification System (IDENT). If you provide your SSN, DHS may provide your name and SSN to the Social Security Administration (SSA) in order to compare that information against SSA's records to ensure the validity of your name and SSN. *Routine Uses:* This information may be shared with third parties during the course of a security threat assessment, employment investigation, or adjudication of a waiver or appeal, to the extent necessary to obtain information pertinent to the assessment, investigation, or adjudication of your applicant or in accordance with the routine uses identified in the Transportation Security Threat Assessment System, DHS/TSA 002.

This rule amends paragraphs (f)–(j) of § 1540.203, which address the comparability of other STAs conducted by TSA or other government agencies. TSA may determine that a threat assessment or background check that TSA conducts for another program, or that another governmental agency conducts, is comparable to the STA outlined in subpart C of part 1540. If an applicant has completed a comparable STA, it will not be necessary for the individual to complete the threat assessment pursuant to part 1540. This process reduces redundant background checks and the costs associated with them. We developed a similar process through notice and comment rulemaking for surface and maritime workers in 49 CFR 1572.5(e), and paragraphs (f)–(j) harmonize with § 1572. Paragraph (i) requires a worker asserting completion of a comparable threat assessment to present the credential that the other agency issued as a result of the assessment, and the operator must retain a copy of it. Also, applicants must notify operators if the agency that issued the credential that corresponds to the comparable assessment revokes the credential for any reason. This is necessary to ensure that a worker who is disqualified from holding access privileges to secure areas in other programs does not continue to have unescorted access to cargo until TSA and the operator can determine if such access is appropriate.

In considering whether another background check is comparable to the STA required in part 1540, TSA examines the standards used for the other threat assessments, such as the kind of databases that the other agency checks and the lookback period for the check. Also, TSA reviews the frequency of the check and the date of the most recent check. If TSA determines that another check is comparable, TSA will notify the public by publishing a notice in the **Federal Register**, amending rule text through rulemaking in the **Federal Register**, or posting the information on pertinent Web sites to ensure that the affected population is aware of the determination.

It is important to note that TSA will consider only threat assessments performed by other government agencies as comparable. 49 CFR 1540.203(f) introductory text. We restrict the checks we will consider as comparable, because critical data sources for security purposes, such as the government's consolidated terrorist watch lists, are not accessible by private entities. This factor is so fundamental to the threat assessments TSA conducts that we are unwilling to accept any other check as comparable. It is also important to note that TSA has the capability to conduct checks perpetually against critical security-related data sources, allowing TSA to compare applicant names automatically with new names that appear on watch lists. This provides a significant improvement over other background checks, and TSA considers it important in making comparability determinations.

Section 1540.203(h) lists the STAs that TSA has determined are comparable to the STA process in part 1540, subpart C. These include a CHRC conducted in accordance with 49 CFR 1542.209, 1544.229, or 1544.230 that also include a TSA name-based check; the STA that TSA conducts under 49 CFR part 1572 for commercial drivers authorized to transport hazardous materials and maritime workers applying for a Transportation Worker Identification Credential (TWIC); and the STA that CBP conducts for the Free and Secure Trade program.

New § 1540.203(j) provides that the STA expires in five years or when the applicant is no longer in the United States lawfully. If the applicant has completed a comparable threat assessment, the STA will expire five years from the date on which the credential associated with the comparable assessment expires. When the five-year expiration of the STA required in this subpart or a comparable threat assessment approaches, the applicant must submit new identifying information to TSA, and TSA will conduct a new threat assessment.

Section 1540.205—Procedures for Security Threat Assessment

This rule amends § 1540.205 by adding new paragraph (c), which states that if TSA becomes aware that an applicant is the subject of an outstanding want or warrant or is a deportable alien, TSA will notify the appropriate law enforcement or immigration agency.

We added a provision in new paragraph (d)(3) relating to cases in which we believe an applicant may pose an imminent threat. TSA may serve an Initial Determination of Threat Assessment and Immediate Revocation on an applicant if TSA believes the applicant poses an immediate security threat. This situation would most likely involve a worker who completed an STA in the past and has unescorted access to cargo or sensitive areas, if TSA believes it is important to immediately revoke the worker's access even before the worker has an opportunity to file an appeal on the Initial Determination with TSA. TSA developed this process for use in the threat assessments process for surface and maritime workers, and we believe it is an important tool that should be available in the aviation industry as well.

Section 1540.209—Fees for Security Threat Assessments

Pursuant to sec. 520 of the 2004 DHS Appropriations Act (Pub. L. 108–90, 117 Stat. 1137, Oct. 1, 2003), TSA will charge a fee to individuals who must obtain an STA under this regulation. The fees will reimburse TSA for the costs of administering the program. Pursuant to the general user fee statute (31 U.S.C. 9701) and OMB circular A–25, TSA establishes user fees after providing the public notice and an opportunity to comment on the amount of the fee and the methodology TSA used to develop the fee amount. Therefore, in this preamble, TSA proposes a fee range and invites comment on the amount of the fee and the assumptions we use to estimate the fee. After reviewing all comments received, TSA will issue a Notice in the **Federal Register** that summarizes and addresses the comments we receive, and establishes the final fee amount, after which the fee will be charged to applicants. Note that the rule text that appears in this IFR relating to fees (49 CFR 1540.209), will not have to be amended at that time because it does

not list the specific fee amounts. TSA expects that the total fee will be approximately $13 to $21, although that figure may increase or decrease as the costs involved in the calculation may change between now and when TSA issues the Notice announcing the final fee. TSA will charge a fee once the Notice is published, at which time TSA will announce the exact fee. TSA calculated the estimated fee from an estimate of the number of applicants (population), the cost of processing the applications, the cost of performing the STAs, and the cost of maintaining the information systems to support the process. Table 1 presents the methodology supporting the population estimates. Table 2, in the Costs section, presents the calculations supporting the estimated fee.

Population

TSA estimates that approximately 1,202,566 applicants would be required to complete a STA during the first five years of the program. This estimate is derived from the following population figures that have been gathered for specific segments of the regulated population.

TABLE 1—CCSP POPULATION ESTIMATES

Operational year	1st year	2nd year	3rd year	4th year	5th year	Total
Screening-Base Enrollments	18,200	195,000	328,644	.....	.....	541,844
Screening-Turnover Enrollments	6,461	75,686	192,355	192,355	192,355	659,212
Approved Validators	1,510	.....	.....	.....	.....	1,510
Grand Total	26,171	270,686	520,999	192,355	192,355	1,202,566

Costs

TSA proposes that individuals required to undergo a STA would be required to pay a fee to cover the following costs:

TABLE 2—CCSP COST ESTIMATES

Operational year	1st year	2nd year	3rd year	4th year	5th year	Total
Estimated Annual Applicants	26,171	270,686	520,999	192,355	192,355	1,202,566
Cost Components:						
Name Check	$102,067	$1,072,055	$2,223,775	$1,237,843	$1,237,843	$5,873,583
Platforms/Systems	5,584,410	2,512,723	2,229,868	2,293,938	2,358,006	14,978,945
Personnel	1,139,223	1,370,137	1,683,908	1,682,020	1,754,441	7,629,729
Grand Totals	6,825,700	4,954,915	6,137,551	5,213,801	5,350,290	28,482,257

For the STA, TSA will check each applicant's information against multiple databases and other information sources. The threat assessment process includes an appeals process for individuals who believe the records upon which TSA bases its determination are incorrect.

TSA would need to implement and maintain the appropriate systems, resources, and personnel to process applicant information and to allow TSA to receive, and act on, the results of the STA.

TSA estimates that the total cost of STA services will be $28,482,257 over five years. The estimate for STA services includes $5,873,583 for TSA name-based checks, $14,978,945 for platforms/systems costs, and $7,629,729 for personnel necessary to facilitate the STA processing.

Total Fee

The fee TSA establishes for the STA should cover all costs related to the STA process. TSA estimates that the resulting applicant charge would be $13 to $21 per applicant, based on the total estimated cost of services provided ($28,482,257). A portion of this total cost will be funded through a $5,875,000 Congressional appropriation. Therefore, the fee will cover only the remaining $22,607,257 in program costs. The remaining cost of $22,607,257 will be divided by the estimated population (1,202,566) receiving the service. The resulting $13 to $21 estimated fee will be sufficient to fully recover the remaining STA costs.

TSA will continue to work to minimize all costs. Additionally, pursuant to the Chief Financial Officers Act of 1990 (Pub. L. 101–576, 104 Stat. 2838, Nov. 15, 1990), DHS/TSA is required to review fees no less than every two years (31 U.S.C. 3512). Upon review, if TSA finds that the fees are either too high (that is, total fees exceed the total cost to provide the services) or too low (that is, total fees do not cover the total costs to provide the services), TSA will adjust the fee. Finally, TSA will be able to adjust the fees for inflation following publication of the final rule. If TSA were to adjust the fees for this reason, TSA would publish a notice in the **Federal Register** notifying the public of the change.

TSA invites comment on the proposed fee of $13 to $21 and the methodology and population estimates we used to arrive at this amount.

Revised § 1540.209 provides that TSA will calculate fees for STAs based on widely accepted accounting principles and practices and in accordance with the provisions of 31 U.S.C. 9701 and other Federal law that may affect the collection, computation, or issuance of fees.

Part 1544—Aircraft Operator Security: Air Carriers and Commercial Operators and Part 1546—Foreign Air Carrier Security

Scope

Part 1544 and part 1546 apply to a variety of operators, including different sizes of passenger aircraft and all-cargo aircraft, by U.S. operators and foreign air carriers, respectively. This rule does not apply to all such operators. The requirement to comply with the enhanced cargo screening requirements in the 9/11 Act and this rule apply only

to U.S. aircraft operators under § 1544.101(a) and to foreign air carriers under §§ 1546.101(a) and (b). *See* 49 CFR 1544.205(g) and 1546.205(g). The operators that must comply are air carriers or commercial operators under FAA rule 14 CFR part 119 (which are U.S. operators), and foreign air carriers, in scheduled or public charter passenger operations with an aircraft having a passenger seating configuration of 61 or more seats, or that will provide deplaned passengers access to a sterile area of an airport or will enplane passengers from a sterile area. *See* 49 CFR 1540.5, 1544.101(a), and 1546.101(a) and (b). This rule does not apply to general aviation operators.

The 9/11 Act covers cargo originating in the United States as well as cargo destined to the United States from foreign countries. TSA is taking a two-pronged approach to addressing the 100 percent screening mandate for cargo loaded in the United States and cargo loaded outside the United States that is inbound to the U.S. This rule and the CCSP, which require TSA regulatory oversight and enforcement authority for the entire air cargo supply chain, apply only to cargo loaded in the United States. TSA does not have this same regulatory reach to the entire supply chain in the international realm [5] and therefore is taking a different approach to implementing the 9/11 screening mandate for inbound cargo. This approach focuses on harmonization efforts including bi-lateral and multilateral agreements, working on updating International Civil Aviation Organization (ICAO) standards, and applying risk assessment for inbound cargo. Note that U.S. aircraft operators and foreign air carriers that load cargo in other countries inbound to the United States must carry out security measures for that cargo that are set out in their TSA-approved or accepted security programs.

Sections 1544.205 and 1546.205—Acceptance and Screening of Cargo

Section 1544.205 sets forth the requirements for the acceptance and screening of cargo by aircraft operators. Current § 1544.205(e) provides that a full program operator may only accept cargo from a shipper, aircraft operator, foreign air carrier, or indirect air carrier. This rule revises § 1544.205(e) to allow full-program operators to accept screened cargo from a CCSF.

New paragraph (g) includes the major revisions to comply with the 9/11 Act mandates for air cargo screening. TSA adds new paragraph (g)(1) to this section, which provides that, with respect to cargo loaded within the United States, full-program operators must have ensured that at least 50 percent of its cargo was screened prior to transport by February 3, 2009, and that 100 percent will be screened by August 3, 2010.

TSA adds new paragraph (g)(2), which explains the methods of screening identified in the 9/11 Act, including physical examination or non-intrusive methods of assessing cargo such as x-ray systems, explosive detection systems, explosives trace detection, and explosives detection canine teams certified by TSA.

TSA adds new paragraph (g)(3), which imposes requirements for screening methods and identifies who may conduct screening. The following persons may conduct screening: The aircraft operator on an airport; another aircraft operator or foreign air carrier under the Aircraft Operator Standard Security Program or Foreign Air Carrier Model Security Program; or a CCSF.

TSA is harmonizing, to the extent practicable, all requirements for air cargo screening and chain of custody. Aircraft operators now conduct most of their cargo screening on-airport in accordance with their security programs and that will continue. Under section 1544.205(b), aircraft operators must ensure that cargo is screened for any unauthorized explosives as specified in their security programs. If they screen off-airport, however, to promote consistent chain of custody requirements that ensure that the cargo remains safe and secure from the time of screening until the cargo is transported on a passenger aircraft, new § 1544.205(g)(3) provides that an aircraft operator who screens cargo off-airport must be certified as a CCSF. This ensures that all screening conducted off-airport be subject to the same requirements of part 1549, including the same chain-of-custody requirements.

The phrase ''on airport'' in paragraph (g)(3) has the same meaning as in 49 CFR 1542.205(a)(3). Under that paragraph all areas on-airport that are used for certain cargo functions, including screening, must be a security identification display area (SIDA). A SIDA is that portion of an airport within the United States, specified in the security program, in which individuals must display an airport-issued or approved ID and carry out other security measures. 49 CFR 1540.5 and 1542.205. Personnel screening cargo in such areas are subject to all SIDA requirements including ID media, STAs and CHRCs. TSA has provided guidance regarding what ''on-airport'' means under § 1542.205(a)(3), and the same guidance applies to § 1544.205(g)(3) in this rule. ''On-airport'' cargo screening facilities include cargo screening facilities that—

- Are located on the AOA or border the AOA perimeter, as the Airport Security Program (ASP) defines the perimeter's boundary; and
- Share a wall with the AOA perimeter boundary, such that an individual could enter from the public side and exit the facility into the AOA or secured area.

Facilities located entirely outside these areas, including where there is public area between the facility and one of these areas, are ''off-airport.'' The Federal Security Director (FSD) for each airport determines whether a facility is on-airport or off-airport for these purposes.

Under new paragraph (g)(4), if the operator accepts screened cargo from a CCSF, the operator must verify that there has been no break in the chain of custody for the screened cargo between the time of screening and the time the CCSF tenders it to the aircraft operator. If a break has occurred, the aircraft operator must re-screen the cargo prior to transporting it on a passenger aircraft.

In this rule, TSA has amended the text currently located at § 1546.205, which applies to foreign air carriers, to make the text essentially the same as the corresponding provisions in § 1544.205 regarding domestic aircraft operators.

Sections 1544.228, 1546.213, and 1548.15—Access to Cargo and Cargo Screening: Security Threat Assessments for Cargo Personnel in the United States

We amend § 1544.228 to clarify which persons must undergo an STA. Individuals must undergo an STA as specified in the appropriate security programs if they meet any of the following conditions:

- Are authorized by the aircraft operator to have unescorted access to cargo and have knowledge that such cargo will be transported on a passenger aircraft;
- Have unescorted access to cargo that has been screened for transport on a passenger aircraft;
- Perform certain functions related to the transportation, dispatch, or security of cargo for transport on a passenger aircraft or all-cargo aircraft; or
- Screen cargo or supervise the screening of cargo.

[5] For example, while TSA regulates both air carriers and indirect air carriers (IACs) domestically, and has regulatory authority over U.S.-bound foreign air carriers, TSA does not have direct authority over foreign IAC equivalents. Through the CCSP, TSA is expanding the domestic screening requirements beyond the aircraft operators and foreign air carriers, to include manufacturers, shippers, IACs, and other entities.

Section 1546.213 makes similar clarifications that apply to foreign air carriers. Section 1548.15 makes similar clarifications that apply to IACs. *See* the discussion of 49 CFR part 1540, subpart C, for a full description of the threat assessment process.

Part 1544 Subpart E and Part 1546 Subpart E—Screener Qualifications

We are removing outdated material in subpart E of parts 1544 and 1546, which apply when the aircraft operator or foreign air carrier conduct screening. TSA added these subparts when the civil aviation security rules were transferred from the FAA to TSA (Civil Aviation Security Rules, 67 FR 8340, Feb. 22, 2002). At that time, TSA included in the rule the screener qualifications and training requirements for aircraft operators and foreign air carriers that were applicable at the time. TSA also included additional requirements for screeners that would apply after November 19, 2002. The rule referred to these as ''current screeners'' and ''new screeners.'' The new screener requirements became effective several years ago, so we have deleted these outdated sections.

Note that while TSA conducts all screening of passengers and their property in the United States for aircraft operators under a full program under § 1544.101(a), and for foreign air carriers under program under § 1546.101(a) and (b), the aircraft operators and foreign air carriers continue to conduct some passenger and checked baggage screening, such as for certain private charter operations and for certain operations departing locations outside of the United States. They also conduct cargo screening. Thus we continue to have a need for the requirements in subpart E of parts 1544 and 1546.

Part 1549—Certified Cargo Screening Program

Section 1549.1—Applicability

This new part applies to each facility that applies for TSA certification as a CCSF or operates as a CCSF. The regulatory text does not limit who may apply to be certified as a CCSF. Examples of facilities that may apply include: Manufacturers; third party logistics companies; IACs; warehouses, distribution centers and other entities, if they own a facility that directly tenders cargo to an IAC, an aircraft operator, foreign air carrier, or another CCSF for transport on a passenger aircraft. For example, a manufacturer could physically inspect the box prior to closing it and initiating chain of custody, then tender the cargo to a third party logistics company who is a CCSF, who then tenders it to the aircraft operator for transport on a passenger aircraft. If the CCSF could transfer the cargo to a non-regulated entity, it would be difficult to ensure that the chain of custody measures remained intact when the non-regulated entity tendered the cargo to the aircraft operator.

Certifications will apply to a single facility, not to a single company owning several locations where screening would occur, because security measures and the level of security will vary from one facility to another. TSA must evaluate and make a determination on the security measures of the specific facility applying for certification.

Section 1549.3—TSA Inspection Authority

This section codifies TSA's inspection authority. Section 1549.3(a) provides that a CCSF must allow TSA, at any time or place, to enter the facility and make any inspections or tests to determine compliance of the CCSF. These areas may include areas off of the airport or areas operated by the CCSF's agent in furtherance of the CCSF's security responsibilities. Section 1549.3(b) explains that a CCSF must provide evidence of compliance with this part, if TSA requests such evidence.

Section 1549.3(a) states that the CCSF must allow TSA and other authorized DHS officials, at any time and in a reasonable manner, without advance notice, to enter, inspect, and test as necessary to carry out TSA's security-related duties. We note that the CCSF potentially may operate at all hours of the day. Even when the CCSF is not in operation it must maintain access control measures to, for instance, secure any screened cargo at the facility from entry by an unauthorized person. This section makes clear TSA's authority, and is based on similar sections that apply to airport operators, aircraft operators, and IACs. *See* 49 CFR 1542.5, 1544.3, 1546.3, and 1548.3. TSA may enter and be present, at any time, areas where a CCSF carries out security measures. TSA inspectors may enter without access media or identification media issued or approved by such a facility, but they will have TSA-issued identification credentials. TSA may copy records, to determine compliance of the facility with applicable regulations, statutory requirements, security programs, directives, or other requirements. Certified cargo screening facilities must allow TSA inspectors to perform these functions, regardless of whether the inspectors provide advance notice of an inspection.

TSA has statutory authorities and responsibilities that support this extensive authority to conduct compliance inspections. For example, TSA must be able to inspect at any time in order to carry out its security-related statutory and regulatory authorities, including the following authorities in 49 U.S.C. 114(f):

(2) Assess threats to transportation.

(7) Enforce security-related regulations and requirements.

(9) Inspect, maintain, and test security facilities, equipment, and systems.

(10) Ensure the adequacy of security measures for the transportation of cargo.

(11) Oversee the implementation, and ensure the adequacy, of security measures at airports and other transportation facilities.

(15) Carry out such other duties, and exercise such other powers, relating to transportation security as the Assistant Secretary considers appropriate, to the extent authorized by law.

Because the transportation system may be compromised by the introduction of an Improvised Explosive Device (IED) or other destructive instrument, the authority for transportation security necessarily includes authority to inspect, as necessary, the facilities that screen cargo prior to aircraft operators' acceptance of that cargo on passenger aircraft. The law does not limit TSA to protecting the security of cargo only while it is on a particular vehicle of transportation, but extends to the entire transportation system. The statute references TSA's responsibility to protect security facilities and transportation facilities.[6] Thus, TSA has explicit authority to inspect all parts of certified cargo screening facilities that relate to screening, including loading and unloading areas, areas where screening and storage occur, and areas where CCSFs prepare or maintain records pertaining to compliance with TSA's requirements. Although TSA has the broad legal authority described above, TSA will conduct inspections in a reasonable manner consistent with TSA guidance for its inspectors.

Section 1549.5—Adoption and Implementation of the Security Program

Section 1549.5 is very similar to § 1548.5 on the Adoption and Implementation of the Security Program for IACs. Section 1549.5(a) specifies that no person may screen cargo to be tendered to an aircraft operator with a full program under part 1544, a foreign air carrier operating under §§ 1546.101(a) or (b) or an indirect air

[6] 49 U.S.C. 114(f)(9) and 114(f)(11).

carrier operating under § 1548.5 for carriage on a passenger aircraft, unless that person holds and carries out an approved security program.

Section 1549.5(b) describes the required content of each security program and provides that the security program must be designed to protect against the entry into the aircraft of any unauthorized explosive, incendiary, and other destructive substance or item.

Section 1549.5(c) makes clear that the CCSF is responsible to ensure that their agents and employees carry out the CCSF's security program.

Section 1549.5(d) provides that alternate procedures and amendments to the security program are all part of the CCSF's security program that the CCSF must comply with.

Paragraph (e) is parallel with 49 CFR 1548.5(d), providing basic requirements on the availability of the security program to the firm's personnel and to TSA, and requirements to protect the security program as SSI.

Section 1549.7—Approval, Amendment, Renewal of the Security Program and Certification of a Certified Cargo Screening Facility

To participate as a CCSF, the applicant must apply for a security program and for certification as a CCSF at a particular location in a form and manner prescribed by TSA not less than 90 calendar days before the applicant intends to begin operations. TSA will only approve a facility to operate as a CCSF if the facility is located in the United States. For example, TSA will not allow a CCSF to be located in Canada and truck cargo to the U.S. for loading onto passenger aircraft. TSA must be able to inspect readily the facility for compliance with TSA requirements.

The applicant must provide information about the business; information about the key individuals at the business (including their names and copies of their identification); and information required for TSA to conduct STAs of the applicant's employees and senior managers. 49 CFR 1549.7(a)(1).

After the Security Coordinator for an applicant successfully completes an STA, TSA will provide the applicant with the certified cargo screening standard security program. This program is SSI and cannot be shared with unauthorized persons. The applicant may accept the standard program or submit a proposed modification. 49 CFR 1549.7(a)(2)(i). Once the applicant has the security program it can determine how it will meet the requirements of the security program. The applicant must then be assessed by either a TSA-approved validator under 49 CFR part 1522 or by TSA. 49 CFR 1549.7(a)(2)(ii).

Under §§ 1549.7(a)(3), (4), and (5), a CCSF at a particular location may begin screening operations after (1) TSA has reviewed the assessment prepared by the validator and approved and certified the facility, and (2) after the CCSF has successfully completed the training and STAs required under part 1549. Section 1549.7(b) provides that certified cargo screening facilities must apply for a renewal of certification every 36 months, providing the information that TSA requires. Generally, the security program will be a standard program provided by TSA.

Sections 1549.7(c), (d), and (e) include provisions allowing applicants to request amendments to the security program and allowing TSA to amend security programs if warranted by considerations of safety and the public interest. Except in cases of emergency, TSA-initiated amendments will comply with notice and comment procedures before they become effective.

Section 1549.101—Acceptance, Screening, and Transfer of Cargo

This section requires each CCSF to implement procedures in the security program to deter the carriage of explosives or incendiaries onboard aircraft. 49 CFR 1549.101(a). It also requires each CCSF to ensure that cargo is screened and inspected for any unauthorized explosive, incendiary, or other destructive substance or item. 49 CFR 1549.101(b). If the shipper does not consent to search or inspection of the cargo in accordance with this part, the CCSF must not offer such cargo for transport to: (1) Another CCSF, (2) an aircraft operator with a full program under 49 CFR 1544.101(a), or (3) a foreign air carrier operating under 1546.101(a) or (b). 49 CFR 1549.101(c).

Finally, § 1549.101(d) requires the CCSF to protect the cargo from unauthorized access from the time the facility screens the cargo until the time the facility tenders it to another CCSF, an IAC, an aircraft operator under part 1544, or a foreign air carrier under part 1546. These chain-of-custody requirements are central to the concept of the CCSP. The regulation does not require specific chain-of-custody controls. Based on knowledge of other programs and on the TSA cargo pilot programs, TSA expects that certified cargo screening facilities will use the following methods: tamper-evident technologies, conveyance level seals, and documented processes. The certified cargo screening standard security program will include specific requirements.

Section 1549.103—Qualifications and Training of Individuals with Security-Related Duties

In accordance with this provision, each CCSF must ensure that employees and agents who are involved in the cargo screening process or who have unescorted access to cargo that has been screened for transport on a passenger aircraft successfully undergo STAs. 49 CFR 1549.103(a). Each CCSF must also ensure that such individuals have completed the training required by TSA and have knowledge of their responsibilities under the CCSP, the STA provisions of TSA's regulations, and TSA's SSI regulations. 49 CFR 1549.103(b)–(c).

Section 1549.103(d) specifies certain qualifications for individuals performing screening. These qualifications are designed to ensure that these individuals understand the applicable security program, can communicate verbally, and are capable of operating screening equipment.

The requirements in § 1549.103(d) closely parallel the existing requirements for screeners of passengers and checked baggage found in 49 CFR 1544.405, to the extent they apply to the screening of cargo. They include the requirement that the screener be a citizen or national of the United States or be an alien lawfully admitted for permanent residence. The discussion of § 1522.117 in this section-by-section analysis explains the importance of such requirements. A screener must also have a high school diploma or equivalent and must have color perception and physical coordination sufficient to operate effectively cargo screening technologies that a CCSF would use.

Additionally, § 1540.103(d)(4) requires that the screener have the ability to read, write, and understand English well enough to carry out written and oral instructions regarding the proper performance of screening duties, or be under the direct supervision of someone who has this ability. This requirement is related to the type of work the screener does. If the screener's duties do not include reading labels, then TSA believes that such an employee need not be able to read and write English sufficiently to write log entries; a supervisor who can read and write English well enough for that purpose would satisfy that requirement. However, if the employee needs to read shipping documentation or seals on the cargo, English proficiency is required.

Section 1549.105—Recordkeeping

This provision requires each CCSF to maintain records demonstrating compliance with all applicable statutes regulations, directives, orders, and security programs. It also requires the CCSF to maintain copies of training records, documents pertaining to the application and renewal of the facility (including copies of the validator's report), documents establishing TSA's certification and renewal of certification, and records demonstrating satisfaction of the STA requirements. 49 CFR 1549.105(a). With the exception of the training records, the CCSF must retain these records until the next re-certification. 49 CFR 1549.105(b). The facility must retain records indicating satisfaction of the rule's employee training requirements for an individual for 180 days after the individual is no longer employed or acting as an agent of the CCSF. 49 CFR 1549.105(a)(1).

Section 1549.107—Corporate and Facility Security Coordinators

This section requires each facility to designate a Security Coordinator and alternate appointed at the corporate level, and a Security Coordinator and alternate appointed at each facility that will conduct screening. A corporate level Security Coordinator is needed if a single company has multiple facilities. The Security Coordinator must have corporate authority to represent and speak for the company and to serve as TSA's point of contact with that company. A facility-based Security Coordinator is needed so that TSA has a point of contact that is familiar with the operations and procedures of the particular facility certified as a CCSF. A corporate level Security Coordinator may also serve as a facility level Security Coordinator. Both Security Coordinators, or their alternates at the corporate and facility level, must be available 24 hours per day to address any adverse security incidents that may arise or to receive information from TSA or others that might jeopardize the security of the cargo handled at the facility.

Section 1549.109—Security Directives and Information Circulars

This provision requires each CCSF to comply with any security directives that TSA may issue to address a security concern that requires immediate action. TSA may issue Information Circulars, which provide information to regulated parties. These do not include mandatory security measures but provide useful information about potential threats.

Section 1549.111—Security Threat Assessments for Personnel of Certified Cargo Screening Facilities

This section requires personnel of certified cargo screening facilities to undergo the STA described in 49 CFR part 1540, subpart C. We are requiring STAs for the following individuals:

- Individuals authorized to perform cargo screening or supervise cargo screening;
- Individuals authorized to have unescorted access to cargo from the time of screening until the time it is offered to an IAC for transport on passenger aircraft, an aircraft operator under part 1544, or a foreign air carrier under part 1546;
- The senior manager or representative of the CCSFs in control of the operations; and
- Security Coordinators and their alternates.

TSA is requiring STAs for the individuals listed above to reduce the likelihood of a terrorist's gaining employment in a position with access to cargo for the purpose of introducing an explosive or other destructive substance into cargo on a passenger aircraft. Extending the STAs to such individuals in a CCSF provides a degree of security comparable to TSA's other programs, including the IAC program, in that all personnel of regulated parties with access to cargo from the time of screening until the time the aircraft operator loads it will undergo a check against the terrorist databases. For a full description of the STA process, *see* the discussion of 49 CFR part 1540, subpart C.

VI. Good Cause for Immediate Adoption

TSA is taking this action without providing the public prior opportunity for notice and comment. The 9/11 Act requires TSA to have developed a system for the screening of 50 percent of cargo transported by passenger aircraft by February 2009, and to develop a system for the screening of 100 percent of such cargo by August 2010. In 49 U.S.C. 44901(g)(2)(A), Congress specifically authorized TSA to issue an IFR ''as a temporary regulation to implement this section without regard to the provisions of chapter 5 of title 5.'' The Act further states that if TSA issues an IFR, then TSA must follow it with a final rule within 12 months of the effective date of the IFR. 49 U.S.C. 44901(g)(2)(B)(i).

TSA cannot meet the screening requirements established in the 9/11 Act for cargo loaded in the U.S. without a system in place to screen cargo off-airport by parties other than aircraft operators, as this rule will accomplish. TSA could not achieve this mandate by relying solely on aircraft operators and foreign air carriers to conduct screening. There is insufficient space and capacity for aircraft operators and foreign air carriers to screen the approximately 12 million pounds of cargo transported on passenger aircraft in the United States. Much of this cargo is gathered by IACs off-airport, consolidated into Unit Load Devises or pallets, and brought to the airport for loading on aircraft. There currently is not a way to adequately screen most consolidations of cargo without breaking them down. Aircraft operators and foreign air carriers do not have sufficient space or time to remove the cargo from the consolidations, screen it, and re-consolidate it, before loading it onto aircraft. This rule establishes more cost-effective and efficient options for CCSFs to screen the cargo off-airport before it is consolidated so that it may be taken to the airport and loaded onto aircraft with little delay. Aircraft operators, foreign air carriers, IACs, and facilities that may decide to become CCSFs must have sufficient finality in the regulations to develop their screening programs and have them fully operational in time to meet the statutory deadlines.

It would be contrary to the public interest to delay this rule. Meeting the statutory requirements for the screening of cargo on passenger aircraft with this IFR will provide substantial security benefits by providing the stakeholders with finality in the rule at an earlier stage, which will allow them to determine how best to comply with the requirements. For instance, IACs, shippers, and other facilities that choose to become CCSFs will have time to comply with the new requirements and become certified. The rationale for issuing this rule as an IFR is fully consistent with sections 553(b) and (d) of the Administrative Procedure Act (APA) (5 U.S.C. 553), which authorize agencies to issue final rules without affording the public a prior opportunity to comment is ''impracticable, unnecessary, or contrary to the public interest.''

VII. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that TSA consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or

requires through regulations. This interim final rule contains new information collection activities subject to the PRA. Accordingly, TSA has submitted the following information requirements to OMB for its review.

Title: Certified Cargo Screening Program Interim Final Rule.

Summary: Section 1602 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110–53) (August 2007) requires the development of a system to screen 100 percent of the cargo transported on a passenger aircraft operating within the United States by August 2010 and to have screened 50 percent of all air cargo by February 2009. This rule amends several parts of Title 49 of the Code of Federal Regulations (CFR) and adds new parts, as described in prior sections of this preamble. The rule creates several new information collections.

Through this rule, TSA is including the following information collections:

First, an entity that seeks to become a CCSF under 49 CFR part 1549 must submit an application to TSA.

Second, a validator from a TSA-approved validation firm must assess each CCSF every three years. An entity that seeks to become a TSA-approved validation firm under 49 CFR part 1522 must submit an application to TSA.

Third, TSA must conduct STAs for key personnel of CCSFs and validation firms. The key personnel must submit personal data to TSA for the STAs. This STA portion is a previously approved collection under OMB control number 1652–0040, but this IFR expands the population from which the information is collected.

Fourth, CCSFs and TSA-approved validation firms must accept or submit security programs for approval. CCSFs must accept a standard security program provided by TSA or submit a proposed modified security program to the designated TSA official for approval initially and periodically thereafter as required. Validation firms must accept a standard security program provided by TSA or submit a proposed modified security program to the designated TSA official for approval initially and periodically thereafter as required. The validation firm must also submit a supplement to the security plan that specifies processes and procedures that the firm will use to maintain the qualification of its validators and its personnel assisting validators with assessments to the designated TSA official for approval.

Fifth, CCSP participants, indirect air carriers, and TSA-approved validation firms must maintain records of compliance with the IFR and make them available for TSA inspection (*see* 49 CFR 1522.129 and 1549.105).

Sixth, TSA-approved validation firms must submit their validators' assessments of CCSFs to TSA.

Finally, CCSFs and air carriers must submit TSA-determined monthly cargo screening metrics to TSA.

Use of: TSA will use the applications of entities seeking to become CCSFs to approve the entity as a CCSF. TSA will use the applications of entities seeking to become TSA-approved validation firms to approve the entities as approved validation firms. TSA will collect personally identifiable information from CCSFs, validation firms, and indirect air carriers about their key personnel in order to conduct STAs on these individuals, which is an important security measure that should apply to individuals who screen cargo and have unescorted access to screened cargo as well as to other key individuals. CCSF and validation firm security programs are necessary because they contain specific measures to deter incidents that may jeopardize transportation security. CCSFs must maintain records and provide TSA-approved validators access to their records, equipment, and facilities necessary for the validators to conduct assessments. TSA will require the validators to submit their assessment reports to TSA in a manner and form prescribed by TSA, and to also retain validation reports that they have prepared for a minimum of 36 months. TSA will use the reports to determine whether CCSFs and validation firms are complying with TSA regulations. Finally, CCSFs and TSA-approved validation firms must submit security programs for approval. These security programs contain specific measures to deter incidents that may jeopardize transportation security. TSA requires CCSFs to provide information on the amount of cargo screened at an approved facility in order to evaluate the compliance and performance of the CCSFs and to provide information needed for congressional reporting and future rulemaking relating to air cargo security.

Respondents (including number of): The likely respondents to this proposed information requirement are the 22,541 entities that seek to become CCSFs under 49 CFR part 1549 and the 83 entities that seek to become TSA-approved validation firms.

Frequency: CCSFs will submit an application for recertification every three years. The rule will require CCSFs to submit an application once annually. TSA estimates that CCSFs, TSA-approved validation firms, and indirect air carriers will submit personally identifiable information of their key personnel so that TSA can conduct STAs every five years. The rule will require CCSFs and validation firms to accept or submit a security program once, and TSA estimates CCSFs will submit updates to their security program on average once annually. TSA estimates that validators will submit their assessment reports to TSA as frequently as they perform the assessments. The recordkeeping requirements will be continuous. The requirement for CCSFs to provide information on the amount of cargo screened and other screening data at an approved facility will be a monthly collection.

Annual Burden Estimate: TSA estimates that the 7,514 entities who will seek to become CCSFs annually will spend approximately 2 hours each to complete the applications for an annual burden of 15,028 hours. TSA estimates that the 28 entities who will seek to become TSA-approved validation firms annually will spend approximately 30 minutes each to complete the applications for an annual burden of 14 hours. TSA estimates 312,433 annual responses from CCSFs, validation firms, and indirect air carriers and the time spent annually submitting personally identifiable information of key personnel for TSA to conduct STAs for an annual burden of 78,108 hours. The time to complete an STA application is estimated at 15 minutes per individual. TSA has estimated that a total of 16,989 CCSFs and validation firms will adopt their security programs for an average of 5,663 security programs annually. Each firm will devote approximately 42 hours to their initial security program, resulting in an annual burden of 237,846 hours. TSA has estimated that a total 31,589 CCSFs and validation firms will be required to maintain and update their security programs for an average of 10,530 security programs updated annually. Each firm will devote approximately 4 hours each annually, beginning in the second year, updating their security programs for an annual hour burden of 42,119. TSA estimates all CCSFs and validation firms will be required to maintain records of compliance with the IFR. This includes a time burden of approximately 5 minutes (0.083 hours) for every CCSF and validation firm employee who is required to have an STA as well as other records of compliance. This also includes validation firm filings of validation assessment reports, resulting in 312,433 annual record updates. TSA

estimates an annual burden of approximately 25,932 hours. TSA estimates that 28 TSA-approved validation firms will spend approximately 4 hours each annually to prepare their findings and submit them to TSA, for annual burden of 22,541 hours. TSA estimates that 5,635 CCSFs will complete monthly cargo reports at an estimated time of one hour per week for an estimated annual burden of 293,037 hours.

INFORMATION COLLECTION AND HOUR BURDEN SUMMARY

[17,117 unique respondents over 3 years]

Function	Annual respondents	Annual responses	Time per response	Annual hours (3-year total)	TSA Form Number	Regulation cite
CCSF Applications	(Initial application is a one time collection, re-certification is every three years)					
One Year	7,514	7,514	2 hours	15,028	419E	§ 1549.7
Three Years	22,541	22,541	2 hours	45,083	419E	§ 1549.7
Validation Firm Applications	Annual collection					
One Year	28	28	.5 hours	14	419G	§ 1522.107
Three Years	83	83	.5 hours	42	419G	§ 1522.107
STA Applications	Collected every five years after initial application					
One Year	312,433	312,433	.25 hours	78,108	419F	§§ 1549.11 & 1549.103
Three Years	937,300	937,300	.25 hours	234,325	419F	§§ 1522.117 & 1522.121
Security Programs Creations	One time collection					
One Year	5,663	5,663	42 hours	237,846		§ 1522.105
Three Years	16,989	16,989	42 hours	713,538		§ 1522.105
Updates	Once annually					
One Year	10,530	10,530	4 hours	42,119	N/A	§ 1549.5
Three Years	31,589	31,589	4 hours	126,356		§ 1549.5
Recordkeeping	Continuous as needed					
One Year	312,433	312,433	.083 hours	25,932	N/A	§§ 1549.105 & 1522.129
Three Years	937,300	937,300	.083 hours	77,796		§§ 1549.105 & 1522.129
Validation Assessment Reports	Continuous as needed					
One Year	28	5,635	4 hours	22,541	N/A	§ 1522.127
Three Years	83	16,906	4 hours	67,624		§ 1522.127
Cargo Reporting	Monthly collection					
One Year	5,635	67,624	52 hours	293,037	N/A	§ 1549.105
Three Years	16,906	202,872	52 hours	879,112		§ 1549.105
CCSF Subset—1 year	121	1,452	2.5 hours	3,630	N/A	§ 1549.105
TOTAL for One Year	654,385	723,312		718,255		
TOTAL for Three Years	1,962,791	2,165,580		2,143,875		

TSA requests comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirements by November 16, 2009. Direct the comments to the address listed in the **ADDRESSES** section of this document, and fax a copy of them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS–TSA Desk Officer, at (202) 395–5806. A comment to OMB is most effective if OMB receives it within 30 days of publication.

As protection provided by the Paperwork Reduction Act, as amended, 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.

VIII. Economic Impact Analyses

A. Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 (EO 12866), Regulatory Planning and Review, directs each Federal agency to 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 (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) 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).

TSA has prepared a separate detailed analysis document which is available to the public in the docket. With respect to these analyses, TSA provides the following conclusions and summary information:

- This rule is considered to be an economically significant rule within the definition of EO 12866, as estimated annual costs or benefits exceed $100 million in any year. TSA has included the mandatory OMB Circular A–4 Accounting Statement in the separate analysis document and thus has not repeated it here.
- Under the Regulatory Flexibility Act of 1980, an agency need not publish a formal analysis of the impact to small entities with the interim final rule. Therefore, TSA has not determined whether or not this interim final rule will have a significant impact on a substantial number of small entities.
- This regulatory evaluation provides the required assessment of the Trade Agreement Act of 1979.
- The regulatory evaluation provides the required written assessment of Unfunded Mandates. This interim final rule is not likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, of $100 million or more annually (adjusted for inflation). However, because the rule is economically significant as defined by Executive Order 12866, it does have an unfunded mandate impact on the economy as a whole. The separate analysis of the costs and benefits of the rule satisfies the requirements of the Unfunded Mandates Reform Act.

B. Executive Order 12866 Assessment

This IFR is a major rule within the definition of Executive Order (EO) 12866, as annual costs or benefits to all parties exceed the $100 million threshold in any year. TSA has not identified any significant economic impacts for each of the required analyses of small business impact, international trade, or unfunded mandates. This summary highlights the costs and benefits of the rule.

Costs

This section summarizes the types of costs of this rule, which would be borne by five relevant parties: CCSFs, non-CCSF entities that receive screened cargo from CCSFs, validation firms, aircraft operators (including, in this context, both U.S. aircraft operators and foreign air carriers), and TSA. A summary table at the end of this section provides an overview of the cost estimates. The following paragraphs provide brief descriptions of the cost components. This rule will require expenditures by CCSFs, approved validation firms, and aircraft operators. CCSFs and approved validation firms must adopt security programs and, in the case of CCSFs, undergo assessment of their security measures by a TSA-approved validation firm prior to joining the program. CCSFs and validation firms must complete TSA-conducted STAs for individuals who will be screening cargo or who have unescorted access to screened cargo, as well as for personnel supporting these functions. CCSFs and validation firms must employ security coordinators and alternates.

CCSFs must also implement training for individuals who perform security-related duties. CCSFs may need to purchase equipment to perform their responsibilities under this program. Validation firms will need to pay for training for individuals involved in conducting assessments. Aircraft operators will need to purchase equipment and hire personnel to handle their additional screening burdens.

TSA will incur costs to implement the rule. These will include the costs associated with reviewing applications and security programs, reviewing validation reports, conducting STAs, and inspecting CCSFs and validation firms. In addition, TSA will incur the cost of developing or approving training programs for validation firms and TSA employees and of developing the Air Cargo Data Management System. Total TSA costs can be found in the Total section in Table 1, and in Table 32 of the Regulatory Evaluation.

Total

In summary, over the 10-year period of the analysis, TSA estimates the aggregate costs of this rulemaking to total approximately $2.8 billion, undiscounted. Discounted at seven percent, the cost is $1.9 billion, and discounted at three percent, the cost is $2.4 billion. Additionally, industry will bear a cost for delayed shipment of cargo estimated at $297.1 million over the 10-year analysis period ($203.1 million discounted at seven percent and $250.4 million discounted at three percent). The regulatory impact analysis provides detailed estimates of these costs.

TSA anticipates bearing costs to administer the provisions of the rulemaking at $384 million over the 10-year analysis period.

TSA presents details in the regulatory impact analysis on how it developed these estimates. The following table displays the annual costs of the rule over the 10-year analysis period. The total is broken out by costs to TSA; costs to industry, estimated using the U.K. Known Consignor program as a proxy for screening fees; and the estimated delay costs due to screening. The TSA total represents the estimated costs TSA will incur to implement the CCSP and enforce compliance. The industry cost is estimated using the U.K. fee proxies and accounts for the 70 percent of cargo shipped on passenger planes expected to be screened at CCSFs as well as the additional fifteen percent that aircraft operators are expected to screen. The delay cost assumes the 30 percent of cargo expected to be screened by the aircraft operators will be the only cargo subject to delay.

TABLE 1—10-YEAR TOTAL COST SUMMARY OF CCSP

[$millions]

Year	TSA cost	Industry cost	Delay cost	Total cost	Discounted (3 percent)	Discounted (7 percent)
1	$62.1	$171.3	$23.6	$257.0	$249.5	$240.2
2	24.5	179.9	24.8	229.3	216.1	200.2
3	25.7	188.9	26.0	240.7	220.3	196.5
4	35.4	198.4	27.3	261.1	232.0	199.2
5	28.7	208.3	28.7	265.6	229.1	189.4
6	38.8	218.7	30.1	287.7	240.9	191.7
7	43.5	229.6	31.7	304.8	247.8	189.8
8	37.1	241.1	33.2	311.4	245.8	181.2
9	38.9	253.2	34.9	326.9	250.6	177.8
10	49.4	265.8	36.6	351.8	261.8	178.9
Total	384.2	2,155.1	297.1	2,836.4	2,394.0	1,945.0
Low	262.4	1,795.9	281.5	2,339.9	1,974.7	1,604.0
High	512.8	2,514.3	318.9	3,346.0	2,824.3	2,294.8

100 Percent Aircraft Operator Screening

As an alternative to establishing the CCSP, TSA considered meeting the statutory requirements by having aircraft operators screen cargo intended for transportation on passenger aircraft—that is, continuing the current cargo screening program but expanding it to 85 percent of air cargo on passenger aircraft. TSA estimates that the remaining fifteen percent will be transferred to alternate means of transportation due to the increased delays and costs of shipping this IFR might incur. The cost of the modal shift assumed by TSA was not estimated as the cost components of this shift would be difficult to estimate. Under this alternative, aircraft operators would bear the costs of screening additional cargo, and industry would bear significant costs because of delays. TSA would not incur costs as a result of this alternative. TSA currently requires aircraft operators to screen cargo intended for transport on passenger aircraft at levels set out in their security programs. As a result, TSA would not have to take any new action.

Under this alternative, the cost drivers for this alternative are screening equipment, personnel for screening, training of personnel, and delays. Delays are the largest cost component, totaling $7.0 billion over 10 years, undiscounted. In summary, the undiscounted 10 year cost of the alternative is $11.1 billion. Discounted at three percent, the cost is $9.4 billion and discounted at seven percent, the cost is $7.7 billion. The following table presents the costs of the 100 percent aircraft operator screening alternative, as well as high and low variations and totals discounted at 3 percent and 7 percent.

TABLE 2—10-YEAR TOTAL COST SUMMARY OF 100 PERCENT AIR CARRIER SCREENING

[$millions]

Year	Equipment	Personnel	Training	Domestic delays	Total	3% Discount	7% Discount
1	$85	$307	$4.9	$613	$1,009	$980	$943
2	10	322	2.7	631	965	910	843
3	10	338	2.9	649	1,000	915	816
4	10	355	3.0	668	1,035	920	790
5	10	373	3.2	687	1,073	925	765
6	10	391	3.3	707	1,112	931	741
7	10	411	3.5	728	1,152	937	718
8	85	431	3.7	750	1,269	1,002	739
9	10	453	3.8	772	1,239	950	674
10	10	476	4.0	796	1,286	957	654
Total	249	3,856	35.0	7,002	11,142	9,427	7,683
Low	187	2,892	26	5,251	8,356	7,070	5,762
High	311	4,820	44	8,752	13,927	11,784	9,603

Benefits

The interim final rule will allow for more standard governance in cargo screening and will provide benefits in terms of increased security of commercial passenger aviation. The benefits are four fold. First, the passenger airline industry will be more firmly protected against an act of terrorism or other malicious behaviors by the screening of 100 percent of cargo shipped on passenger aircraft; currently, only a portion of this cargo is screened before being loaded onto the plane. Second, allowing the screening process to occur throughout the supply chain via the CCSP will reduce potential bottlenecks and delays at the aircraft operators. Third, the interim final rule will allow market forces to identify the most efficient venue for screening along the supply chain. As the most cost-effective venue for screening varies widely depending on the type of goods being shipped on passenger aircraft operators, the interim final rule will permit any entity on the supply chain to apply for TSA certification to screen cargo and apply chain-of-custody procedures to secure that cargo. Finally,

validation firms will perform assessments of the entities that become CCSFs. These assessments will enable TSA to set priorities for compliance inspections while leveraging TSA inspectors with vetted and trained validation firms, thereby adding an extra layer of security.

Alternatively, TSA has assessed the benefits of this rule via a break-even analysis of the cost of the reduction in risk with the dollar amount of the benefit from the rule. The break-even analysis illustrates the tradeoff between program costs and program benefits. For purposes of the analysis, TSA evaluated four scenarios in which an explosive device was placed in the aircraft's cargo hold via air cargo and detonated, destroying the airplane and all passengers and crew on board. For each scenario, TSA derived a total monetary cost of consequence from an estimated value of the statistical human lives lost and the value of the plane (including cargo) destroyed. TSA obtained a value of the monetary cost of an attack under a certain probability (the value of which equals the total estimated monetary cost of the attack multiplied by the probability of an attack of that nature over a year-long time period) and compared it to the undiscounted, annualized cost of the CCSP to estimate how often an attack of that nature would need to be averted for the expected benefits to equal costs.

Table 3 summarizes the results of the break-even analysis, based on the 10-year cost of the rule, annualized at seven percent. Below we describe the four scenarios that we used in that analysis. To judge the value or effectiveness of this IFR in the context of these scenarios, it is necessary to compare the extent of monetary consequence from a successful attack with the cost of a program like the IFR that would be deployed to reduce the risk or likelihood of such an attack being successfully undertaken.

The first scenario describes the impact of a situation in which an explosive device placed in the cargo shipped on the flight in the belly of the plane destroys a standard narrow body aircraft (from the fleets used by major U.S. aircraft operators) during flight. This incident results in the loss of the lives of all passengers and crew members on board, along with the total destruction of the airplane. TSA estimated 119 total people to be on board, including both passengers and crew. The value of these statistical lives is approximately $690.2 million in 2006 U.S. dollars, based on the Department of Transportation Value of a Statistical Life (VSL) estimation of $5.8 million per person. The estimated aircraft cost is just under $17 million on average, again in 2006 dollars. Adding these two together, and assuming no damage on impact to the crash site, TSA estimates the total monetary consequence of the attack at $707.2 million.

The second scenario depicts a situation where an explosive device placed in the cargo shipped on the flight in the belly of the plane destroys an average U.S. commercial passenger aircraft (from the fleets used by major U.S. aircraft operators) in flight. This attack results in loss of life for passengers and crew members, along with complete destruction of the aircraft. Based on data reported in the FAA Critical Values Guidance, there is an assumed loss of 133 lives (128 passengers and 5 crew members), along with an assumed complete loss of the aircraft, which on average would be valued at $22 million in 2006 dollars. The monetary estimate associated with the loss of life is $771 million. Combining the loss of life monetary estimate with the weighted average aircraft market value, TSA estimates the total monetary consequence of this scenario at $793 million.

The third scenario depicts a situation where an explosive device placed in the cargo shipped on the flight in the belly of the plane destroys an average U.S. commercial passenger wide-body aircraft (from the fleets used by major U.S. aircraft operators) in flight. This attack scenario, like the first scenario, results in loss of life for passengers and crew members, along with complete destruction of the wide-body aircraft. Based on data reported in the FAA Critical Values Guidance, there is an assumed loss of 210 lives (202 passengers and 8 crew members) along with the complete loss of the aircraft, which on average would be valued at $49.6 million in 2006 dollars. Using the DOT VSL of $5.8 million, the monetary estimate associated with the loss of life is $1.22 billion. Combining the loss of life monetary estimate with the weighted average aircraft market value, TSA estimates the total monetary consequence of this scenario at $1.27 billion.

The fourth scenario is an extension of the third that takes into account a situation involving multiple planes destroyed by an explosive device. In our case, four wide body aircraft are the targets of the attack. Our estimation of the monetary damage took the value of the single wide body aircraft attack and multiplied that total monetary consequential amount by a factor of four. Therefore, the resulting estimate of monetary damage caused in this scenario is $5.1 billion, in 2006 dollars. This includes approximately 840 passenger and crew member lives lost, and an estimated $198.2 million loss due to the destruction of the four wide body airplanes.

The table below presents the number of attacks averted (expressed as a number of years between attacks), required for the IFR to break even under each of the four scenarios. In this analysis the comparison is made between the estimated scenario consequence and the seven percent discount annualized Air Cargo Screening IFR cost of $276.9 million; the ''required risk reduction in attack frequency'' for break-even can be derived as the multiplicative inverse of the ratio between this annualized program cost and the scenario consequence total (a ratio which expresses a breakeven annual likelihood of attack). As shown in the following table, the rule will need to reduce the existing or baseline frequency of terror attack by one attack every 2.6 years for Scenario 1, one attack every 2.8 years for Scenario 2, one attack every 4.5 years for Scenario 3, or one attack every 18.2 years for Scenario 4 in order for the IFR to break even.

TABLE 3—FREQUENCY OF ATTACKS AVERTED FOR PASSENGER AIR CARGO SCREENING IFR COSTS TO EQUAL EXPECTED BENEFITS, BY ATTACK SCENARIO

[Annualized at 7 percent]

Attack scenario	Lives lost	Valuation at $0.0058 M ($ billion)	Avg. aircraft market value ($ billion)	Property loss ($ billion)	Total consequence ($ billion)	Attacks averted by air cargo sec to break-even
	A	B = A × 0.0058	C	D	E = B + C + D	= E ÷ $276.9 **
1. Narrow Body Target	119	$0.69	$0.017	$0.0	$0.71	One every 2.6 years.

TABLE 3—FREQUENCY OF ATTACKS AVERTED FOR PASSENGER AIR CARGO SCREENING IFR COSTS TO EQUAL EXPECTED BENEFITS, BY ATTACK SCENARIO—Continued

[Annualized at 7 percent]

Attack scenario	Lives lost	Valuation at $0.0058 M ($ billion)	Avg. aircraft market value ($ billion)	Property loss ($ billion)	Total consequence ($ billion)	Attacks averted by air cargo sec to break-even
	A	B = A × 0.0058	C	D	E = B + C + D	= E ÷ $276.9 **
2. Avg. AO Target	133	0.77	0.022	0.0	0.79	One every 2.8 years.
3. Wide Body Target	210	1.22	0.050	0.0	1.27	One every 4.5 years.
4. Multiple Wide Body	840	4.87	0.198	0.0	5.07	One every 18.2 years.

** The total cost of the rule annualized at 7 percent.

C. Regulatory Flexibility Act Assessment

Sections 603(a) and 604(a) of the Regulatory Flexibility Act (RFA) require that, when an agency issues a interim final rule or promulgates a final rule ''after being required * * * to publish a general notice of proposed rulemaking,'' the agency must determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities and, if so, must prepare a regulatory flexibility analysis as described in the Act. For purposes of the RFA, small entities include small businesses, not-for-profit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity. These requirements do not apply where, as here, an agency issues an interim final rule. Congress explicitly authorized TSA to issue an IFR in the 9/11 Act. TSA invites comments that address whether this rule would have a significant economic impact on a substantial number of small entities. TSA will consider this information in developing the final rule.

D. International Trade Impact Assessment

The Trade Agreement Act of 1979 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. TSA has assessed the potential effect of this interim final rule and has determined that the same measures must apply to both U.S. aircraft operators and foreign air carriers loading cargo on passenger aircraft. At most, the impact of this rule creates an even competitive cost structure.

E. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and Tribal governments. Title II of UMRA 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.'' This interim final rule does not exceed this threshold with respect to State, local, and Tribal governments, because it does not require them to take any action. The impact on the overall economy, however, does exceed the threshold, resulting in an unfunded mandate on the private sector; this regulatory evaluation documents the costs and alternatives associated with this regulatory action. TSA will publish a final analysis, including its response to public comments, when it publishes a final rule.

IX. Executive Order 13132, Federalism

TSA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or 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, does not have federalism implications.

X. Environmental Analysis

We have analyzed this interim final rule under DHS Management Directive 5100.1 ''Environmental Planning Program'' (*see* also 71 FR 16790, Apr. 4, 2006), which guides DHS in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). We have concluded that this rule is part of a category of actions described in items A3, A4, A7, B3, H1 and H2 of Table 1 in Appendix A of the Management Directive. This interim final rule would not have individually or cumulatively a significant effect on the human environment and, therefore, neither an environmental assessment nor an environmental impact statement is necessary.

XI. Energy Impact Analysis

TSA has assessed the energy impact of this rule in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects

49 CFR Part 1515

Appeals, Commercial drivers license, Criminal history background checks, Explosives, Facilities, Hazardous materials, Incorporation by reference, Maritime security, Motor carriers, Motor vehicle carriers, Ports, Seamen, Security measures, Security threat assessment, Vessels, Waivers.

49 CFR Part 1520

Air transportation, Law enforcement officers, Maritime carriers, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1522

Accounting, Aircraft operators, Aviation safety, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1540

Air carriers, Aircraft, Airports, Civil aviation security, Law enforcement officers, Reporting and recordkeeping requirements, Security measures, Screening.

49 CFR Part 1542

Air carriers, Aircraft, Airport security, Aviation safety, Security measures.

49 CFR Part 1544

Air carriers, Aircraft, Aviation safety, Freight forwarders, Incorporation by reference, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1546

Aircraft, Aviation safety, foreign air carriers, Incorporation by reference, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1549

Air transportation, Reporting and recordkeeping requirements, Security measures.

The Amendments

■ For the reasons set forth in the preamble, the Transportation Security Administration amends Chapter XII, of Title 49, Code of Federal Regulations as follows:

Subchapter A—Administrative and Procedural Rules

PART 1515—APPEAL AND WAIVER PROCEDURES FOR SECURITY THREAT ASSESSMENTS FOR INDIVIDUALS

■ 1. The authority citation for part 1515 continues to read as follows:

Authority: 46 U.S.C. 70105; 49 U.S.C. 114, 5103a, 40113, and 46105; 18 U.S.C. 842, 845; 6 U.S.C. 469.

■ 2. Amend § 1515.1 by revising paragraph (a) to read as follows:

§ 1515.1 Scope.

(a) *Appeal.* This part applies to applicants who are appealing an Initial Determination of Threat Assessment or an Initial Determination of Threat Assessment and Immediate Revocation in a security threat assessment (STA) as described in each of the following:

(1) 49 CFR part 1572 for a hazardous materials endorsement (HME) or a Transportation Worker Identification Credential (TWIC).

(2) 49 CFR part 1540, Subpart C, which includes individuals engaged in air cargo operations who work for certain aircraft operators, foreign air carriers, IACs, certified cargo screening facilities, or validation firms.

* * * * *

■ 3. Amend § 1515.9 by adding paragraphs (a)(3), (c)(1)(iv) and (v), and revising paragraph (f)(3) to read as follows:

§ 1515.9 Appeal of security threat assessment based on other analyses.

(a) * * *

(3) TSA had determined that an individual engaged in air cargo operations who works for certain aircraft operators, foreign air carriers, indirect air carriers (IACs), certified cargo screening facilities, or validation firms poses a security threat as provided in 49 CFR 1549.109.

* * * * *

(c) * * *

(1) * * *

(iv) In the case of a certified cargo screening facilities worker, TSA serves a Final Determination of Threat Assessment on the operator.

(v) In the case of a validator of certified cargo screening facilities, TSA serves a Final Determination of Threat Assessment on the operator.

* * * * *

(f) * * *

(3) If TSA withdraws a Determination of No Security Threat for an individual engaged in air cargo operations who works for certain aircraft operators, foreign air carriers, IACs, certified cargo screening facilities, or validation firms.

■ 4. Amend § 1515.11 by revising paragraph (a)(3) to read as follows:

§ 1515.11 Review by administrative law judge and TSA Final Decision Maker.

(a) * * *

(3) An individual engaged in air cargo operations who works for certain aircraft operators, foreign air carriers, IACs, certified cargo screening facilities, or validation firms who has been issued a Final Determination of Threat Assessment after an appeal as described in 49 CFR 1515.9.

* * * * *

Subchapter B—Security Rules for All Modes of Transportation

PART 1520—PROTECTION OF SENSITIVE SECURITY INFORMATION

■ 5. The authority citation for part 1520 continues to read as follows:

Authority: 46 U.S.C. 70102–70106, 70117; 49 U.S.C. 114, 40113, 44901–44907, 44913–44914, 44916–44918, 44935–44936, 44942, 46105.

§ 1520.3 [Amended]

■ 6. In § 1520.3, remove the definition of ''Security program''.

■ 7. Amend § 1520.5 by revising paragraph (b)(1) to read as follows:

§ 1520.5 Sensitive security information.

* * * * *

(b) * * *

(1) *Security programs and contingency plans.* Any security program or security contingency plan issued, established, required, received, or approved by DOT or DHS, including any comments, instructions, or implementing guidance, including—

(i) Any aircraft operator, airport operator, fixed base operator, or air cargo security program, or security contingency plan under this chapter;

(ii) Any vessel, maritime facility, or port area security plan required or directed under Federal law;

(iii) Any national or area security plan prepared under 46 U.S.C. 70103; and

(iv) Any security incident response plan established under 46 U.S.C. 70104.

* * * * *

■ 8. Amend § 1520.7 by revising paragraph (b) to read as follows:

§ 1520.7 Covered persons.

* * * * *

(b) Each indirect air carrier (IAC), as described in 49 CFR part 1548; each validation firm and its personnel, as described in 49 CFR 1522; and each certified cargo screening facility and its personnel, as described in 49 CFR 1549.

* * * * *

■ 9. Add new part 1522 to Subchapter B to read as follows:

PART 1522—TSA-APPROVED VALIDATION FIRMS AND VALIDATORS

Subpart A—General

Sec.

1522.1 Scope and terms used in this part.
1522.3 Fraud and intentional falsification of records.
1522.5 TSA inspection authority.

Subpart B—TSA-Approved Validation Firms and Validators for the Certified Cargo Screening Program

1522.101 Applicability.
1522.103 Requirements for validation firms.
1522.105 Adoption and implementation of the security program.
1522.107 Application.
1522.109 TSA review and approval.
1522.111 Reconsideration of disapproval of an application.
1522.113 Withdrawal of approval.
1522.115 Renewal of TSA approval.
1522.117 Qualifications of validators.
1522.119 Training.
1522.121 Security threat assessments for personnel of TSA-approved validation firms.
1522.123 Conduct of assessments.
1522.125 Protection of information.
1522.127 Assessment report.
1522.129 Recordkeeping requirements.

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44907, 44913–44914, 44916–44918, 44932, 44935–44936, 44942, 46105.

Subpart A—General

§ 1522.1 Scope and terms used in this part.

(a) This part governs the use of TSA-approved validation firms and individual validators to assess whether certain persons regulated under this chapter are in compliance with this chapter.

(b) In addition to the terms in §§ 1500.3 and 1540.5 of this chapter, the following terms apply in this part:

Applicant means a firm that seeks to become a TSA-approved validation firm under this part.

Assessment means the physical inspections, records reviews, personnel interviews, and other procedures conducted by a validator to assess whether a person is in compliance with relevant requirements of a security program.

Conflict of interest means a situation in which the validation firm, the validator, or an individual assisting in the assessment, or the spouse or immediate family member of such person, has a relationship with, or an interest in, the person under assessment that may adversely affect the impartiality of the assessment. Examples of conflict of interest situations include, but are not limited to, any of the following:

(1) The validation firm is a parent company or subsidiary of the person under assessment, has a financial interest in the person under assessment, or has common management or organizational governance (for example, interlocking boards of directors) with the person under assessment.

(2) The validation firm, the validator, or an individual who will assist in conducting the assessment, or an immediate family member of such a validator or individual, is a creditor or debtor of the person under assessment.

(3) The validator, or an individual who will assist in conducting the assessment, or the spouse or immediate family member of such a person, is, or within the past two years has been, an employee, officer, or contractor of the person under assessment whose duties did not involve the operations being assessed.

(4) The validator, or an individual who will assist in conducting the assessment, or the spouse or immediate family member of such a person, is, or at any time has been, an individual, officer, or contractor of the person under assessment whose duties or responsibilities did involve the operations being assessed.

(5) The validator, or an individual who will assist in conducting the assessment, or the spouse or immediate family member of such a person, has a financial interest in the person under validation.

Firm means a business enterprise or other non-governmental organization, including a sole proprietorship, partnership, limited liability partnership, limited liability corporation, and a corporation.

National of the United States means a citizen of the United States, or a person who, though not a citizen, owes permanent allegiance to the United States, as defined in 8 U.S.C. 1101(a)(22), and includes American Samoa and Swains Island.

TSA-approved validation firm or *validation firm* means a firm that has been approved under this part to conduct an assessment under this chapter.

Validator means an individual assigned by the validation firm to be responsible for conducting a given assessment under this part.

§ 1522.3 Fraud and intentional falsification of records.

No person may make, or cause to be made, any of the following:

(a) Any fraudulent or intentionally false statement in any application under this part.

(b) Any fraudulent or intentionally false entry in any record or report that is kept, made, or used to show compliance with this subchapter, or used to exercise any privilege under this part.

(c) Any reproduction or alteration, for fraudulent purpose, of any report, record, security program, access medium, or identification medium issued or submitted under this part.

§ 1522.5 TSA inspection authority.

(a) Each validation firm and each validator must allow TSA, during normal business hours, in a reasonable manner, without advance notice, to enter the facility and make any inspections or tests, including copying records, to—

(1) Determine compliance of a validation firm or validator with this chapter and 49 U.S.C. 114 and Subtitle VII, as amended; or

(2) Carry out TSA's statutory or regulatory authorities, including its authority to—

(i) Assess threats to transportation;

(ii) Enforce security-related regulations, directives, and requirements:

(iii) Inspect, maintain, and test the security of facilities, equipment, and systems;

(iv) Ensure the adequacy of security measures for the transportation of passengers and cargo;

(v) Oversee the implementation, and ensure the adequacy, of security measures at airports and other transportation facilities;

(vi) Review security plans; and

(vii) Carry out such other duties, and exercise such other powers, relating to transportation security as the Assistant Secretary of Homeland Security for the TSA considers appropriate, to the extent authorized by law.

(b) At the request of TSA, each validation firm and validator must provide evidence of compliance with this chapter, including copying records.

(c) TSA and DHS officials working with TSA may conduct inspections under this section without access media or identification media issued or approved by a validation firm or other person, except that the TSA and DHS officials will have identification media issued by TSA or DHS.

Subpart B—TSA-Approved Validation Firms and Validators for the Certified Cargo Screening Program

§ 1522.101 Applicability.

This subpart governs the use of TSA-approved validation firms and validators to assess whether certified cargo screening facilities (CCSFs), or facilities seeking to be approved as such, comply with the requirements of 49 CFR part 1549.

§ 1522.103 Requirements for validation firms.

In addition to the other requirements of this part, a validation firm must meet the following requirements to be approved to assess certified cargo screening facilities:

(a) *Resources.* The validation firm must have sufficient facilities, resources, and personnel to conduct the assessments.

(b) *Security Coordinator.* The validation firm must designate and use a Security Coordinator and at least one alternate Security Coordinator.

(1) The Security Coordinator and alternates must be senior employees or officers of the firm, and must be readily available during normal business hours.

(2) The Security Coordinator and designated alternates must serve as the validation firm's primary contact for security-related activities and communications with TSA.

(3) The Security Coordinator must immediately initiate corrective action for any instance of non-compliance by the validation firm with any applicable TSA security requirement.

(c) *Security Program.* The validation firm must obtain TSA approval of a security program and must implement the security program.

(d) *Personnel.* The validation firm must ensure that its personnel carry out the requirements of this chapter and the validation firm's security program.

(e) *Change in information.* (1) The validation firm must inform TSA, in a form and manner prescribed by TSA, of any change in the information required to be submitted by the validation firm to TSA under this part within seven days of the change.

(2) Changes included within the requirement of this paragraph include, but are not limited to, changes in the validation firm's address, phone number, or other contact information, the identity of the Security Coordinator or alternate, significant changes in ownership of the firm.

§ 1522.105 Adoption and implementation of the security program.

(a) *Security program required.* No person may operate as a validation firm unless that person holds and carries out an approved security program under this part.

(b) *Content.* The validation firm standard security program together with approved alternate procedures and amendments that TSA has issued to that particular firm constitutes that firm's security program. Each security program under this part must—

(1) Provide for the security of aircraft, as well as that of persons and property traveling in air transportation, against acts of criminal violence and air piracy, and against the introduction into aircraft of any unauthorized explosive, incendiary, and other destructive substance or item;

(2) Describe the processes and procedures to be used to maintain current qualifications, credentials, or accreditations, training, and security threat assessments for relevant personnel;

(3) Describe the facilities, support personnel, and other resources to be used in conducting assessments; and

(4) Require that the validation firm designate and use a Security Coordinator and at least one alternate Security Coordinator.

(c) *Amendment requested by a validation firm or applicant.* A validation firm or applicant may file a request for an amendment to its security program with the TSA designated official at least 45 calendar days before the date it proposes for the amendment to become effective, unless the designated official allows a shorter period. Any validation firm may submit to TSA a group proposal for an amendment that is on behalf of it and other validation firms that co-sign the proposal.

(1) Within 30 calendar days after receiving a proposed amendment, the designated official, in writing, must either approve or deny the request to amend.

(2) An amendment to a validation firm's security program may be approved if the designated official determines that safety and the public interest will allow it, and if the proposed amendment provides the level of security required under this part.

(3) Within 30 calendar days after receiving a denial of the proposed amendment, the validation firm may petition TSA to reconsider the denial. A Petition for Reconsideration must be filed with the designated official.

(4) Upon receipt of a Petition for Reconsideration, the designated official must either approve the request to amend the security program or transmit the petition, along with any pertinent information, to TSA for reconsideration. TSA will make a determination on the petition within 30 calendar days of receipt by either directing the designated official to approve the amendment or by affirming the denial.

(d) *Amendment by TSA.* TSA may amend a security program in the interest of safety and the public interest, as follows:

(1) TSA must notify the validation firm, in writing, of the proposed amendment, fixing a period of not less than 30 calendar days within which the validation firm may submit written information, views, and arguments on the amendment.

(2) After considering all relevant material, the designated official must notify the validation firm of any amendment adopted or rescind the notice of amendment. If the amendment is adopted, it becomes effective not less than 30 calendar days after the validation firm receives the notice of amendment, unless the validation firm disagrees with the proposed amendment and petitions the TSA to reconsider, no later than 15 calendar days before the effective date of the amendment. The validation firm must send the petition for reconsideration to the designated official. A timely Petition for Reconsideration stays the effective date of the amendment.

(3) Upon receipt of a Petition for Reconsideration, the designated official must either amend or withdraw the notice of amendment, or transmit the Petition, together with any pertinent information, to TSA for reconsideration. TSA must make a determination on the Petition within 30 calendar days of receipt, either by directing the designated official to withdraw or amend the notice of amendment, or by affirming the notice of amendment.

(e) *Emergency Amendments.* (1) If TSA finds that there is an emergency requiring immediate action that makes compliance with the procedural requirements in this section contrary to the public interest, the designated official may issue an emergency amendment, without the prior notice and comment procedures described in paragraph (d) of this section.

(2) The emergency amendment is effective without stay on the date the validation firm receives notification. TSA will incorporate in the notification a brief statement of the reasons and findings for the emergency amendment to be adopted.

(3) The validation firm may file a Petition for Reconsideration with TSA no later than 15 calendar days after TSA issues the emergency amendment. The certified cargo screening facility must send the Petition for Reconsideration to the designated official; however, the filing does not stay the effective date of the emergency amendment.

(f) *Availability.* Each validation firm having a security program must do the following:

(1) Maintain an original of the security program at its corporate office.

(2) Have accessible a complete copy, or the pertinent portions of its security program, or appropriate implementing instructions, at each office where it conducts validation services. An electronic version is adequate.

(3) Make a copy of the security program available for inspection upon the request of TSA.

(4) Restrict the distribution, disclosure, and availability of information contained in its security program to persons with a need to know, as described in part 1520 of this chapter.

(5) Refer requests for such information by other persons to TSA.

§ 1522.107 Application.

(a) *Initial application and approval.* Unless otherwise authorized by TSA, each applicant must apply for a security program and for approval to operate as a validation firm, in a form and a manner prescribed by TSA, not less than 90 calendar days before the applicant intends to begin operations. The application must be in writing and include the following:

(1) The firm's legal name; other names, including doing business as names; state of incorporation or

licensing, if applicable; and tax identification number.

(2) The names of the senior officers or employees of the applicant who will serve as the Security Coordinator and alternates.

(3) A signed statement from each person listed in paragraph (a)(2) of this section stating whether he or she has been a senior manager or representative of any operator, whether or not a validation firm, that had its security program withdrawn by TSA.

(4) Copies of Government-issued identification of persons listed in paragraph (a)(2) of this section.

(5) The street address and e-mail address of the applicant.

(6) A statement acknowledging the requirement that all personnel of the applicant who are subject to training under the requirements of this part must successfully complete such training before performing security-related duties.

(7) Other information requested by TSA concerning security threat assessments.

(8) A statement acknowledging that all personnel of the applicant who must successfully complete a security threat assessment under the requirements of this part must do so before the applicant authorizes the personnel to perform duties under this part.

(b) *Standard security program.* After the Security Coordinator successfully completes a security threat assessment, TSA will provide to the applicant the validation firm standard security program, any security directives, and amendments to the security program and other alternative procedures that apply to validation firms. The applicant may either notify TSA that it accepts the standard security program or submit to TSA a proposed modified security program to the designated official for approval. The validation firm must also submit a supplement to the security program that specifies processes and procedures that the firm will use to maintain the qualification of its validators and its personnel assisting validators with assessments to the designated TSA official for approval. TSA will approve the security program under § 1522.109, or issue a written notice to modify under § 1522.109(b).

§ 1522.109 TSA review and approval.

(a) *Review.* TSA will review an application received under § 1522.107 to determine whether—

(1) The applicant has met the requirements of this part, the proposed security program, and any applicable Emergency Amendment and Security Directive;

(2) The applicant is able and willing to carry out the requirements of this part, its security program, and an applicable Emergency Amendment and Security Directive;

(3) The approval of such applicant's security program is not contrary to the interests of security and the public interest;

(4) The applicant has not held a security program that was withdrawn within the previous year, unless otherwise authorized by TSA; and

(5) TSA determines that the applicant is qualified to be a validation firm.

(b) *Notice.* (1) *Approval.* If an application is approved, TSA will send the applicant a written notice of approval of its security program, and approval to operate as a validation firm.

(2) *Commencement of operations.* A validation firm may commence operations when it has received approval under this section, and successfully completed training and security threat assessments for all relevant personnel.

(3) *Disapproval.* If an application is disapproved, TSA will serve a written notice of disapproval to the applicant. The notice of disapproval will include the basis of the disapproval of the application.

(c) *Duration of security program.* A security program approved under this section will remain effective until the end of the calendar month 12 months after the month it was approved or until the program has been surrendered or withdrawn, whichever is earlier.

§ 1522.111 Reconsideration of disapproval of an application.

(a) *Petition for reconsideration.* If TSA disapproves an application under section 1522.107, the applicant may seek reconsideration of the decision by submitting a written petition for reconsideration to the Assistant Secretary or his or her designee within 30 days of receiving the notice of disapproval. The written petition for reconsideration must include a statement and any supporting documentation explaining why the applicant believes the reason for disapproval is incorrect.

(b) *Review of petition.* Upon review of the petition for reconsideration, the Assistant Secretary or designee makes a determination on the petition by either affirming the disapproval of the application or approving the application. The Assistant Secretary or designee may request additional information from the applicant prior to rendering a decision. This disposition is a final agency action for purposes of 49 U.S.C. 46110.

§ 1522.113 Withdrawal of approval.

(a) *Basis for withdrawal of approval.* TSA may withdraw approval of a TSA-approved validation firm if the validation firm ceases to meet the standards for approval, fails to fulfill its responsibilities under this subpart, or if TSA determines that continued operation is contrary to safety and the public interest.

(b) *Notice of withdrawal of approval.* (1) Except as provided in paragraph (c) of this section, TSA will provide a written notice of proposed withdrawal of approval to the validation firm.

(2) The notice of proposed withdrawal of approval will include the basis for the withdrawal of approval.

(3) Unless the validation firm files a written petition for reconsideration under paragraph (d) of this section, the notice of proposed withdrawal of approval will become a final notice of withdrawal of approval 31 days after the validation firm's receipt of the notice of proposed withdrawal of approval.

(c) *Emergency notice of withdrawal of approval.* (1) If TSA finds that there is an emergency requiring immediate action with respect to a TSA-approved validation firm's ability to perform assessments, TSA may withdraw approval of that validation firm without prior notice.

(2) TSA will incorporate in the emergency notice of withdrawal of approval a brief statement of the reasons and findings for the withdrawal of approval.

(3) The emergency notice of withdrawal of approval is effective upon the TSA-approved validation firm's receipt of the notice. The validation firm may file a written petition for reconsideration under paragraph (d) of this section; however, this petition does not stay the effective date of the emergency notice of withdrawal of approval.

(d) *Petition for reconsideration.* A validation firm may seek reconsideration of the withdrawal of approval by submitting a written petition for reconsideration to the Assistant Secretary or designee within 30 days of receiving the notice of withdrawal of approval. The filing of a petition for reconsideration does not stay the effective date of the withdrawal pending the reconsideration.

(e) *Review of petition.* Upon review of the written petition for reconsideration, the Assistant Secretary or designee makes a determination on the petition by either affirming or withdrawing the notice of withdrawal of approval. The Assistant Secretary or designee may request additional information from the validation firm prior to rendering a

decision. This disposition is a final decision for purposes of review under 49 U.S.C. 46110.

§ 1522.115 Renewal of TSA approval.

(a) *Application.* Every 12 months, computed from the date of initial approval under § 1522.107, or more frequently as required by TSA, each validation firm must apply, in a form and manner prescribed by TSA, for renewal of approval of its security program, and of approval to operate as a validation firm. If the validation firm submits the information in the month before or after it is due, the validation firm is considered to have submitted the information in the month it is due. If the validation firm timely submits its application for review of approval under this section, the validation firm may continue to conduct assessments under this subpart unless and until TSA denies the application.

(b) *Content.* In addition to any other information required by TSA, the validation firm must submit the following information to TSA when applying for renewal:

(1) If required, evidence that the validators and other individuals of the validation firm with responsibilities for participating in assessments have successfully completed the initial training under § 1522.119(a) and any recurrent training described in § 1522.119(b).

(2) Evidence that the individual validators with responsibilities for conducting assessments continue to be certified or accredited by an organization that TSA recognizes as qualified to certify or accredit a validator.

(3) A statement signed by a senior officer or employee of the validation firm attesting that the firm has reviewed and ensures the continuing accuracy of the contents of its initial application for a security program, subsequent renewal applications, or other submissions to TSA confirming a change of information and noting the date such applications and submissions were made to TSA, including the following certification:

[Name of validation firm] (hereinafter ''the validation firm'') has adopted and is currently carrying out a security program in accordance with the Transportation Security Regulations as originally approved on [Insert date of TSA initial approval]. In accordance with TSA regulations, the validation firm has notified TSA of any new or changed information required for the validation firm's initial security program. If new or changed information is being submitted to TSA as part of this application for reapproval, that information is stated in this filing.

The validation firm understands that intentional falsification of certification may be subject to both civil and criminal penalties under 49 CFR part 1540 and 18 U.S.C. 1001. Failure to notify TSA of any new or changed information required for initial approval of the validation firm's security program in a timely fashion and in a form acceptable to TSA may result in withdrawal by TSA of approval of the validation firm's security program.

(c) *Renewal.* TSA will renew approval of the security program and the validation firm's authority to conduct assessments if TSA determines that—

(1) The validation firm has met the requirements of this chapter, its security program, and any Security Directive; and

(2) The renewal of approval of the validation firm's security program, and of the approval to operate as a validation firm, is not contrary to the interests of security or the public interest.

(d) *Effective.* The renewal of approval issued pursuant to this section will remain effective until the end of the calendar month 12 months after the month it was approved or until the program has been surrendered or withdrawn, whichever is earlier.

(e) *Withdrawal.* If a validation firm fails to comply with the requirements of this section, TSA may withdraw approval of the validation firm under § 1522.113.

§ 1522.117 Qualifications of validators.

(a) Each assessment conducted under this subpart must be conducted by a validator who meets the following requirements:

(1) He or she must be a citizen or national of the United States or be an alien lawfully admitted for permanent residence.

(2) He or she must meet the requirements of paragraph (a)(2)(i) or (ii) of this section.

(i) He or she must hold a certification or accreditation from an organization that TSA recognizes as qualified to certify or accredit a validator for assessments and must have at least five years of experience in inspection or validating compliance with State or Federal regulations in the security industry, the aviation industry, or government programs. The five years of experience must have been obtained within 10 years of the date of the application.

(ii) He or she must have at least five years experience as an inspector for a Federal or State government agency performing inspections similar to the inspections called for in this subpart and part 1549. The five years of experience must have been obtained within 10 years of the date of the application.

(3) The validator must have three professional references that address his or her abilities in inspection, validation, and written communications.

(4) The validator must have sufficient knowledge of the rules, regulations, policies, security programs, directives, and orders, pertaining to the certified cargo screening program (CCSP).

(5) The validator must have the ability to apply the concepts, principles, and methods of compliance with the requirements of the certified cargo screening program to include assessment, inspection, investigation, and reporting of compliance with the certified cargo screening program.

(b) Each validator and each individual who assists in conducting assessments must successfully undergo a security threat assessment as required under § 1522.121.

§ 1522.119 Training.

(a) *Initial training.* The validation firm must ensure that its validators and individuals who will assist in conducting assessments have completed the initial training prescribed by TSA before conducting any assessment under this subpart.

(b) *Recurrent training.* The validation firm must ensure that each validator and each individual assisting in conducting assessments under this subpart completes the recurrent training prescribed by TSA not later than 12 months after the validator's or individual's most recent TSA-prescribed training. If the validator or individual completes the recurrent training in the month before or the month after it is due, he or she is considered to have taken it in the month it is due.

(c) *Content.* The training required by this section will include coverage of the applicable provisions of this chapter, including this part, part 1520, and § 1540.105.

§ 1522.121 Security threat assessments for personnel of TSA-approved validation firms.

Each of the following must successfully complete a security threat assessment or comparable security threat assessment described in part 1540, subpart C of this chapter:

(a) Each individual who supervises validators or individuals who will assist validators.

(b) The validation firm's validator authorized to perform assessment services under this subpart.

(c) The validation firm's Security Coordinator and alternates.

(d) Each individual who will assist the validator in conducting assessments.

§ 1522.123 Conduct of assessments.

(a) *Standards for assessment.* Each validator must assess, in a form and manner prescribed by TSA, whether the person seeking to operate or operating as a certified cargo screening facility is in compliance with 49 CFR part 1549. The validator may be assisted by other individuals; however, the validator is directly responsible for the assessment and must sign the assessment report.

(b) *Conflict of interest.* A validator may not conduct an assessment for which there exists a conflict of interest as defined in § 1552.1.

(c) *Immediate notification to TSA.* If during the course of an assessment, the validator believes that there is or may be an instance of noncompliance with TSA requirements that presents an imminent threat to transportation security or public safety, he or she must report the instance immediately to the Security Coordinator, and the Security Coordinator must report the instance immediately to TSA.

(d) *No authorization to take remedial or disciplinary action.* Neither the validation firm nor the validator is authorized to require any remedial action by, or to take any disciplinary or enforcement action against, the facility under assessment.

(e) *Prohibition on consecutive assessments.* Unless otherwise authorized by TSA, a validation firm must not conduct more than two consecutive assessments of a person seeking approval, or renewal of approval, to operate a certified cargo screening facility.

§ 1522.125 Protection of information.

(a) *Sensitive Security Information.* Each validation firm must comply with the requirements in 49 CFR part 1520 regarding the handling and protection of Sensitive Security Information (SSI).

(b) *Non-disclosure of proprietary information.* Unless explicitly authorized by TSA, no validation firm, or any of its officers, Security Coordinators, validators, or employees, or individuals assisting in validations, may make an unauthorized release nor disseminate any information that TSA or an entity being assessed indicates is proprietary information.

§ 1522.127 Assessment report.

(a) Each validator must prepare and submit to TSA a written assessment report, in a manner and form prescribed by TSA, within 30 calendar days of completing each assessment.

(b) The assessment report must include the following information, in addition to any other information otherwise required by TSA:

(1) A description of the facilities, equipment, systems, processes, and/or procedures that were assessed and any other information as determined by TSA.

(2) The validator's assessment regarding the facility's compliance with TSA requirements, including all elements of the applicable security program.

(3) Signed attestation by the individual validator with responsibility for the assessment that no conflicts of interest existed with regard to the assessment and that the assessment was conducted impartially, professionally, and consistent with the standards set forth by TSA.

§ 1522.129 Recordkeeping requirements.

(a) Each validation firm must maintain records demonstrating compliance with all statutes, regulations, directives, orders, and security programs that apply to operation as a validation firm, including the records listed below.

(b) Each validation firm must retain the following records for 180 days after the individual is no longer employed by the validation firm or is no longer acting as the firm's agent.

(1) Records of all training and instruction given to each individual under the requirements of this subpart.

(2) Records demonstrating that the validation firm has complied with the security threat assessment provisions of § 1522.121.

(3) Records about the qualifications of validators it uses to conduct assessments under this subpart.

(c) Each validation firm must retain the following records until completion of the validation firm's next review under § 1522.115, after which the records may be destroyed unless TSA instructs the validation firm to retain the records for a longer period.

(1) Copies of all applications for approval, or renewal of approval, by TSA to operate as a validation firm under part 1522.

(2) Copies of TSA's approval and renewals of approval as required by part 1522.

(d) Each validation firm must retain assessment reports and copies of back-up documentation supporting each assessment report submitted to TSA for 42 months after the assessment.

Subchapter C—Civil Aviation Security

PART 1540—CIVIL AVIATION AUTHORITY: GENERAL RULES

■ 10. The authority citation for part 1540 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44907, 44913–44914, 44916–44918, 44935–44936, 44942, 46105.

Subpart A—General

■ 11. Amend § 1540.5 by adding definitions of ''certified cargo screening program'', ''certified cargo screening facility'', and ''standard security program'' in alphabetical order to read as follows:

§ 1540.5 Terms used in this subchapter.

* * * * *

Certified cargo screening program (CCSP) means the program under which facilities are authorized to screen cargo to be offered for transport on certain passenger aircraft in accordance with 49 CFR part 1549.

Certified cargo screening facility (CCSF) means a facility certified by TSA to screen air cargo in accordance with part 1549. As used in this subchapter, ''certified cargo screening facility'' refers to the legal entity that operates a CCSF at a particular location.

* * * * *

Standard security program means a security program issued by TSA that serves as a baseline for a particular type of operator. If TSA has issued a standard security program for a particular type of operator, unless otherwise authorized by TSA, each operator's security program consists of the standard security program together with any amendments and alternative procedures approved or accepted by TSA.

* * * * *

■ 12. Revise part 1540, subpart C to read as follows:

Subpart C—Security Threat Assessments

Sec.

1540.201 Applicability and terms used in this subpart.
1540.203 Security threat assessment.
1540.205 Procedures for security threat assessment.
1540.207 [Reserved]
1540.209 Fees for security threat assessment.

§ 1540.201 Applicability and terms used in this subpart.

(a) This subpart includes the procedures that certain aircraft operators, foreign air carriers, indirect air carriers, certified cargo screening facilities, and TSA-approved validation firms must use to have security threat assessments performed on certain individuals pursuant to 49 CFR 1522.121, 1544.228, 1546.213, 1548.7, 1548.15, 1548.16, and 1549.113. This subpart applies to the following:

(1) Each aircraft operator operating under a full program or full all-cargo program described in 49 CFR 1544.101(a) or (h).

(2) Each foreign air carrier operating under a program described in 49 CFR 1546.101(a), (b), or (e).

(3) Each indirect air carrier operating under a security program described in 49 CFR part 1548.

(4) Each applicant applying for unescorted access to cargo under one of the programs described in (a)(1) through (a)(3) of this section.

(5) Each proprietor, general partner, officer, director, or owner of an indirect air carrier as described in 49 CFR 1548.16.

(6) Each certified cargo screening facility described in 49 CFR part 1549.

(7) Each individual a certified cargo screening facility authorizes to perform screening or supervise screening.

(8) Each individual the certified cargo screening facility authorizes to have unescorted access to cargo at any time from the time it is screened until the time it is tendered to an indirect air carrier under 49 CFR part 1548, an aircraft operator under part 1544, or a foreign air carrier under part 1546.

(9) The senior manager or representative of its facility in control of the operations of a certified cargo screening facility under 49 CFR part 1549.

(10) Each TSA-approved validation firm for the certified cargo screening program described in 49 CFR part 1522 subpart B.

(11) Each individual of the TSA-approved validation firm under 49 CFR part 1522 subpart B who supervises, conducts, or assists in the validation.

(12) The security coordinator and alternates of each TSA-approved validation firm under 49 CFR part 1522 subpart B and of each certified cargo screening facility.

(b) For purposes of this subpart—

Applicant means the individuals listed in paragraph (a) of this section.

Operator means an aircraft operator, foreign air carrier, and indirect air carrier listed in paragraphs (a)(1) through (a)(3) of this section, a certified cargo screening facility described in paragraph (a)(6) of this section, and a TSA-approved validator described in paragraph (a)(10) of this section.

(c) An applicant poses a security threat under this subpart when TSA determines that he or she is known to pose or is suspected of posing a threat—

(1) To national security;

(2) To transportation security; or

(3) Of terrorism.

§ 1540.203 Security threat assessment.

(a) Each operator subject to this subpart must ensure that each of the following undergoes a security threat assessment or a comparable security threat assessment described in § 1540.205:

(1) Personnel of TSA-approved validation firms, as described in § 1522.121.

(2) Cargo personnel in the United States, as described in § 1544.228.

(3) Cargo personnel in the United States, as described in § 1546.213.

(4) Individuals with unescorted access to cargo, as described in § 1548.15.

(5) Proprietors, general partners, officers, directors, and owners of an indirect air carrier, as described in § 1548.16.

(6) Personnel of certified cargo screening facilities, as described in § 1549.111.

(b) Each operator must verify the identity and work authorization of each applicant and examine the document(s) presented by the applicant to prove identity and work authorization to determine whether they appear to be genuine and relate to the applicant presenting them.

(c) Each operator must submit to TSA a security threat assessment application for each applicant that is dated and signed by the applicant and that includes the following:

(1) Legal name, including first, middle, and last; any applicable suffix; and any other names used previously.

(2) Current mailing address, including residential address if it differs from the current mailing address; all other residential addresses for the previous five years; and e-mail address if the applicant has an e-mail address.

(3) Date and place of birth.

(4) Social security number (submission is voluntary, although failure to provide it may delay or prevent completion of the threat assessment).

(5) Gender.

(6) Country of citizenship.

(7) If the applicant is a U.S. citizen born abroad or a naturalized U.S. citizen, their U.S. passport number; or the 10-digit document number from the applicant's Certificate of Birth Abroad, Form DS–1350.

(8) If the applicant is not a U.S. citizen, the applicant's Alien Registration Number.

(9) The applicant's daytime telephone number.

(10) The applicant's current employer(s), and the address and telephone number of the employer(s).

(11) A Privacy Notice as required in the security program and the following statement:

The information I have provided on this application is true, complete, and correct to the best of my knowledge and belief and is provided in good faith. I understand that a knowing and willful false statement, or an omission of a material fact, on this application can be punished by fine or imprisonment or both (*see* section 1001 of Title 18 United States Code), and may be grounds for denial of authorization or in the case of parties regulated under this section, removal of authorization to operate under this chapter, if applicable.

I acknowledge that if I do not successfully complete the security threat assessment, the Transportation Security Administration may notify my employer. If TSA or other law enforcement agency becomes aware that I may pose an imminent threat to an operator or facility, TSA may provide limited information necessary to reduce the risk of injury or damage to the operator or facility.

(d) Each operator must retain the following for 180 days following the end of the applicant's service to the operator:

(1) The applicant's signed security threat assessment application.

(2) Copies of the applicant's document(s) used to verify identity and work authorization.

(3) Any notifications or documents sent to or received from TSA relating to the applicant's application and security threat assessment.

(4) As applicable, a copy of the applicant's credential evidencing completion of a threat assessment deemed comparable under paragraph (f) of this section.

(e) Records under this section may include electronic documents with electronic signature or other means of personal authentication, where accepted by TSA.

(f) TSA may determine that a security threat assessment conducted by another governmental agency is comparable to a security threat assessment conducted under this subpart. Individuals who have successfully completed a comparable security threat assessment are not required to undergo the security threat assessments described in this subpart. If TSA makes a comparability determination under this section, TSA will so notify the public. In making a comparability determination, TSA will consider—

(i) The minimum standards used for the security threat assessment;

(ii) The frequency of the security threat assessment;

(iii) The date of the most recent threat assessment; and

(iv) Other factors TSA deems appropriate.

(g) To apply for a comparability determination, the agency seeking the determination must contact the

Assistant Program Manager, Attn: Federal Agency Comparability Check, Hazmat Threat Assessment Program, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6019.

(h) TSA has determined that each of the following are comparable to the security threat assessment required in this subpart:

(1) A CHRC conducted in accordance with §§ 1542.209, 1544.229, or 1544.230 that includes a name-based check conducted by TSA.

(2) A security threat assessment conducted under 49 CFR part 1572 for the Transportation Worker Identification Credential or Hazardous Materials Endorsement programs.

(3) A security threat assessment conducted for the Free and Secure Trade (FAST) program administered by U.S. Customs and Border Protection.

(i) If asserting completion of a comparable threat assessment listed in paragraph (h) of this section, an individual must—

(1) Present the credential that corresponds to successful completion of the comparable assessment to the operator so the operator may retain a copy of it; and

(2) Notify the operator when the credential that corresponds to successful completion of the comparable assessment expires or is revoked for any reason.

(j) A security threat assessment conducted under this subpart remains valid for five years from the date that TSA issues a Determination of No Security Threat or a Final Determination of Threat Assessment, except—

(1) If the applicant is no longer authorized to be in the United States, the security threat assessment and the privileges it conveys expire on the date lawful presence expires; or

(2) If the applicant asserts completion of a comparable threat assessment, it expires five years from the date of issuance of the credential that corresponds to the comparable assessment, or the date on which the credential is revoked for any reason.

§ 1540.205 Procedures for security threat assessment.

(a) *Contents of security threat assessment.* The security threat assessment TSA conducts under this subpart includes an intelligence-related check and a final disposition.

(b) *Intelligence-related check.* To conduct an intelligence-related check, TSA completes the following procedures:

(1) Reviews the applicant information required in 49 CFR 1540.203.

(2) Searches domestic and international government databases to determine if an applicant meets the requirements of 49 CFR 1540.201(c) or to confirm an applicant's identity.

(3) Adjudicates the results in accordance with 49 CFR 1540.201(c).

(c) *Wants, warrants, deportable aliens.* If the searches listed in paragraph (b)(2) of this section indicate that an applicant has an outstanding want or warrant, or is a deportable alien under the immigration laws of the United States, TSA sends the applicant's information to the appropriate law enforcement or immigration agency.

(d) *Final disposition.* Following completion of the procedures described in paragraph (b), the following procedures apply, as appropriate:

(1) TSA serves a Determination of No Security Threat on the applicant and operator if TSA determines that the applicant meets the security threat assessment standards in 49 CFR 1540.201(c).

(2) TSA serves an Initial Determination of Threat Assessment on the applicant, if TSA determines that the applicant does not meet the security threat assessment standards in 49 CFR 1540.201(c). The Initial Determination of Threat Assessment includes—

(i) A statement that TSA has determined that the applicant is suspected of posing or poses a security threat;

(ii) The basis for the determination;

(iii) Information about how the applicant may appeal the determination, as described in 49 CFR 1515.9; and

(iv) A statement that if the applicant chooses not to appeal TSA's determination within 60 days of receipt of the Initial Determination, or does not request an extension of time within 60 days of the Initial Determination of Threat Assessment in order to file an appeal, the Initial Determination becomes a Final Determination of Security Threat Assessment.

(3) TSA serves an Initial Determination of Threat Assessment and Immediate Revocation on the applicant and the applicant's operator or other operator as approved by TSA, where appropriate, if TSA determines that the applicant does not meet the security threat assessment standards in 49 CFR 1540.201(c) and may pose an imminent threat to transportation or national security, or of terrorism. The Initial Determination of Threat Assessment and Immediate Revocation includes—

(i) A statement that TSA has determined that the applicant is suspected of posing or poses an imminent security threat;

(ii) The basis for the determination;

(iii) Information about how the applicant may appeal the determination, as described in 49 CFR 1515.5(h) or 1515.9(h), as applicable; and

(iv) A statement that if the applicant chooses not to appeal TSA's determination within 60 days of receipt of the Initial Determination, or does not request an extension of time within 60 days of the Initial Determination of Threat Assessment in order to file an appeal, the Initial Determination becomes a Final Determination of Security Threat Assessment.

(4) If the applicant does not appeal the Initial Determination of Threat Assessment or Initial Determination of Threat Assessment and Immediate Revocation, or if TSA does not grant the appeal, TSA serves a Final Determination of Threat Assessment on the individual and the applicant.

(5) If the applicant appeals an Initial Determination of Threat Assessment, the procedures in 49 CFR 1515.5 or 1515.9 apply.

§ 1540.207 [Reserved]

§ 1540.209 Fees for security threat assessment.

This section describes the payment process for completion of the security threat assessments required under subpart.

(a) *Fees for security threat assessment.* (1) TSA routinely establishes and collects fees to conduct the security threat assessment process. These fees apply to all entities requesting a security threat assessment. TSA reviews the amount of the fee periodically, at least once every two years, to determine the current cost of conducting security threat assessments. TSA determines fee amounts and any necessary revisions to the fee amounts based on current costs, using a method of analysis consistent with widely accepted accounting principles and practices, and calculated in accordance with the provisions of 31 U.S.C. 9701 and other applicable Federal law.

(2) TSA will publish fee amounts and any revisions to the fee amounts as a notice in the **Federal Register**.

(b) [Reserved]

(c) *Remittance of fees.* (1) The fees required under this subpart must be remitted to TSA in a form and manner acceptable to TSA each time the applicant or an aircraft operator, foreign air carrier, indirect air carrier, certified cargo screening facility, or TSA-approved validation firm submits the information required under § 1540.203 or § 1540.207 to TSA.

(2) Fees remitted to TSA under this subpart must be payable to the ''Transportation Security Administration'' in U.S. currency and drawn on a U.S. bank.

(3) TSA will not issue any fee refunds, unless a fee was paid in error.

■ 13. Add new subpart D to part 1540 to read as follows:

Subpart D—Responsibilities of Holders of TSA-Approved Security Programs

Sec.

1540.301 Withdrawal of approval of a security program.
1540.303 [Reserved]

Subpart D—Responsibilities of Holders of TSA-Approved Security Programs

§ 1540.301 Withdrawal of approval of a security program.

(a) *Applicability.* This section applies to holders of a security program approved or accepted by TSA under 49 CFR chapter XII, subchapter C.

(b) *Withdrawal of security program approval.* TSA may withdraw the approval of a security program, if TSA determines continued operation is contrary to security and the public interest, as follows:

(1) *Notice of proposed withdrawal of approval.* TSA will serve a Notice of Proposed Withdrawal of Approval, which notifies the holder of the security program, in writing, of the facts, charges, and applicable law, regulation, or order that form the basis of the determination.

(2) *Security program holder's reply.* The holder of the security program may respond to the Notice of Proposed Withdrawal of Approval no later than 15 calendar days after receipt of the withdrawal by providing the designated official, in writing, with any material facts, arguments, applicable law, and regulation.

(3) *TSA review.* The designated official will consider all information available, including any relevant material or information submitted by the holder of the security program, before either issuing a Withdrawal of Approval of the security program or rescinding the Notice of Proposed Withdrawal of Approval. If TSA issues a Withdrawal of Approval, it becomes effective upon receipt by the holder of the security program, or 15 calendar days after service, whichever occurs first.

(4) *Petition for reconsideration.* The holder of the security program may petition TSA to reconsider its Withdrawal of Approval by serving a petition for consideration no later than 15 calendar days after the holder of the security program receives the Withdrawal of Approval. The holder of the security program must serve the Petition for Reconsideration on the designated official. Submission of a Petition for Reconsideration will not stay the Withdrawal of Approval. The holder of the security program may request the designated official to stay the Withdrawal of Approval pending review of and decision on the Petition.

(5) *Assistant Secretary's review.* The designated official transmits the Petition together with all pertinent information to the Assistant Secretary for reconsideration. The Assistant Secretary will dispose of the Petition within 15 calendar days of receipt by either directing the designated official to rescind the Withdrawal of Approval or by affirming the Withdrawal of Approval. The decision of the Assistant Secretary constitutes a final agency order subject to judicial review in accordance with 49 U.S.C. 46110.

(6) *Emergency withdrawal.* If TSA finds that there is an emergency with respect to aviation security requiring immediate action that makes the procedures in this section contrary to the public interest, the designated official may issue an Emergency Withdrawal of Approval of a security program without first issuing a Notice of Proposed Withdrawal of Approval. The Emergency Withdrawal would be effective on the date that the holder of the security program receives the emergency withdrawal. In such a case, the designated official will send the holder of the security program a brief statement of the facts, charges, applicable law, regulation, or order that forms the basis for the Emergency Withdrawal. The holder of the security program may submit a Petition for Reconsideration under the procedures in paragraphs (b)(4) through (b)(5) of this section; however, this petition will not stay the effective date of the Emergency Withdrawal.

(c) *Service of documents for withdrawal of approval of security program proceedings.* Service may be accomplished by personal delivery, certified mail, or express courier. Documents served on the holder of a security program will be served at its official place of business as designated in its application for approval or its security program. Documents served on TSA must be served to the address noted in the Notice of Withdrawal of Approval or Withdrawal of Approval, whichever is applicable.

(1) *Certificate of service.* An individual may attach a certificate of service to a document tendered for filing. A certificate of service must consist of a statement, dated and signed by the person filing the document, that the document was personally delivered, served by certified mail on a specific date, or served by express courier on a specific date.

(2) *Date of service.* The date of service is—

(i) The date of personal delivery;

(ii) If served by certified mail, the mailing date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark; or

(iii) If served by express courier, the service date shown on the certificate of service, or by other evidence if there is no certificate of service.

(d) *Extension of time.* TSA may grant an extension of time to the limits set forth in this section for good cause shown. A security program holder must submit a request for an extension of time in writing, and TSA must receive it at least two days before the due date in order to be considered. TSA may grant itself an extension of time for good cause.

§ 1540.303 [Reserved]

PART 1544—AIRCRAFT OPERATOR SECURITY: AIR CARRIERS AND COMMERCIAL OPERATORS

■ 14. The authority citation for part 1544 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44907, 44913–44914, 44916–44918, 44932, 44935–44936, 44942, 46105.

Subpart C—Operations

■ 15. Amend § 1544.205 by revising paragraph (e) and adding new paragraph (g) to read as follows:

§ 1544.205 Acceptance and screening of cargo.

* * * * *

(e) *Acceptance of cargo only from specified persons.* Each aircraft operator operating under a full program or a full all-cargo program may accept cargo to be loaded in the United States for air transportation only from the shipper, an aircraft operator, foreign air carrier, or indirect air carrier operating under a security program under this chapter with a comparable cargo security program, or, in the case of an operator under a full program, from a certified cargo screening facility, as provided in its security program.

* * * * *

(g) *Screening of cargo loaded inside the United States by a full program*

operator. For cargo to be loaded in the United States, each operator under a full program in § 1544.101(a) must ensure that all cargo is screened in the United States as follows:

(1) *Amount screened.* (i) Not later than February 3, 2009, each operator under a full program must ensure that at least 50 percent of its cargo is screened prior to transport on a passenger aircraft.

(ii) Not later than August 3, 2010, each operator under a full program must ensure that 100 percent of its cargo is screened prior to transport on a passenger aircraft.

(2) *Methods of screening.* For the purposes of this paragraph (g), the aircraft operator must ensure that cargo is screened using a physical examination or non-intrusive method of assessing whether cargo poses a threat to transportation security, as provided in its security program. Such methods may include TSA-approved x-ray systems, explosives detection systems, explosives trace detection, explosives detection canine teams certified by TSA, or a physical search together with manifest verification, or other method approved by TSA.

(3) *Limitation on who may conduct screening.* Screening must be conducted by the aircraft operator on an airport with a complete program under 49 CFR part 1542, by another aircraft operator or foreign air carrier operating under a security program under this chapter with a comparable cargo security program on an airport, by a certified cargo screening facility in accordance with 49 CFR part 1549, or by TSA. If an aircraft operator or foreign air carrier screens cargo off an airport, it must do so as a certified cargo screening facility in accordance with part 1549.

(4) *Verification.* The aircraft operator must verify that the chain of custody measures for the screened cargo are intact prior to loading such cargo on aircraft, or must ensure that the cargo is re-screened in accordance with this chapter.

■ 16. Revise § 1544.228 to read as follows:

§ 1544.228 Access to cargo and cargo screening: Security threat assessments for cargo personnel in the United States.

This section applies in the United States to each aircraft operator operating under a full program under § 1544.101(a) or a full all-cargo program under § 1544.101(h).

(a) Before an aircraft operator authorizes and before an individual performs a function described in paragraph (b) of this section—

(1) Each individual must successfully complete a security threat assessment or comparable security threat assessment described in part 1540 subpart C of this chapter; and

(2) Each aircraft operator must complete the requirements in part 1540 subpart C.

(b) The security threat assessment required in paragraph (a) of this section applies to the following:

(1) Each individual who has unescorted access to cargo and access to information that such cargo will be transported on a passenger aircraft; or who has unescorted access to cargo that has been screened for transport on a passenger aircraft; or who performs certain functions related to the transportation, dispatch, or security of cargo for transport on a passenger aircraft or all-cargo aircraft, as specified in the aircraft operator's security program; from the time—

(i) The cargo reaches a location where an aircraft operator with a full all-cargo program consolidates or inspects it pursuant to security program requirements until the cargo enters an airport Security Identification Display Area or is transferred to another TSA-regulated aircraft operator, foreign air carrier, or indirect air carrier; or

(ii) An aircraft operator with a full program accepts the cargo until the cargo—

(A) Enters an airport Security Identification Display Area;

(B) Is removed from the destination airport; or

(C) Is transferred to another TSA-regulated aircraft operator, foreign air carrier, or indirect air carrier.

(2) Each individual the aircraft operator authorizes to screen cargo or to supervise the screening of cargo under § 1544.205.

Subpart E—Screener Qualifications When the Aircraft Operator Performs Screening

■ 17. Revise § 1544.401 to read as follows:

§ 1544.401 Applicability of this subpart.

This subpart applies when the aircraft operator is conducting inspections as provided in § 1544.207.

§ 1544.403 [Removed and Reserved]

■ 18. Remove and reserve § 1544.403.

§ 1544.405 Qualifications of screening personnel.

■ 19. Revise the heading of § 1544.405 to read as set forth above.

■ 20. Amend § 1544.407 by revising the heading and paragraph (c) to read as follows:

§ 1544.407 Training, testing, and knowledge of individuals who perform screening functions.

* * * * *

(c) *Citizenship.* A screener must be a citizen or national of the United States.

* * * * *

§ 1544.409 Integrity of screener tests.

■ 21. Revise the heading of § 1544.409 to read as set forth above.

§ 1544.411 Continuing qualifications of screening personnel.

■ 22. Revise the heading of § 1544.411 to read as set forth above.

PART 1546—FOREIGN AIR CARRIER SECURITY

■ 23. The authority citation for part 1546 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44907, 44914, 44916–44917, 44935–44936, 44942, 46105.

Subpart C—Operations

■ 24. Amend § 1546.205 by revising paragraphs (d) and (e) and adding new paragraph (g) to read as follows:

§ 1546.205 Acceptance and screening of cargo.

* * * * *

(d) *Screening and inspection of cargo in the United States.* For cargo to be loaded in the United States, each foreign air carrier operating a program under § 1546.101(1)(a), (b), (e), or (f) must ensure that cargo is screened and inspected for any unauthorized person, and any unauthorized explosive, incendiary, and other destructive substances or items as provided in the foreign air carrier's security program and § 1546.207, and as provided in § 1546.213 for operations under § 1546.101(a) or (b), before loading it on its aircraft in the United States.

(e) *Acceptance of cargo only from specified persons.* Except as otherwise provided in its program, each foreign air carrier operating a program under § 1546.101(a), (b), (e) or (f) may accept cargo for air transportation to be loaded in the United States only from the shipper, or from an aircraft operator, foreign air carrier, or indirect air carrier operating under a security program under this chapter with a comparable cargo security program, or, in the case of a foreign air carrier under § 1546.101(a) or (b), from a certified cargo screening facility, as provided in its security program.

* * * * *

(g) *Screening of cargo loaded inside the United States under § 1546.101(a) or*

(b). For cargo to be loaded in the United States, each foreign air carrier under § 1546.101(a) or (b) must ensure that all cargo is screened in the United States as follows:

(1) *Amount screened.* (i) Not later than February 3, 2009, each foreign air carrier must ensure that at least 50 percent of its cargo is screened prior to transport on a passenger aircraft.

(ii) Not later than August 3, 2010, each foreign air carrier must ensure that 100 percent of its cargo is screened prior to transport on a passenger aircraft.

(2) *Methods of screening.* For the purposes of this paragraph (g), the foreign air carrier must ensure that cargo is screened using a physical examination or non-intrusive method of assessing whether cargo poses a threat to transportation security, as provided in its security program. Such methods may include TSA-approved x-ray systems, explosives detection systems, explosives trace detection, explosives detection canine teams certified by TSA, a physical search together with manifest verification, or other method approved by TSA.

(3) *Limitation on who may conduct screening.* Screening must be conducted by the foreign air carrier on an airport, by another aircraft operator or foreign air carrier operating under a security program under this chapter with a comparable cargo security program on an airport with a complete program under 49 CFR part 1542, by a certified cargo screening facility in accordance with 49 CFR part 1549, or by TSA. If an aircraft operator or foreign air carrier screens cargo off an airport, it must do so as a certified cargo screening facility in accordance with part 1549.

(4) The foreign air carrier must verify that the chain of custody measures for the screened cargo are intact prior to loading such cargo on aircraft, or must ensure that the cargo is re-screened in accordance with this chapter.

■ 25. Revise § 1546.213 to read as follows:

§ 1546.213 Access to cargo: Security threat assessments for cargo personnel in the United States.

This section applies in the United States to each foreign air carrier operating under § 1546.101(a), (b), or (e).

(a) Before a foreign air carrier authorizes and before an individual performs a function described in paragraph (b) of this section—

(1) Each individual must successfully complete a security threat assessment or comparable security threat assessment described in part 1540 subpart C of this chapter; and

(2) Each aircraft operator must complete the requirements in part 1540 subpart C.

(b) The security threat assessment required in paragraph (a) of this section applies to the following:

(1) Each individual who has unescorted access to cargo and access to information that such cargo will be transported on a passenger aircraft; or who has unescorted access to cargo that has been screened for transport on a passenger aircraft; or who performs certain functions related to the transportation, dispatch or security of cargo for transport on a passenger aircraft or all-cargo aircraft, as specified in the foreign air craft operator's or foreign air carrier's security program; from the time—

(i) The cargo reaches a location where a foreign air carrier operating under § 1546.101(e) consolidates or inspects it pursuant to security program requirements, until the cargo enters an airport Security Identification Display Area or is transferred to another TSA-regulated aircraft operator, foreign air carrier, or indirect air carrier; or

(ii) A foreign air carrier under §§ 1546.101(a) or (b) accepts the cargo, until the cargo—

(A) Enters an airport Security Identification Display Area;

(B) Is removed from the destination airport; or

(C) Is transferred to another TSA-regulated aircraft operator, foreign air carrier, or indirect air carrier.

(2) Each individual the foreign air carrier authorizes to screen cargo or to supervise the screening of cargo under § 1546.205.

Subpart E—Screener Qualifications When the Foreign Air Carrier Conducts Screening

■ 26. Revise § 1546.401 to read as follows:

§ 1546.401 Applicability of this subpart.

This subpart applies when the aircraft operator is conducting inspections as provided in § 1546.207.

§ 1546.403 [Removed and Reserved]

■ 27. Remove and reserve § 1546.403.

§ 1546.405 Qualifications of screening personnel.

■ 28. Revise the heading of § 1546.405 to read as set forth above.

§ 1546.407 Training, testing, and knowledge of individuals who perform screening functions.

■ 29. Revise the heading of § 1546.407 to read as set forth above.

§ 1546.409 Integrity of screener tests.

■ 30. Revise the heading of § 1546.409 to read as set forth above.

§ 1546.411 Continuing qualifications of screening personnel.

■ 31. Revise the heading of § 1546.411 to read as set forth above.

PART 1548—INDIRECT AIR CARRIER SECURITY

■ 32. The authority citation for part 1548 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44913–44914, 44916–44917, 44932, 44935–44936, 46105.

■ 33. Revise § 1548.7(f) to read as follows:

§ 1548.7 Approval, amendment, annual renewal, and withdrawal of approval of the security program.

* * * * *

(f) *Withdrawal of approval of a security program.* Section 1540.301 includes procedures for withdrawal of approval of a security program.

* * * * *

■ 34. Revise § 1548.15 to read as follows:

§ 1548.15 Access to cargo: Security threat assessments for individuals having unescorted access to cargo.

(a) Before an aircraft operator authorizes and before an individual performs a function described in paragraph (b) of this section—

(1) Each individual must successfully complete a security threat assessment or comparable security threat assessment described in part 1540 subpart C of this chapter; and

(2) Each aircraft operator must complete the requirements in part 1540 subpart C.

(b) The security threat assessment required in paragraph (a) of this section applies to the following:

(1) Each individual who has unescorted access to cargo and access to information that such cargo will be transported on a passenger aircraft; or who has unescorted access to cargo screened for transport on a passenger aircraft; or who performs certain functions related to the transportation, dispatch or security of cargo for transport on a passenger aircraft or all-cargo aircraft, as specified in the indirect air carrier's security program; from the time—

(i) Cargo to be transported on an all-cargo aircraft operated by an aircraft operator with a full all-cargo program under § 1544.101(h) of this chapter, or by a foreign air carrier under § 1546.101(e) of this chapter, reaches an

indirect air carrier facility where the indirect air carrier consolidates or holds the cargo, until the indirect air carrier transfers the cargo to an aircraft operator or foreign air carrier; or

(ii) Cargo to be transported on a passenger aircraft operated by an aircraft operator with a full program under § 1544.101(a) or by a foreign air carrier under § 1546.101(a) or (b) of this chapter, is accepted by the indirect air carrier, until the indirect air carrier transfers the cargo to an aircraft operator or foreign air carrier.

(2) Each individual the indirect air carrier authorizes to screen cargo or to supervise the screening of cargo under § 1548.21.

■ 35. Revise § 1548.16(a) to read as follows:

§ 1548.16 Security threat assessments for each proprietor, general partner, officer, director, and certain owners of the entity.

(a) Before an indirect air carrier permits a proprietor, general partner, officer, director, or owner of the entity to perform those functions—

(1) The proprietor, general partner, officer, director, or owner of the entity must successfully complete a security threat assessment or comparable security threat assessment described in part 1540 subpart C of this chapter; and

(2) Each indirect air carrier must complete the requirements in 49 CFR part 1540, subpart C.

* * * * *

■ 36. Add new § 1548.21 to read as follows:

§ 1548.21 Screening of cargo.

An IAC may only screen cargo for transport on a passenger aircraft under §§ 1544.205 and 1546.205 if the IAC is a certified cargo screening facility as provided in part 1549.

■ 37. Add new part 1549 to subchapter C to read as follows:

PART 1549—CERTIFIED CARGO SCREENING PROGRAM

Subpart A—General

Sec.

1549.1 Applicability.
1549.3 TSA inspection authority.
1549.5 Adoption and implementation of the security program.
1549.7 Approval, amendment, renewal of the security program and certification of the certified cargo screening facility.

Subpart B—Operations

1549.101 Acceptance, screening, and transfer of cargo.
1549.103 Qualifications and Training of individuals with security-related duties.
1549.105 Recordkeeping.
1549.107 Security coordinators.
1549.109 Security Directives and Information Circulars.
1549.111 Security threat assessments for personnel of certified cargo screening facilities.

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44913–44914, 44916–44917, 44932, 44935–44936, 46105.

Subpart A—General

§ 1549.1 Applicability.

This part applies to each facility applying for or certified by TSA as a certified cargo screening facility to screen cargo that will be transported on a passenger aircraft operated under a full program under 49 CFR 1544.101(a), or a foreign air carrier operating under a program under 49 CFR 1546.101(a) or (b).

§ 1549.3 TSA inspection authority.

(a) Each certified cargo screening facility must allow TSA, at any time or place, in a reasonable manner, without advance notice, to enter the facility and make any inspections or tests, including copying records, to—

(1) Determine compliance of a certified cargo screening facility, airport operator, foreign air carrier, indirect air carrier, or airport tenant with this chapter and 49 U.S.C. 114 and Subtitle VII, as amended; or

(2) Carry out TSA's statutory or regulatory authorities, including its authority to—

(i) Assess threats to transportation;

(ii) Enforce security-related regulations, directives, and requirements:

(iii) Inspect, maintain, and test the security of facilities, equipment, and systems;

(iv) Ensure the adequacy of security measures for the transportation of passengers and cargo;

(v) Oversee the implementation, and ensure the adequacy, of security measures at airports and other transportation facilities;

(vi) Review security plans; and

(vii) Carry out such other duties, and exercise such other powers, relating to transportation security as the Assistant Secretary of Homeland Security for the TSA considers appropriate, to the extent authorized by law.

(b) At the request of TSA, each certified cargo screening facility must provide evidence of compliance with this chapter, including copying records.

(c) TSA and DHS officials working with TSA may conduct inspections under this section without access media or identification media issued or approved by a certified cargo screening facility or other person, except that the TSA and DHS officials will have identification media issued by TSA or DHS.

§ 1549.5 Adoption and implementation of the security program.

(a) *Security program required.* No person may screen cargo to be tendered to an aircraft operator operating under a full program under part 1544, a foreign air carrier operating under § 1546.101(a) or (b), or an indirect air carrier operating under § 1548.5 for carriage on a passenger aircraft, unless that person holds and carries out an approved security program under this part.

(b) *Content.* Each security program under this part must—

(1) Provide for the security of the aircraft, as well as that of persons and property traveling in air transportation against acts of criminal violence and air piracy and against the introduction into the aircraft of any unauthorized explosive, incendiary, and other destructive substance or item as provided in the certified cargo screening facility's security program;

(2) Be designed to prevent or deter the introduction of any unauthorized explosive, incendiary, and other destructive substance or item onto an aircraft; and

(3) Include the procedures and description of the facilities and equipment used to comply with the requirements of this part.

(c) *Employees and agents.* The certified cargo screening facility must ensure that its employees and agents carry out the requirements of this chapter and the certified cargo screening facility's security program.

(d) *Facility's security program.* The certified cargo screening facility standard security program together with approved alternate procedures and amendments issued to a particular facility constitutes that facility's security program.

(e) *Availability.* Each certified cargo screening facility must:

(1) Maintain an original of the security program at its corporate office.

(2) Have accessible a complete copy, or the pertinent portions of its security program, or appropriate implementing instructions, at its facility. An electronic version is adequate.

(3) Make a copy of the security program available for inspection upon the request of TSA.

(4) Restrict the distribution, disclosure, and availability of information contained in its security program to persons with a need to know, as described in part 1520 of this chapter.

(5) Refer requests for such information by other persons to TSA.

§ 1549.7 Approval, amendment, renewal of the security program and certification of a certified cargo screening facility.

(a) *Initial application and approval.* (1) *Application.* Unless otherwise authorized by TSA, each applicant must apply for a security program and for certification as a certified cargo screening facility at a particular location, in a form and a manner prescribed by TSA not less than 90 calendar days before the applicant intends to begin operations. TSA will only approve a facility to operate as a CCSF if it is located in the United States. The CCSF application must be in writing and include the following:

(i) The business name; other names, including doing business as; state of incorporation, if applicable; and tax identification number.

(ii) The name of the senior manager or representative of the applicant in control of the operations at the facility.

(iii) A signed statement from each person listed in paragraph (a)(1)(ii) of this section stating whether he or she has been a senior manager or representative of a facility that had its security program withdrawn by TSA.

(iv) Copies of government-issued identification of persons listed in paragraph (a)(1)(ii) of this section.

(v) The street address of the facility where screening will be conducted.

(vi) A statement acknowledging and ensuring that each individual and agent of the applicant, who is subject to training under § 1549.11, will have successfully completed the training outlined in its security program before performing security-related duties.

(vii) Other information requested by TSA concerning Security Threat Assessments.

(viii) A statement acknowledging and ensuring that each individual will successfully complete a Security Threat Assessment under § 1549.111 before the applicant authorizes the individual to have unescorted access to screened cargo or to screen or supervise the screening of cargo.

(2) *Standard security program and assessment.* (i) After the Security Coordinator for an applicant successfully completes a security threat assessment, TSA will provide to the applicant the certified cargo screening standard security program, any security directives, and amendments to the security program and other alternative procedures that apply to the facility. The applicant may either accept the standard security program or submit a proposed modified security program to the designated official for approval. TSA will approve the security program under paragraphs (a)(3) and (a)(4) of the section or issue a written notice to modify under paragraph (a)(4) of this section.

(ii) An applicant must successfully undergo an assessment by a TSA-approved validation firm under 49 CFR part 1522 or by TSA.

(3) *Review.* TSA will review a facility at a particular location to determine whether—

(i) The applicant has met the requirements of this part, its security program, and any applicable Security Directive;

(ii) The applicant has successfully undergone an assessment by a TSA-approved validation firm under 49 CFR part 1522 or by TSA;

(iii) The applicant is able and willing to carry out the requirements of this part, its security program, and an applicable Security Directive;

(iv) The approval of such applicant's security program is not contrary to the interests of security and the public interest;

(v) The applicant has not held a security program that was withdrawn within the previous year, unless otherwise authorized by TSA; and

(vi) TSA determines that the applicant is qualified to be a certified cargo screening facility.

(4) *Approval and certification.* If TSA determines that the requirements of paragraph (a)(4) of this section are met and the application is approved, TSA will send the applicant a written notice of approval of its security program, and certification to operate as a certified cargo screening facility.

(5) *Commencement of operations.* The certified cargo screening facility may operate under a security program when it meets all TSA requirements, including but not limited to a validation by TSA or a TSA-approved validation firm, successful completion of training, and Security Threat Assessments by relevant personnel.

(6) *Duration of security program.* The security program will remain effective until the end of the calendar month three years after the month it was approved or until the program has been surrendered or withdrawn, whichever is earlier.

(7) *Requirement to report changes in information.* Each certified cargo screening facility under this part must notify TSA, in a form and manner approved by TSA, of any changes to the information submitted during its initial application.

(i) The CCSF must submit this notification to TSA not later than 30 days prior to the date the change is expected to occur.

(ii) Changes included in the requirement of this paragraph include, but are not limited to, changes in the certified cargo screening facility's contact information, senior manager or representative, business addresses and locations, and form of business facility.

(iii) If the certified cargo screening facility relocates, TSA will withdraw the existing certification and require the new facility to undergo a validation and certification process.

(b) *Renewal Application.* Upon timely submittal of an application for renewal, and unless and until TSA denies the application, the certified cargo screening facility's approved security program remains in effect.

(1) Unless otherwise authorized by TSA, each certified cargo screening facility must timely submit to TSA, at least 30 calendar days prior to the first day of the 36th anniversary month of initial approval of its security program, an application for renewal of its security program in a form and a manner approved by TSA.

(2) The certified cargo screening facility must demonstrate that it has successfully undergone a revalidation of its operations by a TSA or a TSA-approved validation firm prior to the first day of the 36th anniversary month of initial approval of its security program.

(3) The application for renewal must be in writing and include a signed statement that the certified cargo screening facility has reviewed and ensures the continuing accuracy of the contents of its initial application for a security program, subsequent renewal applications, or other submissions to TSA confirming a change of information and noting the date such applications and submissions were sent to TSA, including the following certification:

[Name of certified cargo screening facility] (hereinafter ''the CCSF'') has adopted and is currently carrying out a security program in accordance with the Transportation Security Regulations as originally approved on [Insert date of TSA initial approval]. In accordance with TSA regulations, the CCSF has notified TSA of any new or changed information required for the CCSF's initial security program. If new or changed information is being submitted to TSA as part of this application for reapproval, that information is stated in this filing.

The CCSF understands that intentional falsification of certification to an aircraft operator, foreign air carrier, indirect air carrier, or to TSA may be subject to both civil and criminal penalties under 49 CFR part 1540 and 18 U.S.C. 1001. Failure to notify TSA of any new or changed information required for initial approval of the CCSF's security program in a timely fashion and in a form acceptable to TSA may result in

withdrawal by TSA of approval of the CCSF's security program.

(4) TSA will renew approval of the security program if TSA determines that—

(i) The CCSF has met the requirements of this chapter, its security program, and any Security Directive; and

(ii) The renewal of its security program is not contrary to the interests of security and the public interest.

(5) If TSA determines that the certified cargo screening facility meets the requirements of paragraph (b)(3) of this section, it will renew the certified cargo screening facility's security program and certification. The security program and certification will remain effective until the end of the calendar month three years after the month it was renewed.

(c) *Amendment requested by a certified cargo screening entity or applicant.* A certified cargo screening facility or applicant may file a request for an amendment to its security program with the TSA designated official at least 45 calendar days before the date it proposes for the amendment to become effective, unless the designated official allows a shorter period. Any certified cargo screening facility may submit to TSA a group proposal for an amendment that is on behalf of it and other certified cargo screening facilities that co-sign the proposal.

(1) Within 30 calendar days after receiving a proposed amendment, the designated official, in writing, either approves or denies the request to amend.

(2) TSA may approve an amendment to a certified cargo screening facility's security program, if the TSA designated official determines that safety and the public interest will allow it, and if the proposed amendment provides the level of security required under this part.

(3) Within 30 calendar days after receiving a denial of the proposed amendment, the certified cargo screening facility may petition TSA to reconsider the denial. The CCSF must file the Petition for Reconsideration with the designated official.

(4) Upon receipt of a Petition for Reconsideration, the designated official either approves the request to amend or transmits the petition, together with any pertinent information, to TSA for reconsideration. TSA will dispose of the petition within 30 calendar days of receipt by either directing the designated official to approve the amendment or by affirming the denial.

(d) *Amendment by TSA.* TSA may amend a security program in the interest of safety and the public interest, as follows:

(1) TSA notifies the certified cargo screening facility, in writing, of the proposed amendment, fixing a period of not less than 30 calendar days within which the certified cargo screening facility may submit written information, views, and arguments on the amendment.

(2) After considering all relevant material, the designated official notifies the certified cargo screening facility of any amendment adopted or rescinds the notice of amendment. If the amendment is adopted, it becomes effective not less than 30 calendar days after the certified cargo screening facility receives the notice of amendment, unless the certified cargo screening facility disagrees with the proposed amendment and petitions the TSA to reconsider, no later than 15 calendar days before the effective date of the amendment. The certified cargo screening facility must send the petition for reconsideration to the designated official. A timely Petition for Reconsideration stays the effective date of the amendment.

(3) Upon receipt of a Petition for Reconsideration, the designated official either amends or withdraws the notice of amendment, or transmits the Petition, together with any pertinent information, to TSA for reconsideration. TSA disposes of the Petition within 30 calendar days of receipt, either by directing the designated official to withdraw or amend the notice of amendment, or by affirming the notice of amendment.

(e) *Emergency amendments.* (1) If TSA finds that there is an emergency requiring immediate action, with respect to aviation security that makes procedures in this section contrary to the public interest, the designated official may issue an emergency amendment, without the prior notice and comment procedures described in paragraph (d) of this section.

(2) The emergency amendment is effective without stay on the date the certified cargo screening facility receives notification. TSA will incorporate in the notification a brief statement of the reasons and findings for the emergency amendment to be adopted.

(3) The certified cargo screening facility may file a Petition for Reconsideration with the TSA no later than 15 calendar days after TSA issued the emergency amendment. The certified cargo screening facility must send the Petition for Reconsideration to the designated official; however, the filing does not stay the effective date of the emergency amendment.

Subpart B—Operations

§ 1549.101 Acceptance, screening, and transfer of cargo.

(a) *Preventing or deterring the carriage of any explosive or incendiary.* Each certified cargo screening facility must use the facilities, equipment, and procedures described in its security program to prevent or deter the carriage onboard an aircraft of any unauthorized explosives, incendiaries, and other destructive substances or items in cargo onboard an aircraft, as provided in the facility's security program.

(b) *Screening and inspection of cargo.* Each certified cargo screening facility must ensure that cargo is screened and inspected for any unauthorized explosive, incendiary, and other destructive substance or item as provided in the facility's security program before it is tendered to another certified cargo screening facility, an aircraft operator with a full program under part 1544, a foreign air carrier operating under §§ 1546.101(a) or (b), or an indirect air carrier operating under § 1548.5 for transport on a passenger aircraft. Cargo that the facility represents as screened, must be screened in accordance with this part.

(c) *Refusal to transport.* Each certified cargo screening facility must refuse to offer to another certified cargo screening facility, an aircraft operator with a full program under part 1544, a foreign air carrier operating under §§ 1546.101(a) or (b), or an indirect air carrier operating under § 1548.5 for transport on a passenger aircraft any cargo, if the shipper does not consent to a search or inspection of that cargo in accordance with this part, or parts 1544, 1546, or 1548 of this chapter.

(d) *Chain of custody.* Each certified cargo screening facility must protect the cargo from unauthorized access from the time it is screened until the time it is tendered to another certified cargo screening facility as approved by TSA, an indirect air carrier under 49 CFR part 1548, an aircraft operator under part 1544, or a foreign air carrier under part 1546.

§ 1549.103 Qualifications and training of individuals with security-related duties.

(a) *Security threat assessments.* Each certified cargo screening facility must ensure that individuals listed in 49 CFR 1540.201(a)(6), (7), (8), (9), and (12) relating to a certified cargo screening facility complete a security threat assessment or comparable security threat assessment described in part 1540, subpart C of this chapter, before conducting screening or supervising screening or before having unescorted

access to screened cargo, unless the individual is authorized to serve as law enforcement personnel at that location.

(b) *Training required.* Each certified cargo screening facility must ensure that individuals have received training, as specified in this section and its security program, before such individual perform any duties to meet the requirements of its security program.

(c) *Knowledge and training requirements.* Each certified cargo screening facility must ensure that each individual who performs duties to meet the requirements of its security program have knowledge of, and annual training in, the—

(1) Applicable provisions of this chapter, including this part, part 1520, and § 1540.105;

(2) The certified cargo screening facility's security program, to the extent that such individuals need to know in order to perform their duties;

(3) Applicable Security Directives and Information Circulars; and

(4) The applicable portions of approved airport security program(s) and aircraft operator security program(s).

(d) *Screener qualifications.* Each certified cargo screening facility must ensure that each individual who screens cargo or who supervises cargo screening—

(1) Is a citizen or national of the United States, or an alien lawfully admitted for permanent residence;

(2) Has a high school diploma, a General Equivalency Diploma, or a combination of education and experience that the certified cargo screening facility has determined to have equipped the person to perform the duties of the position;

(3) Has basic aptitudes and physical abilities including color perception, visual and aural acuity, physical coordination, and motor skills to the extent required to effectively operate cargo screening technologies that the facility is authorized to use. These include:

(i) The ability to operate x-ray equipment and to distinguish on the x-ray monitor the appropriate imaging standard specified in the certified cargo screening facility security program. Wherever the x-ray system displays colors, the operator must be able to perceive each color.

(ii) The ability to distinguish each color displayed on every type of screening equipment and explain what each color signifies.

(iii) The ability to hear and respond to the spoken voice and to audible alarms generated by screening equipment.

(4) Has the ability to read, write and understand English well enough to carry out written and oral instructions regarding the proper performance of screening duties or be under the direct supervision of someone who has this ability, including reading labels and shipping papers, and writing log entries into security records in English.

§ 1549.105 Recordkeeping.

(a) Each certified cargo screening facility must maintain records demonstrating compliance with all statutes, regulations, directives, orders, and security programs that apply to operation as a certified cargo screening facility, including the records listed below, at the facility location or other location as approved by TSA:

(1) Records of all training and instructions given to each individual under § 1549.103. The CCSF must retain these records for 180 days after the individual is no longer employed by the certified cargo screening facility or is no longer acting as the facility's agent.

(2) Copies of all applications for, or renewals of, TSA certification to operate under part 1549. Copies of reports by TSA-certified validators must be included in these records.

(3) Documents establishing TSA's certification and renewal of certification as required by part 1549.

(4) Records demonstrating that each individual has complied with the security threat assessment provisions of § 1549.111.

(b) Unless otherwise stated, records must be retained until the next re-certification.

§ 1549.107 Security coordinators.

Each certified cargo screening facility must have a Security Coordinator and designated alternate Security Coordinator appointed at the corporate level. In addition, each certified cargo screening facility must have a facility Security Coordinator and alternate facility Security Coordinator appointed at the facility level. The facility Security Coordinator must serve as the certified cargo screening facility's primary contact for security-related activities and communications with TSA, as set forth in the security program. The Security Coordinator and alternate appointed at the corporate level, as well as the facility Security Coordinator and alternate, must be available on a 24-hour, 7-days a week basis.

§ 1549.109 Security Directives and Information Circulars.

(a) TSA may issue an Information Circular to notify certified cargo screening facilities of security concerns.

(b) When TSA determines that additional security measures are necessary to respond to a threat assessment, or to a specific threat against civil aviation, TSA issues a Security Directive setting forth mandatory measures.

(1) Each certified cargo screening facility must comply with each Security Directive that TSA issues to it, within the time prescribed in the Security Directive for compliance.

(2) Each certified cargo screening facility that receives a Security Directive must comply with the following:

(i) Within the time prescribed in the Security Directive, acknowledge in writing receipt of the Security Directive to TSA.

(ii) Within the time prescribed in the Security Directive, specify the method by which the measures in the Security Directive have been implemented (or will be implemented, if the Security Directive is not yet effective).

(3) In the event that the certified cargo screening facility is unable to implement the measures in the Security Directive, the certified cargo screening facility must submit proposed alternative measures and the basis for submitting the alternative measures to TSA for approval.

(i) The certified cargo screening facility must submit the proposed alternative measures within the time prescribed in the Security Directive.

(ii) The certified cargo screening facility must implement any alternative measures approved by TSA.

(4) Each certified cargo screening facility that receives a Security Directive may comment on it by submitting data, views, or arguments in writing to TSA.

(i) TSA may amend the Security Directive based on comments received.

(ii) Submission of a comment does not delay the effective date of the Security Directive.

(5) Each certified cargo screening facility that receives a Security Directive or Information Circular, and each person who receives information from a Security Directive or Information Circular, must—

(i) Restrict the availability of the Security Directive or Information Circular, and information contained in either document, to those persons with a need-to-know; and

(ii) Refuse to release the Security Directive or Information Circular, and information contained in either document, to persons other than those with a need-to-know without the prior written consent of TSA.

§ 1549.111 Security threat assessments for personnel of certified cargo screening facilities.

(a) *Scope.* This section applies to the following:

(1) Each individual the certified cargo screening facility authorizes to perform cargo screening or supervise cargo screening.

(2) Each individual the certified cargo screening facility authorizes to have unescorted access to cargo at any time from the time it is screened until the time it is tendered to another certified cargo screening facility, an indirect air carrier under 49 CFR part 1548 for transport on a passenger aircraft, an aircraft operator under part 1544, or a foreign air carrier under part 1546.

(3) The senior manager or representative of its facility in control of the operations.

(4) The security coordinators and their alternates.

(b) *Security threat assessment.* Before a certified cargo screening facility authorizes an individual to perform the functions described in paragraph (a) of this section, and before the individual performs those functions—

(1) Each individual must successfully complete a security threat assessment or comparable security threat assessment described in part 1540, subpart C of this chapter; and

(2) Each certified screening facility must complete the requirements in 49 CFR part 1540, subpart C.

Issued in Arlington, VA, on September 1, 2009.

Gale D. Rossides,

Acting Administrator.

[FR Doc. E9–21794 Filed 9–15–09; 8:45 am]

BILLING CODE 9110–05–P

Reader Aids

Federal Register

Vol. 74, No. 178

Wednesday, September 16, 2009

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202–741–6000**

Laws **741–6000**

Presidential Documents

Executive orders and proclamations **741–6000**

The United States Government Manual **741–6000**

Other Services

Electronic and on-line services (voice) **741–6020**

Privacy Act Compilation **741–6064**

Public Laws Update Service (numbers, dates, etc.) **741–6043**

TTY for the deaf-and-hard-of-hearing **741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

45093–45304 1
45305–45534 2
45535–45730 3
45731–45976 4
45977–46300 8
46301–46488 9
46489–46662 10
46663–46884 11
46885–47046 14
47047–47430 15
47431–47110 16

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8404 45527
8405 45529
8406 45535
8407 45727
8408 45729
8409 45977
8410 46301
8411 46661
8412 46663
8413 47045

Administrative Orders:
Presidential Determinations:
No. 2009–27 of September 11, 2009 47431
No. 2009–28 of September 11, 2009 47433
Memorandums:
Memorandum of August 31, 2009 45533
Notices:
Notice of September 10, 2009 46883

5 CFR

Proposed Rules:
630 46934
875 46937

7 CFR

210 45305
220 45305
248 46665
319 46489
402 45537
407 45537
457 45537
760 46665
905 ..... 46303, 47047
920 46306
944 47047
945 45731
959 47048
980 45734
993 46310
3430 45736

Proposed Rules:
457 46023
970 45565
983 45772
987 47124
1485 46027

8 CFR

Proposed Rules:
103 46938
214 46938
274a 46938

9 CFR

Proposed Rules:
317 46951
321 47648
332 47648
381 ..... 46951, 47648

10 CFR

55 45544
76 45544
431 45979

Proposed Rules:
40 46512
72 47126
609 46513

12 CFR

329 47050
370 45093

Proposed Rules:
3 47138
208 47138
225 47138
325 47138
370 47489
567 47138

13 CFR

120 45752
121 ..... 45752, 46312
124 ..... 45752, 46885
125 46885
126 ..... 45752, 46885
134 45752

14 CFR

1 45307
23 45100
25 45546
33 45307
39 ..... 45311, 45550, 45754, 45979, 46313, 46317, 46319, 46322, 46324, 46327, 46329, 46331, 46334, 46336, 46339, 46342, 46888
71 ..... 45553, 45554, 45981, 45982, 45983, 45984, 46489, 46890, 46892, 46893, 46894, 46896, 46897, 46898
97 ..... 46899, 46901
101 47435

Proposed Rules:
23 45133
25 ..... 45777, 47494
39 ..... 45135, 45139, 45381, 45781, 45783, 45787, 46395, 47148
71 ..... 45142, 45574, 45575, 46513, 47495
73 47150
93 47495

15 CFR

736.....45985
740.....45985
744.....45990
746.....45985
902.....45756
909.....45555

Proposed Rules:

806.....45383

16 CFR

1119.....45101

Proposed Rules:

1119.....45133
1215.....45719
1216.....45704
1500.....45714, 45723

18 CFR

301.....47052

Proposed Rules:

284.....45576

20 CFR

655.....45560

Proposed Rules:

655.....45906

21 CFR

524.....47435

Proposed Rules:

1301.....46396

22 CFR

Proposed Rules:

62.....45385

24 CFR

206.....45311

26 CFR

1 .....45757, 45993, 46345, 46346, 47436
54.....45994
301.....46347, 46903
602.....45757, 47436

Proposed Rules:

1 .....45789, 47152, 47500
17.....47500
26.....46705
301.....46705, 46957

28 CFR

0.....47096

29 CFR

1910.....46350
1915.....46350
1917.....46350
1918.....46350
1956.....45107
4022.....47097
4044.....47097

Proposed Rules:

501.....45906
1910.....46958
1926.....46958
2560.....45791

30 CFR

203.....46904
210.....46904
250.....46904
251.....46904
253.....46904
254.....46904
256.....46904
280.....46904
291.....46904
944.....45116

31 CFR

356.....47099
515.....46000
538.....46361

33 CFR

100.....46364
110.....46007
117.....46010, 46910
138.....46367
151.....45555
165 .....45120, 45318, 45323, 46011, 46014, 46367, 46491

Proposed Rules:

151.....46910
165.....46040

34 CFR

Proposed Rules:

Ch. VI.....46399

36 CFR

1253.....47439

39 CFR

20.....45760
111.....45325, 45763
3020.....45327, 46016

Proposed Rules:

3060.....46044

40 CFR

35.....46019
52 .....45561, 45766, 46910, 47404, 47414
63.....46493
81.....47404, 47414
180 .....45330, 46369, 46377, 46683, 46689, 47440, 47445, 47451
239.....45769
258.....45769
300.....45335

Proposed Rules:

52 .....45387, 45578, 45795, 46044, 46965, 47154
60.....46401
81.....45387
180.....47507
239.....45796
258.....45796
721.....46707

42 CFR

405.....47458

Proposed Rules:

457.....47517

44 CFR

59.....47471
61.....47471
64.....45122, 46699
78.....47471
79.....47471
80.....47471
201.....47471
206.....47471

Proposed Rules:

67 .....46047, 46056, 46068, 46074, 47160, 47164, 47169

45 CFR

2510.....46495
2516.....46495
2519.....46495
2520.....46495
2522.....46495
2540.....46495
2550.....46495
2551.....46495
2552.....46495
2553.....46495

46 CFR

Proposed Rules:

162.....46964

47 CFR

25.....47100
32.....47107
73 .....45126, 45770, 46020, 47483
74.....45126, 46382
79.....46703

Proposed Rules:

73.....45797, 45798

48 CFR

352.....47108
1545.....47108
1552.....47108

Proposed Rules:

8.....45394
9.....45579
12.....45394, 45579
15.....45394
42.....45394
49.....45394
52.....45579

49 CFR

222.....46384
234.....45336
393.....47112
501.....46021
1515.....47672
1520.....47672
1522.....47672
1540.....47672
1544.....47672
1546.....47672
1548.....47672
1549.....47672

Proposed Rules:

367.....45583
571.....45143
633.....46515

50 CFR

13.....46836
17 .....46914, 47112, 47483
20.....45343
22.....4683
32.....45674, 47117
222.....46930
223.....46930
226.....45353
622.....46509, 46510
648 .....45131, 47117, 47118
665.....45756, 47119
679 .....45131, 45378, 45379, 45564, 46021

Proposed Rules:

17 .....45396, 46401, 46521, 46542, 46548, 46551, 46965, 47536
648.....45597, 45798
660.....46714, 47545

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

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

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.