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

WHO: Sponsored by the Office of the Federal Register.

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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

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Presidential Documents

Title 3—

The President

Proclamation 8427 of October 1, 2009

National Cybersecurity Awareness Month, 2009

By the President of the United States of America

A Proclamation

Americans are constantly adopting new and innovative technologies. This exposure has dramatically increased our thirst for computers, smartphones, and other digital solutions at work and at home. Our Nation's growing dependence on cyber and information-related technologies, coupled with an increasing threat of malicious cyber attacks and loss of privacy, has given rise to the need for greater security of our digital networks and infrastructures. In the Information Age, the very technologies that empower us to create and build also empower those who would disrupt and destroy. During National Cybersecurity Awareness Month, we rededicate ourselves to promoting cybersecurity initiatives that ensure the confidentiality of sensitive information, the integrity of e-commerce, and the resilience of digital infrastructures.

Cyber attacks and their viral ability to infect networks, devices, and software must be the concern of all Americans. This month, we highlight the responsibility of individuals, businesses, and governments to work together to improve their own cybersecurity and that of our Nation. We all must practice safe computing to avoid attacks. A key measure of our success will be the degree to which all Americans educate themselves about the risks they face and the actions they can take to protect themselves and our Nation's digital infrastructure.

The Department of Homeland Security (DHS) and the Federal Trade Commission (FTC) support and promote cybersecurity education. Both the DHS and the FTC have identified basic cybersecurity tips that every computer user should adopt. To learn more about safe computing practices that can help prevent cyber attacks, visit www.onguardonline.gov and www.dhs.gov/cyber.

The 21st century offers our Nation unprecedented opportunities to develop new solutions to the challenges we face. Today, technology allows Americans to reach across the globe and communicate with family and friends, customers and colleagues, in distant locations. With this freedom, however, comes heightened responsibility. My Administration is committed to treating our digital infrastructure as a strategic national asset. Protecting this infrastructure is a national security priority, and in the process, we will ensure that these networks are comprehensive, trustworthy, and resilient. Together, we will create a more secure America, where technology can evolve in a protected and productive environment.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2009 as National Cybersecurity Awareness Month. I call upon the people of the United States to recognize the importance of cybersecurity and to observe this month with appropriate activities, events, and trainings to enhance our national security and resilience.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. E9–24288
Filed 10–6–09; 8:45 am]
Billing code 3195–W9–P

Presidential Documents

Proclamation 8428 of October 1, 2009

National Domestic Violence Awareness Month, 2009

By the President of the United States of America

A Proclamation

Domestic violence touches the lives of Americans of all ages, leaving a devastating impact on women, men, and children of every background and circumstance. A family's home becomes a place of fear, hopelessness, and desperation when a woman is battered by her partner, a child witnesses the abuse of a loved one, or a senior is victimized by family members. Since the 1994 passage of the landmark Violence Against Women Act, championed by then Senator Joe Biden, our Nation has strengthened its response to this crime and increased services for victims. Still, far too many women and families in this country and around the world are affected by domestic violence. During National Domestic Violence Awareness Month, we recommit ourselves to ending violence within our homes, our communities, and our country.

To effectively respond to domestic violence, we must provide assistance and support that meets the immediate needs of victims. Facing social isolation, victims can find it difficult to protect themselves and their children. They require safe shelter and housing, medical care, access to justice, culturally specific services, and economic opportunity. The Family Violence Prevention and Services Act supports emergency shelters, crisis intervention programs, and community education about domestic violence.

In the best of economic times, victims worry about finding a job and housing, and providing for their children; these problems only intensify during periods of financial stress. That is why the American Recovery and Reinvestment Act provides $325 million for the Violence Against Women Act (VAWA) and the Victims of Crime Act (VOCA). This funding will supplement the Federal VAWA and VOCA dollars that flow to communities every year, and enable States, local governments, tribes, and victim service providers to retain and hire personnel that can serve victims and hold offenders accountable. These funds will also bring relief to victims seeking a safe place to live for themselves and their children.

Victims of violence often suffer in silence, not knowing where to turn, with little or no guidance and support. Sadly, this tragedy does not just affect adults. Even when children are not directly injured by violence, exposure to violence in the home can contribute to behavioral, social, and emotional problems. High school students who report having experienced physical violence in a dating relationship are more likely to use drugs and alcohol, are at greater risk of suicide, and may carry patterns of abuse into future relationships. Our efforts to address domestic violence must include these young victims.

During this month, we rededicate ourselves to breaking the cycle of violence. By providing young people with education about healthy relationships, and by changing attitudes that support violence, we recognize that domestic violence can be prevented. We must build the capacity of our Nation's victim service providers to reach and serve those in need. We urge community leaders to raise awareness and bring attention to this quiet crisis. And across America, we encourage victims and their families to call the

National Domestic Violence Hotline at 1–800–799–SAFE. Together, we must ensure that, in America, no victim of domestic violence ever struggles alone.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2009, as National Domestic Violence Awareness Month. I ask all Americans to do their part to end domestic violence in this country by supporting their communities' efforts to assist victims in finding the help and healing they need.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. E9–24289
Filed 10–6–09; 8:45 am]
Billing code 3195–W9–P

Presidential Documents

Proclamation 8429 of October 1, 2009

National Information Literacy Awareness Month, 2009

By the President of the United States of America

A Proclamation

Every day, we are inundated with vast amounts of information. A 24-hour news cycle and thousands of global television and radio networks, coupled with an immense array of online resources, have challenged our long-held perceptions of information management. Rather than merely possessing data, we must also learn the skills necessary to acquire, collate, and evaluate information for any situation. This new type of literacy also requires competency with communication technologies, including computers and mobile devices that can help in our day-to-day decisionmaking. National Information Literacy Awareness Month highlights the need for all Americans to be adept in the skills necessary to effectively navigate the Information Age.

Though we may know how to find the information we need, we must also know how to evaluate it. Over the past decade, we have seen a crisis of authenticity emerge. We now live in a world where anyone can publish an opinion or perspective, whether true or not, and have that opinion amplified within the information marketplace. At the same time, Americans have unprecedented access to the diverse and independent sources of information, as well as institutions such as libraries and universities, that can help separate truth from fiction and signal from noise.

Our Nation's educators and institutions of learning must be aware of—and adjust to—these new realities. In addition to the basic skills of reading, writing, and arithmetic, it is equally important that our students are given the tools required to take advantage of the information available to them. The ability to seek, find, and decipher information can be applied to countless life decisions, whether financial, medical, educational, or technical.

This month, we dedicate ourselves to increasing information literacy awareness so that all citizens understand its vital importance. An informed and educated citizenry is essential to the functioning of our modern democratic society, and I encourage educational and community institutions across the country to help Americans find and evaluate the information they seek, in all its forms.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2009 as National Information Literacy Awareness Month. I call upon the people of the United States to recognize the important role information plays in our daily lives, and appreciate the need for a greater understanding of its impact.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. E9–24290
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Rules and Regulations

Federal Register
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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 274a

[ICE 2377–06; DHS Docket No. ICEB–2006–0004]

RIN 1653–AA59

Safe-Harbor Procedures for Employers Who Receive a No-Match Letter: Rescission

AGENCY: U.S. Immigration and Customs Enforcement, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS) is amending its regulations by rescinding the amendments promulgated on August 15, 2007, and October 28, 2008, relating to procedures that employers may take to acquire a safe harbor from receipt of No-Match letters. DHS is amending its regulations as proposed on August 19, 2009, without change. Implementation of the 2007 final rule was preliminarily enjoined by the United States District Court for the Northern District of California on October 10, 2007. After further review, DHS has determined to focus its enforcement efforts relating to the employment of aliens not authorized to work in the United States on increased compliance through improved verification, including participation in E–Verify, ICE Mutual Agreement Between Government and Employers (IMAGE), and other programs.

DATES: This final rule is effective November 6, 2009.

FOR FURTHER INFORMATION CONTACT: National Program Manager Charles McClain, U.S. Immigration and Customs Enforcement, Office of Investigations—MS 5112, 500 12th Street, SW., Washington DC, 20536. *Telephone:* 202–732–3988 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Docket

Public comments on this docket may be viewed online at *http://www.regulations.gov* or in person at U.S Immigration and Customs Enforcement, Department of Homeland Security, 500 12th Street, SW., Room 1000, Washington, DC 20024, by appointment. To make an appointment to review the docket, call 202–307–0071.

II. Final Rule

After considering the public comments, DHS has determined, for the reasons stated in the proposed rule and in this final rule, to promulgate the rescission of the 2007 and 2008 final rules (referred to collectively as the ''No-Match rules'') without change.

III. Background

It is unlawful for a person or other entity to hire, or to recruit or refer for a fee, an alien for employment in the United States knowing the alien is not authorized to work in the United States. Immigration and Nationality Act of 1952, as amended (INA), section 274A(a)(1)(A), 8 U.S.C. 1324a(a)(1)(A). It is also unlawful for a person or other entity, after hiring an alien for employment, to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment. INA section 274A(a)(2), 8 U.S.C. 1324a(a)(2).

All persons or entities that hire, or recruit or refer persons for a fee, for employment must verify the identity and employment eligibility of all employees hired to work in the United States. INA section 274A(a)(1)(B), (b)(1), (b)(2), 8 U.S.C. 1324a(a)(1)(B), (b)(1), (b)(2). Under the INA, this verification is performed by completing an Employment Eligibility Verification form (Form I–9) for all employees, including United States citizens. INA section 274A(b)(1), (b)(2), 8 U.S.C. 1324a(b)(1), (b)(2); 8 CFR 274a.2. The INA provides, however, that an employer may not conduct this verification in a manner that treats employees differently based on their citizenship status or national origin. INA section 274B(a), 8 U.S.C. 1324b(a). An employer, or a recruiter or referrer for a fee, must retain the completed Form I–9 for three years after hiring, recruiting or referral, or, where the employment extends longer, for the life of the individual's employment and for one year following the employee's departure. INA section 274A(b)(3), 8 U.S.C. 1324a(b)(3). These forms are not routinely filed with any Government agency; employers are responsible for maintaining these records, and they may be requested and reviewed by U.S. Immigration and Customs Enforcement (ICE). INA section 274A(b)(1)(E)(3); 8 CFR 274a.2(b)(2), (c)(2); *see* 71 FR 34510 (June 15, 2006) (Electronic Signature and Storage of Form I–9, Employment Eligibility Verification).

Employers annually send the Social Security Administration (SSA) millions of earnings reports (W–2 Forms) in which the combination of employee name and social security number (SSN) does not match SSA records. In some of these cases, SSA sends a letter, such as an ''Employer Correction Request,'' that informs the employer of the mismatch. The letter is commonly referred to as an employer ''No-Match letter.'' No-Match letters may be caused by many things, including clerical error and name changes. One potential cause may be the submission of information for an alien who is not authorized to work in the United States and who may be using a false SSN or an SSN assigned to someone else. Such a letter may be one indicator to an employer that one of its employees may be an unauthorized alien; the letter itself, however, does not make any statement about an employee's immigration status. ICE sends a similar letter (currently called a ''Notice of Suspect Documents'') after it has inspected an employer's Employment Eligibility Verification forms (Forms I–9) during an investigation audit and after unsuccessfully attempting to confirm, in agency records, that an immigration status document or employment authorization document presented or referenced by the employee in completing the Form I–9 was assigned to that person. After a Form I–9 is completed by an employer and employee, it is retained by the employer and made available to DHS investigators on request, such as during an audit.

Over the years, employers have inquired of the former Immigration and Naturalization Service, and now DHS, whether receipt of a No-Match letter constitutes constructive knowledge on the part of the employer that he or she may have hired an alien who is not

authorized to work in the United States. On August 15, 2007, DHS issued a final rule describing the legal obligations of an employer following receipt of a No-Match letter from SSA or a letter from DHS regarding employment verification forms. *See* 72 FR 45611. That final rule also established ''safe-harbor'' procedures for employers receiving No-Match letters.

The rule has never been implemented in light of a preliminary injunction issued by the United States District Court for the Northern District of California. *AFL–CIO* v. *Chertoff,* 552 F. Supp. 2d 999 (N.D. Cal. 2007) (order granting motion for preliminary injunction). As a result of that litigation, DHS also issued a supplemental proposed and final rule providing to address specific issues raised by the court. *See, e.g.,* 73 FR 15944 (Mar. 26, 2008) (supplemental proposed rule), 73 FR 63843 (Oct. 28, 2008) (supplemental final rule). Neither the supplemental nor 2008 final rules, however, changed any regulatory text.

DHS proposed to rescind the No-Match rules on August 19, 2009, explaining that a more appropriate utilization of DHS resources would be to focus enforcement/community outreach efforts on increased compliance through improved verification, including increased participation in the U.S. Citizenship and Immigration Services (USCIS) E–Verify employment eligibility verification system, the ICE Mutual Agreement Between Government and Employers (IMAGE), and other programs. The proposed rescission rule and this final rule are part of a Government-wide reexamination of regulatory processes. 74 FR 41801, 41802 (Aug. 19, 2009); Docket ICEB–2006–0004–0923. DHS requested public comments on the proposed rescission of the No-Match rules and provided a 30-day public comment period.

IV. Public Comments

DHS received 22 comments during the 30-day comment period. DHS received comments from individuals, professional associations, unions, trade organizations, and advocacy organizations. DHS received comments from the litigants in *AFL–CIO* v. *Chertoff,* No. 07–cv–4472–CRB (N.D. Cal.). Many commenters supported the rescission of the 2007 final rule and provided arguments why the 2007 final rule should be rescinded. Other commenters argued in favor of retaining and implementing the 2007 final rule. The substantive comments are addressed below.

A. Viability of the 2007 and 2008 Rules

One commenter suggested that the guidance provided in the No-Match rules clarified and interpreted existing law. The commenter suggested that the safe harbor provision provided valuable guidance to employers that need guidance in this area. The commenter further argued that removal of the No-Match rule will just create uncertainty and more room for unscrupulous employers to continue to hire and retain workers they know or should know are not authorized to work. Another commenter expressed concern that rescinding the No-Match rules will leave employers wanting to resolve discrepancies but having no guidance on what DHS would consider a good faith attempt to resolve the discrepancy to avoid a finding of constructive knowledge, as opposed to violating the anti-discrimination laws; and that E–Verify, IMAGE and other DHS programs identified in this rule do not provide guidance in dealing with No-Match letters or provide a safe harbor to employers.

DHS does not disagree that additional guidance would be valuable to employers. DHS disagrees, however, with the suggestion that if the No-Match rules are rescinded, employers will have no guidance on compliance with the Immigration and Nationality Act's employment verification requirements. As discussed in all of the proposed and final rules in this rulemaking, DHS and its predecessor agencies have provided guidance on the immigration implications and responding to No-Match letters. Similarly, the Office of Special Counsel for Immigration Related Unfair Employment Practices, Civil Rights Division, Department of Justice, enforces the anti-discrimination provisions of INA section 274B, 8 U.S.C. 1324b, and provides guidance to employers about responding to SSA no-match letters in a manner consistent with the anti-discrimination provision of the INA. The No-Match rules set out that advice and provided a safe harbor if employers followed specified steps to resolve the discrepancy. The commenter, a professional association, has provided similar advice to its members. DHS, in considering all of its options, does not believe that the addition of a ''safe-harbor'' to that guidance is as effective as other tools to assist in compliance with the employment restrictions of the Immigration and Nationality Act.

DHS continues to provide employer support through IMAGE. IMAGE is specifically designed to help the business community develop and implement hiring and employment verification best practices.

As of September 2009, more than 155,000 employers have signed an MOU with DHS to participate in E–Verify, representing more than 500,000 hiring sites; in fiscal year (FY) 2009, employers queried E–Verify nearly 8.6 million times. The Administration and DHS fully support the expansion of E–Verify and have taken steps to encourage use of E–Verify, including ensuring that federal contractors use E–Verify to ensure an employment eligible workforce.[1] USCIS also recently updated the Handbook for Employers (M–274) to provide more comprehensive guidance and instructions for completing the Employment Eligibility Verification Form (Form I–9). *http://www.uscis.gov/files/nativedocuments/m-274.pdf.*

These tools focus on more universal compliance with the employment eligibility verification requirements of the Immigration and Nationality Act than a safe harbor procedure for a limited number of employers who receive a No-Match letter. A No-Match letter is reactive, either one specifically guided to the employment eligibility issue from ICE or one indirectly pointing to a potential employment eligibility issue through social security number record mismatches on tax filings through SSA.

Furthermore, DHS has acknowledged that unscrupulous employers would continue to find ways to take advantage of the system, regardless of whether the No-Match rules were in place. DHS focuses criminal and civil enforcement against the most egregious violators: employers who use unauthorized workers in order to gain a competitive advantage or those who exploit the vulnerable, often engaging in human trafficking and smuggling, identity theft,

[1] A modest expansion of E–Verify will occur with the requirement that certain government contractors utilize E–Verify. See Executive Order 13,465, 73 FR 33285 (June 11, 2008); *Designation of the Electronic Employment Eligibility Verification System Under Executive Order 12,989,* 73 FR 33837 (June 13, 2008); *Proposed Employment Eligibility Verification Rule,* 73 FR 33,374 (June 12, 2008); *Final Employment Eligibility Verification Rule,* 73 FR 67651 (Nov. 14, 2008); *Chamber of Commerce of the United States* v. *Napolitano,* 2009 WL 2632761, D. Md. No. 08–civ–3444 (AW), Memorandum Opinion, Dk. No. 51 (Aug. 26, 2009) (denying plaintiff's motion for summary judgment and preliminary injunction; granting defendant's motion for summary judgment), appeal filed No. 09–2006 (Sept. 4, 2009. DHS also encourages States and other jurisdictions to utilize E–Verify. *Cf., Chicanos por la Causa, Inc.* v. *Napolitano,* 558 F.3d 856, 867 (9th Cir. 2009) (amended on denial of petition for rehearing) (holding that ''Congress could have, but did not, expressly forbid state laws from requiring E–Verify participation.''), pet. for cert. filed sub nom. *Chamber of Commerce* v. *Candelaria,* U.S. No 09–115 (filed May 28, 2009).

and social security number and document fraud; and employers in the Nation's critical infrastructure sites, including airports, seaports and power plants.

B. Issues Raised in the 2007 and 2008 Rules

Other commenters repeated arguments previously made in the 2007 and 2008 rulemaking, and in the subsequent litigation, that the No-Match rules created confusion among many small businesses, including farm businesses, and that the No-Match rules would have resulted in additional costs; and also that the process outlined in the No-Match rules would have resulted in additional labor, resource and personnel costs, which many small businesses would be unable to absorb.

The 2007 and 2008 No-Match rules were intended to clarify the obligations of an employer following the receipt of a no-match letter from SSA or a letter from DHS regarding employment verification forms. Further, as explained, DHS does not believe the No-Match rules imposed a mandate that forced employers to incur ''compliance'' costs. 73 FR 63863. Only small entities that choose to avail themselves of the safe harbor would incur direct costs as a result of the No-Match rules, and all entities are responsible for the wage statement (Form W–2) that creates a No-Match letter.

Commenters asserted that the No-Match rules should be rescinded because the correction period allowed in the final rules is inadequate. SSA, according to the commenters, would be unable to resolve mismatches presented by authorized workers within the correction period. One commenter further alleged that the No-Match rules would disproportionately impact authorized workers of color, transgender workers, and those who appear or sound ''foreign;'' the rules would lead to retaliatory firings.

Although DHS agrees with the commenters' suggestions that the rules should be rescinded, DHS disagrees with the suggestion that the No-Match rules would have generated additional costs or would have disproportionately impacted authorized workers or any discrete group. As stated above, the No-Match rules were intended to clarify the obligations of an employer following the receipt of a No-Match letter from SSA or a letter from DHS regarding employment verification forms.

Another commenter alleged that the No-Match rules were an unlawful expansion of the definition of ''constructive knowledge'' because the No-Match letters are sent out for reasons unrelated to immigration status. Similarly, another commenter supported the rescission of the No-Match rules arguing that the rules would have led to the termination of large numbers of United States citizens and other authorized workers because many of the ''no-matches'' in the SSA's Earning Suspense File have nothing to do with immigration status.

DHS disagrees. DHS has not changed its position as to the merits of the 2007 and 2008 rules; DHS has decided to focus on more universal means of encouraging employer compliance than the narrowly focused and reactive process of granting a safe harbor for following specific steps in response to a no-match letter. DHS has determined that focusing on the management practices of employers would be more efficacious than focusing on a single element of evidence. Receipt of a No-Match letter, when considered with other probative evidence, is a factor that may be considered in the totality of the circumstances and may in certain situations support a finding of ''constructive knowledge.'' A reasonable employer would be prudent, upon receipt of a No-Match letter, to check their own records for errors, inform the employee of the no-match letter, and ask the employee to review the information. Employers would be prudent also to allow employees a reasonable period of time to resolve the no-match with SSA.

Another commenter noted that employers are wrongly implementing the 2007 and 2008 final rules even though implementation of the 2007 rule was enjoined and that employees who receive no-match letters are being discriminated against and terminated if they are unable to resolve their discrepancies with SSA within ten days. DHS acknowledges that an employer who terminates an employee without attempting to resolve the issues raised in a No-Match letter, or who treats employees differently based upon national origin, perceived citizenship status, or other prohibited characteristics may be found to have engaged in unlawful discrimination under the anti-discrimination provision of the INA section 274B, 8 U.S.C. 1324b. That fact does not, however, warrant DHS changing its earlier position that receipt of a No-Match letter and an employer's response to a No-Match letter, in the totality of the circumstances, may be used as evidence of a violation of the employment restrictions of the Immigration and Nationality Act. 73 FR at 63848, n.2; 74 FR 41804, n.4. Employers should not use No-Match letters, without more, as a basis for firing employees without resolution of the mis-match, and DHS has never countenanced such a practice. DHS urges employers, employees, and other interested parties to contact the Office of Special Counsel for Immigration-Related Unfair Employment Practices, (800) 255–8155 or *http://www.usdoj.gov/crt/osc/,* for additional information and guidance about the application of the anti-discrimination provisions.

Another commenter alleges that the No-Match rules failed to address the concerns of the District Court that led to the injunction of the rules. This comment appears more attuned to the 2008 supplemental proposed rule, rather than the rescission of the 2007 final rule. Although DHS disagrees that the supplemental rule failed to address the District Court rationale in the order granting a motion for preliminary injunction, DHS is nonetheless rescinding the No-Match rule as the commenter urged.

C. Scope of No-Match Letters as an Enforcement Tool

Several commenters suggested that SSA discontinue issuing No-Match letters to employers and instead send them to affected employees. The commenters further recommend that, if sent to employers, DHS not use the no-match letters for immigration compliance purposes or, if the letters are obtained through audits or investigations, that DHS inform employers that they will have safe harbor from wrongful termination and Privacy Act charges. Another commenter further noted that No-Match letters are issued for administrative purposes; that they were not designed as an immigration enforcement tool and are, in fact, ill-suited for this purpose.

Whether the SSA will continue to provide employers and employees with written notice indicating that there is a discrepancy between the worker's name and social security number is a decision to be made by SSA. DHS believes that SSA notification is beneficial to the employer and the employee, and that the different letters to employers and employees serve different purposes for SSA. Employers and employees are made aware of discrepancies in their filings and that the discrepancy may affect employees' potential benefits, respectively, and the letters encourage corrective action to ensure that the employee's earnings are properly credited for retirement, disability, survivor and other benefits.

As discussed above, a finding of constructive knowledge of unauthorized employment may be based on the totality of the circumstances. Employers

remain liable where the totality of the circumstances establishes constructive knowledge that the employer knowingly hired or continued to employ unauthorized workers. An employer's receipt of a No-Match letter and the nature of the employer's response to the letter are only two factors that may be considered in determining the totality of the circumstances.

Another commenter argued that the use of social security numbers for immigration enforcement through delivery of No-Match letters turns employers into de facto immigration agents, which goes beyond the scope of SSA's mission. DHS strongly disagrees. DHS acknowledges that receipt of the No-Match letter, without more, does not mean that the employee is not authorized to work or that the employee provided a fraudulent name or social security number. The discrepancy may be based upon a number of reasons unrelated to immigration status, such as clerical errors or employees' name changes that may not have been reported to SSA. However, a No-Match letter may also be generated because the individual is unauthorized to work in the United States and provided fraudulent information to the employer at the time of hire.

With regard to the comment that DHS provide a safe harbor from wrongful termination and Privacy Act charges, such action is outside of DHS's authority. DHS, therefore, declines to accept the recommendation.

D. Viability of E-Verify and IMAGE

Several commenters suggested that E-Verify and IMAGE cannot replace the No-Match rules. One commenter argued that improvements in E-Verify and other DHS programs do not provide better tools for employers to reduce the incidence of unauthorized employment and to better detect and deter the use of fraudulent identity documents by employees, because IMAGE and E-Verify are voluntary, and unscrupulous employers will not sign up for either. The commenter further argued that E-Verify is deeply flawed and will confirm work authorization for individuals who claim to be a citizen and obtain identity documents using the citizen's name and social security number. Some commenters expressed reservations about expansion of E-Verify without significant modifications because of alleged reliance on databases that are flawed or riddled with errors that would result in denial of employment to authorized workers, including United States citizens, and in discrimination against immigrant workers. Another commenter supported the rescission of the 2007 and 2008 No-Match Rules, but opposes mandated participation in E-Verify or IMAGE.

Another commenter suggested that a mandatory or vast expansion of the E-Verify electronic employment verification system is not a solution to our nation's immigration problems. Further, the commenter suggested that the degree of inaccuracy in the E-Verify underlying databases means that large numbers of Americans will be denied employment and paychecks, at least temporarily, while they attempt to resolve the problem with relevant government agencies. Finally, the commenter suggests that evidence coming from those who have used E-Verify indicate that the current program is seriously flawed, ineffective, and could potentially cost thousands of United States citizens and legal residents their jobs due to database errors.

Other commenters suggested that E-Verify relies upon databases which are flawed or error-prone and have unacceptably high error rates that misidentify authorized workers; abuse of the program by employers is substantial and results in discrimination, profiling of a vulnerable segment of workers, and illegal employment practices by unscrupulous employers; the privacy and security concerns of the program have not been addressed; and expanded use of the program jeopardizes the labor rights and livelihoods of work-authorized immigrant and citizen workers.

Other commenters similarly expressed reservations about expansion of E-Verify without significant modifications to the program, its timely implementation with added employer safeguards, and fair procedures to ensure the system's accuracy and accountability. Another commenter supported the rescission of the 2007 and 2008 final rules, but opposed mandated participation in E-Verify or IMAGE.

DHS agrees that E-Verify and IMAGE do not replace the no-match rules per se—DHS never intended to suggest that its change in focus was a replacement for the No-Match rule. The E-Verify and IMAGE programs, and DHS enforcement priorities, are not a part of this rule and the proposed rule did not propose any action that would make E-Verify or IMAGE or any other program a replacement or mandatory. DHS stated only that it was changing enforcement priorities and focus. These comments address broader policy decisions, not the content of the rescission proposed rule. DHS continues to believe that E-Verify provides the best available method for employers to verify the employment eligibility of employees.

DHS strongly disagrees, however, with the commenters' suggestion that E-Verify contains a degree of inaccuracy that warrants not using E-Verify.[2] Although outside the scope of the proposed rule, DHS notes that many of the statistics used by commenters are out of date and some do not establish the point suggested by the commenter. As discussed above, the Administration and DHS are expanding the use of E-Verify because it is an accurate and effective tool for employers to verify employment eligibility.

In addition, the IMAGE outreach program and other initiatives, such as requiring all government contractors to utilize E-Verify, positively influence United States employers to exercise proactive immigration compliance, thus restricting the competitive field in which unscrupulous employers operate.

Several commenters suggested that relying solely on electronic verification of employment eligibility would disadvantage agricultural employers who are located in rural areas where modern internet capability is not readily available; these commenters further argued that the difficulty faced by these employers in using electronic verification may subject them to an imprecise interpretation of constructive knowledge. DHS has made clear that E-Verify is not a requirement and is one of many means to assure compliance. An employer who decides to use E-Verify, however, may choose, for example, to use an outside company or vendor to run E-Verify queries. Employers could also seek out other sources of internet access, such as public sites. Accordingly, DHS does not believe that it is impracticable for some employers to use electronic employment verification methods such as E-Verify in areas where internet capability may currently be limited. As discussed above, E-Verify is one of many tools available to employers, not the exclusive tool available or the exclusive focus of DHS' assistance to employers. To the extent that agricultural employers are located in rural areas that are not well served with modern

[2] Current statistics are available on the Internet at *http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=f82d8557a487a110VgnVCM1000004718190aRCRD&vgnextchannel=a16988e60a405110VgnVCM1000004718190aRCRD.* See Committee on Oversight and Government Reform, Subcommittee on Government Management, Organization and Procurement, *E-Verify: Challenges and Opportunities,* 111th Cong., 1st Sess. (July 23, 2009) (prepared statements available at *http://governmentmanagement.oversight.house.gov/story.asp?ID=2552*).

internet capability, employers may continue to complete the Employment Eligibility Verification Form I–9 in the paper format and comply with the employer verification requirements of the Immigration and Nationality Act by carefully examining the identification and employment eligibility documents presented by the employee at the time of hire.

E. Other Issues

A commenter suggested that the Employment Eligibility Verification Form I–9 process is flawed and that employers refer to it as the ''ten foot rule''—i.e. that if the documents presented look valid from ten feet away, then they are acceptable. DHS shares the commenter's concern that the Employment Eligibility Verification process can be abused by fraudulent document holders. The standard implicated in this comment by which employers are held to account regarding document verification is fixed by statute. INA section 274A(b)(1)(A), 8 U.S.C. 1324a(b)(1)(A) requires employers to verify an alien's work eligibility where a work authorization document presented ''reasonably appears on its face to be genuine.'' Accordingly the comment treats matters outside the scope of this rule. DHS is making improvements in the Employment Eligibility Verification Form I–9 to assist employers and improve the integrity of employment verification. *See,* e.g., *Documents Acceptable for Employment Eligibility Verification,* 73 FR 76505 (Dec. 17, 2008) (interim final rule with request for comments amending lists of acceptable documents); 74 FR 5899 (Feb. 3, 2009) (delayed effective date); 74 FR 10455 (Mar. 11, 2009) (correction).

A few commenters further suggested that this rescission rule should address guest worker programs. These comments are outside the scope of this rulemaking action and thus will not be addressed in this final rule. DHS may consider these issues separately.

V. Statutory and Regulatory Reviews

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this rule would have a significant economic impact on a substantial number of small entities. This rule would amend DHS regulations to rescind the amendments promulgated in the 2007 final rule and the 2008 supplemental final rule relating to procedures that employers may take to acquire a safe harbor from evidentiary use of receipt of no-match letters. Implementation of the 2007 final rule was preliminarily enjoined by the United States District Court for the Northern District of California on October 10, 2007. This rule reinstates the language of 8 CFR 274.1(l) as it existed prior to the effective date of the 2007 final rule.

As explained at 73 FR 63863, DHS does not believe the safe-harbor offered by the 2007 final rule and the 2008 supplemental final rule imposed a mandate that forced employers to incur ''compliance'' costs for the purposes of the Regulatory Flexibility Act. Only small entities that choose to avail themselves of the safe harbor would incur direct costs as a result of the 2007 final rule and the 2008 supplemental final rule. As this rulemaking proposes to rescind the offer of a safe harbor, this rule does not propose any compliance requirements and consequently would not impose any direct costs on small entities if promulgated as a final rule. Therefore, DHS certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

B. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in one year, and it would not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Public Law No. 104–4, 109 Stat. 48 (1995), 2 U.S.C. 1501 *et seq.*

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996, Public Law 104–121, 804, 110 Stat. 847, 872 (1996), 5 U.S.C. 804(2). This rule has not been found to be likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic or foreign markets.

D. Executive Order 12866 (Regulatory Planning and Review)

This rule constitutes a ''significant regulatory action'' under Executive Order 12866, and therefore has been reviewed by the Office of Management and Budget. Under Executive Order 12866, a significant regulatory action is subject to an Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or 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.

E. Executive Order 13132 (Federalism)

This rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order No. 13132, 64 FR 43255 (Aug. 4, 1999), this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order No. 12988, 61 FR 4729 (Feb. 5, 1996).

G. Paperwork Reduction Act

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

List of Subjects in 8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons set forth in the preamble, DHS amends part 274a of title 8 of the Code of Federal Regulations as follows:

8 CFR CHAPTER 1—DEPARTMENT OF HOMELAND SECURITY

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 1. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1624a, 8 CFR part 2, Public Law 101–410, 104 Stat. 890, as amended by Public Law 104–134, 110 Stat. 1321.

■ 2. Section 274a.1 is amended by revising paragraph (l) to read as follows:

§ 274a.1 Definitions.

* * * * *

(l)(1) The term knowing includes not only actual knowledge but also knowledge which may fairly be inferred through notice of certain facts and circumstances which would lead a person, through the exercise of reasonable care, to know about a certain condition. Constructive knowledge may include, but is not limited to, situations where an employer:

(i) Fails to complete or improperly completes the Employment Eligibility Verification Form, I–9;

(ii) Has information available to it that would indicate that the alien is not authorized to work, such as Labor Certification and/or an Application for Prospective Employer; or

(iii) Acts with reckless and wanton disregard for the legal consequences of permitting another individual to introduce an unauthorized alien into its work force or to act on its behalf.

(2) Knowledge that an employee is unauthorized may not be inferred from an employee's foreign appearance or accent. Nothing in this definition should be interpreted as permitting an employer to request more or different documents than are required under section 274(b) of the Act or to refuse to honor documents tendered that on their face reasonably appear to be genuine and to relate to the individual.

Janet Napolitano,

Secretary.

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FEDERAL HOUSING FINANCE BOARD

12 CFR Part 915

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1261

RIN 2590–AA03

Federal Home Loan Bank Boards of Directors: Eligibility and Elections

AGENCY: Federal Housing Finance Board; Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is adopting a final regulation on the eligibility and election of Federal Home Loan Bank (Bank) directors. The final rule implements section 1202 of the Housing and Economic Recovery Act of 2008, which amended section 7 of the Federal Home Loan Bank Act (Bank Act) as it relates to the eligibility and election of individuals to serve on the boards of directors of the Banks.

DATES: This final rule will become effective on November 6, 2009.

FOR FURTHER INFORMATION CONTACT: Thomas P. Jennings, Senior Attorney Advisor, *thomas.jennings@fhfa.gov,* (202) 414–8948; or Patricia L. Sweeney, Management Analyst, *pat.sweeney@fhfa.gov,* (202) 408–2872.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

The Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. 2654 (2008), transferred the supervisory and oversight responsibilities over the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation (collectively, Enterprises), and the Banks to FHFA, which is responsible for ensuring that the Enterprises and the Banks operate in a safe and sound manner and carry out their public policy missions. The Enterprises and the Banks continue to operate under regulations promulgated by the Office of Federal Housing Enterprise Oversight and the Federal Housing Finance Board (Finance Board), respectively, until FHFA issues its own regulations.

Section 1202 of HERA amended section 7 of the Bank Act, 12 U.S.C. 1427, which governs the directorship structure of the Banks. The Finance Board regulation implementing section 7 was codified at 12 CFR part 915. Part 915 governed the nomination and election only of those directors who are chosen from among the officers and directors of members of the Banks, which this final rule refers to as member directors. Section 1202(1) of HERA amended section 7(a) of the Bank Act to give the members the additional right to elect all of the other directors on the boards of directors of the Banks, which this rule refers to as independent directors.

On September 26, 2008, FHFA published an interim final rule (interim rule) to implement the amendments made by section 1202 of HERA. *See* 73 FR 55710, September 26, 2008. FHFA retained the basic process of elections that existed in part 915 as applied to member directorships, making changes as necessary to comply with the amendments to section 7 of the Bank Act. FHFA also added new provisions to govern the process for nominating individuals for independent directorships and for conducting elections of independent directors in conjunction with the elections of the member directors.

FHFA adopted the rule on an interim basis because there was insufficient time after the enactment of HERA for FHFA to conduct a full notice and comment rulemaking that would have allowed the Banks to conduct their 2008 elections before the end of 2008. Nonetheless, the interim rule afforded interested persons the opportunity to participate in the rulemaking process by submitting written comments on the interim rule, which FHFA has considered in adopting this final rule. The comment period closed on November 25, 2008.

Section 1201 of HERA (codified at 12 U.S.C. 4513(f)) requires the Director of FHFA to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure, mission of providing liquidity to members, affordable housing and community development mission, capital structure, and joint and several liability, whenever promulgating regulations that affect the Banks. In preparing this final rule, the Director considered these factors and determined that the rule is appropriate, particularly because this final rule implements a statutory provision that applies only to the Banks. *See* 12 U.S.C. 1427.

II. Analysis of the Public Comments and Final Rule

FHFA received 15 public comments on the interim rule. Eleven Banks and one Bank member submitted comments. Two trade associations and a member of the United States House of

Representatives also submitted comments. There were common threads in the Bank comments, which FHFA considered in making revisions to the interim rule. The final rule establishes Subpart A— Federal Home Loan Bank Boards of Directors: Eligibility and Elections of part 1261 of the FHFA regulations, which now will be titled ''Federal Home Loan Bank Directors.'' Comments on specific issues are addressed in the section-by-section discussion below.

A. Section 1261.1 Definitions

FHFA received no comments on the definitions in the interim rule, but has made technical changes to some of the definitions that were in part 915, without changing their meanings. For example, in some definitions the final rule has replaced the word ''person'' with ''individual'' for purposes of consistency.

B. Section 1261.2 General Provisions

Section 1261.2 of the final rule includes two substantive amendments from the interim rule, noted below, as well as certain technical revisions. Section 7(a) of the Bank Act sets the size of a Bank's board of directors at 13, or such other number as the Director may determine, provided the member directorships always constitute a majority and the independent directorships comprise at least 40 percent of the entire board. As a practical matter, however, the ''grandfather'' provision of section 7(c) of the Bank Act, which guarantees each State at least as many member directorships as it had in 1960, requires that nearly all of the Banks must have at least 8 member directorships. As a result, the minimum size board that could comply with both of those provisions is 14 persons, with 8 member directorships and 6 independent directorships. Section 1261.2(a) of the interim rule provided that the FHFA Director annually will set the number of directorships for each Bank and will designate the directorships as either member directorships or independent directorships. At least two independent directorships are required by the Bank Act to be public interest directorships. Some Banks commented that the boards of directors of the Banks should have the discretion to determine how many of the independent directors should be designated as public interest directors. In response to those comments, section 1261.2(a) of the final rule has been changed to require the board of directors of each Bank annually to determine how many of its independent directorships should be designated as public interest directorships, provided that the Bank at all times has at least two public interest directorships.

Section 1261.2(c) of the interim rule carried forward the requirement in § 915.3(a) that the Banks conduct their elections, and provided that each Bank must hold one election each year for all directors, rather than separate elections for the independent directors and member directors. The final rule has amended the latter provision to clarify that the purpose of an election occurring in a particular year is to elect directors whose terms will commence on January 1 of the following year. Two commenters advocated that FHFA become more involved in the election process to help assure that elections result in an appropriate board composition. One trade association requested that FHFA ''monitor the extent to which credit unions and other minority interests'' are represented on the boards of the Banks and take actions, including encouraging nominations of individuals who are associated with minority interests, when such interests are not represented adequately. A member of the House of Representatives requested that FHFA consider ''implementing safeguards'' to assure that individuals from the general population, including minorities and women, are considered for nomination and are represented adequately on the boards.

FHFA believes that diversity among the members of each board of directors of the Banks would be beneficial to the Banks, and thus encourages the Banks to consider the diversity of their boards, both as to representation among the general population and as to representation of its members, as it requests nominees for member directorships from its members and as it goes through the process of nominating candidates for independent directorships. Each Bank could be assisted in the nomination of candidates for independent directorships by effectively integrating its process of consulting with the Bank's Advisory Council, as required by § 1261.6(d) of the final rule, into the election process. Nonetheless, the final rule does not include any provisions mandating that the boards of the Banks include representatives from any particular industry groups or other populations. Such a provision could be contrary to the statutory provisions vesting the nominations of member and independent directors in the members and the boards of directors of the Banks, respectively, as well as to HERA's repeal of the authority for the Finance Board to appoint directors to the boards of the Banks. Moreover, the Banks have gone through only one election cycle since the enactment of HERA, and therefore it is difficult to assess the extent to which the new process will generate diverse boards.

C. Section 1261.3 Designation of Member Directorships

Section 1261.3 of the interim rule addressed the process by which the Director annually designates the member directorships at each Bank. The final rule adopts this provision with one substantive change, noted below, as well as several wording changes, none of which has substantive effect. Section 1261.3(c)(1) of the interim rule required that the designation of directorships be conducted in accordance with section 7(b) and (c) of the Bank Act. Section 1261.3(c)(2) of the interim rule further provided that if an existing directorship were to cease to exist as a result of the annual designation of directorships, then the incumbent director sitting in that directorship would not be eligible to serve after December 31 of that year. The final rule deletes section 1261.3(c)(2) in its entirety because it is largely duplicative of another provision of the interim rule, which is codified at § 1261.4(e) of the final rule.

D. Section 1261.4 Director Eligibility

Section 1261.4(a) of the interim rule carried forward § 915.7(b) of the Finance Board rule regarding the eligibility requirements of member directors. Several Banks commented that the final rule should clarify how these requirements should be applied when a Bank's board must fill a vacancy. Specifically, these commenters asked whether a board of directors is limited to choosing officers or directors of institutions that were members at the time the position initially was filled, or may consider candidates from any institutions that are members when the board acts.

Section 7(f)(2) of the Bank Act requires a vacancy to be filled by an individual who meets the eligibility requirements applicable to his or her predecessor. The Bank Act, however, does not include a single list of provisions that are labeled ''eligibility'' requirements. Instead, certain requirements for directors are contained within the definitions of the types of directorships, while others exist elsewhere in the form of qualifications for persons to serve as directors. Section 1261.4(a)(2) of the interim rule included as part of the regulatory eligibility requirements for member directors a requirement that the person be an officer or director of an institution that

was a member as of the record date prior to the election. Commenters expressed concern about applying the record date requirement to a replacement director, and suggested that the final rule make clear that an institution's membership status as of the record date should not be deemed an eligibility requirement for a replacement director. FHFA agrees that this provision of the rule should be clarified and, because the Bank Act does not address the issue of the time of membership in determining whether a candidate is an officer or director of a member, believes that the rule should distinguish between directors elected by the members and those elected by the board to fill a vacancy. Accordingly, § 1261.4(a)(2) of the final rule provides that in the case of member directors elected by the members, the institution at which a candidate serves must have been a member as of the record date, but in the case of the board filling a vacancy, the institution at which the candidate serves as an officer or director must be a member of the Bank at the time the individual is elected by the board, whether or not it was a member as of the record date for the election of the predecessor.

Section 1261.4(a)(2) of the final rule also has been changed by replacing a reference to a member being located in a ''voting State'' with a reference to the member being located in the Bank's ''district'', which conforms more closely to the statutory language. The requirements relating to a voting State are located in a new paragraph (b) of the final rule. This has been added to maintain the requirement that each individual filling a member directorship must be an officer or director of a member that is located in the State to which the Director has allocated that directorship. This requirement applies to all individuals serving as member directors, though it is not designated as an eligibility requirement.

As a result of the addition of new § 1261.4(b), the final rule also redesignates § 1261.4(b)–(d) of the interim rule as § 1261.4(c)–(e) of the final rule and revises portions of the redesignated paragraphs (d) and (e). Section 1261.4(c)(1) of the interim rule described situations in which otherwise eligible individuals would not be eligible to serve, while § 1261.4(c)(2) clarified the application of the statutory term limits provision. The final rule makes certain changes relating to the application of the term limits, which are described below. The term limit provisions of section 7(d) of the Bank Act limit service of individuals who have been elected to and served all or part of three consecutive full terms. Such individuals are ineligible for the two years following such service. Although § 1261.4(c)(2)(i) of the interim rule provided that terms adjusted subsequent to HERA would not be considered to be full terms, some commenters construed this to mean that FHFA would apply that provision only to the terms that commenced on January 1, 2009, but not to terms adjusted subsequently. It is possible that the discussion of the term limits provisions in the preamble to the interim rule, which focused primarily on the 2008 election, may have caused some misunderstanding about this provision, which is intended to apply whenever a term is adjusted by FHFA to fewer than four years, and not just to terms commencing on January 1, 2009. Because the language of that provision of the interim rule is clear, it has not been changed in the final rule, although the provision has been redesignated as § 1261.4(d)(2)(i).

Section 1261.4(c)(2)(iii) of the interim rule provided that a director's election to a three-year term prior to HERA constituted service in a full-term directorship. This provision also applied only to the terms of member directors. Some Bank commenters requested that this provision be changed to apply to all directors holding three-year directorships as of the effective date of HERA, and one trade association commented that only four-year terms should count toward the term limit provision. FHFA believes that the provision as it currently reads is in accordance with the Bank Act. The term limits provisions apply only to terms to which a director ''has been elected.'' Prior to HERA, the minority members of the board of the Banks were appointed to three-year terms by the Finance Board. Because section 7(d) applies only to persons who have been elected, terms served by persons appointed by the Finance Board cannot count toward the consecutive term limitation. With regard to the other issue, prior to HERA a three-year term constituted a full term as a matter of law and FHFA cannot disregard that fact by limiting the application of the term limits provision solely to four-year terms. Accordingly, § 1261.4(c)(2)(iii) of the interim rule will remain the same in this respect, except that in the final rule it is redesignated as § 1261.4(d)(2)(ii) and includes certain other nonsubstantive wording changes.

One Bank asked FHFA to clarify whether the period of time served by a person who is elected to fill a vacancy constitutes a full term for purposes of the term limits provision. In the past, the Finance Board has interpreted section 7(d) of the Bank Act as applying only when the director is elected by the members, and not to persons elected by the board of directors of a Bank to fill a vacancy. Moreover, because replacement directors serve only the unexpired portion of an existing term of office, they are not elected to serve a full term. Accordingly, the final rule includes a new provision, § 1261.4(d)(2)(iv), that makes clear that the time served by a replacement director filling a vacancy does not constitute a full term for purposes of the term limit provision.

Section 1261.4(d) of the interim rule addressed situations in which an incumbent Bank director becomes ineligible to remain in office if the directorship in which he serves is eliminated or is designated to another State as part of the annual designation of directorships before its term expires. The final rule redesignates this provision as section 1261.4(e), but does not make any substantive changes to the regulation. Paragraph (e)(2) has been revised slightly to include a cross reference to section 1261.14(a) of the final rule, which includes language that had previously been included in paragraph (e)(2) regarding how the board fills a redesignated directorship. Although the final rule does not change this provision, certain comments related to the issue of vacancies arising from the redesignation of a directorship to another State have prompted FHFA to consider whether the rule should be revised to allow the members in the affected States to select the person to fill the redesignated directorship, rather than the board of directors, which is the current practice. The Finance Board treated the redesignation of a directorship from one State to another as creating a vacancy on the board, which is to be filled by a Bank's board of directors. FHFA believes, however, that the relevant provisions of the Bank Act allow it to construe the redesignation of directorship to another State as the termination of the original directorship and the creation of a new directorship, which would allow the members in the new State to elect a person to fill the new directorship. Such treatment would have no effect on the staggering of the directorships, so long as the Director adjusts the term of the new directorship to match the unexpired portion of the original directorship. Because such a change would constitute a change in the policy established by the Finance Board, however, FHFA has not included that provision in this final rule, but intends to address this issue in a separate proposed rulemaking, which it intends

to publish in the Federal Register shortly after the final rule takes effect.

E. Section 1261.5 Determination of Member Votes

Section 1261.5 of the interim rule carried forward § 915.5 of the Finance Board rule, which sets forth how the Banks must determine the number of votes of each member. The final rule makes no changes to § 1261.5 of the interim rule, except that the reference to the specific Finance Board rules in paragraph (b) has been modified to reflect that they may at some time be replaced by FHFA rules that succeed them.

F. Section 1261.6 Nominations for Member and Independent Directorships

Section 1261.6 of the interim rule carried forth, in modified form, the requirements of § 915.6 of the Finance Board regulations regarding nominations for member directorships, and added provisions relating to the nomination of independent directorship candidates. In the final rule, § 1261.6(a)–(c) remain essentially the same as the corresponding provisions of the interim rule. The final rule does modify certain language used in paragraph (a)(5), relating to the nominating certificate that a Bank's election notice must include, and in paragraph (c), which includes certain editorial changes, none of which affect the substance of those provisions. Section 1261.6(d) of the interim rule addressed independent directorship nominations and implemented Section 7(b)(2) of the Bank Act, which requires independent directors to be nominated by each Bank's board of directors but to be elected by the members of each Bank. The final rule includes some modest revisions to certain provisions of § 1261.6(d), which are noted below, but otherwise does not differ from the interim rule. HERA amended the Bank Act to require that independent directors either must possess demonstrated knowledge or experience in certain specified subject matter areas, or must have more than four years of experience in representing certain consumer or community interests.

Section 1261.6(d)(1) of the interim rule generally reiterated those statutory requirements, which are somewhat more rigorous than were the pre-HERA requirements for the appointed directors. Certain Banks expressed concern about the effect of the new qualifications on their holdover appointed directors, and asked that the final rule allow those incumbent directors that do not satisfy the HERA requirements to stand for election so long as they continue to comply with the pre-HERA requirements under which they were appointed initially. These Banks assert that the changes in qualifications are not significant and that board continuity with well-performing directors is more important than is compliance with the new qualifications. The final rule does not include the revisions suggested by the commenters because that would be contrary to the unambiguous language of the Bank Act, which does not allow a person who does not meet the new qualifications to stand for election as an independent director. Any such holdover appointed directors are deemed to be independent directors while they serve out the remainder of their terms, and any persons who were designated as public interest directors prior to HERA may retain that status until their term expires.

Section 1261.6(d)(2) of the interim rule required each Bank to include in its bylaws the procedures that it will follow for nominating and electing independent directors, and it is not being changed in any substantive way in the final rule. The Banks commented that this provision should be modified to allow them to incorporate the procedures in this rule into their bylaws by reference. While incorporation of this rule into the bylaws might be one method of including procedures in a Bank's bylaws, FHFA declines to include that in the regulation.

FHFA expects that each Bank will include in its bylaws provisions relating to the procedures that it believes will work best in identifying nominees and presenting them to the members, and FHFA prefers that approach over an approach that would prescribe bylaw provisions by regulation. The provisions adopted by each Bank should address how and when the board will consult with its Advisory Council, how applications from prospective nominees will be processed, and how the board will nominate candidates for independent directorships.

Section 1261.6(d)(3) of the interim rule required each Bank to determine the number of public interest directorships its board would have, subject to the statutory minimum of two, and to nominate at least as many individuals as there are independent directorships to be filled in the elections for that year.

The Banks commenting on this provision believe that their boards should have the flexibility to determine how many independent directorships should be designated as public interest directorships, provided they have at least two public interest directors. They also believe that they should determine how many persons should be nominated for each type of directorship for which elections will be held, stating that the directors' fiduciary duties will ensure that they make appropriate decisions. One member commenting on this provision, however, contended that each Bank should be required to nominate all qualified candidates who apply, so that the members can decide who will serve as the independent directors.

The Bank Act does not require the board of directors to nominate any specific number of candidates for the independent directorships that are up for election, but it does require that each independent directorship be filled by the vote of the members. The FHFA has decided to leave this provision unchanged in the final rule, although the final rule does include other revisions, at § 1261.7(f), that are intended to strike a balance between the right of a board to nominate independent directors and the right of the members to elect those directors. As discussed later in this preamble, that provision would allow a board to nominate as few as one person for each open independent directorship, but if only one person is nominated for an open independent directorship, that person could not be elected without receiving at least 20 percent of the eligible votes. The provision is intended to ensure that the members retain a meaningful role in the election process.

Section 1261.6(e) of the interim rule implemented provisions of section 7(a) of the Bank Act that specify the qualifications that each independent director, other than public interest directors, must have. Section 7(a) also authorizes the Director to establish other knowledge or experience requirements that an independent director may have in addition to those specified in section 7(a). The interim rule provided that independent directors will be qualified if they have knowledge or experience in law or in the statutorily prescribed subjects, which are auditing or accounting, derivatives, financial management, organizational management, project development or risk management practices. In each case, the interim rule required a candidate's knowledge or experience to be commensurate with the knowledge or experience needed to oversee a business of the size and complexity of the Bank.

One Bank requested that the Director consider adding up to eight additional qualifications to the statutory list of qualifications, as authorized by section 7(a)(3)(B)(i) of the Bank Act. The Bank asserts that it has found each of the

additional qualifications to be helpful for corporate governance at the Bank. Although each of the suggested additional qualifications may be of value, the Bank Act heretofore has not specified qualifications for the independent directors, and the Director believes that the Banks should gain further experience applying the qualifications set forth in the statute and interim rule before FHFA considers adding additional qualifications. Other qualifications, indeed, may deserve consideration, and FHFA intends periodically to review whether additional qualifications should be added to the rule.

Section 1261.6(e) of the interim rule also addressed the knowledge or experience qualifications that each independent director must have. The final rule is retaining the substance of the provisions from the interim rule, but the final rule divides § 1261.6(e) into two paragraphs, one addressing independent directors generally, and one addressing only the public interest directors. The general qualifications for independent directors who are not also public interest directors remain as set forth in the interim rule, with some clarifying language, and are located in paragraph (1). The statutory qualifications for public interest directors have been added in paragraph (2).

As set forth in § 1261.6(f) of the interim rule, Banks must verify the eligibility of nominees for directorships before placing their names on the ballots. To verify eligibility for member director nominees, the Banks must use information on certification forms prescribed by FHFA. To verify eligibility and qualifications for nominees for independent directorships, the Banks must use information on the appropriate application forms. For incumbent nominees for independent directorships, the Banks may verify eligibility by using information on eligibility certification forms or, if a director was recently elected, on application forms. For all persons to be proposed as independent directorship nominees, the interim rule required the Banks to deliver the names and contemporaneously executed director application forms of the nominees to FHFA for its review before announcing the nominees. FHFA will review the information submitted and, if it has concerns about a nominee's qualifications, may so inform the Bank.

FHFA received several comments questioning how the FHFA review provision of the interim rule is intended to work, particularly how long a Bank should wait to receive comments from FHFA on the nominees. Some Banks raised questions about when certification forms, but not application forms, are appropriate for verification. As a result of those comments, FHFA has revised § 1261.6(f) to set forth its requirements more clearly. The final rule separately sets forth the requirements with respect to member directors and independent directors. The final rule also provides for a two-week period after a Bank delivers application forms to FHFA before it may resume the next step in the election process, which previously was located in § 1261.7(a) of the interim rule. The final rule provides that the two-week period is to allow FHFA an opportunity to comment on nominees. FHFA expects that it will not comment in all cases, but if it does, the final rule gives the Bank's board of directors discretion to reopen the nominations and consider other candidates in light of those comments. FHFA believes that a two-week interval to allow for review and potential comments by FHFA should not disrupt the nomination process.

G. Section 1261.7 Election Process

Section 1261.7 of the interim rule addressed how the Banks must conduct the elections process, from the distribution of ballots to the members through the reporting of the election results to their members and FHFA. Apart from the revisions described below, the final rule generally retains the substance of the provisions of the interim rule.

Section 1261.7(a) of the interim rule addressed the content and distribution of the ballots, and included a provision regarding the two-week period for FHFA review of nominee application forms. As discussed above, FHFA received comments about how the two-week period for FHFA comments should work and has addressed that issue by relocating the provisions relating to the review period to § 1261.6(f) of the final rule. The final rule includes no other substantive changes to paragraphs (a) or (b) of this provision. Section 1261.7(c) of the interim rule addressed how a Bank is to proceed if the number of nominees for member directorships is equal to or less than the number of directorships to fill in an election. That provision directs a Bank to declare elected all eligible nominees, without holding an election, and provides that any unfilled directorship shall be deemed vacant on January 1 of the following year.

Several Banks commented that § 1261.7(c) should be revised to allow a Bank's board of directors to elect someone to fill the vacancy as soon as the nomination process is closed because after that date the seat cannot be filled through election by the members and will become vacant on the following January 1. The final rule does not include the requested changes to § 1261.7(c) because FHFA has incorporated other revisions into § 1261.14(a) of the final rule, relating to vacancies generally, that would allow a Bank's board of directors to fill an anticipated vacancy under certain circumstances, which could be applied if a vacancy were to occur as a result of no persons being nominated for a member directorship. FHFA, therefore, has not changed § 1261.7(c) of the interim rule, except to provide some clarifying language.

The final rule has adopted without change § 1261.7(d) and (e) of the interim rule, which deal with the voting process and the counting of ballots, respectively. One Bank commented that the final rule should allow members the option of voting ''no'' for any independent director nominee, which would serve as an alternative to the requirement in § 1261.7(f) that a nominee for an independent directorship must receive 20 percent of the vote. FHFA has not adopted this suggestion, in light of the changes to the 20 percent requirement made in § 1261.7(f), discussed immediately below.

Section 1261.7(f) of the interim rule addressed the manner in which a Bank is to declare the results of its elections for the member and independent directorships and included a requirement that any nominee for an independent directorship must receive at least 20 percent of the number of votes eligible to be cast in order to be declared elected. FHFA included the 20 percent vote requirement in the interim rule as a means of ensuring that the members would maintain a meaningful role in the selection of the independent directors, and that the nomination process would not result in the board of directors effectively choosing the independent directors. FHFA also requested comment on whether the final rule should require that each Bank nominate more than one person for each independent directorship, as an alternative means of ensuring that the members retain a meaningful role in the process.

All of the commenting Banks and one trade association requested that the 20 percent vote requirement for independent directors be removed or reduced to a more manageable number, such as 10 percent. Some expressed concern about being able to obtain a minimum of 20 percent of the eligible

votes on the election of individuals who are not affiliated with the voting members, and others commented that the rule will have the effect of reducing the number of nominees in order to increase the likelihood that those nominated will receive 20 percent of the vote.

After reviewing the comments, FHFA has decided to modify, rather than to eliminate, the requirement that an independent director must receive at least 20 percent of the eligible votes in order to be elected. Accordingly, the final rule provides that if a Bank's board of directors nominates only one individual for each directorship, receipt of 20 percent of the eligible votes by that individual is the minimum level at which one could deem the members to have endorsed the board's choice, especially given the need for only a plurality of the votes. If, however, a Bank's board of directors nominates more persons for the type of independent directorship to be filled, either a public interest or other independent directorship, than there are directorships of that type to be filled in the election, then the final rule would allow the person with the highest number of votes to be declared elected, even if the total received was less than 20 percent of the votes eligible to be cast in the election. FHFA believes this change strikes an appropriate balance between allowing the boards of the Banks to identify and nominate individuals who are well qualified and ensuring that the members have a meaningful role in determining whether the nominees are to become independent directors.

Section 1261.7(g) of the interim rule required each Bank promptly to report the results of each election to its members, each nominee, and FHFA. The report must contain the number of voting members, the number of votes cast, and the number of votes received by each nominee, as well as other information specified therein. Although the interim rule did not require the submission of the total number of eligible votes that may be cast, FHFA needs this information to verify that the 20 percent vote, if required, has been met, and thus added a requirement to the final rule to provide this information.

If a Bank cannot fill an independent directorship because no nominee has received 20 percent of the eligible votes, § 1261.7(h) of the interim rule required a Bank to continue the election for such directorship by starting again with consideration of nominees by its board of directors and going through all the steps thereafter. The Bank must continue repeated election procedures until the directorship is filled by a vote of 20 percent of the votes eligible to be cast. In their comments, the Banks requested more specific guidance on what steps should be taken in carrying out the repeated elections, and requested that they be allowed to shorten the amount of time required for various stages of the process. The Banks also suggested that a nominee's failure to receive 20 percent of the vote may have been caused by any number of factors, ranging from having too many nominees to voter apathy, and that the final rule should not prohibit their boards from renominating some or all of the original nominees.

After considering the comments, FHFA is revising § 1261.7(h) in the final rule to state more clearly what the Banks must do, starting with making nominations by the board of directors. The final rule allows the Banks to nominate any of the original nominees, as well as to shorten the voting period, provided they provide what they consider to be a reasonable voting period. However, because the original vote will have failed, the final rule requires the Banks to withhold placing names on ballots until FHFA has had an opportunity to approve them, without regard to any two-week time period.

H. Section 1261.9 Actions Affecting Director Elections

Section 1261.9 of the interim rule pertained to actions that representatives of a Bank may take in connection with the nomination and election of directors. Paragraphs (a) and (c) of the final rule are unchanged from the interim rule, apart from a wording change in paragraph (c).

Section 1261.9(b) of the interim rule generally authorized a Bank and its representatives to support any nominee for election to an independent directorship, but allowed support for a nominee to a member directorship only if the persons are acting in their personal capacity and, as to Bank directors only, do not purport to represent the views of the Bank.

Seven Banks requested that FHFA revise paragraph (b)(1) (which allowed Bank representatives to support member director nominees only when acting in their personal capacity and if not purporting to represent the views of the Bank) so that it would apply to all directorships, not just member directorships. Those commenters also asked that the prohibition on purporting to represent the views of the Bank be applied to all agents of the Bank, not just to the directors. The effect of that change would be to prohibit all such agents from stating that their views on any candidate are the same as the Bank's views. Two other Banks advocated allowing directors to state that their views were the same as those of the Bank, so long as the statements were true.

Because all candidates for member directorships are nominated by the members, not the Banks, FHFA believes that a Bank should not take a position favoring any particular nominee for a member directorship. Revising the rule to allow an agent of a Bank to represent that his or her personal views are the same as those of the Bank could undermine that policy, and FHFA declines to broaden the rule in that respect. The interim rule had allowed certain representatives of a Bank, when acting in their personal capacity, to support member director nominees, but prohibited only Bank directors from purporting to represent the views of the Bank. Section 1261.9(b)(1) of the final rule corrects that discrepancy by providing that none of the listed representatives shall purport to represent the views of the Bank when they act in their personal capacity to support a nominee for any Bank directorship. FHFA believes that differences do exist in how member directors and independent directors are chosen and that those differences justify separate rules on support and nomination, so § 1261.9(b)(1) of the interim rule has not been expanded to cover actions with respect to independent directors.

Section 1261.9(b)(2) of the interim rule governs what is further allowed in one situation: After an individual has been nominated for an independent directorship. In this situation, individuals who are directors, officers, attorneys, employees or other agents of a Bank, as well as the Bank's board and Advisory Council may support those nominees, and the section does not prohibit supporters from stating that their views represent the views of the Bank. Some Banks request that the final rule specifically authorize members of the Advisory Council to support independent directorship nominees, since the interim rule specifically authorizes members of a Bank's board of directors to do so. FHFA has modified the final rule to clarify that members of the Advisory Council are included among those who may support a nominee for an independent directorship. Other clarifying changes also have been made to § 1261.9(b)(2) of the interim rule.

I. Section 1261.10 Independent Director Conflict of Interests

Section 1261.10(a) of the interim rule prohibits an independent director from serving as an officer of any Bank and from serving as a director, officer, or employee of any member of the Bank on whose board the director sits, or of any recipient of any advances from that Bank. It also requires any independent director or nominee to disclose such interests.

One Bank and one trade association commented that directors, officers and employees of nonmember institutions that are recipients of advances should not be disqualified from becoming independent directors solely because of that affiliation. They believe that such recipients of advances are treated unfairly by such a rule because their officers and directors also are not eligible to become member directors. However, the provision of the interim rule that prompted the comments simply reiterates a statutory prohibition, which FHFA cannot change. Accordingly, § 1261.10(a) has not been changed in the final rule, other than two instances in which the word ''shall'' has replaced ''may''.

Section 1261.10(b) of the interim rule addressed situations in which a person's service with a holding company having subsidiaries that are members of, or that receive advances from, the Bank on whose board the independent director serves would be deemed to be service with a member. The interim rule included a reference to institutions that were members of, or received advances from, ''any'' Bank, which would have included institutions that were members of other Banks. In order to clarify the intended reach of this provision, the final rule has added language limiting the reach of this provision to institutions that are member of, or that receive advances from, the Bank at which the independent director serves.

J. Section 1261.11 Conflict-of-Interests Policy for Bank Directors

Section 1261.11 of the interim rule required each Bank to adopt a conflict-of-interests policy for the members of its board of directors, and set forth the minimum contents of the policy. The final rule adopts these provisions as they were stated in the interim rule, with the exception of the revisions noted below. Section 1261.11(a) specifies six specific minimum requirements that each Bank's conflict-of-interests policy must address, and allows a Bank to adopt a more expansive policy to address other issues if the Bank's board of directors deems it appropriate to do so. Some commenters were unclear about what FHFA intends in one area, so the final rule modifies the fifth requirement of paragraph (a), relating to internal controls, to provide that the conflict-of-interests policy must require Bank management to establish internal controls with respect to disclosure and resolution of conflicts of interests.

Section 1261.11(d) of the interim rule prohibits the acceptance of gifts that are given with the intent to influence the director's actions as a member of the board of directors, or would have that appearance, and requires directors to discourage their family members from accepting gifts given with the intent of influencing the actions of the directors. The commenting Banks believed that the interim rule was too restrictive and argued that directors should be allowed to accept de minimis gifts and gifts that directors of insured depository institutions may accept.

The interim rule was intended to preclude gifts that are given with the intent to influence the actions of a director, as well as those that a director reasonably believes to have been given with that intent and those that have the appearance of being given with that intent. FHFA believes that any gift that is intended to influence a director's official actions is inappropriate and that it is not possible to eliminate the ''corrupt intent'' of the person giving the gift by establishing a de minimis exception. For that reason, § 1261.11(d) of the final rule has not adopted the comments that sought to relax the scope of the rule. Nonetheless, FHFA recognizes that at times it is customary for persons in business relationships to give insubstantial gifts without any intent to influence the business decisions of the recipients of those gifts. FHFA expects that such insubstantial gifts could not reasonably be viewed by a director as having been given with the intent to influence, nor would an objective person view the gift as having been given for the purpose of influencing business decisions, and it has included a provision to that effect in the final rule. FHFA expects that the Banks will include in their codes of conduct provisions governing the views of their board on what constitutes an insubstantial gift and how to determine whether any gift violates the provisions of the final rule.

K. Section 1261.12 Reporting Requirements for Bank Directors

Section 1261.12(a) of the interim rule required each sitting director to execute an annual eligibility certification form applicable to the directorship held by the director. Section 1261.12(b) of the interim rule requires any sitting director of a Bank who believes or has reason to believe that she or he no longer meets the statutory or regulatory eligibility requirements to notify promptly both the Bank and FHFA. Likewise, any Bank that believes or has reason to believe that any of its directors no longer meets the eligibility requirements must notify FHFA promptly. The final rule does not change the interim rule in any substantive manner.

L. Section 1261.13 Ineligible Bank Directors

Section 1261.13 of the interim rule implemented section 7(f) of the Bank Act, which provides that a director's failure to meet any statutory requirements causes the directorship to become vacant immediately. The section provides that a vacancy occurs whenever FHFA or a Bank determines that the director has failed to meet any eligibility requirement set forth in the Bank Act or in part 1261 or has failed to comply with the reporting requirements in § 1261.12. As discussed above in section D. *Director Eligibility*, a Bank director must satisfy certain eligibility requirements as well as other qualifications in order to remain in office. Section 1261.13 is intended to encompass all such requirements, so the final rule makes this clarifying change.

M. Section 1261.14 Vacant Bank Directorships

Section 1261.14 of the interim rule implemented the requirements of section 7(f) of the Bank Act relating to how vacancies in Bank directorships are to be filled. Paragraph (a) of that provision stated that the board of the Bank must fill such a vacancy ''as soon as practicable after any vacancy occurs''. Banks commenting on this provision asked that they also be allowed to elect a director to fill an anticipated vacancy that they know will occur, such as when a director resigns with an effective date some months into the future. FHFA believes that section 7(f) of the Bank Act, which uses the phrase ''[i]n the event of a vacancy'' to preface when a Bank can act, allows sufficient latitude for a Bank to fill an anticipated vacancy under certain circumstances. FHFA further believes that Banks could benefit from selecting persons to fill anticipated vacancies, such as by eliminating gaps in service that might otherwise arise and by allowing a new director more time to prepare for service prior to participating in his or her first board meeting. Section 1261.14(a) of the final rule, therefore, has been modified to allow a Bank to select a replacement director prior to the

occurrence of the vacancy, provided that it does so no earlier than the date of the board meeting that is scheduled to occur immediately prior to the date of the anticipated vacancy. The final rule also provides that in any event the board of a Bank must act as soon as practicable after a vacancy actually occurs.

Section 1261.14(b) of the interim rule required the board of directors to fill any vacancy with an individual who meets the eligibility requirements and the qualifications that applied to the predecessor director, except in the case of vacant public interest directorship where the Bank continues to have at least two other sitting public interest directors. In that case, the board of directors could fill the vacancy with an individual meeting the eligibility and qualification requirements for any independent directorship. Some Banks asked how they should apply the requirement that the replacement director satisfy the eligibility and qualification requirements that applied to the predecessor director if the predecessor was an appointed director who does not satisfy the HERA qualifications for independent directors. FHFA believes that the Bank Act distinguishes between eligibility requirements and qualifications for the independent directors and that a replacement director need only satisfy the eligibility requirements that applied to the predecessor, *i.e.*, citizenship and residency in the district, and not the other qualifications, as to which the replacement director may meet the requirements of the Bank Act and the rule in the same manner as any independent director. Section 1261.14(b) of the interim rule did not make this distinction, which the final rule does, albeit in § 1261.14(a)(3).

As to member directorships, some Banks expressed concern that the interim rule would limit them to filling a vacancy with an individual who is an officer or director of an institution that was a member of the Bank as of the record date preceding the election in which the predecessor director was elected. The commenters suggested that the final rule allow them to elect a person that is an officer or director of an institution that is a member of the Bank as of the date that the board votes to fill the vacancy. FHFA believes that there is merit in this suggestion and that revising the final rule in this manner would be consistent with the applicable provisions of the Bank Act. Section 1261.14(a)(3) of the final rule provides that a successor member director must satisfy the eligibility requirements and the other qualifications of the predecessor director as of the date that the board acts and that a successor independent director must satisfy the eligibility requirements for independent directors and have at least one of the qualifications for an independent director. Thus, a Bank may fill a vacant member directorship with an individual who is a citizen of the United States and is an officer or director of a current member that is located in the State to which the Director has allocated the directorship.

The comments from the Banks also indicate some confusion about how to meet the requirements in § 1261.14(b) to verify eligibility for vacant directorships to be filled by the board of directors of a Bank. FHFA intends that the Banks verify eligibility for member directorships in the same manner as they verify eligibility of nominees for member directorships under § 1261.6(c) of the interim rule, which is by using the eligibility certification form prescribed by FHFA. FHFA intends that both eligibility and qualification for independent directorships be verified by using the independent director application form prescribed by FHFA. In addition, FHFA intends that the Banks deliver to FHFA, for its review, the application forms of all individuals that their boards will consider to fill independent directorship vacancies. The final rule has been revised to more clearly set forth these requirements.

N. Section 1261.16 Temporary Rule for 2008 Election of Directors

This temporary director election schedule ceased to be effective after December 31, 2008. The final rule reserves this section for future use.

III. Paperwork Reduction Act

The final rule will have no substantive effect on any collection of information covered by the Paperwork Reduction Act of 1995 (PRA). *See* 44 U.S.C. 3501 *et seq.* Therefore, FHFA has not submitted this final rule to the Office of Management and Budget (OMB) for review. The Finance Board used application and certification forms to collect information on prospective and incumbent directors, and those forms had been assigned control number 3069–0002 by the OMB. FHFA will direct the Banks to use a revised version of those forms, which revised version will not modify materially the approved information collection, pending the assignment by OMB of control numbers to the revised forms. FHFA will submit only the revised forms to OMB for review under the PRA.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the final rule under the Regulatory Flexibility Act. FHFA certifies that the final rule is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the Banks, which are not small entities for the purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Parts 915 and 1261

Banks, Banking, Conflicts of interest, Elections, Ethical conduct, Federal home loan banks, Financial disclosure, Reporting and recordkeeping requirements.

■ Accordingly, the interim final rule removing part 915 of Title 12 CFR chapter IX and adding part 1261 of Title 12 CFR chapter XII, published at 73 FR 55710 on September 26, 2008, is adopted as a final rule, with the following changes:

PART 1261—FEDERAL HOME LOAN BANK DIRECTORS

■ 1. The authority citation for 12 CFR part 1261 is revised to read as follows:

Authority: 12 U.S.C. 1426, 1427, 1432, 4511 and 4526.

■ 2. The heading for part 1261 is revised to read as set forth above.

■ 3. Designate §§ 1261.1 through 1261.16 as Subpart A and add a new Subpart A heading above § 1261.1 to read as follows:

Subpart A—Federal Home Loan Bank Boards of Directors: Eligibility and Elections

■ 4. Subpart B is added after § 1261.16 and reserved to read as follows:

Subpart B—Federal Home Loan Bank Directors' Compensation and Expenses [Reserved]

■ 5. Subpart C is added after Subpart B and reserved to read as follows:

Subpart C—[Reserved]

■ 6. The Table of Contents is revised to read as follows:

Subpart A—Federal Home Loan Bank Boards of Directors: Eligibility and Elections

Subpart B—Federal Home Loan Bank Directors' Compensation and Expenses [Reserved]

Subpart C—[Reserved]

■ 7. Amend § 1261.1 by revising the introductory text and the definitions of ''Director'', ''FHFA'', ''FHFA ID number'', ''Independent directorship'', ''Member directorship'', ''Method of equal proportions'', ''Public interest director'', ''Stock directorship'', and ''Voting State'' to read as follows:

§ 1261.1 Definitions.

As used in this Subpart A:

* * * * *

Director means the Director of the Federal Housing Finance Agency.

FHFA means Federal Housing Finance Agency.

FHFA ID number means the number assigned to a member by FHFA and used by FHFA and the Banks to identify a particular member.

* * * * *

Independent directorship means a directorship, as defined by section 7(a)(4)(A) of the Act, 12 U.S.C. 1427(a)(4)(A), that is filled by a plurality vote of the members at large by an individual having the qualifications specified by section 7(a)(3)(B)(i) or (ii), 12 U.S.C. 1427(a)(3)(B)(i) or (ii).

Member directorship means a directorship, as defined by section 7(a)(4)(A) of the Act, 12 U.S.C. 1427(a)(4)(A), that is filled by a plurality vote of the members located in a particular State by an individual who is an officer or director of a member located in that State, and includes guaranteed directorships and stock directorships.

Method of equal proportions means the mathematical formula used by FHFA to allocate member directorships among the States in a Bank's district based on the relative amounts of Bank stock required to be held as of the record date by members located in each State.

Public interest director means an individual serving in a public interest directorship.

* * * * *

Stock directorship means a member directorship that is designated by FHFA as representing the members located in a particular voting State based on the amount of Bank stock required to be held by the members in that State as of the record date, other than a guaranteed directorship.

Voting State means the District of Columbia, Puerto Rico, or the State of the United States in which a member's principal place of business, as determined in accordance with 12 CFR part 925, or any successor provision, is located as of the record date. The voting State of a member with a principal place of business located in the U.S. Virgin Islands as of the record date is Puerto Rico, and the voting State of a member with a principal place of business located in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands as of the record date is Hawaii.

■ 8. Amend § 1261.2 by revising paragraphs (a), (b), and (c) to read as follows:

§ 1261.2 General provisions.

(a) *Board size and composition.* Annually, the FHFA Director will determine the size of the board of directors for each Bank and will designate at least a majority, but no more than 60 percent, of the directorships as member directorships and the remainder as independent directorships. Annually, the board of directors of each Bank shall determine how many, if any, of the independent directorships with terms beginning the following January 1 shall be public interest directorships, ensuring that at all times the Bank will have at least two public interest independent directorships.

(b) *Term of directorships.* The term of office of each directorship commencing on or after January 1, 2009 shall be four years, except as adjusted pursuant to section 7(d) of the Act (12 U.S.C 1427(d)) to achieve a staggered board, and shall commence on January 1 of the calendar year so designated by FHFA.

(c) *Annual elections.* Each Bank annually shall conduct an election the purpose of which is to fill all directorships designated by FHFA as commencing on January 1 of the calendar year immediately following the year in which such election is commenced. Subject to the provisions of the Act and in accordance with the requirements of this subpart, the disinterested members of the board of directors of each Bank, or a committee of disinterested directors, shall administer and conduct the annual election of directors. In so doing, the disinterested directors may use Bank staff or independent contractors to perform ministerial and administrative functions concerning the elections process.

* * * * *

■ 9. Revise § 1261.3 to read as follows:

§ 1261.3 Designation of member directorships.

(a) *Determination of voting stock.* (1) On or before April 10 of each year, each Bank shall deliver to FHFA a capital stock report that indicates, as of the record date, the number of members located in each voting State in the Bank's district, the number of shares of Bank stock that each member (identified by its FHFA ID number) was required to hold, and the number of shares of Bank stock that all members located in each voting State were required to hold. If a Bank has issued more than one class of stock, it shall report the total shares of stock of all classes required to be held by the members. The Bank shall certify to FHFA that, to the best of its knowledge, the information provided in the capital stock report is accurate and complete, and that it has notified each member of its minimum capital stock holding requirement as of the record date.

(2) If a Bank's capital plan was not in effect as of the record date, the number of shares of Bank stock that any member was required to hold as of the record date shall be determined in accordance with 12 CFR 925.20 and 925.22, or any successor provisions. If a Bank's capital plan was in effect as of the record date, the number of shares of Bank stock that any member was required to hold as of the record date shall be determined in accordance with the minimum investment established by the capital plan for that Bank; however, for any member whose Bank stock is less than the minimum investment during a transition period, the amount of Bank stock to be reported shall be the number

of shares of Bank stock actually owned by the member as of the record date.

(b) *Designation of member directorships as stock directorships.* Using the method of equal proportions, the Director annually will conduct a designation of member directorships for each Bank based on the number of shares of Bank stock required to be held by the members in each State as of December 31 of the preceding calendar year. If a Bank has issued more than one class of stock, the Director will designate the directorships for each State in that Bank district based on the combined number of shares required to be held by the members in that State. For purposes of conducting the designation, if a Bank's capital plan was not in effect on the immediately preceding December 31, the number of shares of Bank stock required to be held by members as of that date shall be determined in accordance with 12 CFR 925.20 and 925.22, or any successor provisions. If a Bank's capital plan was in effect on the immediately preceding December 31, the number of shares of Bank stock required to be held by members as of that date shall be determined in accordance with the minimum investment established by such capital plan; however, for any members whose Bank stock is less than the minimum investment during a transition period, the amount of stock to be used in the designation of directorships shall be the number of shares of Bank stock actually owned by those members as of that December 31. In all cases, the Director will designate the directorships by using the information provided by each Bank in its capital stock report required by paragraph (a)(1) of this section.

(c) *Allocation of directorships.* The member directorships designated by the Director will be allocated among the States by the Director in accordance with section 7(b) and (c) of the Act.

(d) *Notification.* On or before June 1 of each year, FHFA will notify each Bank in writing of the total number of directorships established for the Bank and the number of member directorships designated as representing the members in each voting State in the Bank district. If the annual designation of member directorships results in an existing directorship being redesignated as representing members in a different State, the directorship shall be deemed to become vacant as of December 31 of that year, and the notice shall state that the directorship will be filled by the board of directors of the Bank with an eligible individual who is an officer or director of a member located in the newly designated State.

■ 10. Amend § 1261.4 as follows:
■ a. Revise paragraph (a)(2);
■ b. Redesignate paragraphs (b) through (d) as paragraphs (c) through (e);
■ c. Add a new paragraph (b);
■ d. Revise newly redesignated paragraph (d)(2); and
■ e. Revise newly redesignated paragraph (e).

§ 1261.4 Director eligibility.

(a) * * *

(2) An officer or director of a member that is located in the district in which the Bank is located and that meets all minimum capital requirements established by its appropriate Federal banking agency or appropriate State regulator. In the case of a director elected by the members, the institution of which the director is an officer or director must have been a member as of the record date. In the case of a director elected by a Bank's board of directors to fill a vacancy, the institution of which the director is an officer or director must be a member at the time the board acts.

(b) *State designation for member directors.* Each member director, and each nominee to a member directorship, shall be an officer or director of a member that is located in the State to which the Director has allocated such directorship under § 1261.3(c).

* * * * *

(d) * * *

(2) For purposes of applying the term limit provision of section 7(d) of the Act (12 U.S.C. 1427(d)):

(i) A term of office that is adjusted after July 30, 2008 to a period of fewer than four years shall not be deemed to be a full term;

(ii) Any member director's election and service to a directorship with a three year term of office prior to July 30, 2008 shall be deemed to be a full term;

(iii) Any three-year term of office that ends immediately before a term of office that is adjusted after July 30, 2008 to a period of fewer than four years, and any term of office commencing immediately following such adjusted term of office, shall constitute consecutive full terms of office; and

(iv) Any period of time served by a director who has been elected by the board of directors to fill a vacancy shall not be deemed to constitute a full term.

(e) *Loss of eligibility.* (1) A director shall become ineligible to remain in office if, during his or her term of office, the directorship to which he or she has been elected is eliminated or, with respect to a member directorship, is redesignated by FHFA as representing members located in another State, in accordance with § 1261.3(c). The incumbent director shall become ineligible after the close of business on December 31 of the year in which the directorship is redesignated or eliminated. Any directorship ceasing through elimination or redesignation shall not be deemed to be a full-term directorship for purposes of this section.

(2) In the case of a redesignation to another State, the redesignated directorship shall be filled by a majority vote of the remaining Bank directors, in accordance with § 1261.14(a).

■ 11. Amend § 1261.5 by revising paragraph (b) to read as follows:

§ 1261.5 Determination of member votes.

* * * * *

(b) *Number of votes.* For each member directorship and each independent directorship that is to be filled in an election, each member shall be entitled to cast one vote for each share of Bank stock that the member was required to hold as of the record date. Notwithstanding the preceding sentence, the number of votes that any member may cast for any one directorship shall not exceed the average number of shares of Bank stock required to be held as of the record date by all members located in the same State as of the record date. If a Bank has issued more than one class of stock, it shall calculate the average number of shares separately for each class of stock, using the total number of members in a State as the denominator, and shall apply those limits separately in determining the maximum number of votes that any member owning that class of stock may cast in the election. If a Bank's capital plan was not in effect as of the record date, the number of shares of Bank stock that a member was required to hold as of the record date shall be determined in accordance with 12 CFR 925.20 and 925.22, or any successor provisions. If a Bank's capital plan was in effect as of the record date, the number of shares of Bank stock that a member was required to hold as of the record date shall be determined in accordance with the minimum investment requirement established by the Bank's capital plan; however, for any member whose Bank stock is less than the minimum investment during a transition period, the amount of Bank stock to be used shall be the number of shares of Bank stock actually owned by the member as of the record date.

* * * * *

■ 12. Amend § 1261.6 by revising paragraphs (a)(5), (c), (d)(1), (d)(2), (e), and (f) to read as follows:

§ 1261.6 Nominations for member and independent directorships.

(a) * * *

(5) If a member directorship is to be filled by members in a State, a nominating certificate for those members.

* * * * *

(c) *Accepting member directorship nominations.* Promptly after receipt of any nominating certificate, a Bank shall notify in writing any individual nominated for a member directorship. An individual may accept the nomination only by delivering to the Bank, prior to a deadline established by the Bank and set forth in its notice, an executed director eligibility certification form prescribed by FHFA. A Bank shall allow each nominee at least 30 calendar days after the date the Bank delivered the notice of nomination within which to deliver the executed form. A nominee may decline the nomination by so advising the Bank in writing, or by failing to deliver a properly executed director eligibility certification form prior to the deadline. Each Bank shall retain all information received under this paragraph for at least two years after the date of the election.

(d) *Independent directorship nominations.* (1) Any individual who seeks to be an independent director of the board of directors of a Bank may deliver to the Bank, on or before the deadline set by the Bank for delivery of nominating certificates, an executed independent director application form prescribed by FHFA that demonstrates that the individual both is eligible and has either of the following qualifications:

(i) More than four years experience representing consumer or community interests in banking services, credit needs, housing, or consumer financial protections; or

(ii) Knowledge of or experience in one or more of the areas set forth in paragraph (e) of this section.

(2) Any other interested party may recommend to the Bank that it consider a particular individual as a nominee for an independent directorship, but the Bank shall not nominate any individual unless the individual has delivered to the Bank, on or before the date the Bank has set for delivery of nominating certificates, an executed independent director application form prescribed by FHFA. The application form prescribed by FHFA will provide a means by which an individual can indicate an intent to be considered for a public interest directorship. The board of directors of the Bank may consider any individual for any independent directorship nomination, provided it has determined that the individual is eligible and qualified, but the board shall nominate for a public interest directorship only an individual who indicates on the application form a desire to be considered for a public interest directorship. The board of directors of the Bank shall consult with the Bank's Advisory Council before nominating any individual for any independent directorship. Each Bank shall include in its bylaws the procedures it intends to use for the nomination and election of the independent directors, and shall retain all information received under this paragraph for at least two years after the date of the election.

* * * * *

(e) *Independent director qualifications.* (1) Each independent director and each nominee for an independent directorship, other than a public interest directorship, shall have experience in, or knowledge of, one or more of the following areas: auditing and accounting, derivatives, financial management, organizational management, project development, risk management practices, and the law. Before nominating any individual for an independent directorship, other than a public interest directorship, the board of directors of a Bank shall determine that such knowledge or experience of the nominee is commensurate with that needed to oversee a financial institution with a size and complexity that is comparable to that of the Bank.

(2) Each public interest independent director and each nominee for a public interest directorship shall have more than four years experience representing consumer or community interests in banking services, credit needs, housing or consumer financial protection.

(f) *Eligibility verification.* Using the information provided on member director eligibility forms prescribed by FHFA, each Bank shall verify that each nominee for each member directorship meets all the eligibility requirements for such directorship. Using the information provided on independent director application forms prescribed by FHFA, each Bank shall verify that each nominee for each public interest independent directorship and each other independent directorship meets all eligibility requirements and any knowledge or experience qualifications for such directorship, as set forth in the Act and this subpart. Before announcing any independent director nominee, the Bank shall deliver to FHFA, for the Director's review, a copy of the independent director application forms executed by the individuals nominated for independent directorships. If within two weeks of such delivery FHFA provides comments to the Bank on any independent director nominee, the board of directors of the Bank shall consider the FHFA's comments in determining whether to proceed with those nominees or to reopen the nomination.

■ 13. Amend § 1261.7 by revising paragraphs (a) introductory text, (a)(1)(ii), (a)(1)(v), (c), (f), (g), and (h) to read as follows:

§ 1261.7 Election process.

(a) *Ballots.* Promptly after fulfilling the requirements of § 1261.6(f), each Bank shall prepare and deliver a ballot to each member that was a member as of the record date. The Bank shall include with each ballot a closing date for the Bank's receipt of voted ballots, which date shall be no earlier than 30 calendar days after the date such ballot is delivered to the member.

(1) * * *

(ii) An alphabetical listing of the names of each nominee for a public interest independent directorship and a brief description of each nominee's experience representing consumer and community interests;

* * * * *

(v) A confidentiality statement prohibiting the Bank from disclosing how any member voted.

* * * * *

(c) *Lack of member directorship nominees.* If, for any voting State, the number of nominees for the member directorships for that State is equal to or fewer than the number of such directorships to be filled in that year's election, the Bank shall deliver a notice to the members in the affected voting State (in lieu of including any member directorship nominees on the ballot for that State) that such nominees shall be deemed elected without further action, due to an insufficient number of nominees to warrant balloting. Thereafter, the Bank shall declare elected all such eligible nominees and in doing so shall designate particular nominees to guaranteed directorships or stock directorships, respectively, if necessary. The nominees declared elected shall be included as directors-elect in the report of election required under paragraph (g) of this section. Any member directorship that is not filled due to a lack of nominees shall be deemed vacant as of January 1 of the following year and shall be filled by the Bank's board of directors in accordance with § 1261.14(a).

* * * * *

(f) *Declaring results.* (1) *For member directorships.* The Bank shall declare elected the nominee receiving the highest number of votes. If more than

one member directorship is to be filled for a particular State, the Bank shall declare elected each successive nominee receiving the next highest number of votes until all such open directorships are filled.

(2) *For independent directorships.* (i) The bank shall tabulate separately the votes received for public interest independent director nominees and those received for other independent director nominees, in each case in accordance with paragraph (f)(2)(ii) of this section.

(ii) If the number of nominees exceeds the number of directorships to be filled, the Bank shall declare elected the nominee receiving the highest number of votes. If more than one directorship is to be filled, the Bank shall declare elected each successive nominee receiving the next highest number of votes for such directorship until all such open directorships are filled.

(iii) If the number of nominees is no more than the number of directorships to be filled, the Bank shall declare elected each nominee receiving at least 20 percent of the number of votes eligible to be cast in the election. If any directorship is not filled due to any nominee's failure to receive at least 20 percent of the votes eligible to be cast, the Bank shall continue the election process for that directorship under the procedures in paragraph (h) of this section.

(3) *Tie votes.* In the event of a tie for the last available directorship, the disinterested incumbent members of the board of directors of the Bank, by a majority vote, shall declare elected one of the nominees for whom the number of votes cast was tied.

(4) *Eligibility.* A Bank shall not declare elected a nominee that it has reason to know is ineligible to serve, nor shall it seat a director-elect that it has reason to know is ineligible to serve.

(5) *Record retention.* The Bank shall retain all ballots it receives for at least two years after the date of the election, and shall not disclose how any member voted.

(g) *Report of election.* Promptly following the election, each Bank shall deliver a notice to its members, to each nominee, and to FHFA that contains the following information:

(1) For each member directorship, the name of the director-elect, the name and location of the member at which he or she serves, his or her title or position at the member, the voting State represented, and the expiration date of the term of office;

(2) For each independent directorship, the name of the director-elect, whether the director-elect will fill a public interest directorship and, if so, the consumer or community interest represented by such directorship, any qualifications under § 1261.6(e), and the expiration date of the term of office;

(3) For member directorships, the total number of eligible votes, the number of members voting in the election, and the total number of votes cast for each nominee, which shall be reported by State; and

(4) For independent directorships, the total number of eligible votes, the number of members voting in the election, and the total number of votes cast for each nominee, which shall be reported for the district at large.

(h) *Failure to fill all independent directorships.* If any independent directorship is not filled due to the failure of any nominee to receive at least 20 percent of the eligible vote, the Bank shall continue the election process for that directorship under the following procedures:

(1) The Bank's board of directors, after again consulting with the Bank's Advisory Council, shall nominate at least as many individuals as there are independent directorships to be filled. It may nominate individuals who failed to be elected in the initial vote. The Bank thereafter shall deliver to FHFA a copy of the independent director application form executed by each nominee.

(2) The Bank then shall follow the provisions in this section that are applicable to the election process for independent directors, except for the following:

(i) The Bank shall not place the name of any nominee on a ballot without prior approval of FHFA; and

(ii) The Bank may adopt a closing date that is earlier than 30 calendar days after delivery of the ballots to the eligible voting members, provided the Bank determines that an earlier closing date provides a reasonable amount of time to vote the ballots.

■ 14. Amend § 1261.9 by revising the section heading and paragraphs (b) and (c) to read as follows:

§ 1261.9 Actions affecting director elections.

* * * * *

(b) *Support for nomination or election.* (1) A Bank director, officer, attorney, employee, or agent, acting in his or her personal capacity, may support the nomination or election of any individual for a member directorship, provided that no such individual shall purport to represent the views of the Bank or its board of directors in doing so.

(2) A Bank director, officer, attorney, employee or agent and the board of directors and Advisory Council (including members of the Council) of a Bank may support the candidacy of any individual nominated by the board of directors for election to an independent directorship.

(c) *Prohibition.* Except as provided in paragraphs (a) and (b) of this section, no director, officer, attorney, employee, or agent of a Bank shall:

(1) Communicate in any manner that a director, officer, attorney, employee, or agent of a Bank, directly or indirectly, supports or opposes the nomination or election of a particular individual for a directorship; or

(2) Take any other action to influence the voting with respect to any particular individual.

■ 15. Amend § 1261.10 by revising paragraphs (a) and (b) to read as follows:

§ 1261.10 Independent director conflict of interests.

(a) *Employment interests.* During any independent director's term of service, such director shall not serve as an officer, employee, or director of any member of the Bank on whose board the individual sits, or of any recipient of advances from such Bank, and shall not serve as an officer of any Bank. An independent director or nominee for any independent directorship shall disclose all such interests to the Bank on whose board of directors the individual serves or which is considering the individual for nomination to its board of directors.

(b) *Holding companies.* Service as an officer, employee, or director of a holding company that controls one or more members of, or one or more recipients of advances from, the Bank on whose board an independent director serves is not deemed to be service as an officer, employee or director of a member or recipient of advances if the assets of all such members or all such recipients of advances constitute less than 35 percent of the assets of the holding company, on a consolidated basis.

* * * * *

■ 16. Amend § 1261.11 by revising the section heading and paragraphs (a) introductory text, (a)(4), (a)(5), (a)(6), and (d) to read as follows:

§ 1261.11 Conflict-of-interests policy for Bank directors.

(a) *Adoption of conflict-of-interests policy.* Each Bank shall adopt a written conflict-of-interests policy that applies to all members of its board of directors. At a minimum, the conflict-of-interests policy of each Bank shall:

* * * * *

(4) Require directors to disclose actual or apparent conflicts of interests and establish procedures for addressing such conflicts;

(5) Require the establishment of internal controls to ensure that conflict-of-interests reports are made and filed and that conflict-of-interests issues are disclosed and resolved; and

(6) Establish procedures to monitor compliance with the conflict-of-interests policy.

* * * * *

(d) *Gifts.* No Bank director shall accept, and each Bank director shall discourage the director's immediate family members from accepting, any gift that the director believes or has reason to believe is given with the intent to influence the director's actions as a member of the Bank's board of directors, or where acceptance of such gift would have the appearance of intending to influence the director's actions as a member of the board. Any insubstantial gift would not be expected to trigger this prohibition.

* * * * *

■ 17. Revise § 1261.12 to read as follows:

§ 1261.12 Reporting requirements for Bank directors.

(a) *Annual reporting.* Annually, each Bank shall require each of its directors to execute and deliver to the Bank the appropriate director eligibility certification form prescribed by FHFA for the type of directorship held by such director. The Bank promptly shall deliver to FHFA a copy of the certification form delivered to it by each director.

(b) *Report of noncompliance.* At any time that any director believes or has reason to believe that he or she no longer meets the eligibility requirements set forth in the Act or this subpart, the director promptly shall so notify the Bank and FHFA in writing. At any time that a Bank believes or has reason to believe that any director no longer meets the eligibility requirements set forth in the Act or this subpart, the Bank promptly shall notify FHFA in writing.

■ 18. Revise § 1261.13 to read as follows:

§ 1261.13 Ineligible Bank directors.

Upon a determination by FHFA or a Bank that any director of the Bank no longer satisfies the eligibility requirements set forth in the Act or this part, or has failed to comply with the reporting requirements of § 1261.12, the directorship shall immediately become vacant. Any director that is determined to have failed to comply with any of these requirements shall not continue to serve as a Bank director. Whenever a Bank makes such a determination, the Bank promptly shall notify the Bank director and FHFA in writing.

■ 19. Revise § 1261.14 to read as follows:

§ 1261.14 Vacant Bank directorships.

(a) *Filling unexpired terms.* (1) When a vacancy occurs on the board of directors of any Bank, the board of directors of the Bank shall elect, by a majority vote of the remaining Bank directors sitting as a board, an individual to fill the unexpired term of office of the vacant directorship, regardless of whether the remaining Bank directors constitute a quorum of the Bank's board of directors.

(2) The board of directors of the Bank may fill an anticipated vacancy prior to the effective date of the vacancy, provided the board does so no sooner than the date of the regularly scheduled board meeting that occurs immediately prior to the effective date of the vacancy.

(3) The board of directors shall elect only an individual who satisfies all the eligibility requirements in the Act and in this subpart that applied to his or her predecessor and, for independent directorships, also satisfies any of the qualifications in the Act or this subpart. If a Bank does not have at least two sitting public interest independent directors, the board of directors of the Bank shall designate the directorship as a public interest directorship and shall elect an individual who satisfies a public interest independent directorship qualification in the Act or in this subpart.

(b) *Verifying eligibility.* Prior to any election by the board of directors, the Bank shall obtain an executed member director eligibility certification form prescribed by FHFA from each individual being considered to fill a member directorship and an executed independent director application form prescribed by FHFA from each individual being considered to fill an independent directorship. Using the executed forms, each Bank shall verify each individual's eligibility and, as to independent directors, also shall verify the individual's qualifications. Before any independent director is elected by the board of directors of a Bank, the Bank shall deliver to FHFA for its review a copy of the application form of each individual being considered by the board. The Bank shall retain the information it receives in accordance with paragraphs (c) and (d) of § 1261.6.

(c) *Notification.* Promptly after allowing the individual to assume the directorship, as provided in paragraph (b) of this section, a Bank shall notify FHFA and each member located in the Bank's district in writing of the following:

(1) For each member directorship filled by the board of a Bank, the name of the director, the name, location, and FHFA ID number of the member the director serves, the director's title or position with the member, the voting State that the director represents, and the expiration date of the director's term of office; and

(2) For each independent directorship filled by the board of a Bank, the name of the director, the name and location of the organization with which the director is affiliated, if any, the director's title or position with such organization, and the expiration date of the director's term of office.

§ 1261.16 [Removed and reserved]

■ 20. Remove and reserve § 1261.16.

Dated: September 30, 2009.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. E9–24063 Filed 10–6–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0367; Directorate Identifier 2009–NE–10–AD; Amendment 39–16023; AD 2009–19–07]

RIN 2120–AA64

Airworthiness Directives; Teledyne Continental Motors O–470, IO–470, TSIO–470, IO–520, TSIO–520, IO–550, and IOF–550 Series Reciprocating Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting airworthiness directive (AD) 2009–19–06, which published in the **Federal Register** on September 22, 2009. That AD applies to Teledyne Continental Motors O–470, IO–470, TSIO–470, IO–520, TSIO–520, IO–550, and IOF–550 series reciprocating engines. The two references to the AD number are incorrect due to a software problem with the automated AD number assignment system. This document corrects those references. In all other respects, the original document remains the same.

DATES: Effective October 7, 2009.

FOR FURTHER INFORMATION CONTACT: Anthony Holton, Engineer, Propulsion, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1701 Columbia Avenue, College Park, Georgia 30337; *e-mail: anthony.holton@faa.gov; telephone:* (404) 474–5567; *fax:* (404) 474–5606.

SUPPLEMENTARY INFORMATION: On September 22, 2009, we published a final rule AD, FR Doc. E9–22287, in the **Federal Register** (74 FR 48141). That AD applies to Teledyne Continental Motors O–470, IO–470, TSIO–470, IO–520, TSIO–520, IO–550, and IOF–550 series reciprocating engines. We need to make the following correction:

§ 39.13 [Corrected].

■ On page 48141, in the second column, in the third line below 14 CFR Part 39, ''AD 2009–19–06'' is corrected to read ''AD 2009–19–07''.

■ On page 48142, in the third column, in the eighth line below PART 39–AIRWORTHINESS DIRECTIVES, ''2009–19–06 Teledyne Continental Motors'' is corrected to read ''2009–19–07 Teledyne Continental Motors''.

Issued in Burlington, Massachusetts, on September 29, 2009.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E9–24088 Filed 10–6–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0811]

RIN 1625–AA00

Safety Zone; Beachfest Fireworks, Pacific Ocean, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone, on the navigable waters of the Pacific Ocean near San Diego in support of the Beachfest Fireworks Display. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 8 p.m. to 10 p.m. on October 10, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0811 and are available online by going to *http://www.regulations.gov*, inserting USCG–2009–0811 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Petty Officer Shane Jackson, Waterways Management, U.S. Coast Guard Sector San Diego; telephone 619–278–7262, e-mail *Shane.E.Jackson@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because any delay in the effective date of this rule would expose members of the public to the dangers associated with fireworks displays. Immediate action is necessary to ensure the safety of vessels, spectators, and other users of the waterway.

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

Background and Purpose

Fireworks & Stage FX Inc is sponsoring the Beachfest Fireworks Display, which will include a fireworks presentation from Crystal Pier in the Pacific Beach neighborhood of San Diego, California. The safety zone will be a 600 foot radius around the end of the pier. This temporary safety zone is necessary to provide for the safety of the vessels, spectators, and other users of the waterway.

Discussion of Rule

The Coast Guard is establishing a safety zone that will be enforced from 8 p.m. to 10 p.m. on October 10, 2009. The limits of the safety zone will be a 600 foot radius around the end of Crystal Pier in the Pacific Beach neighborhood of San Diego, California. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the affected portion of the Pacific Ocean from 8 p.m. to 10 p.m. on October 10, 2009.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced in a small area for only two hours late in the evening when vessel traffic is low. Commercial vessels will

not be hindered by the safety zone. Before the effective period, the Coast Guard will publish a local notice to mariners and will issue broadcast notice to mariners alerts via marine channel VHF 16 before the temporary safety zone is enforced.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

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

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T11–237 to read as follows:

§ 165.T11–237 Safety Zone; Beachfest Fireworks, San Diego, CA.

(a) *Location.* The following area is a safety zone: All navigable waters of the Pacific Ocean, from surface to bottom, within 600 feet of the fireworks launching site located at the end of Crystal Pier in San Diego, CA.

(b) *Enforcement Period.* This section will be enforced from 8 p.m. to 10 p.m. on October 10, 2009. If the event

concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: As used in this section, *designated representative,* means any commissioned, warrant, or petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, or local, State, or Federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Under the general regulations in § 165.23, entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Sector San Diego Communications Center (COMCEN). The COMCEN may be contacted via VHF–FM Channel 16 or (619) 278–7033.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

(5) The Coast Guard may be assisted by other Federal, State, or local agencies.

Dated: September 21, 2009.

T. H. Farris,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. E9–24176 Filed 10–6–09; 8:45 am]

BILLING CODE 4910–15–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009–42 and CP2009–63; Order No. 305]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding the Priority Mail Contract 18 to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective October 7, 2009 and is applicable beginning September 28, 2009.

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

SUPPLEMENTARY INFORMATION: *Regulatory History,* 74 FR 48323 (September 22, 2009).

I. Introduction

The Postal Service seeks to add a new product identified as Priority Mail Contract 18 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

II. Background

On September 11, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Priority Mail Contract 18 to the Competitive Product List.[1] The Postal Service asserts that the Priority Mail Contract 18 product is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2009–42.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2009–63.

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors' Decision, filed in Docket No MC2009–25, authorizing the Priority Mail Contract Group; [2] (2) a redacted version of the contract; [3] (3) a requested change in the Mail Classification Schedule product list; [4] (4) a Statement of Supporting Justification as required by 39 CFR 3020.32;[5] (5) a certification of compliance with 39 U.S.C. 3633(a); [6] and (6) an application for nonpublic treatment of the materials filed under seal.[7] The redacted version of the contract provides that the contract is terminable on 30 days' notice by either party, but could continue until March 11, 2012 without modification except as to price adjustments. Request, Attachment B, Article III.

In the Statement of Supporting Justification, Mary Prince Anderson, Acting Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to coverage of institutional costs, and will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Request, Attachment D, at 1. W. Ashley Lyons, Manager, Regulatory Reporting and Cost Analysis, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). *Id.,* Attachment E.

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

In Order No. 298, the Commission gave notice of the two dockets, appointed a public representative, sought supplemental information, and provided the public with an opportunity to comment.[8] The Postal Service filed its Response for supplemental information pertaining to the sufficiency of spreadsheets of the partially superseded agreement, and related data.[9]

III. Comments

Comments were filed by the Public Representative.[10] No comments were submitted by other interested parties. The Public Representative states that the Postal Service's filing comports with title 39 and the relevant Commission rules. Public Representative Comments at 1. He further states that the agreement

[1] Request of the United States Postal Service to Add Priority Mail Contract 18 to Competitive Product List, September 11, 2009 (Request).

[2] Attachment A to the Request, reflecting Governors' Decision No. 09–6, April 27, 2009.

[3] Attachment B to the Request.

[4] Attachment C to the Request.

[5] Attachment D to the Request.

[6] Attachment E to the Request.

[7] Attachment F to the Request.

[8] PRC Order No. 298, Notice and Order Concerning Priority Mail Contract 18 Negotiated Service Agreement, September 15, 2009 (Order No. 298).

[9] Response of the United States Postal Service to Request for Supplemental Information in Order No. 298 (Questions 1 and 2), September 21, 2009 (Response).

[10] Public Representative Comments in Response to United States Postal Service Request to Add Priority Mail Contract 18 Negotiated Service Agreement to the Competitive Product List, September 25, 2009 (Public Representative Comments). The Public Representative also filed a Motion of the Public Representative for Late Acceptance of Comments in Response to United States Postal Service Request to Add Priority Mail Contract 18 to the Competitive Products List, September 25, 2009. That motion is granted.

appears to be beneficial to the general public since ''[i]n addition to having the mailer prepare mailings for less costly handling by the Postal Service, the contract employs pricing incentives favorable to the Postal Service and thereby, the public.'' *Id.* at 4. The Public Representative notes that the Postal Service has provided adequate justification for maintaining confidentiality in this case. *Id.* at 3.

IV. Commission Analysis

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

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning Priority Mail Contract 18 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

Product list assignment. In determining whether to assign Priority Mail Contract 18 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether

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

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

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

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

No commenter opposes the proposed classification of Priority Mail Contract 18 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Priority Mail Contract 18 is appropriately classified as a competitive product and should be added to the Competitive Product List.

Cost considerations. The Postal Service presents a financial analysis showing that Priority Mail Contract 18 results in cost savings while ensuring that the contract covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products.

Based on the data submitted, the Commission finds that Priority Mail Contract 18 should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of proposed Priority Mail Contract 18 indicates that it comports with the provisions applicable to rates for competitive products.

Agreements amending previous negotiated service agreements. In its Request, the Postal Service did not clearly identify the existing contract that the new one effectively modifies. The new contract supersedes, in part, a contract for Express Mail and Priority Mail, only with respect to Priority Mail terms.[11] In the future, if it is amending or changing an existing contract in a new filing, the Postal Service shall identify the contract and docket number of the contract being amended or changed in the new filing and describe the changes. In addition, assuming the existing contract is to continue, in part, as modified, the Postal Service must also certify, as part of its filing, that the amended contract still complies with the requirements of 39 U.S.C. 3633(a).

Application for non-public treatment. The Postal Service believes that the 10-year period of non-public treatment, as specified in 39 U.S.C. 3007.30, is insufficient to protect customer-identifying information. Request, Attachment F, at 7. It asserts that such information should be protected permanently and requests that the Commission enter an order extending that duration indefinitely.

The request is premature. Should the need for non-public treatment remain due to ongoing business relationships, the Postal Service may submit a motion to the Commission to extend the duration at the appropriate time.[12]

Other considerations. Following the scheduled termination date of the agreement, the Commission will remove the product from the Competitive Product List.

In conclusion, the Commission approves Priority Mail Contract 18 as a new product. The revision to the Competitive Product List is shown below the signature of this Order and is effective upon issuance of this Order.

V. Ordering Paragraphs

It is ordered:

1. Priority Mail Contract 18 (MC2009–42 and CP2009–63) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.

2. The Postal Service shall notify the Commission if termination occurs prior to the scheduled termination date.

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

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

By the Commission.

Shoshana M. Grove,

Secretary.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission amends 39 CFR part 3020 as follows:

PART 3020—PRODUCT LISTS

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

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

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

[11] The existing contract became effective March 11, 2009. Request, Attachment B, at 1.

[12] *See* Docket Nos. MC2009–40 and CP2009–61, Order Concerning Parcel Select & Parcel Return Service Contract 2 Negotiated Service Agreement, September 4, 2009, at 7.

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

Part A—Market Dominant Products

1000 Market Dominant Product List

First-Class Mail
- Single-Piece Letters/Postcards
- Bulk Letters/Postcards
- Flats
- Parcels
- Outbound Single-Piece First-Class Mail International
- Inbound Single-Piece First-Class Mail International

Standard Mail (Regular and Nonprofit)
- High Density and Saturation Letters
- High Density and Saturation Flats/Parcels
- Carrier Route
- Letters
- Flats
- Not Flat-Machinables (NFMs)/Parcels

Periodicals
- Within County Periodicals
- Outside County Periodicals

Package Services
- Single-Piece Parcel Post
- Inbound Surface Parcel Post (at UPU rates)
- Bound Printed Matter Flats
- Bound Printed Matter Parcels
- Media Mail/Library Mail

Special Services
- Ancillary Services
- International Ancillary Services
- Address List Services
- Caller Service
- Change-of-Address Credit Card Authentication
- Confirm
- International Reply Coupon Service
- International Business Reply Mail Service
- Money Orders
- Post Office Box Service

Negotiated Service Agreements
- HSBC North America Holdings Inc. Negotiated Service Agreement
- Bookspan Negotiated Service Agreement
- Bank of America corporation Negotiated Service Agreement
- The Bradford Group Negotiated Service Agreement
- Inbound International
- Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services

Market Dominant Product Descriptions

First-Class Mail

[Reserved for Class Description]
- Single-Piece Letters/Postcards
- [Reserved for Product Description]
- Bulk Letters/Postcards
- [Reserved for Product Description]
- Flats
- [Reserved for Product Description]
- Parcels
- [Reserved for Product Description]
- Outbound Single-Piece First-Class Mail International
- [Reserved for Product Description]
- Inbound Single-Piece First-Class Mail International
- [Reserved for Product Description]

Standard Mail (Regular and Nonprofit)

[Reserved for Class Description]
- High Density and Saturation Letters
- [Reserved for Product Description]
- High Density and Saturation Flats/Parcels
- [Reserved for Product Description]
- Carrier Route
- [Reserved for Product Description]
- Letters
- [Reserved for Product Description]
- Flats
- [Reserved for Product Description]
- Not Flat-Machinables (NFMs)/Parcels
- [Reserved for Product Description]

Periodicals

[Reserved for Class Description]
- Within County Periodicals
- [Reserved for Product Description]
- Outside County Periodicals
- [Reserved for Product Description]

Package Services

[Reserved for Class Description]
- Single-Piece Parcel Post
- [Reserved for Product Description]
- Inbound Surface Parcel Post (at UPU rates)
- [Reserved for Product Description]
- Bound Printed Matter Flats
- [Reserved for Product Description]
- Bound Printed Matter Parcels
- [Reserved for Product Description]
- Media Mail/Library Mail
- [Reserved for Product Description]

Special Services

[Reserved for Class Description]
- Ancillary Services
- [Reserved for Product Description]
- Address Correction Service
- [Reserved for Product Description]
- Applications and Mailing Permits
- [Reserved for Product Description]
- Business Reply Mail
- [Reserved for Product Description]
- Bulk Parcel Return Service
- [Reserved for Product Description]
- Certified Mail
- [Reserved for Product Description]
- Certificate of Mailing
- [Reserved for Product Description]
- Collect on Delivery
- [Reserved for Product Description]
- Delivery Confirmation
- [Reserved for Product Description]
- Insurance
- [Reserved for Product Description]
- Merchandise Return Service
- [Reserved for Product Description]
- Parcel Airlift (PAL)
- [Reserved for Product Description]
- Registered Mail
- [Reserved for Product Description]
- Return Receipt
- [Reserved for Product Description]
- Return Receipt for Merchandise
- [Reserved for Product Description]
- Restricted Delivery
- [Reserved for Product Description]
- Shipper-Paid Forwarding
- [Reserved for Product Description]
- Signature Confirmation
- [Reserved for Product Description]
- Special Handling
- [Reserved for Product Description]
- Stamped Envelopes
- [Reserved for Product Description]
- Stamped Cards
- [Reserved for Product Description]
- Premium Stamped Stationery
- [Reserved for Product Description]
- Premium Stamped Cards
- [Reserved for Product Description]
- International Ancillary Services
- [Reserved for Product Description]
- International Certificate of Mailing
- [Reserved for Product Description]
- International Registered Mail
- [Reserved for Product Description]
- International Return Receipt
- [Reserved for Product Description]
- International Restricted Delivery
- [Reserved for Product Description]
- Address List Services
- [Reserved for Product Description]
- Caller Service
- [Reserved for Product Description]
- Change-of-Address Credit Card Authentication
- [Reserved for Product Description]
- Confirm
- [Reserved for Product Description]
- International Reply Coupon Service
- [Reserved for Product Description]
- International Business Reply Mail Service
- [Reserved for Product Description]
- Money Orders
- [Reserved for Product Description]
- Post Office Box Service
- [Reserved for Product Description]

Negotiated Service Agreements

[Reserved for Class Description]
- HSBC North America Holdings Inc. Negotiated Service Agreement
- [Reserved for Product Description]
- Bookspan Negotiated Service Agreement
- [Reserved for Product Description]
- Bank of America Corporation Negotiated Service Agreement
- The Bradford Group Negotiated Service Agreement

Part B—Competitive Products

2000 Competitive Product List

Express Mail
- Express Mail
- Outbound International Expedited Services
- Inbound International Expedited Services
- Inbound International Expedited Services 1 (CP2008–7)
- Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)

Priority Mail
- Priority Mail
- Outbound Priority Mail International
- Inbound Air Parcel Post
- Royal Mail Group Inbound Air Parcel Post Agreement

Parcel Select

Parcel Return Service

International
- International Priority Airlift (IPA)
- International Surface Airlift (ISAL)
- International Direct Sacks—M-Bags
- Global Customized Shipping Services
- Inbound Surface Parcel Post (at non-UPU rates)
- Canada Post—United States Postal service Contractual Bilateral
- Agreement for Inbound Competitive Services (MC2009–8 and CP2009–9)
- International Money Transfer Service
- International Ancillary Services

Special Services
- Premium Forwarding Service

Negotiated Service Agreements
- Domestic
- Express Mail Contract 1 (MC2008–5)
- Express Mail Contract 2 (MC2009–3 and CP2009–4)

Express Mail Contract 3 (MC2009–15 and CP2009–21)
Express Mail Contract 4 (MC2009–34 and CP2009–45)
Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)
Express Mail & Priority Mail Contract 4 (MC2009–17 and CP2009–24)
Express Mail & Priority Mail Contract 5 (MC2009–18 and CP2009–25)
Express Mail & Priority Mail Contract 6 (MC2009–31 and CP2009–42)
Express Mail & Priority Mail Contract 7 (MC2009–32 and CP2009–43)
Express Mail & Priority Mail Contract 8 (MC2009–33 and CP2009–44)
Parcel Select & Parcel Return Service Contract 2 (MC2009–40 and CP2009–61)
Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
Priority Mail Contract 1 (MC2008–8 and CP2008–26)
Priority Mail Contract 2 (MC2009–2 and CP2009–3)
Priority Mail Contract 3 (MC2009–4 and CP2009–5)
Priority Mail Contract 4 (MC2009–5 and CP2009–6)
Priority Mail Contract 5 (MC2009–21 and CP2009–26)
Priority Mail Contract 6 (MC2009–25 and CP2009–30)
Priority Mail Contract 7 (MC2009–25 and CP2009–31)
Priority Mail Contract 8 (MC2009–25 and CP2009–32)
Priority Mail Contract 9 (MC2009–25 and CP2009–33)
Priority Mail Contract 10 (MC2009–25 and CP2009–34)
Priority Mail Contract 11 (MC2009–27 and CP2009–37)
Priority Mail Contract 12 (MC2009–28 and CP2009–38)
Priority Mail Contract 13 (MC2009–29 and CP2009–39)
Priority Mail Contract 14 (MC2009–30 and CP2009–40)
Priority Mail Contract 15 (MC2009–35 and CP2009–54)
Priority Mail Contract 16 (MC2009–36 and CP2009–55)
Priority Mail Contract 17 (MC2009–37 and CP2009–56)
Priority Mail Contract 18 (MC2009–42 and CP2009–63)
Outbound International
Direct Entry Parcels Contracts
Direct Entry Parcels 1 (MC2009–26 and CP2009–36)
Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)
Global Expedited Package Services (GEPS) Contracts
GEPS 1 (CP2008–5, CP2008–11, CP2008–12, and CP2008–13,
CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24)
Global Expedited Package Services 2 (CP2009–50)
Global Plus Contracts
Global Plus 1 (CP2008–8, CP2008–46 and CP2009–47)
Global Plus 2 (MC2008–7, CP2008–48 and CP2008–49)
Inbound International
Inbound Direct Entry Contracts with Foreign Postal Administrations
Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and MC2008–15)
Inbound Direct Entry Contracts with Foreign Postal Administrations 1 (MC2008–6 and CP2009–62)
International Business Reply Service Competitive Contract 1 (MC2009–14 and CP2009–20)
Competitive Product Descriptions
Express Mail
[Reserved for Group Description]
Express Mail
[Reserved for Product Description]
Outbound International Expedited Services
[Reserved for Product Description]
Inbound International Expedited Services
[Reserved for Product Description]
Priority
[Reserved for Product Description]
Priority Mail
[Reserved for Product Description]
Outbound Priority Mail International
[Reserved for Product Description]
Inbound Air Parcel Post
[Reserved for Product Description]
Parcel Select
[Reserved for Group Description]
Parcel Return Service
[Reserved for Group Description]
International
[Reserved for Group Description]
International Priority Airlift (IPA)
[Reserved for Product Description]
International Surface Airlift (ISAL)
[Reserved for Product Description]
International Direct Sacks—M–Bags
[Reserved for Product Description]
Global Customized Shipping Services
[Reserved for Product Description]
International Money Transfer Service
[Reserved for Product Description]
Inbound Surface Parcel Post (at non-UPU rates)
[Reserved for Product Description]
International Ancillary Services
[Reserved for Product Description]
International Certificate of Mailing
[Reserved for Product Description]
International Registered Mail
[Reserved for Product Description]
International Return Receipt
[Reserved for Product Description]
International Restricted Delivery
[Reserved for Product Description]
International Insurance
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Group Description]
Domestic
[Reserved for Product Description]
Outbound International
[Reserved for Group Description]

Part C—Glossary of Terms and Conditions
[Reserved]

Part D—Country Price Lists for International Mail [Reserved]

[FR Doc. E9–24237 Filed 10–6–09; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0490; FRL–8439–1]

Sodium and Ammonium Naphthalenesulfonate Formaldehyde Condensates; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the sodium and ammonium napthalenesulfonate formaldehyde condensates, herein referred to in this document as the SANFCs, when used as inert ingredients in pesticide formulations applied pre-harvest and post-harvest. The Joint Inerts Task Force (JITF), Cluster Support Team Number 11 and Akzo Nobel Surface Chemistry, LLC, submitted petitions to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of the SANFCs.

DATES: This regulation is effective October 7, 2009. Objections and requests for hearings must be received on or before December 7, 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–2009–0490. 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: Elizabeth Fertich, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–8560; e-mail address: *fertich.elizabeth@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–2009–0490 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 December 7, 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–2009–0490, 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

In the **Federal Register** of August 19, 2009 (74 FR 41898) (FRL–8426–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9E7572) by The JITF, CST 11, c/o CropLife America, 1156 15th Street, NW., Suite 400, Washington, DC 20005. The petition requested that 40 CFR 180.910 be amended by establishing exemptions from the requirement of a tolerance for residues of SANFCs. That notice referenced a summary of the petition prepared by the JITF, CST 11, the petitioner, which is available to the public in the docket, *http://www.regulations.gov*. Docket ID number EPA–HQ–OPP–2009–0043 was established for this petition. There were no comments received in response to the notice of filing.

In the **Federal Register** of August 19, 2009 (74 FR 41895]) (FRL–8429–9), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9E7562) by Akzo Nobel Surface Chemistry, LLC, 525 West Van Buren Street, Chicago, IL 60607–3823. The petition requested that 40 CFR 180.910 be amended by establishing exemptions from the requirement of a tolerance for residues of mono-, di-, and trimethylnapthalenesulfonic acids and napthalenesulfonic acids formaldehyde condensates, ammonium and sodium salts. That notice referenced a summary of the petition prepared by Akzo Nobel Surface Chemistry, LLC, the petitioner, which is available to the public in the docket, *http://www.regulations.gov*. Docket ID number EPA–HQ–OPP–2008–0822 was established for this petition. There were no comments received in response to the notice of filing.

These two petitions are grouped because they fall under the same general chemical description criteria.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of 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. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

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 exemption from the requirement of a tolerance for residues of the SANFCs when used as inert ingredients in pesticide formulations applied pre-harvest and post-harvest. 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.

The toxicology database for the SANFC inerts is adequate to support their use as inert ingredients in pesticide formulations. The existing toxicology database for the SANFC consists of two OPPTS Harmonized Guidelines 870.3650 (combined repeated dose toxicity study with the reproduction/developmental toxicity screening test in rats), and several studies from the scientific literature on acute toxicity and mutagenicity.

The available toxicity data indicates that SANFC has low acute oral and inhalation toxicity. SANFC was not mutagenic in an Ames test. In a repeated 28 to 42 day OPPTS Harmonized Guideline 870.3650 combined repeated dose toxicity study with the reproduction/developmental toxicity screening with the representative test compound, naphthalenesulfonic acid, sodium salt polymer with formaldehyde (CAS 9084–06–4), there was no evidence of increased susceptibility. Parental toxicity manifested as decrements in body-weight gain in both sexes at the limit dose (1,000 milligrams/kilogram/ day (mg/kg/day). No developmental or reproductive effects were observed at doses of 100, 300, and 1,000 mg/kg/day. In an OPPTS Harmonized Guideline 870.3650 study submitted by Akzo Nobel Chemistry, LLC, no systemic toxicity was observed at doses up to and including 456 mg/kg/day. The highest dose tested (HDT). There was no evidence of potential neurotoxicity or immunotoxicity in the adult animal in the OPPTS Harmonized Guideline 870.3650 study at the limit dose of 1,000 mg/kg/day. There is no evidence that the SANFCs are carcinogenic. There are no chronic data available on the SANFC surfactants; however, no structural alerts for cancer were identified in a qualitative structure activity relationship (SAR) database, DEREK Version 11. In addition, there was little concern about any of the postulated metabolites having greater toxicity than the parent compounds. The higher molecular weight (MW) polymeric SANFC surfactants (MW >1,000) are not expected to be readily absorbed or metabolized, and should thus be rapidly excreted (likely in the feces) unchanged. Additionally, lower molecular microsome cytochrome P-450 oxygenases may hydroxylate the naphthalene ring and/or methylene bridge to produce alternative metabolites that should also be readily conjugated and excreted. Furthermore, these compounds are formaldehyde condensates and do not contain free formaldehyde. Therefore, formaldehyde is not a residue of concern. In summary, all available data indicate that SANFCs have a low hazard potential.

Specific information on the studies received are included in the Agency's Human Health Risk Assessment which can be found at *http://www.regulations.gov* in document *Sodium and Ammonium Naphthalenesulfonate Formaldehyde Condensates (SANFCs) - JITF CST 11 Inert Ingredients), Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations*, pages 6–8 and 11–14 in docket ID number EPA–HQ–OPP–2009–0043 and also in document *Mono-, Di-, and Trimethylnapthalensulfonic Acids and Naphthalenesulfonic Acids Formaldehyde Condensates, Ammonium and Sodium Salts: Review of Toxicological Studies in Support of an Exemption from the Requirement of a Tolerance (40 CFR 180.920 and 40 CFR 180.910) When Used as Inert Ingredients in Pesticide Formulations* in docket ID number EPA–HQ–OPP–2008–0822.

B. Toxicity Endpoint Selection and FQPA Considerations

There was no significant hazard identified in the OPPTS Harmonized Guideline 870.3650 study at the limit dose of 1,000 mg/kg/day to either parental animals or their offspring. Thus, due to their low potential hazard and the lack of a hazard endpoint, it was determined that a quantitative risk assessment using safety factors applied to a point of departure protective of an identified hazard endpoint is not appropriate for the SANFCs. The Agency notes that there was no evidence of neurotoxicity or increased susceptibility to the offspring of rats following prenatal or postnatal exposure in the OPPTS Harmonized Guideline 870.3650 studies. Based on this information, there is no concern, at this time, for increased sensitivity to infants and children to the SANFCs when used as inert ingredients in pesticide formulations applied pre-harvest and post-harvest and a safety factor analysis has not been used to assess risk. For the same reason, EPA has determined that an additional safety factor is not needed to protect the safety of infants and children.

C. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

The SANFC inerts are used as disperants, defoamers and emulsifiers in pesticide formulations. These surfactants have a wide range of

industrial uses as well as serving as emulsifiers in personal care products and in food contact packaging.

The residues of concern are the parent compound only. Considering the large size and polarity of the SANFC molecules, it is unlikely that they would be readily absorbed by livestock or taken up by plants for further metabolism.

No hazard was identified for the acute and chronic dietary assessment (food and drinking water), or for the short-term, intermediate-term, and long-term residential assessments, and therefore, no quantitative aggregate exposure assessments were performed.

D. 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 the SANFCs to share a common mechanism of toxicity with any other substances, and SANFCs do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that SANFCs do 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*.

E. Determination of safety

Based on all available information, 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 residues of the SANFCs when used as inert ingredients in pesticide formulations applied pre-harvest and post-harvest.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. Existing Exemptions

The SANFCs have an existing exemption from the requirement of a tolerance under 40 CFR 180.920 for use as inert ingredients in pesticide formulations applied to growing crops.

C. International Residue Limits

The Agency is not aware of any country requiring a tolerance for the SANFCs nor have any CODEX Maximum Residue Levels been established for any food crops at this time.

VI. Conclusion

Therefore, an exemption from the requirement of a tolerance is established for residues of the SANFCs, under the tolerance expression mono-, di-, and trimethylnapthalenesulfonic acids and napthalenesulfonic acids formaldehyde condensates, ammonium and sodium salts, when used as inert ingredients in pesticide formulations applied pre-harvest and post-harvest.

VII. 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 exemption 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).

VIII. 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 30, 2009.

G. Jeffrey Herndon,

Acting 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 §180.910, the table is amended by adding alphabetically the following inert ingredients to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert Ingredients	Limits	Uses
* * * * * * *		
Mono-, di-, and trimethylnapthalenesulfonic acids and napthalenesulfonic acids formaldehyde condensates, ammonium and sodium salts (CAS Reg. Nos 9008–63–3, 9069–80–1, 9084–06–4, 36290–04–7, 91078–68–1, 141959–43–5, 68425–94–5)		Surfactants, related adjuvants of surfactants
* * * * * * *		

[FR Doc. E9–24160 Filed 10–6–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0690; FRL–8437–3]

C_{10}-C_{18}-Alkyl dimethyl amine oxides; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of C_{10}-C_{18}-Alkyl dimethyl amine oxides (ADAO) when used as the inert ingredient in pesticide formulations applied to raw agricultural commodities pre- and post-harvest. Exponent on behalf of Stepan Company and Rhodia submitted petitions to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of ADAOs.

DATES: This regulation is effective October 7, 2009. Objections and requests for hearings must be received on or before December 7, 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–2009–0690. All documents in the dockets 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: Lisa Austin, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7894; e-mail address: *austin.lisa@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?

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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–2009–0690 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 December 7, 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–2009–0690, 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 and Statutory Findings

EPA received two petitions requesting that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of ADAOs. These two petitions are grouped together because they fall under the same general chemical description criteria.

In the **Federal Register** of February 1, 2006 (71 FR 5322) (FRL–7756–5), EPA issued a notice pursuant to section 408 (d)(3)of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP #5E7003) by Stepan Company, 951 Bankhead Hwy., Winder, GA 30680. The petition requested that 40 CFR 180.920 be amended by establishing an exemption from the requirement of a tolerance for residues of ADAOs (CAS Reg. Nos. 1643–20–5, 2571–88–2, 2605–79–0, 3332–27–2, 61788–90–7, 68955–55–5, 70592–80–2, 7128–91–8, 85408–48–6, and 85408–49–7). Also, in the **Federal Register** of December 3, 2008 (73 FR 73644) (FRL–8390–4), EPA issued a notice pursuant to section 408 (d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP #5E7003) by Stepan Company, 951 Bankhead Hwy., Winder, GA 30680. This petition is an addendum to PP #5E7003 and included the submission of new data only. Both notices included a summary of the petition prepared by the petitioner. There were no comments received in response to the notices of filing.

Also, in the **Federal Register** of April 13, 2009 (74 FR 16869) (FRL–8396–6), EPA issued a notice pursuant to section 408 (d)(3)of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP #8E7316) by Rhodia Inc. c/o SciReg, Inc., 12733 Director's Loop, Woodbridge, VA 22192. The petition requested that 40 CFR 180.920 be amended by establishing an exemption from the requirement of a tolerance for residues of ADAOs. The notice included a summary of the petition prepared by the petitioner. There were no substantial comments received in response to the notice of filing.

Based upon review of the data supporting the petitions (#5E7003 and #8E7316), EPA has modified the exemptions requested by limiting ADAOs to a maximum of 15% by weight in pesticide formulations. In addition, the risk assessment supports the expansion of the exemptions from a requirement of tolerance to include use in pesticide formulations intended for post– harvest as well as pre–harvest application under 40 CFR 180.910. Further details can be found at *http://www.regulations.gov* in document Decision Document for Petition Numbers #5E7003 and 8E7316 ($C_{10–16}$); C_{10}–C_{18}–Alkyldimethylamine oxides CAS Reg. No. 1643–20–5, 2571–88–2, 2605–79–0, 3332–27–2, 61788–90–7, 68955–55–5, 70592–80–2, 7128–91–8, 85408–48–6, 85408–49–7) in docket ID numbers EPA–HQ–OPP–2005–0310 and EPA–HQ–OPP–2008–0858.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene ploymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of 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....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

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 exemption from the requirement of a tolerance for residues of ADAOs is limited to no more than 15% by weight in pesticide formulations when used as an inert ingredient in pesticide formulations for pre- and post-harvest uses. 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.

The available toxicology database includes an acute, subchronic (rat and rabbit), 21 and 90 day dermal toxicity (rabbit), developmental (rat and rabbit), reproduction and fertility effects study, an OPPTS Harmonized Guideline 870.3650 combined repeated dose toxicity studies with the reproduction/developmental toxicity screening tests, chronic dermal toxicity (mouse), chronic/carcinogenicity (rat), mutagenicity, and metabolism studies.

ADAOs have moderate acute toxicity via the oral routes and low toxicity via the dermal and inhalation routes. It is moderately irritating to the skin and severely irritating to the eye. It is not a skin sensitizer.

Subchronic studies were available in the rat and rabbit. Following subchronic exposure to rats via the diet, a decrease in body weight was observed in females only while cataracts were observed in males only. In the rabbit, subchronic exposure via the diet resulted in decreased alkaline phosphatase levels and increased liver/body weight ratio.

A 21/28 day study and 91–day dermal toxicity studies were available in rabbits. Systemic toxicity was not observed at the limit dose in the 21/28 day study and was not observed at the highest dose (2.5 milligrams/kilogram/day (mg/kg bw/day)) tested in the 91–day study.

Three developmental studies were available for review (2–rat, 1–rabbit). In one developmental toxicity study in the rat (Sprague-Dawley), maternal (decreased body weight gain) and offspring (skeletal variation-bifid centrum) toxicity were manifested at 100 mg/kg/day. The NOAEL in this study was 25 mg/kg/day. In a second developmental toxicity study in the rat (CD), maternal and offspring toxicity occurred at the same dose (200 mg/kg/day), the highest dose tested. Effects similar to the previous study were observed. Maternal toxicity was manifested as decreased body weight, food intake and water consumption and offspring toxicity was manifested as a slight reduction in fetal ossification. The NOAEL in this study was 100 mg/kg/day. In the rabbit, maternal and offspring toxicity were not observed at doses up to 160 mg/kg/day (highest dose tested, HDT). In a reproduction and fertility effects study in the rat, neither maternal nor offspring systemic toxicity was not observed at doses up to 40 mg/kg bw/day (HDT). No treatment-related effects were observed on reproductive parameters.

In an OPPTS Harmonized Test Guideline 870.3650 study designed to evaluate developmental, reproduction and neurological parameters, maternal toxicity in the rat [HanRcc:WIST(SPF)] was manifested as hyperkeratosis, parakeratosis, squamous cell hyperplasia, submucosal inflammation and submucosal edema in the forestomach at 100 mg/kg/day (mid dose tested, MDT). Mortality and decreased body weight were observed in the offspring at 250 mg/kg/day (HDT). Reproductive toxicity (decreased gestation index) was also manifested at 250 mg/kg/day. Reduced total locomotor activity was observed in females at 250 mg/kg/day. However, this effect was considered a result of systemic toxicity rather than a result of neurological toxicity since it was transient, occurred at the high dose in one gender only, it was not observed at the lower doses, neuropathologic lesions were not observed and signs of neurotoxicity were not observed in other studies. Changes in absolute and relative thymus weights and atrophy were observed in males at the 250 mg/kg/d (HDT). These were determined to be non-specific changes not indicative of immunotoxicity. In addition, no blood parameters were affected. Furthermore, these compounds do not belong to a class of chemicals that would be expected to be immunotoxic.

Several mutagenicity studies (Ames, chromosome aberration, micronucleus assay, cell transformation, and cell dominant lethal assay) were available for review. The results for these studies were negative.

There were two chronic studies available, a chronic dermal toxicity study in the mouse, and a chronic/carcinogenicity study in the rat. In the dermal toxicity study in the mouse, systemic toxicity and evidence of increased tumors were not observed at the HDT (5.6 mg/kg/day). In the chronic carcinogenicity study in the rat, systemic toxicity was manifested as decreased body weight and cataracts at 107 mg/kg/day (HDT). Evidence of increased tumors was not observed. Based on the lack of evidence of carcinogenicity in these studies and the negative response for mutagenicity ADAOs are not expected to be carcinogenic.

Metabolism studies demonstrated that C_{12} ADAO was absorbed in rats and extensively and rapidly excreted. The distribution of C_{12} ADMO was similar between males and females. Among all the tissues analyzed, the largest amount and the highest concentration of radioactivity were found in the liver. The fractions of dosed radioactivity appearing in the liver, kidney, and blood reached maxima within 1 hour after the oral dose. The excretion of radioactivity was rapid with approximately 70% and greater excreted within 24 hours. The major excretory pathway was urine followed by expired CO_2 with much less found in feces and bile.

Specific information on the studies received and the nature of the adverse effects caused by ADAOs, 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 document Decision Document for Petition Numbers #5E7003 and 8E7316 ($C_{10–16}$); C_{10}-C_{18}-Alkyldimethylamine oxides CAS Reg. No. 1643–20–5, 2571–88–2, 2605–79–0, 3332–27–2, 61788–90–7, 68955–55–5, 70592–80–2, 7128–91–8, 85408–48–6, 85408–49–7) at pp 7–18 in docket ID numbers EPA–HQ–OPP–2005–0310 and EPA–HQ–OPP–2008–0858.

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 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 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*.

A summary of the toxicological endpoints for ADAOs used for human health risk assessment is shown in Table 1 of this unit.

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR ADAOS FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/Scenario	Point of Departure and Uncertainty/Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (all populations)	No appropriate endpoints were identified for acute dietary risk assessment.		
Chronic dietary (all populations)	NOAEL = 42.3 mg inert/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = .42 mg/kg/day cPAD = .42 mg/kg/day	Chronic toxicity/oncogenicity study– rat (CAS Reg. No. 70592–80–2) LOAEL = 87.4 mg/kg/day based on decreased body weight and ophthalmological opacities/cataracts
Incidental Oral Short- and Intermediate Term Dermal and Inhalation	NOAEL= 42.3 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x (10% Dermal absorption; 100% inhalation and oral toxicity assumed equivalent)	Residential/Occupational LOC for MOE = 100.	Chronic toxicity/oncogenicity study– rat (CAS Reg. No. 70592–80–2) LOAEL = 87.4 mg/kg/day based on decreased body weight and ophthalmological opacities/cataracts
Cancer (oral, dermal, inhalation)	Classification: ADAOs are not expected to be carcinogenic based on the lack of evidence of carcinogenicity in the chronic feeding study in rats or in the chronic dermal study in mice as well as the negative response for mutagenicity.		

Point of Departure (POD) = A data point or an estimated point that is derived from observed dose-response data and used to mark the beginning of extrapolation to determine risk associated with lower environmentally relevant human exposures. NOAEL = no observed adverse effect level. LOAEL = lowest observed adverse effect level. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). PAD = population adjusted dose (a=acute, c=chronic). FQPA SF = FQPA Safety Factor. RfD = reference dose. MOE = margin of exposure. LOC = level of concern. N/A = not applicable.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to the ADAOs, EPA considered exposure under the petitioned-for exemptions from the requirement of a tolerance. EPA assessed dietary exposures from ADAOs in food as follows:

i. *Acute exposure.* No adverse effects attributable to a single exposure of ADAOs were seen in the toxicity databases. Therefore, acute dietary risk assessments for ADAOs are not necessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used food consumption information from the U.S. Department of Agriculture (USDA) [1994–1996 and 1998] Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, no residue data were submitted for ADAOs. In the absence of specific residue data, EPA has developed an approach which uses surrogate information to derive upper bound exposure estimates for the subject inert ingredient. Upper bound exposure estimates are based on the highest tolerance for a given commodity from a list of high-use insecticides, herbicides, and fungicides. A complete description of the general approach taken to assess inert ingredient risks in the absence of residue data is contained in the memorandum entitled ''Alkyl Amines Polyalkoxylates (Cluster 4): Acute and Chronic Aggregate (Food and Drinking Water) Dietary Exposure and Risk Assessments for the Inerts,'' (D361707, S. Piper, 2/25/09) and can be found at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2008–0738.

In the dietary exposure assessment, the Agency assumed that the residue level of the inert ingredient would be no higher than the highest tolerance for a given commodity. Implicit in this assumption is that there would be similar rates of degradation (if any) between the active and inert ingredient and that the concentration of inert ingredient in the scenarios leading to these highest levels of tolerances would be no higher than the concentration of the active ingredient.

The Agency believes the assumptions used to estimate dietary exposures lead to an extremely conservative assessment of dietary risk due to a series of compounded conservatisms. First, assuming that the level of residue for an inert ingredient is equal to the level of residue for the active ingredient will overstate exposure. The concentrations of active ingredient in agricultural products are generally at least 50 percent of the product and often can be much higher. Further, pesticide products rarely have a single inert ingredient; rather there is generally a combination of different inert ingredients used which additionally reduces the concentration of any single inert ingredient in the pesticide product in relation to that of the active ingredient. In the case of ADAOs, EPA made a specific adjustment to the dietary exposure assessment to account for the use limitations of the amount of ADAOs that may be in formulations (to no more than 15% by weight in pesticide products) and assumed that the ADAOs are present at the maximum limitation rather than at equal quantities with the active ingredient.

Second, the conservatism of this methodology is compounded by EPA's decision to assume that, for each commodity, the active ingredient which will serve as a guide to the potential level of inert ingredient residues is the active ingredient with the highest tolerance level. This assumption overstates residue values because it would be highly unlikely, given the high number of inert ingredients, that a single inert ingredient or class of ingredients would be present at the level of the active ingredient in the highest tolerance for every commodity. Finally, a third compounding conservatism is EPA's assumption that all foods contain the inert ingredient at the highest tolerance level. In other words, EPA assumed 100 percent of all foods are treated with the inert ingredient at the rate and manner necessary to produce the highest residue

legally possible for an active ingredient. In summary, EPA chose a very conservative method for estimating what level of inert residue could be on food, then used this methodology to choose the highest possible residue that could be found on food and assumed that all food contained this residue. No consideration was given to potential degradation between harvest and consumption even though monitoring data shows that tolerance level residues are typically one to two orders of magnitude higher than actual residues in food when distributed in commerce.

Accordingly, although sufficient information to quantify actual residue levels in food is not available, the compounding of these conservative assumptions will lead to a significant exaggeration of actual exposures. EPA does not believe that this approach underestimates exposure in the absence of residue data.

iii. *Cancer*. ADAOs are not expected to be carcinogenic since there was no evidence of carcinogenicity in the chronic feeding studies in mice and rats or in the chronic dermal study in mice as well as the negative response for mutagenicity. Since the Agency has not identified any concerns for carcinogenicity relating to ADAOs, a cancer dietary exposure assessment was not performed.

iv. *Anticipated residue and percent crop treated (PCT) information*. EPA did not use anticipated residue and/or PCT information in the dietary assessment for ADAOs. Tolerance level residues and/or 100% CT were assumed for all food commodities.

2. *Dietary exposure from drinking water*. For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for ADAOs, a conservative drinking water concentration value of 100 parts per billion (ppb) based on screening level modeling was used to assess the contribution to drinking water for chronic dietary risk assessments for ADAOs. These values were directly entered into the dietary exposure model.

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). ADAOs may be used in inert ingredients in pesticide products that are registered for specific uses that may result in both indoor and outdoor residential exposures. A screening level residential exposure and risk assessment was completed for products containing ADAOs as inert ingredients. The ADAO inerts are used in pesticide formulations that may be used around the home in pesticide formulations used on lawn, turf, or gardens. In addition, these inerts may be present in home cleaning products. The Agency selected representative scenarios, based on end-use product application methods and labeled application rates. The Agency conducted an assessment to represent worst-case residential exposure by assessing ADAOs in pesticide formulations (Outdoor Scenarios) and ADAOs in disinfectant-type uses (Indoor Scenarios). Based on information contained in the petition, ADAOs can be present in consumer cleaning products (maximum concentration 4%). Therefore, the Agency assessed the disinfectant-type products containing ADAOs using exposure scenarios used by OPP's Antimicrobials Division to represent worst-case residential handler exposure. The Agency conducted an assessment to represent worst-case residential exposure by assessing post application exposures and risks from ADAOs in pesticide formulations (Outdoor Scenarios) and ADAOs in disinfectant-type uses (Indoor Scenarios). Further details of this residential exposure and risk analysis can be found at *http://www.regulations.gov* in the memorandum entitled: ''JITF Inert Ingredients. Residential and Occupational Exposure Assessment Algorithms and Assumptions Appendix for the Human Health Risk Assessments to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations,'' (D364751, 5/7/09, Lloyd/LaMay in docket ID number EPA–HQ–OPP–2008–0710.

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.'' Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to ADAOs and any other substances and, this material does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that ADAOs 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 the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on 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*. Qualitative susceptibility was observed in the developmental toxicity studies in the rat. Skeletal variations were observed in rat fetuses at a dose (100 mg/kg/day) that caused maternal toxicity (decreased body weight gain). In a second developmental study in the rat, increased incidence of bifid centrum occurred in fetuses at a dose (100 mg/kg/day) that caused maternal toxicity (decreased body weight gain). However, the concern for qualitative fetal susceptibility is low because NOAELs are well established in these two studies and protective of fetuses. The NOAEL of 25 mg/kg/day established in the developmental study in the rat represents the lowest NOAEL in the database. However, the NOAEL of 42.3 mg/kg/day was selected from the chronic/carcinogenicity study for use in risk assessment. This decision was based on the conclusion that the NOAEL of 25 mg/kg/day is an artifact of dose spread. The doses tested in the developmental study in the rat were 0, 25, 100, and 200 mg/kg/day. The LOAEL for this study was 100 mg/kg/day. In a second rat developmental study and a 2–generation reproduction study, fetal and maternal effects were consistently seen at doses >100 mg/kg/day, the maternal and fetal NOAELs

were established at 100 mg/kg/day (developmental study) and >40 mg/kg/day (2–generation reproduction study, highest dose tested). In a recently conducted combined developmental/reproduction screening study (OPPTS Harmonized Guideline 870.3650), the maternal and offspring NOAELs were 40 and 100 mg/kg/day, respectively, and effects were seen at doses >100 mg/kg/day further supporting the higher NOAEL. Additionally, in the chronic/carcinogenicity study, the NOAEL was 42.3 mg/kg/day, effects (decreased body weight and cataracts) were observed at 87.4 mg/kg/day which is consistent with the dose at which other effects were seen. Given this weight-of-evidence, it was concluded that the NOAEL of 42.3 mg/kg/day most accurately reflected the true NOAEL. Therefore, the established Chronic Reference Dose (cRfD) (0.42 mg/kg/day) is protective of any developmental effects observed at doses as low as 100 mg/kg/day in these studies. There are low concerns for residual uncertainties concerning prenatal and postnatal toxicity.

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 the ADAOs inerts is considered adequate for assessing the risks to infants and children. The toxicity data available on the ADAOs is summarized in Unit IV.A.

ii. Although qualitative susceptibility was observed in the developmental toxicity studies in the rat, the concern for qualitative fetal susceptibility is low for the reasons noted in Unit IV.D.2.

iii. Evidence of neurotoxicity was noted in the combined developmental/reproduction screening test in rats. Total locomotor activity was reduced at the high dose (250 mg/kg/day) in females only. However, EPA concluded that the reduction in locomotor activity was due to excessive systemic toxicity at the high dose rather than due to neurological origin. This conclusion is based on the following: effects were seen only in one sex at the high dose, the effect was transient, neurotoxicity was not observed at the lower doses in this study, there were no neuropathological lesions in the study and clinical signs of neurotoxicity and neuropathology were not observed in any other studies in the database. Thus there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iv. The Agency noted changes in thymus weight and thymus atrophy were observed in males at the high dose (250 mg/kg/day) only. These were determined to be non-specific changes not indicative of immunotoxicity. In addition, no blood parameters were affected. Furthermore, these compounds do not belong to a class of chemicals that would be expected to be immunotoxic. Therefore, these identified effects do not raise a concern necessitating an additional uncertainty.

v. There are no residual uncertainties identified in the exposure databases. The food and drinking water assessment is not likely to underestimate exposure to any subpopulation, including those comprised of infants and children. The food exposure assessments are considered to be highly conservative as they are based on the use of the highest tolerance level from the surrogate pesticides for every food and 100% crop treated is assumed for all crops. EPA also made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to ADAOs in drinking water. These assessments will not underestimate the exposure and risks posed by ADAOs.

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*.There was no hazard attributable to a single exposure seen in the toxicity database for ADAOs. Therefore, the ADAOs are not expected to pose an acute risk.

2. *Chronic risk*. A chronic aggregate risk assessment takes into account exposure estimates from chronic dietary consumption of food and drinking water Using the exposure assumptions discussed in this unit for chronic exposure and the use limitations of not more than 15% by weight in pesticide formulations, the chronic dietary exposure from food and water to ADAO is 14% of the cPAD for the U.S. population and 45% of the cPAD for children 1 to 2 years old, the most highly exposed population subgroup.

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).

ADAOs are used as inert ingredients in pesticide products that are currently registered for uses 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 ADAOs. Using the exposure assumptions described in this unit, EPA has concluded that the combined short-term aggregated food, water, and residential exposures result in aggregate MOEs of 250 for both adult males and females respectively. Adult residential exposure combines high end dermal and inhalation handler exposure from indoor hand wiping with a high end post application dermal exposure from contact with treated lawns. EPA has concluded the combined short-term aggregated food, water, and residential exposures result in an aggregate MOE of 200 for children. Children's residential exposure includes total exposures associated with contact with treated lawns (dermal and hand-to-mouth exposures). As the level of concern is for MOEs that are lower than 100, these MOEs are not of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

ADAOs are currently registered for uses that could result in intermediate -term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to ADAOs. Using the exposure assumptions described in this unit, EPA has concluded that the combined intermediate-term aggregated food, water, and residential exposures result in aggregate MOEs of 840 for adult males and females. Adult residential exposure includes high end post application dermal exposure from contact with treated lawns. EPA has concluded the combined intermediate-term aggregated food, water, and residential exposures result in an aggregate MOE of 210 for children. Children's residential exposure includes total exposures associated with contact with treated lawns (dermal and hand-to-mouth exposures). As the level of concern is for MOEs that are lower than 100, this MOE is not of concern.

5. *Aggregate cancer risk for U.S. population*. The Agency has not identified any concerns for carcinogenicity relating to ADAOs.

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 residues of ADAOs.

V. Other Considerations

A. Endocrine Disruptors

EPA is required under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by FQPA, to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or other such endocrine effects as the Administrator may designate.'' Following recommendations of its Endocrine Disruptor and Testing Advisory Committee (EDSTAC), EPA determined that there was a scientific basis for including, as part of the program, the androgen and thyroid hormone systems, in addition to the estrogen hormone system. EPA also adopted EDSTAC's recommendation that the Program include evaluations of potential effects in wildlife. For pesticide chemicals, EPA will use FIFRA and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA authority to require the wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program (EDSP).

When additional appropriate screening and/or testing protocols being considered under the Agency's EDSP have been developed, ADAOs may be subjected to further screening and/or testing to better characterize effects related to endocrine disruption.

B. Analytical Method(s)

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. International Tolerances

The Agency is not aware of any country requiring a tolerance for ADAOs nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

VI. Conclusions

Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of ADAOs. Accordingly, EPA finds that exempting ADAOs from the requirement of a tolerance when used as an inert ingredient in pesticide formulations applied to growing crops will be safe.

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance 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 exemption 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).

VIII. 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 25, 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. In §180.910, the table is amended by adding alphabetically the following inert ingredients:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * * * * * *		
C_{10}-C_{18}-Alkyl dimethyl amine oxides (CAS Reg. Nos. 1643–20–5, 2571–88–2, 2605–79–0, 3332–27–2, 61788–90–7, 68955–55–5, 70592–80–2, 7128–91–8, 85408–48–6, and 85408–49–7)	15% by weight in pesticide formulation	Surfactant
* * * * * * *		

[FR Doc. E9–24055 Filed 10–06–09; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0407; FRL–8438–1]

Ammonium chloride; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of ammonium chloride (CAS Reg. No. 12125–02–9) applied pre-harvest on all raw agricultural commodities when applied/used as a carrier/nutrient. SciReg, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of ammonium chloride.

DATES: This regulation is effective October 7, 2009. Objections and requests for hearings must be received on or before December 7, 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–2008–0407. 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: Deirdre Sunderland, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 603–0851; e-mail address: *sunderland.deirdre@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 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. 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–2008–0407 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 December 7, 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–2008–0407, 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 and Statutory Findings

In the **Federal Register** of June 13, 2008 (73 FR 33814) (FRL–8367–3), EPA issued a notice pursuant to section 408

of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 8E7329) by SciReg Inc., 12733 Director's Loop, Woodbridge, VA 22192. The petition requested that 40 CFR 180.920 be amended by establishing an exemption from the requirement of a tolerance for residues of ammonium chloride when used as an inert ingredient in pesticide formulations applied pre-harvest. That notice included a summary of the petition prepared by the petitioner. There were no comments received in response to the notice of filing.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for 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. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene ploymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information 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. The nature of the toxic effects caused by ammonium chloride are discussed in this unit. The following provides a brief summary of the risk assessment and conclusions for the Agency's review of ammonium chloride. The Agency's full decision document for this action is available in the Agency's electronic docket (regulations.gov) under the docket ID number EPA–HQ–OPP–2008–0407.

Ammonium and chloride are integral components of normal human metabolic processes. Ingested ammonium chloride is rapidly absorbed from the gastrointestinal tract with almost complete absorption occurring in 3 to 6 hours. It is utilized by the liver to form amino acids and proteins.

Acute oral studies on mice and rats given ammonium chloride showed LD_{50} values ranging from 1,220 milligrams/kilogram (mg/kg) to 1,630 mg/kg. No acute dermal or inhalation studies are available; however, skin irritation and eye irritation studies revealed moderate transient irritation effects. Skin sensitization studies showed that ammonium chloride has no sensitizing potential. According to the World Health Organization (WHO), ''The ingestion of ammonium chloride in doses of around 500–1,000 mg/kg body weight/day (bw/day), for periods ranging from 1 to 8 days, has induced metabolic acidosis in mice, guinea-pigs, rats, rabbits, and dogs. However, one study did not report any toxic effects at doses of up to 1 gram/kg bw in rats, rabbits, guinea-pigs, and cats (50 animals per group).'' It is also noted that susceptibility to ammonium chloride differs among species.

In one study, male Fisher 344 rats given a diet containing 580 mg/kg/day for 56 days produced no clinical signs of toxicity and no histopathological changes were attribute to this chemical. Another study administered 684 mg/kg/day of ammonium chloride to male Sprague-Dawley rats for 70 days. Treated animals showed a reduction in urinary pH (6.04 vs. ≥7.56 in controls) and an increase in urinary calcium; however, no crystals were found in the urine. Other urinary parameters were not affected by treatment. In addition, no histopathological changes were noted in the stomach, bladder, or kidneys. The no observed adversed effect level (NOAEL) for these studies are 580 mg/kg/day and 684 mg/kg/day, respectively.

An 8–day dog study administered 200 mg/kg/day of ammonium chloride. Metabolic acidosis occurred in the blood and the plasma; however, there were no changes in the acid-base system in erythrocytes. This study indicates that ammonium chloride causes substantial acidification of the blood and urine but does not affect the acid-base system of erythrocytes. A 330–day study which administered 0 or 1.5% ammonium chloride in drinking water to rats showed the development of osteoporosis in test animals due to loss of organic bone substance and bone minerals. The effect was reversible with the supplement of bicarbonate. The release of bone mineral by resorption is thought to provide additional buffering capacity, sparing bicarbonate.

Renal effects were also observed at high doses in some of the studies. One study administered 0 or 1.28 g/kg/day of ammonium chloride via drinking water or gavage to Sprague- Dawley rats for 5 days. Renal hypertrophy was observed; however, no increase in uptake of radioactive thymidine was seen, implying that no increase in DNA synthesis or cell division occurred.

No evidence of tumors were observed in mice and rats administer ammonium chloride at doses up to 1% of their diet or drinking water for up to 652 days. Ammonium chloride is not expected to be carcinogenic. Based on available mutagencity studies, EPA concludes that ammonium chloride is not mutagenic.

No clinical signs of neurotoxicity were seen in any of the repeat dose studies. Although evidence of neurotoxicity was observed in two specialized studies at high doses, the scenarios presented are not likely to occur in a natural setting (i.e. the chemical injected directly into the brain) and do not include the oral, dermal, or inhalation routes of exposure. After evaluating the available data and the expected exposure from the intended use pattern of this inert ingredient, the Agency does not feel that

a developmental neurotoxicity study is needed.

The primary effect of ammonium chloride is related to the subsequent metabolic acidosis that occurs as a result of ingesting high concentrations of the chemical. Fortunately, the body has compensatory mechanisms used to return it to homeostasis. It is only after these buffers are exhausted that adverse effects are seen. According to Food and Drug Administration in the ''Evaluation of the Health Aspects of Certain Ammonium Salts as Food Ingredients'' (1974), ''the normal liver so readily detoxifies ammonium ion from alimentary sources that blood concentrations of ammonium salts do not rise to the levels necessary to evoke toxic response.'' The FDA has designated ammonium chloride as a ''Generally Recognized as Safe-GRAS'' chemical for use in food products. Many of the studies noted that the effects were reversible.

Although no reproduction studies are available, ammonium chloride has been used medicinally on pregnant women and has been classified in Australia under Pregnancy Category A meaning that it ''has been used for many pregnant women and women of conceiving age, and that there is no proof of increase in the frequency of deformation and the frequency of direct or indirect detrimental action to the embryo.'' Because ammonium chloride is found naturally in the environment and is a normal component of the human diet, the Agency does not feel that there is an increased risk to pregnant woman or woman of child-bearing age.

Available studies show that ammonium chloride is of low toxicity for human health endpoints. Although one developmental study did observe 7% ectrodactyly in the offspring of mice that were given 600 mg/kg 4 times a day on day 10 of gestation (2.4 g/kg/day), another study found no teratogencity in the fetuses of rats given almost 4 times that dosage (~8.9 mg/kg/day) during days 7 to 10 of gestation. Effects of treatment were seen in regards to fetal weight; however, no fetal malformations were observed.

Based on available data, the 56–day rat study was selected for establishing the chronic Reference Dose (cRfD). In this study the NOAEL was 580 mg/kg/day (the highest dose tested) where no clinical signs of toxicity or histopathologic changes were attributed to this chemical. With an uncertainty factor of 100X for interspecies and intraspecies extrapolation and the Food Quality Protection Act (FQPA) safety factor (SF) reduced to 1X the cRfD is equal to the chronic population adjusted dose (cPAD).

V. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

In order to quantify the anticipated dietary exposure, the Agency's Dietary Exposure Evaluation Model (DEEM) was employed. In modeling exposure, EPA made several very conservative assumptions including the assumption that the inert ingredient was used in all food use pesticide products applied to all crops and that 100% of the crop was treated. EPA also assumed that the residues of ammonium chloride would be present in all crops at levels equal to or greater than the highest established tolerance levels for any pesticide active ingredient for pre-harvest use.

Although EPA used a default value of 100 parts per billion for the concentration of the inert in all sources of drinking water, the Agency does not anticipate increased exposure to ammonium chloride from drinking water as a result of the use of ammonium chloride as an inert ingredient. This conclusion is based on the fact that excess ammonium chloride is taken up by the plant as a nutrient, the rapid disassociation of ammonium chloride into its anion/cation parts, and the regulation of water treatment plants for nutrients in drinking water. Furthermore, the unpalatability of the amount of ammonium chloride needed to induce a toxic response would discourage consumption. Due to the nature of the chemical, it is unlikely that ammonium chloride will volatize from water.

This exposure assessment is particularly conservative for several reasons. Given the wide spread use of ammonium chloride in the food supply (both as a direct food additive and fertilizer), the amount of ammonium chloride contributed by its use as an inert ingredient in pesticide products will not significantly increase the overall exposure to infants and children. In addition, based on its high water solubility and the use of this product in the growing phase of plant life, it is expected that the majority of this inert ingredient will be washed from the plant prior to it reaching the consumer market and therefore the residues on the plant will be limited.

VI. Cumulative Effects

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.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to ammonium chloride and any other substances, and these chemicals do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that these chemicals 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 the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://ww.epa.gov/pesticides/cumulative/*.

VII. Additional Safety Factor for the Protection of Infants and Children

Section 408 of FFDCA provides that EPA shall apply an additional tenfold 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 that a different margin of safety will be safe for infants and children. EPA concluded that the FQPA SF for ammonium chloride should be reduced to 1X.

The database for ammonium chloride is adequate to make a determination of safety. Although specific reproduction studies have not been presented, the use of ammonium chloride as a pharmacological agent gives an understanding of how the chemical will behave.

Available studies show that ammonium chloride is of low toxicity for human health endpoints. Although one developmental study did observe 7% ectrodactyly in the offspring of mice that were given 600 mg/kg 4 times a day (2.4 g/kg/day) on day 10 of gestation, another study found no teratogencity in the fetuses of rats given almost 4 times that dosage (~8.9 mg/kg/day) during days 7 to 10 of gestation. Effects of treatment were seen in regards to fetal weight; however, no fetal malformations were observed. Similar results were seen when rats were given 0.9% (0.17mol/L) ammonium chloride in drinking water. The effects seen in these studies are believed to be a result of maternal acidosis.

Many of the repeat dose studies and human case studies show that the effects of ammonium chloride were reversible once the exposure was removed (in some cases sodium bicarbonate was given to reverse the acidosis). It was inferred in many of the studies that the toxicity was secondary to acidosis.

No clinical signs of neurotoxicity were seen in any of the repeat dose studies. Although evidence of neurotoxicity was observed in two specialized studies at high doses, the scenarios presented are not likely to occur in a natural setting (i.e., the chemical injected directly into the brain) and do not include the oral, dermal, or inhalation routes of exposure. After evaluating the available data and the expected exposure from the intended use pattern of this inert ingredient, the Agency does not feel that a developmental neurotoxicity study is needed.

Ammonium chloride is a natural part of the metabolic process and therefore, the body has buffers in place to bring the system back to homeostasis when levels of ammonium or chloride exceed normal values. Because of the low toxicity of the chemical, the body's ability to achieve homeostasis, the conservative approach taken for estimating exposure, the Agency concludes there are reliable data showing that a reduction of childrens' safety factor from 10X to 1X is safe.

VIII. Determination of Safety for U.S. Population

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the acute population adjusted dose (aPAD) and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate uncertainty/safety factors. EPA calculates the aPAD and cPAD by dividing the point of departure by all applicable uncertainty/safety factors.

As noted in Unit IV., ammonium chloride is not expected to pose an acute risk. To evaluate chronic risk, EPA compared estimated chronic exposure to the cPAD of 5.8 mg/kg/day. Utilizing a highly conservative aggregate exposure assessment, the resulting chronic exposure estimates do not exceed the Agency's level of concern (<100% cPAD). Children 1 to 2 years old were the most highly exposed population with the chronic exposure estimate occupying 10.8% of the cPAD. In addition, this highly conservative exposure assessment is protective of any possible non-occupational exposures to ammonium chloride as it results in exposure estimates orders of magnitude greater than the high-end exposure estimates for residential uses of pesticides routinely used by EPA.

Taking into consideration all available information on ammonium chloride, it has been determined that there is a reasonable certainty that no harm to any population subgroup, including infants and children, will result from aggregate exposure to this chemical. Therefore, the exemption from the requirement of a tolerance for residues of ammonium chloride (CAS Reg. No. 12125–02–9), when used as inert ingredient in pre-harvest applications, under 40 CFR 180.920 can be considered safe under section 408(q) of the FFDCA.

IX. Other Considerations

A. Analytical Method

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. Existing Exemptions

Ammonium chloride has exemptions under 40 CFR 180.910 when used as an intensifier with ammonium nitrate as a dessicant or defoliant or as a fire suppressant in aluminum phosphide and magnesium phosphide formulations and under 40 CFR 180.940(a) as an ingredient in antimicrobial pesticide formulation where the end-use concentration cannot exceed 48 parts per million.

C. International Tolerances

The Agency is not aware of any country requiring a tolerance for ammonium chloride nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

X. Conclusions

Therefore, a tolerance exemption is established for ammonium chloride (CAS Reg. No. 12125–02–9) when used as an inert ingredient in pesticide formulations applied to growing crops only.

XI. Statutory and Executive Order Reviews

This final rule establishes a tolerance 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).

XII. 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 29, 2009.

G. Jeffrey Herndon,

Acting 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 § 180.920, the table is amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.920 Inert ingredients used pre-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Ammonium chloride (CAS Reg. No. 12125–02–9)		Carrier/ nutri-ent
* * * * * * *		

[FR Doc. E9–24161 Filed 10–6–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0518; FRL–8434–3]

Quinclorac; Pesticide Tolerance for Emergency Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of quinclorac in or on cranberry. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on cranberries. This regulation establishes a maximum permissible level for residues of quinclorac in this food commodity. The time-limited tolerance expires and is revoked on December 31, 2012.

DATES: This regulation is effective October 7, 2009. Objections and requests for hearings must be received on or before December 7, 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–2009–0518. All documents in the docket are listed in the docket index available in *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: Marcel Howard, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6784; e-mail address: *Howard.Marcel@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 cite at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the Federal Food, Drug, and Cosmetic Act (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–2009–0518 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 December 7, 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–2009–0518, 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 and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of FFDCA, 21 U.S.C. 346a(e) and 346a(1)(6), is establishing a time-limited tolerance for residues of the herbicide quinclorac, 3,7-dichloro-8-quinolinecarboxylic acid, in or on cranberries at 15.0 parts per million (ppm). This time-limited tolerance expires and is revoked on December 31, 2012. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the CFR.

Section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related time-limited tolerances to set binding precedents for the application of section 408 of FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

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. . . .''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Quinclorac on Cranberries and FFDCA Tolerances

The Massachusetts Department of Agriculture Resources (MDAR) requested the use of quinclorac through an emergency exemption to control dodder on cranberries. According to MDAR, dodder is a serious and devastating pest in commercial cranberry production. The MDAR stated that currently available herbicides are inadequate for dodder control and growers have experienced at least a 50% yield loss due to dodder infestation. After having reviewed the submission, EPA determined that emergency conditions exist for this State, and that the criteria for an emergency exemption are met. EPA has authorized under FIFRA section 18 the use of quinclorac on cranberries for control of dodder in Massachusetts.

As part of its evaluation of the emergency exemption application, EPA assessed the potential risks presented by residues of quinclorac in or on cranberries. In doing so, EPA considered the safety standard in section 408(b)(2) of FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of FFDCA. Although these time-limited tolerances expire and are revoked on December 31, 2012, under section 408(l)(5) of FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on cranberries after that date will not be unlawful, provided the pesticide was applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these time-limited tolerances at the time of that application. EPA will take action to revoke these time-limited tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these time-limited tolerances are being approved under emergency conditions, EPA has not made any decisions about whether quinclorac meets FIFRA's registration requirements for use on cranberries or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that this time-limited tolerance decision serves as a basis for registration of quinclorac by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for persons in any State other than

Massachusetts to use this pesticide on these crops under FIFRA section 18 absent the issuance of an emergency exemption applicable within that State. For additional information regarding the emergency exemption for quinclorac, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. 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 the factors specified in FFDCA section 408(b)(2)(D), 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 expected as a result of this emergency exemption request and the time-limited tolerance for residues of quinclorac on cranberries at 15.0 ppm. EPA's assessment of exposures and risks associated with establishing time-limited tolerances follows.

A. 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 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 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*.

A summary of the toxicological endpoints for quinclorac used for human risk assessment can be found at *http://www.regulations.gov* in the document Quinclorac. Human Health Risk Assessment for the Proposed Food/Feed Use of the Herbicide (Associated with Section 18 Registation) on Cranberries in Massachusetts, pages 14–41 in docket ID number EPA–HQ–OPP–2009–0518.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to quinclorac, EPA considered exposure under the time-limited tolerances established by this action as well as all existing quinclorac tolerances in (40 CFR 180.463). EPA assessed dietary exposures from quinclorac in food as follows:

i. *Acute exposure*. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed 100 percent crop-treated (% CT) and tolerance-level residues for all agricultural commodities. Default processing factors from Dietary Exposure Evaluation Model (DEEM) 7.81 were used (for dried beef and cranberry juice) in the analyses.

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 100% CT, along with tolerance-level residues for all agricultural commodities. Default processing factors from DEEM 7.81 were used (for dried beef and cranberry juice) in the analyses.

iii. *Cancer*. Based on an evaluation under the 1986 Agency Cancer Assessment Guidelines and the results of carcinogenicity studies in rats and mice, EPA has classified quinclorac as ''not classifiable as to carcinogenicity to humans.'' The results indicate that there was equivocal evidence of an increase in the incidence of pancreatic acinar cell adenomas in the male rat only, and no increase in female rats nor in mice. A quantification of cancer risk is not warranted because the chronic reference dose is approximately 1,200-fold lower than the dose that induced the benign pancreatic tumors. Therefore, EPA considers the chronic assessment to be protective of potential cancer impacts.

iv. *Anticipated residue and percent crop treated (PCT) information*. EPA did not use anticipated residue and/or PCT information in the dietary assessment for quinclorac. Tolerance level residues and/or 100% CT were assumed for all food commodities.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for quinclorac in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of quinclorac. 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 modified Tier I Provisional Cranberry Model (PRZM and EXAMS models are not based on typical properties of cranberry bogs, which involves flooding) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of quinclorac for acute exposures and chronic exposures for non-cancer assessments are estimated to be 0.077 parts per billion (ppb) and 0.070 ppb, respectively, for surface water and 0.019 ppb for both acute and chronic (non-cancer) ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For both acute and chronic dietary risk assessment, the water concentration value of 0.077 ppb was used to assess the contribution to drinking water. Conservative assumptions used in these model estimates help ensure that the outputs are protective of most environments associated with agricultural uses; thus, the estimates are expected to exceed peak values found in the environment in most cases.

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). Quinclorac is currently registered for the following use that could result in residential exposures: turf and lawns. EPA assessed residential exposure using the following assumptions for toddlers:

i. Five percent of the application rate has been used to calculate the day-zero turf transferable residue (TTR) levels used for assessing risks from hand-to-mouth exposures, since quinclorac-specific turf transferable residue study data are not available;

ii. Twenty percent of the application rate has been used to calculate the day-zero turf transferable residue (TTR) residue levels used for assessing risks from object-to-mouth exposures (a higher percent transfer has been used for object-to-mouth behaviors, because it involves a teething action believed to be more analogous to DFR/leaf wash sample collection, where 20% is also used);

iii. Three year-old toddlers are expected to weigh 15 kilograms (representing an average weight from years 1 to 6);

iv. Hand-to-mouth exposures are based on a frequency of 20 events/hour, and a surface area per event of 20 square centimeters, representing the palm-side surfaces of three fingers;

v. Saliva extraction efficiency is 50%, meaning that every time the hand goes in the mouth, approximately half of the residues on the hand are removed;

vi. Object-to-mouth exposures are based on a 25 square centimeter surface area;

vii. Exposure durations for turfgrass scenarios are estimated to be 2 hours, based on information in HED's Exposure Factors Handbook; and

viii. Soil residues are contained in the top centimeter, and soil density is 0.67 milliliters per gram.

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 quinclorac to share a common mechanism of toxicity with any other substances, and quinclorac does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that quinclorac 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 the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

C. 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 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*. There is no qualitative evidence of increased prenatal and/or postnatal susceptibility and, due to the marginal nature of the effects observed on pup viability in the multigeneration reproductive toxicity study, no residual uncertainties with regard to prenatal toxicity following *in utero* exposures of rats or rabbits to quinclorac (developmental toxicity studies), and prenatal and/or postnatal exposure of rats to quinclorac (reproductive toxicity study) at the estimated aggregate exposure levels. Furthermore, the exposure levels selected for use in risk assessment are measurably lower than the NOAEL from the multigeneration study, and therefore protective against the marginal effects seen in pups.

3. *Conclusion*. EPA has determined that reliable data show that 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 quinclorac is sufficiently complete to inform the determination for the FQPA safety factor. Although recent changes to 40 CFR part 158 make acute and subchronic neurotoxicity testing (OPPTS Harmonized Guideline 870.6200), and immunotoxicity testing (OPPTS Harmonized Guideline 870.7800) required for pesticide registration, the available data for quinclorac do not show the potential for immunotoxic nor neurotoxic effects. However, future registration actions may require additional toxicity studies.

ii. There is no indication that quinclorac is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity for purposes of this time-limited tolerance.

iii. There is no evidence that quinclorac results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. EPA made conservative (protective) assumptions in the ground water and surface water modeling used to assess exposure to quinclorac in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by quinclorac.

D. 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*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to quinclorac will occupy less than 1% of the aPAD for females age 13 to 49, 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 quinclorac from food and water will utilize 3% of the cPAD for children 1 to 2 years of age, the population group receiving the greatest exposure, while the general U.S. population utilizes 2% of the cPAD. Quinclorac is not expected to pose a chronic dietary risk for the general population (including infants and children). The chronic risk estimates for all populations, resulting from aggregate exposure to quinclorac in food and drinking water, is below EPA's chronic LOC, and therefore not of concern.

3. *Short-term and intermediate-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). Intermediate-term aggregate exposure takes into account intermediate-term non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). Because short- and intermediate-term exposure may occur as a result of quinclorac use in residential settings, both assessments were based on toddler exposure from an oral route: hand-to-mouth, object-to-mouth, and incidental soil ingestion. The oral MOEs for residential post-application exposure of toddlers range from 6,300 to 1,800,000. The combined MOE of 5,000 is greater than the LOC. These values are greater than the LOC (100) for the short-term and intermediate-term risk assessment and therefore not of concern. The post-application exposure scenarios from the use on turf represent worst-case estimates of exposure and risk. To evaluate short- and intermediate-term aggregate risk, EPA has included the post-application combined MOE (5,000) with the MOE derived from chronic dietary exposure estimates (to reflect background dietary exposure). The behaviors associated with post-application exposures are applicable to toddlers, so only those age groups (infants, children 1–2 years of age, and children 3–5 years of age) have been assessed for short- and intermediate-term aggregate risk. Aggregate MOEs are all greater than 100 (MOEs range from 2,900 to 2,700), and are therefore below EPA's short-term and intermediate-term LOC.

4. *Aggregate cancer risk for U.S. population*. Quinclorac has been classified as ''not classifiable as to carcinogenicity to humans.'' Therefore, aggregate cancer risk from quinclorac is not of concern.

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 quinclorac residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate analytical methods, utilizing gas chromatography with electron capture detection (GC/ECD), are available to enforce the tolerance expression on plant (BASF Method A8902; MRID# 41063537) and animal (BASF Method 268/1; MRID# 41063536) commodities. Both methods have undergone successful Agency method validation trials, and have been submitted to FDA for publication in PAM II as the tolerance enforcement methods. The limit of quantitation (LOQ) for both methods is 0.05 ppm in all matrices. Furthermore, FDA has reported that quinclorac can be detected by Multiresidue Protocol B. No additional data are needed.

B. International Residue Limits

There are currently no established Codex, Canadian, or Mexican maximum residue limits for residues of quinclorac in/on cranberry.

VI. Conclusion

Therefore, a time-limited tolerance is established for residues of quinclorac, 3,7-dichloro-8-quinolinecarboxylic acid, in or on cranberry at 15.0 ppm. This tolerance expires and is revoked on December 31, 2012.

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under sections 408(e) and 408(l)(6) of FFDCA. 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 in accordance with sections 408(e) and 408(l)(6) 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).

VIII. 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 25, 2009.

Lois Rossi,

Acting 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 180.463 is amended by revising paragraph (b) to read as follows:

§ 180.463 Quinclorac; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances specified in the following table are established for residues of quinclorac, 3,7-dichloro-8-quinolinecarboxylic acid in or on the specified agricultural commodities, resulting from use of the pesticide pursuant to FIFRA section 18 emergency exemptions. The tolerances expire and are revoked on the date specified in the table.

Commodity	Parts per million	Expiration/ revocation date
Cranberry	15.0	12/31/12

* * * * *

[FR Doc. E9–24188 Filed 10–06–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0713; FRL–8793–2]

Pyraclostrobin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of pyraclostrobin and its desmethoxy metabolite, expressed as parent compound, in or on coffee, bean, green at 0.3 parts per million (ppm; this is a new import tolerance); fruit, stone, group 12 at 2.5 ppm (this is an increase in the existing domestic tolerance); sorghum, grain, forage at 5.0 ppm; sorghum, grain, grain at 0.60 ppm; and sorghum, grain, stover at 0.80 ppm (the sorghum tolerances are new domestic tolerances). BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective October 7, 2009. Objections and requests for hearings must be received on or before December 7, 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–2008–0713. 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: John Bazuin, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7381; e-mail address: *bazuin.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may potentially be 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 site 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–2008–0713 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 December 7, 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–2008–0713, 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 December 3, 2008 (73 FR 73644) (FRL–8386–9), 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 8F7385, 8F7390, and 8E7394) by BASF Corporation, 26 Davis Drive, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.582 be amended by establishing tolerances for combined residues of the fungicide pyraclostrobin, carbamic acid, [2-[[[1-(4-chlorophenyl)-1H- pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester) and its desmethoxy metabolite (methyl N-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl carbamate, expressed as parent compound, in or on coffee, bean, green at 0.5 ppm (PP#8E7394; a new import tolerance); fruit, stone, group 12 at 2.5 ppm (8F7390; an increase in the existing domestic tolerance); sorghum, grain at 0.5 ppm (PP#8F7385; a new domestic tolerance); sorghum, forage at 5.0 ppm (PP#8F7385; a new domestic tolerance); and sorghum, stover at 0.8 ppm (PP#8F7385; a new domestic tolerance). That notice referenced a summary of the petition prepared by BASF Corporation, 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 reduced the proposed pyraclostrobin tolerance for coffee, bean, green from 0.5 ppm to 0.3 ppm and has increased the proposed tolerance for sorghum, grain, grain (termed sorghum, grain in PP#8F7385) from 0.5 ppm to 0.60 ppm. The reasons for these changes are explained in Unit IV.D.

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 to the petitioned-for tolerances for combined residues of pyraclostrobin (carbamic acid, [2-[[[1-(4-chlorophenyl)-1H- pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester) and its desmethoxy metabolite (methyl N-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl carbamate), expressed as parent compound, in or on coffee, bean, green at 0.3 ppm; fruit, stone, group 12 at 2.5 ppm; sorghum, grain, forage at 5.0 ppm; sorghum, grain, grain at 0.60 ppm; and sorghum, grain, stover at 0.80 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. Pyraclostrobin has a low to moderate acute toxicity via the oral, dermal, and inhalation routes of exposure. Pyraclostrobin produces moderate eye irritation, is a moderate dermal irritant, and is not a dermal sensitizer. The main target organs for pyraclostrobin are the upper gastrointestinal tract (mainly the duodenum and stomach), the spleen/hematopoiesis, and the liver. In the 90–day mouse oral toxicity study, thymus atrophy was seen at doses of 30 milligrams\kil0gram (mg/kg) or above, but similar effect was not found in the mouse carcinogenicity study at doses as high as 33 mg/kg. In reproductive and developmental studies, there was evidence of increased qualitative susceptibility following *in utero* exposure in the rabbit, but not in rats. In both the acute and subchronic neurotoxicity studies, there were no indications of treatment-related neurotoxicity. EPA classified pyraclostrobin as ''Not Likely to be Carcinogenic to Humans'' based on no treatment-related increase in tumors in both sexes of rats and mice, which were tested at doses that were adequate to assess carcinogenicity, and the lack of evidence of mutagenicity. Specific information on the studies received and the nature of the adverse effects caused by pyraclostrobin 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 document *Revised Pyraclostrobin: Human Health Risk Assessment for Proposed Uses on Cotton and Belgian Endive*, page 15 in docket ID number EPA–HQ–OPP–2006–0522–004.

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 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 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*.

A summary of the toxicological endpoints for pyraclostrobin used for human risk assessment can be found at *http://www.regulations.gov* in document *Pyraclostrobin: Human Health Risk Assessment for Proposed Uses on Grain Sorghum (PP#8F7385); Increase of Tolerance for the Stone Fruit Crop Group 12 to Satisfy European Union (EU) Import Requirement (PP#8F7390); and Establishment of a Permanent Import Tolerance for Coffee (PP#8E7394)*, page 17 in docket ID number EPA–HQ–OPP–2008–0713.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to pyraclostrobin, EPA considered exposure under the petitioned-for tolerances as well as all existing pyraclostrobin tolerances in (40 CFR 180.582). EPA assessed dietary exposures from pyraclostrobin 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 United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA performed a slightly refined acute dietary exposure assessment for pyraclostrobin. EPA assumed that 100 percent of crops covered by existing or proposed tolerances were treated with pyraclostrobin and that these crops either had tolerance-level residues or residues at the highest level found in field trials. Experimentally derived processing factors were used for fruit juices, tomato, and wheat commodities but for all other processed commodities Dietary Exposure Evaluation Model (DEEM) default processing factors were assumed.

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 performed a refined chronic dietary exposure assessment for pyraclostrobin. EPA used data on average percent crop treated (PCT) (when available) and either tolerance-level residues or average field trial residues. Experimentally derived processing factors were used for fruit juices, tomato, and wheat commodities, but for all other processed commodities DEEM™ default processing factors were assumed.

iii. *Cancer*. EPA classified pyraclostrobin as ''Not Likely to be Carcinogenic to Humans'' based on no treatment-related increase in tumors in both sexes of rats and mice, which were tested at doses that were adequate to assess carcinogenicity, and the lack of evidence of mutagenicity. Accordingly, an exposure assessment to evaluate cancer risk is unnecessary.

iv. *Anticipated residue and PCT information*. 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.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition A: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition B: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition C: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

Commodity	PCT
Almond	35
Apple	10
Apricot	10
Barley	1
Black bean seed	5
Broad bean (succulent)	2.5
Broad bean seed	5
Cowpea (succulent)	2.5
Cowpea seed	5
Great northern bean seed	5
Kidney bean seed	5
Lima bean (succulent)	2.5
Lima bean seed	5
Mung bean seed	5
Navy bean seed	5
Pink bean seed	5
Pinto bean seed	5
Snap bean (succulent)	2.5
Sugar beet	35

Commodity	PCT
Blackberry	20
Blueberry	20
Broccoli	5
Cabbage	10
Napa cabbage	10
Chinese mustard cabbage	10
Cantaloupe	15
Carrot	25
Celery	2.5
Cherry	30
Field corn	5
Pop corn	5
Sweet corn	5
Cucumber	5
Currant	5
Filbert	10
Garlic	10
Grape	25
Grapefruit	25
Head lettuce	5
Leaf lettuce	5
Nectarine	15
Dry bulb onion	15
Green onion	15
Orange	5
Succulent pea	5
Pigeon pea (succulent)	5
Peach	15
Peanut	25
Pear	10
Pecan	2.5
Bell pepper	10
Non-bell pepper	10
Pistachio	25
Plum	5
Potato	10
Pumpkin	20
Raspberry	35
Soybean	5
Spinach	10
Summer squash	10
Winter squash	10
Strawberry	50
Tangerine	15
Tomato	20
Watermelon	30
Wheat	5

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition A, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions B and C, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which pyralostrobin may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for pyraclostrobin in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of pyraclostrobin. 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) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of pyraclostrobin for acute exposures are estimated to be 35.6 parts per billion (ppb) for surface water and 0.02 ppb for ground water and for chronic exposures for non-cancer assessments are estimated to be 2.3 ppb for surface water and 0.02 ppb for ground 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 35.6 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 2.3 ppb 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). Pyraclostrobin is currently registered for the following uses that could result in residential exposures: Residential turf grass and recreational sites. EPA assessed residential exposure using the following assumptions: Residential and recreational turf applications are applied by professional pest control operators (PCOs) only and, therefore, residential handler exposures do not occur. There is, however, a potential for short- and intermediate-term post-application exposure of adults and children entering lawn and recreation areas previously treated with pyraclostrobin. Exposures from treated recreational sites are expected to be

similar to, or in many cases lower than, those from treated residential turf sites so a separate exposure assessment for recreational turf sites was not conducted. EPA assessed exposures from the following residential turf post-application scenarios:

i. Short-/intermediate-term adult and toddler post-application dermal exposure from contact with treated lawns,

ii. Short-/intermediate-term toddlers' incidental ingestion of pesticide residues on lawns from hand-to-mouth transfer,

iii. Short-/intermediate-term toddlers' object-to-mouth transfer from mouthing of pesticide-treated turfgrass, and

iv. Short-/intermediate-term toddlers' incidental ingestion of soil from pesticide-treated residential areas. The post-application risk assessment was conducted in accordance with the Residential Standard Operating Procedures and recommended approaches of the Health Effects Division's Science Advisory Council for 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.''

EPA has not found pyraclostrobin to share a common mechanism of toxicity with any other substances, and pyraclostrobin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that pyraclostrobin 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 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.* The prenatal and postnatal toxicology database for pyraclostrobin includes the rat and rabbit developmental toxicity studies and the 2–generation reproduction toxicity study in rats. In reproductive and developmental studies there was evidence of increased qualitative susceptibility following *in utero* exposure in the rabbits, but not in rats. In the 2–generation reproduction study, the highest dose tested did not cause maternal systemic toxicity, nor did it elicit reproductive or offspring toxicity. There is low concern for prenatal developmental effects seen in the rabbit because there are clear NOAELs for maternal and developmental effects, this toxicity endpoint is used to establish the acute dietary RfD, and the developmental effect was seen at the same dose level as that produced for the maternal effect.

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 pyraclostrobin is considered adequate to support toxicity endpoint selection for risk assessment and FQPA evaluation. However, under the current 40 CFR 158.500 data requirement guidelines, the immunotoxicity data (OPPTS 780.7800) is required as a condition of approval. In the absence of specific immunotoxicity studies, EPA has evaluated the available pyraclostrobin toxicity data to determine whether an additional database uncertainty factor is needed to account for potential immunotoxicity. For pyraclostrobin a complete battery of subchronic, chronic, carcinogenicity, developmental and reproductive studies, and acute and subchronic neurotoxicity screening studies are available for consideration. The immunotoxic potential of pyraclostrobin has been well characterized in relationship to other adverse effects seen in the submitted toxicity studies. Under the conditions of the studies the results do not indicate the immune system to be the primary target and, other than the high-dose thymus effects seen in the 90–day mouse study, no significant evidence of pyraclostrobin-induced immunotoxicity was demonstrated in the studies conducted either in adult animals or in the offspring following prenatal and postnatal exposures. Increased spleen weights observed in 28–day rat studies were accompanied by mild hemolytic anemia (a hematopoi-response) indicating these effects are unrelated to an immunotoxic response. Currently, the point of departure in establishing the chronic RfD is 3.4 mg/kg/day. The Agency does not believe that conducting a special series 870.7800 immunotoxicity study will result in a NOAEL less than 3.4 mg/kg/day. A similar conclusion was reached in an earlier action on pyraclostrobin. (See 72 FR 52108, September 12, 2007). In light of these conclusions, EPA does not believe an additional uncertainty or safety factor is needed to address the lack of the required immunotoxicity study.

ii. There is no indication that pyraclostrobin is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional safety factors to account for neurotoxicity.

iii. There is no evidence that pyraclostrobin results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study. Although there is qualitative evidence of increased susceptibility in the prenatal development study in rabbits, the Agency did not identify any residual uncertainties after establishing toxicity endpoints and traditional UFs to be used in the risk assessment of pyraclostrobin. The degree of concern for prenatal and/or postnatal toxicity is low.

iv. There are no residual uncertainties identified in the exposure databases. The acute dietary food exposure assessments were performed using tolerance-level or highest field trial residues and 100 PCT. The chronic dietary food exposure assessments were performed using tolerance-level or average field trial residues and 100 PCT or average PCT. Average PCT is conservatively derived from multiple data sources and is averaged by year and then across all years. The field trials represent maximum application rates and minimum PHIs. A limited number of experimentally derived processing factors from pyraclostrobin processing studies were also used to refine the analysis. The results of the refined chronic dietary analysis are based on reliable data and will not underestimate the exposure and risk. Conservative surface water modeling estimates were used. Similarly, residential standard operating procedures were used to assess post-application dermal exposure

of children as well as incidental oral exposure of toddlers. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by pyraclostrobin.

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*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to pyraclostrobin will occupy 81% of the aPAD for females 13–49 years old, and 2.5% of the aPAD for children 1–2 years 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 pyraclostrobin from food and water will utilize 24% of the cPAD for children 1–2 years old, 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 pyraclostrobin 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).

Pyraclostrobin is currently registered for uses 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- and intermediate-term residential exposures to pyraclostrobin.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that the combined short-term food, water, and residential exposures aggregated result in aggregate MOEs of 230 for adults and 120 for children 1–2 years old. The aggregate MOE for adults is based on the residential turf scenario and includes combined food, drinking water, and post-application dermal exposures. The aggregate MOE for children includes food, drinking water, and post-application dermal and incidental oral exposures from entering turf areas previously treated with pyraclostrobin. MOEs above 100 are considered to be of no concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Pyraclostrobin is currently registered for uses that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure to pyraclostrobin through food and water with intermediate-term exposures for pyraclostrobin.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures aggregated result in aggregate MOEs of 230 for adults and 120 for children 1–2 years old. The endpoints and points of departure (NOAELs) are identical for short- and intermediate-term exposures, so the aggregate MOEs for intermediate-term exposure are the same as those for short-term exposure.

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 pyraclostrobin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Two adequate methods were proposed for enforcing the tolerances for residues of pyraclostrobin and its desmethoxy metabolite in/on plant commodities: A liquid chromatography/mass spectrometry/mass spectrometry (LC/MS/MS) method (BASF Method D9908), and a high pressure liquid chromatography/ultraviolet (HPLC/UV) method (BASF Method D9904). The validated method level of quantitation (LOQ) for both pyraclostrobin and its desmethoxy metabolite is 0.02 ppm in all tested plant matrices, for a combined LOQ of 0.04 ppm. Adequate independent method validation and radiovalidation data were submitted for both methods. Following the standard operating procedure for reviewing tolerance methods, EPA has determined that Method D9904 is suitable as an enforcement method.

Adequate enforcement methodology is available to enforce the tolerance expression. The method (D9904) 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 (CAC) has established maximum residue limits (MRLs) for residues of pyraclostrobin on stone fruit and coffee beans. However, the residue definitions for pyraclostrobin differ in the CAC MRLs and United States tolerances. The CAC definition contains parent only, whereas the United States residue definition includes a metabolite. EPA is unwilling to modify the residue definition for the United States tolerance because both parent and its metabolite are major residues in crop matrices and are measured by the enforcement method. Additionally, the CAC MRL and United States tolerance values differ for stone fruit. They are the same for coffee beans. The CAC value for stone fruits of 1 ppm is based on evaluation of United States residue data for cherries, where the highest residue was 0.63 ppm. This action sets a United States tolerance of 2.5 ppm based on results from new trials conducted in 2007 on cherries, peaches, and plums using a water dispersible granule formulation containing pyraclostrobin and boscalid. Use of this particular formulation requires an increase in the United States tolerance from its present value of 0.9 ppm (40 CFR 180.582) because measured residues were as high as 1.9 ppm. For this reason the United States tolerance value cannot be harmonized with the CAC MRL. Canada has established tolerances for various stone fruits at 0.7 ppm. The United States and Canadian residue definitions are the same; however, the United States tolerance for stone fruits being set in this action is higher than the Canadian tolerances for individual stone fruit commodities because of the new formulation uses of pyraclostrobin in the United States that result in higher residues in stone fruits.

C. Revisions to Petitioned-For Tolerances

EPA reduced the pyraclostrobin tolerance for coffee, bean, green from 0.5 ppm, as proposed by BASF Corporation,

to 0.3 ppm because the Agency's tolerance spreadsheet determined that the lower value was more appropriate based on the field trial data. EPA increased the tolerance for sorghum, grain, grain (termed sorghum, grain in PP#8F7385) from 0.5 ppm to 0.60 ppm because the Agency's tolerance spreadsheet determined that the higher value was more appropriate based on the field trial data.

V. Conclusion

Therefore, tolerances are established for combined residues of pyraclostrobin (carbamic acid, [2-[[[1-(4-chlorophenyl)-1H- pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester) and its desmethoxy metabolite (methyl N-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl carbamate), expressed as parent compound, in or on coffee, bean, green at 0.3 ppm; fruit, stone, group 12 at 2.5 ppm; sorghum, grain, forage at 5.0 ppm; sorghum, grain, grain at 0.60 ppm; and sorghum, grain, stover at 0.80 ppm

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: September 25, 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 180.582 is amended by alphabetically adding the following commodities to the table and by revising fruit, stone, group 12 in the table in paragraph (a)(1) read as follows:

180.582 Pyraclostrobin; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
* * * * *	
Coffee, bean, green	0.3[1]
* * * * *	
Fruit, stone, group 12	2.5
* * * * *	
Sorghum, grain, forage	5.0
Sorghum, grain, grain	0.60
Sorghum, grain, stover	0.80
* * * * *	

[1] There is no U.S. registration on coffee, bean, green as of September 30, 2009.

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[FR Doc. E9–24058 Filed 10–06–09; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412, 413, 415, 485, and 489

[CMS–1406–CN]

RINs 0938–AP33; 0938–AP39; 0938–AP76

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and Fiscal Year 2010 Rates and to the Long-Term Care Hospital Prospective Payment System and Rate Year 2010 Rates; Corrections

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

ACTION: Correction of final rules and interim final rule with comment period.

SUMMARY: This document corrects technical errors and typographical errors that appeared in the final rules and interim final rule with comment

period published in the **Federal Register** on August 27, 2009 entitled ''Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and Fiscal Year 2010 Rates and to the Long-Term Care Hospital Prospective Payment System and Rate Year 2010 Rates.''

DATES: *Effective Date:* This correction document is effective October 2, 2009.

Applicability Date: This correction document is applicable to discharges occurring on or after October 1, 2009.

FOR FURTHER INFORMATION CONTACT: Tzvi Hefter, (410) 786–4487.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. E8–18663 of August 27, 2009 (74 FR 43754), the final rule with comment period entitled ''Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and Fiscal Year 2010 Rates and to the Long-Term Care Hospital Prospective Payment System and Rate Year 2010 Rates'' (hereinafter referred to as the FY 2010 IPPS/RY 2010 LTCH PPS final rule) there were a number of technical errors that are identified and corrected in the Correction of Errors section below. The provisions in this correction notice are effective as if they had been included in the document published August 27, 2009. Further, changes to our rates have already been made through PRICER and joint signature memoranda. Accordingly, the corrections are effective October 1, 2009.

II. Summary of Errors

A. Errors in the Preamble

On page 43889, in our discussion of the submission period for annual electronically acknowledgement of the completeness and accuracy of data, the submission period was incorrectly indicated as once between January 1, 2010 and August 15, 2010. Therefore, in section III.A.1. of this notice, we are correcting our discussion to require hospitals to electronically acknowledge their data accuracy and completeness once between July 1, 2010 and August 15, 2010 for the FY 2011 payment determination.

On page 43920, in our discussion of hospital emergency services under the Emergency Medical Treatment and Labor Act (EMTALA), we made a technical error in a parenthetical phrase by noting that emphasized text was underlined instead of italicized. Therefore, in section III.A.2. of this notice, we are correcting the phrase ''(which are underlined)'' to read ''(which are italicized).''

On page 43934, in our discussion regarding critical access hospitals (CAHs) and provider-based entities, we inadvertently provided the following incorrect example ''For example, a CAH-based RHC with 50 or more beds is a provider-based entity because it is paid based on the RHC payment methodology at 42 CFR 405.2462.'' In section III.A3. of this notice, we are correcting the example.

On page 43994, we inadvertently misnumbered the heading for sections ''XI. MedPAC Recommendations'' and ''XII. Other Required Information'' and we are correcting these numbering errors in section III.A.4. of this notice.

B. Errors in the Addendum

On pages 44011, 44015, 44017, 44019, 44020, 44021, and 44031, we inadvertently cited that the forecast of the FY 2006-based capital input price index (CIPI) for FY 2010 is 1.4 percent. However, the FY 2006-based CIPI for FY 2010 is forecast 1.2 percent, as stated in the preamble of the FY 2010 IPPS/RY 2010 LTCH PPS final rule. We are correcting this error in the update to the capital rates. We are also correcting that capital outlier offset since outlier payments are determined based on the capital rates. (See sections III.B.3. through 7. of this notice.)

On page 44031, in Table 1A—National Adjusted Operating Standardized Amounts, Labor/Nonlabor (68.8 Percent Labor Share/31.2 Percent Nonlabor Share If Wage Index Is Greater Than 1) and Table 1B—National Adjusted Operating Standardized Amounts, Labor/Nonlabor (62 Percent Labor Share/38 Percent Nonlabor Share If Wage Index Is Less Than or Equal to 1), we are correcting a typographical error in the column headings for the ''reduced update.'' Section 1886(b)(3)(B)(viii) of the Act provides for a reduction of 2.0 percentage points from the update percentage increase (also known as the market basket update) for FY 2007 and subsequent fiscal years. As stated in the preamble to the FY 2010 IPPS/RY 2010 LTCH PPS final rule, the market basket update to the national adjusted operating standardized amounts for FY 2010 is 2.1 percent. Therefore, the reduced update to the national adjusted operating standardized amounts for hospitals that fail to submit quality data consistent with section 1886(b)(3)(B)(viii) of the Act for FY 2010 is 0.1 percent (that is, 2.1 percent minus 2.0 percent). However, Tables 1A and 1B erroneously cite that the reduced update is 1.1 percent; and therefore, we are correcting this error in the column headings. (See section III.B.7. of this notice.)

On page 44031, in Table 1D—Capital Standard Federal Payment Rate, we are correcting an inadvertent error in the update to the capital rates, wherein the Addendum of the FY 2010 IPPS/RY 2010 LTCH PPS final rule, in establishing the capital update, we erroneously cited the CIPI forecast for FY 2010 as 1.4 percent. However, as stated in the preamble of that final rule, the CIPI for FY 2010 is 1.2. We are correcting this error in the update to the capital rates (*see* section III.B.7. of this notice).

On pages 44032 through 44078, in Table 2.—Acute Care Hospitals Case-Mix Indexes for Discharges Occurring in Federal Fiscal Year 2008; Hospital Wage Indexes for Federal Fiscal Year 2010; Hospital Average Hourly Wages for Federal Fiscal Years 2008 (2004 Wage Data), 2009 (2005 Wage Data), and 2010 (2006 Wage Data); and 3-Year Average of Hospital Average Hourly Wages, we are correcting technical errors in hospitals' wage data or geographic classifications that were used in calculating the wage index that was published in the FY 2010 IPPS/RY 2010 LTCH PPS final rule. We are correcting Table 2 by adding the wage data for provider 230105, which through an inadvertent typographical error was omitted from the table. In addition, we are correcting inadvertent errors in the case mix index and FY 2010 wage index for provider 110230. We note that the correction of these errors do not require us to recalculate the wage indexes for other providers that are located in or reclassified to the same geographic area because provider 110230 is a new provider and has no average hourly wage data. Also, in accordance with our regulations regarding midyear corrections to the wage index (42 CFR 412.64(k)(2)(ii)), we are correcting the wage data for 4 providers (310034, 310052, 310073, and 330005). Other corrections to Table 2 address the addition of a hospital's wage and occupational mix data that were erroneously excluded from the final FY 2010 wage index (provider 050335) and the removal of a hospital's wage data that were erroneously included in the final FY 2010 wage index (provider 050325). In addition, we are correcting errors in geographic classifications for 5 providers (providers 150015, 230195, 330106, 340010, and 390201). As a result of the wage data, occupational mix data, and geographic classification corrections made for the 11 providers noted, we are also correcting the wage index for other providers that are located in or reclassified to the same

geographic area. (*See* section III.B.8. of this notice.)

On page 44079, in Table 3A—FY 2010 and 3-Year* Average Hourly Wage for Acute Care Hospitals in Urban Areas by CBSA and Table 3B—FY 2010 and 3-Year* Average Hourly Wage for Acute Care Hospitals in Rural Areas by CBSA, we are correcting certain area average hourly wages based on corrections to errors in hospital wage data for several providers. As discussed previously, in Table 2 we are correcting the wage data for 4 providers. The corrections to the wage data for provider 330005 also require a correction in the associated area average hourly wage. Therefore, in section III.B.9. of this notice, we are correcting the area average hourly wage for CBSA 15380 (Buffalo-Niagara Falls, NY). (The corrections to the wage data for providers 310034, 310052, 310073 do not result in a change to the associated area average hourly wage.)

On page 44084, in Table 3B—FY 2010 and 3-Year* Average Hourly Wage for Acute Care Hospitals in Rural Areas by CBSA, we are correcting an area average hourly wage based on corrections to errors in the wage data for two providers. As discussed previously, in Table 2 we are correcting the wage and occupational mix data for providers 050335 and 050325. The corrections to the wage data for these providers also require correction of the associated area average hourly wage. Therefore, in section III.B.10. of this notice, we are correcting the area average hourly wage for CBSA 05 (California).

On pages 44085 through 44095, in Table 4A.—Wage Index and Capital Geographic Adjustment Factor (GAF) for Acute Care Hospitals in Urban Areas, Table 4B.—Wage Index and Capital Geographic Adjustment Factor (GAF) for Acute Care Hospitals in Rural Areas and Table 4C.—Wage Index and Capital Geographic Adjustment Factor (GAF) for Acute Care Hospitals that are Reclassified, we are correcting technical errors in hospitals' geographic classifications that were used in calculating the wage index that was published in the FY 2010 IPPS/RY 2010 LTCH PPS final rule. After correcting the geographic classification for provider 230195 (that is, removing the provider from Table 9A), there are no longer any hospitals that are reclassified to CBSA 19804 for the FY 2010 wage index. (See sections III.B.11. through 13. of this notice.)

On page 44121 and 44122, in Table 4J—Out-Migration Adjustment for Acute Care Hospitals—FY 2010, we are correcting a technical error in the data that were used in computing the outmigration adjustments that were published in the FY 2010 IPPS/RY 2010 LTCH PPS final rule. We are correcting the outmigration adjustment for providers in Wayne County, MI, only. However, this correction has no impact on the wage index values in Tables 2, 4A, and 4B because all of the Wayne County providers are reclassified instead to Ann Arbor, MI (CBSA 11460). Therefore, they are ineligible to receive the outmigration adjustment. (*See* section III.B.14. of this notice.)

On page 44140, in Table 6E.—Revised Diagnosis Code Titles, we made a typographical error in the description of diagnosis code 793.99. Therefore, we are correcting the phrase ''radiological and other examination'' to read ''radiological and other examinations.'' (See section III.B.15. of this notice.)

On page 44161 and 44173, in Table 9A.—Hospital Reclassifications and Redesignations—FY 2010, we are correcting technical errors in hospitals' geographic classifications that were used in calculating the wage index that was published in the FY 2010 IPPS/RY 2010 LTCH PPS final rule. Providers 110230, 150015, 230195, and 390201 were erroneously listed in Table 9A of the Addendum to that final rule as being reclassified; and therefore, we are correcting the table by removing these providers. Conversely, provider 330106 was inadvertently omitted from the Table 9A; and therefore, we are correcting this error by adding this provider. (*See* section III.B.16. of this notice.)

On page 44173, in Table 9C.—Hospitals Redesignated as Rural Under Section 1886(d)(8)(E) of the Act—FY 2010, we inadvertently omitted provider 340010. Therefore we are correcting this error by adding this provider. (*See* section III.B.17. of this notice.)

On pages 44195 and 44212, in Table 12A.—LTCH PPS Wage Index for Urban Areas for Discharges Occurring From October 1, 2009 Through September 30, 2010 and Table 12B.—LTCH PPS Wage Index for Rural Ares for Discharges Occurring From October 1, 2009 Through September 30, 2010, consistent with the corrections to the IPPS wage data discussed in this notice, we are correcting technical errors in hospitals' wage data that were used in calculating the LTCH PPS wage index that was published in the FY 2010 IPPS/RY 2010 LTCH IPPS final rule. (*See* sections III.B.18. and 19. of this notice.)

On pages 44213, 44228 through 44230, and 44234 through 44235, we are correcting the impact analysis to reflect the correct CIPI of 1.2 percent rather than 1.4 percent and the payment estimates associated with the CIPI. (*See* sections III.B.20. through 24. of this notice.)

III. Correction of Errors

In FR Doc. E8–18663 of August 27, 2009 (74 FR 43754), make the following corrections:

A. Corrections to the Preamble

1. On page 43889, third column, seventh paragraph, line 10, the date ''January 1, 2010'' is corrected to read ''July 1, 2010.''

2. On page 43920, second column, first full paragraph, line 32, the phrase ''(which are underlined)'' is corrected to read ''(which are italicized)''.

3. On page 43934, third column, second full paragraph, the sentence ''For example, a CAH-based RHC with 50 or more beds is a provider-based entity because it is paid based on the RHC payment methodology at 42 CFR 405.2462.'' is corrected to read ''For example, a CAH-based RHC (that is, an RHC that is provider-based to a hospital with fewer than 50 beds) is not subject to the per visit payment limitations under section 1833(f) of the Act.''

4. On page 43994,

a. First column, after the second full paragraph, the heading ''XI. MedPAC Recommendations'' is corrected to read ''XII. MedPAC Recommendations.''

b. Second column, after the fourth paragraph, the heading ''XII. Other Required Information'' is corrected to read ''XIII. Other Required Information.''

B. Corrections to the Addendum

1. On page 44011, in the second column,

a. In the second full paragraph, line 13, the figure ''5.2'' is corrected to read ''5.3''.

b. In the table following fourth paragraph, the table is corrected to read as follows:

	Capital Federal Rate
National	0.947484
Puerto	0.935759

2. On page 44015, third column,

a. First full paragraph,

(1) Line 9, the figure ''1.4'' is corrected to read ''1.2.''

(2) Line 13, the figure ''$171'' is corrected to read ''$154.''

b. Second full paragraph,

(1) Line 11, the figure ''1.40'' is corrected to read ''1.20.''

(2) Line 14, the figure ''1.4'' is corrected to read ''1.2.''

3. On page 44017,

a. Second column,

(1) Fourth full paragraph, line 2, the figure ''1.4'' is corrected to read ''1.2.''

(2) Following the fourth full paragraph, in the table entitled ''CMS FY 2010 Update to the Capital Federal Rate,'' the figures for the listed entries are corrected to read as follows:

Capital Input Price Index	1.2
Subtotal	1.2
Total Update	1.2

b. Third column,

(1) Second full paragraph,

(a) Line 10, the figure ''5.23'' is corrected to read ''5.25.''

(b) Line 13, the figure ''0.9477'' is corrected to read ''0.9475.''

(2) Third full paragraph,

(a) Line 5, the figures ''0.9477'' and ''0.13'' are corrected to read ''0.9475'' and ''0.11,'' respectively.

(b) Line 9, the figure ''1.0013'' is corrected to read ''1.0011.''

(c) Line 10, the figure ''0.9477'' is corrected to read ''0.9475.''

(d) Line 12, the figure ''0.13'' is corrected to read ''0.11.''

4. On page 44019, third column,

a. First full paragraph,

(1) Line 3, the figure ''1.4'' is corrected to read ''1.2.''

(2) Line 5, the figure ''1.4'' is corrected to read ''1.2.''

(3) Line 8, the figure ''$430.15'' is corrected to read ''$429.26.''

b. Second full paragraph (first bulleted paragraph)

(1) Line 1, the figure ''1.0140'' is corrected to read ''1.0120.''

(2) Line 2, the figure ''1.4'' is corrected to read ''1.2.''

c. Fourth full paragraph (third bulleted paragraph), last line, the figure ''0.9477'' is corrected to read ''0.9475.''

d. Last paragraph,

(1) Line 8, the figure ''1.4'' is corrected to read ''1.2.''

(2) Line 14, the figure ''0.13'' is corrected to read ''0.11.''

5. On page 44020,

a. Top third of the page,

(1) Third column, line 2, the figure ''1.4'' is corrected to read ''1.2.''

(2) The table entitled ''Comparison of Factors and Adjustments: FY 2009 Capital Federal Rate and FY 2010 Capital Federal Rate'', the listed entries and footnote are corrected to read as follows:

	FY 2010	Change	Percent change
Update Factor [1]	1.0120	1.0120	1.20
Outlier Adjustment Factor [2]	0.9475	1.0011	0.11
Capital Federal Rate	$429.26	1.0120	1.20

[2] The outlier reduction factor and the exceptions adjustment factor are not built permanently into the capital rates; that is, these factors are not applied cumulatively in determining the capital rates. Thus, for example, the net change resulting from the application of the FY 2010 outlier adjustment factor is 0.9475/0.9465, or 1.0011.

b. Middle third of the page, the table entitled ''Comparison of Factors and Adjustments: Proposed FY 2009 Capital Federal Rate and Final FY 2010 Capital Federal Rate'', the listed entries are corrected to read as follows:

	Final FY 2010	Change	Percent change
Update Factor	1.0120	1.0000	0.00
Outlier Adjustment Factor	0.9475	1.0022	0.22
Capital Federal Rate	$429.26	1.0204	2.04

c. Bottom third of the page, third column, first full paragraph, line 4, the figure ''$204.01'' corrected ''$203.56.''

6. On page 44021, second column, second full paragraph,

a. Line 4, the figure ''1.4'' is corrected to read ''1.2.''

b. Line 13, the figure ''1.4'' is corrected to read ''1.2.''

7. On page 44031,

a. Top half of the page,

(1) Table 1A—National Adjusted Operating Standardized Amounts, Labor/Nonlabor (68.8 Percent Labor Share/31.2 Percent Nonlabor Share If Wage Index Is Greater Than 1), the second column heading ''Reduce update (1.1 percent)'' is corrected to read ''Reduce update (0.1 percent).''

(2) Table 1B—National Adjusted Operating Standardized Amounts, Labor/Nonlabor (62 Percent Labor Share/38 Percent Nonlabor Share If Wage Index Is Less Than or Equal to 1), the second column heading ''Reduce update (1.1 percent)'' is corrected to read ''Reduce update (0.1 percent).''

b. Bottom half of the page, in Table 1D—Capital Standard Federal Payment Rate, the rate entries are corrected to read as follows:

	Rate
National	$429.26
Puerto Rico	203.56

8. On pages 44032 through 44078, in Table 2.—Acute Care Hospitals Case-Mix Indexes for Discharges Occurring in Federal Fiscal Year 2008; Hospital Wage Indexes for Federal Fiscal Year 2010; Hospital Average Hourly Wages for Federal Fiscal Years 2008 (2004 Wage Data), 2009 (2005 Wage Data), and 2010 (2006 Wage Data); and 3-Year Average of Hospital Average Hourly Wages, the listed entries are corrected to read as follows:

Provider No.	Case-Mix Index[2]	FY 2010 Wage Index	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009	Average Hourly Wage FY 2010[1]	Average Hourly Wage** (3 years)
050022	1.6861	1.1831	33.0592	36.6360	38.9203	36.3343
050024	1.1893	1.1831	33.4334	33.5247	34.6921	33.8896
050025	1.8351	1.1831	32.7476	36.9233	39.5330	36.4669
050026	1.6001	1.1831	33.1277	35.0306	36.3315	34.8703
050028	1.2936	1.1831	28.5736	28.1584	28.5839	28.4402
050030	1.2416	1.1831	30.9014	33.5654	33.2455	32.5839
050036	1.6646	1.1831	36.0905	37.4298	39.2616	37.6682
050039	1.5904	1.1831	36.6943	34.9262	37.8559	36.4390
050045	1.3659	1.1831	27.0676	28.5952	27.8903	27.8521
050054	1.2588	1.1831	24.0338	27.1320	27.9082	26.4594
050057	1.7461	1.1831	31.7467	33.7574	35.6340	33.7435
050060	1.5631	1.1831	32.0196	34.1183	35.3108	33.8337
050069	1.7808	1.1831	35.3850	38.1339	40.0498	37.8939
050077	1.6289	1.1831	36.5384	37.4989	38.5242	37.6430
050089	1.3725	1.1831	36.4018	39.6297	39.9711	38.6925
050093	1.5711	1.1831	36.8486	37.7244	38.5686	37.7313
050099	1.5777	1.1831	32.0650	34.3507	35.4717	33.9237
050100	1.7931	1.1831	33.3959	34.2839	37.1606	34.9452
050102	1.3981	1.1831	32.8434	33.2837	35.4740	33.8520
050115	1.5039	1.1831	32.5257	33.3013	37.7614	34.4870
050121	1.2641	1.1831	34.6244	35.1135	36.9069	35.7123
050128	1.5539	1.1831	33.4233	34.2364	36.6986	34.8511
050129	1.9164	1.1831	36.9887	40.3786	41.4256	39.6589
050140	1.4429	1.1831	39.4954	42.7590	44.8911	42.4513
050168	1.6098	1.1831	40.5973	40.8362	37.9746	39.7308
050173	1.4207	1.1831	31.6717	32.3265	31.5434	31.8479
050192	0.9710	1.1831	27.8386	27.4611	29.4203	28.2565
050193	1.2713	1.1831	29.0623	36.7240	39.0111	34.3157
050196	1.1775	1.1831	32.8293	41.1300	43.7415	39.0851
050222	1.6843	1.1831	33.7510	35.4045	36.0221	35.1304
050224	1.6925	1.1831	35.7280	37.3442	39.7119	37.6583
050225	1.5265	1.1831	35.1227	37.5252	38.9288	37.2722
050226	1.5128	1.1831	35.4597	36.5354	38.4952	36.8620
050230	1.7510	1.1831	35.8490	38.8901	39.8582	38.1992

Provider No.	Case-Mix Index[2]	FY 2010 Wage Index	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009	Average Hourly Wage FY 2010[1]	Average Hourly Wage** (3 years)
050234	1.5286	1.1831	34.8308	37.7125	37.6811	36.8277
050243	1.6149	1.1831	36.1209	37.8538	40.0490	37.9780
050245	1.3581	1.1831	33.2556	34.7153	36.9270	35.0229
050257	0.8700	1.1831	24.0737	29.2651	30.7766	28.1655
050261	1.2833	1.1831	30.8704	33.7196	34.8188	33.2168
050272	1.4714	1.1831	30.9290	32.2584	35.0624	32.7944
050279	1.3431	1.1831	31.6738	32.1695	31.0888	31.6403
050292	1.0695	1.1831	27.3365	35.0372	34.6404	32.6120
050295	1.4457	1.1831	38.4256	39.7399	39.3961	39.2311
050298	1.2155	1.1842	33.7864	33.6947	31.7374	33.0204
050300	1.3876	1.1831	33.6821	37.1275	39.2722	36.7802
050315	1.4955	1.1831	32.5538	37.3560	40.3132	36.9209
050324	1.7981	1.1831	36.3474	37.1883	38.9511	37.5499
050325	0.7197	1.1864	37.0441	34.0343	*	35.3296
050327	1.7444	1.1831	35.9349	36.9550	37.7681	36.9187
050329	1.3362	1.1831	33.0390	36.7669	37.6975	35.8747
050335	1.4391	1.2202	34.7192	37.2347	37.1670	36.4047
050342	1.3022	1.1831	30.4226	29.8389	31.6852	30.6669
050348	1.8134	1.1831	32.7107	33.5276	35.1080	33.7908
050349	0.9151	1.1831	25.4266	23.1095	23.5190	23.9313
050359	1.2193	1.1831	31.3391	30.3988	30.9732	30.8940
050366	1.1372	1.1846	37.1527	41.8324	43.0169	40.6263
050390	1.2352	1.1831	27.9359	33.0463	31.4134	30.7029
050397	0.8791	1.1831	29.6825	31.1621	32.3700	31.2139
050417	1.3676	1.1831	36.1222	37.9951	38.8418	37.6627
050423	0.9097	1.1831	31.9751	32.4108	41.3130	35.2260
050424	1.8835	1.1831	36.6091	37.5246	39.8802	38.1014
050426	1.5848	1.1831	34.9855	37.6505	*	36.2570
050430	1.0024	1.1831	24.5327	25.9368	28.7102	26.6632
050434	1.0072	1.1831	33.7794	35.4807	34.4698	34.5577
050435	1.2399	1.1831	33.0372	35.7427	35.3040	34.7304
050448	1.3163	1.1831	32.7748	32.6682	32.9244	32.7905
050455	1.5338	1.1831	34.5445	35.0232	38.9871	36.1689
050492	1.3426	1.1831	30.7718	32.6609	35.6838	33.0853
050503	1.5669	1.1831	37.3605	37.7210	40.7324	38.6886
050515	1.3519	1.1831	40.2957	42.0106	45.0972	42.4993

Provider No.	Case-Mix Index[2]	FY 2010 Wage Index	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009	Average Hourly Wage FY 2010[1]	Average Hourly Wage** (3 years)
050517	1.3003	1.1831	22.4096	29.3694	29.8385	27.1486
050526	1.3356	1.1831	33.3964	35.5457	*	34.4882
050528	1.1847	1.1831	36.2908	38.3051	41.9922	38.8610
050534	1.4960	1.1831	36.6447	38.1892	39.7655	38.2236
050543	0.7581	1.1831	24.4913	32.8367	29.0470	28.4715
050546	0.9013	1.1831	36.5099	*	*	36.5099
050548	0.8853	1.1831	41.1075	*	*	41.1075
050551	1.3734	1.1831	37.2506	37.6223	39.4047	38.1084
050567	1.4772	1.1831	37.6384	39.0114	41.7247	39.5088
050568	1.2403	1.1831	26.0908	26.7733	28.7691	27.2379
050570	1.6746	1.1831	38.4373	40.6761	40.3411	39.7870
050573	1.5704	1.1831	35.2842	36.8561	38.0175	36.7515
050580	1.2357	1.1831	34.1531	35.0966	36.7968	35.3668
050586	1.5377	1.1831	31.3513	31.1932	32.7348	31.7623
050589	1.2342	1.1831	37.6886	37.2056	39.2646	38.0657
050603	1.4831	1.1831	35.0279	35.4809	37.4348	36.0743
050608	1.3372	1.1831	31.2909	30.7280	28.3794	30.0916
050609	1.5110	1.1831	39.7397	43.4555	45.2475	42.8887
050618	0.9849	1.1831	33.1472	34.9177	34.0584	34.0420
050636	1.3104	1.1831	33.0718	35.4565	38.8844	35.8008
050678	1.3068	1.1831	33.7633	35.8411	38.3361	36.1388
050682	0.9113	1.1831	22.2193	22.3903	22.4419	22.3441
050684	1.2784	1.1831	28.8378	33.5915	33.0982	31.9255
050686	1.3842	1.1831	39.7757	42.1444	45.2231	42.4511
050693	1.3762	1.1831	39.6838	42.8266	41.9594	41.4885
050694	1.1180	1.1831	32.1065	34.8486	33.8553	33.6246
050701	1.3618	1.1831	34.9876	37.2839	38.4382	36.9906
050708	1.7654	1.1831	31.8442	28.3074	34.4063	31.2579
050709	1.5764	1.1831	24.5621	29.5364	30.4570	28.2554
050710	1.4735	1.1831	44.2482	46.2533	51.1460	47.3139
050720	1.5874	1.1831	30.3595	32.1173	33.8712	32.0728
050722	0.9344	1.1831	33.7991	35.6741	35.2177	34.9402
050724	1.9522	1.1831	35.2344	35.1020	35.5224	35.2811
050732	2.3521	1.1831	33.6831	34.3475	37.4333	35.2452
050744	1.8433	1.1831	*	48.4951	56.5911	52.3032
050745	1.4422	1.1831	*	42.5523	48.2903	45.4522

Provider No.	Case-Mix Index[2]	FY 2010 Wage Index	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009	Average Hourly Wage FY 2010[1]	Average Hourly Wage** (3 years)
050746	1.7960	1.1831	*	43.2015	46.3622	44.7916
050747	1.6108	1.1831	*	44.5887	47.8242	46.1426
050757	1.7287	1.1831	*	*	*	*
050758	1.5404	1.1831	*	*	17.6509	17.6509
050759	3.0472	1.1831	*	*	*	*
070006	1.5739	1.2651	39.3935	41.2165	41.9550	40.8714
070010	1.6536	1.2651	36.7227	38.6114	38.7345	38.0240
070015	1.5383	1.2651	37.3454	39.9249	42.4738	39.9522
070018	1.4603	1.2651	41.8460	42.4771	44.1370	42.8524
070028	1.5644	1.2651	38.0855	40.9645	41.2950	40.1488
070033	1.4800	1.2651	41.7955	44.6717	46.5982	44.4108
070034	1.4667	1.2651	40.1685	42.4111	45.7694	42.8155
110230	1.4757	0.9581	*	*	*	*
150015	1.4286	0.9210	27.3811	30.2516	32.6995	29.9450
150035	1.4912	0.9168	27.8904	29.2039	27.9432	28.3404
150102	1.1055	0.9168	25.8742	25.4717	30.4952	27.1707
150174	***	0.9168	*	*	*	*
230105	1.7865	0.9176	30.5515	32.1124	33.0444	31.9349
230195	1.4731	0.9879	30.9702	32.5549	33.4975	32.3707
310002	1.8480	1.2722	37.8652	37.9484	39.7599	38.5483
310009	1.4222	1.2722	33.6165	35.4624	37.9098	35.6657
310015	1.9526	1.2722	39.2928	40.8229	39.5076	39.8655
310017	1.3448	1.2722	35.7308	35.9806	34.8881	35.5276
310018	1.1786	1.2722	32.9704	32.6956	33.5069	33.0673
310038	1.9228	1.2722	36.3344	39.8707	40.7395	39.0018
310039	1.3348	1.2722	33.2100	32.6425	33.4253	33.0853
310050	1.3393	1.2722	32.3686	37.9214	32.5213	34.0930
310054	1.4187	1.2722	36.9095	38.2432	37.2851	37.4826
310070	1.4413	1.2722	36.3279	36.9999	36.8951	36.7447
310076	1.7144	1.2722	37.5163	38.1671	39.0325	38.2365
310083	1.3697	1.2722	31.9151	28.3406	28.2875	29.3819
310093	1.2441	1.2722	30.2860	32.3860	33.4460	32.0464
310096	1.8766	1.2722	35.0707	34.2014	36.3201	35.2111
310108	1.4508	1.2722	34.5866	36.2848	38.3403	36.4174
310119	1.8872	1.2722	41.5702	41.2997	46.1339	42.9802
330005	1.6639	0.9809	31.5030	33.2851	34.1763	32.9954

Provider No.	Case-Mix Index[2]	FY 2010 Wage Index	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009	Average Hourly Wage FY 2010[1]	Average Hourly Wage** (3 years)
330008	1.1656	0.9809	25.2005	26.2141	26.7882	26.0607
330023	1.5109	1.2903	36.4736	37.5135	40.9595	38.3939
330025	1.0358	0.9809	23.2424	24.2702	26.5550	24.6990
330027	1.3567	1.2903	45.1920	45.9571	49.0573	46.6599
330029	0.5859	0.9809	24.0679	22.9332	23.7555	23.5734
330065	1.0754	0.9809	24.4004	26.2288	28.6809	26.4269
330078	1.4914	0.9809	27.2870	27.6682	30.8157	28.5988
330091	1.3851	0.9809	27.0040	28.3034	30.9457	28.7618
330102	1.4768	0.9809	26.6887	27.2543	31.6270	28.4487
330106	1.6464	1.2903	46.3657	48.2903	47.2240	47.2955
330111	0.9946	0.9809	40.4349	23.2134	25.1572	27.3535
330126	1.3626	1.2903	36.5689	37.7807	40.0542	38.1472
330163	1.1499	0.9809	28.3910	28.6252	26.3050	27.7728
330167	1.6734	1.2903	39.1251	39.2421	40.8753	39.7618
330181	1.3412	1.2903	43.0977	46.2181	47.2523	45.4811
330182	2.2325	1.2903	41.3033	42.7962	46.6346	43.5697
330188	1.2661	0.9809	27.5988	29.7318	30.7222	29.3714
330198	1.4522	1.2903	34.8985	35.8715	37.9641	36.3109
330219	1.7322	0.9809	32.5658	33.2147	38.3321	34.6200
330225	1.2075	1.2903	35.7651	32.9036	33.7052	34.1540
330259	1.5187	1.2903	36.4788	39.0213	38.5914	37.9800
330279	1.7026	0.9809	29.6385	31.2393	33.7210	31.5272
330331	1.3291	1.2903	41.2694	44.1734	44.3947	43.3044
330332	1.3587	1.2903	37.0111	38.6932	40.8557	38.8521
330372	1.2862	1.2903	35.1297	37.0323	40.3348	37.4455
340003	1.3269	0.8605	26.0888	26.6831	28.0732	27.0128
340010	1.4513	0.8605	28.7544	29.5232	31.0327	29.8051
340011	1.1552	0.8605	22.0047	22.5152	23.6040	22.7123
340016	1.3780	0.8605	27.2365	27.9651	27.2226	27.4702
340020	1.2554	0.8761	27.5473	28.3461	30.5510	28.8310
340024	1.2572	0.8782	26.4001	26.9001	27.4770	26.9269
340035	1.0591	0.8605	24.6262	26.0846	26.8821	25.8659
340037	1.2327	0.8767	29.0618	30.5362	32.0484	30.6131
340038	1.2027	0.8858	24.2111	26.2600	26.9487	25.8553
340042	1.2511	0.8605	25.6349	27.0597	27.0729	26.6107
340064	1.2448	0.8605	23.9701	25.0814	27.2184	25.4849

Provider No.	Case-Mix Index[2]	FY 2010 Wage Index	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009	Average Hourly Wage FY 2010[1]	Average Hourly Wage** (3 years)
340068	1.3681	0.8692	23.6757	24.7409	27.3499	25.3073
340087	1.2422	0.8605	25.4730	23.8360	25.0091	24.7827
340097	1.2054	0.8605	29.8005	27.9810	29.8702	29.2104
340099	1.3223	0.8605	23.9702	26.0077	28.1143	26.0182
340104	0.5942	0.8767	17.0165	19.9492	20.2901	19.1559
340106	1.1370	0.8605	26.1340	24.5154	24.4254	24.9477
340120	1.1057	0.8605	25.5399	26.1465	26.6358	26.1106
340132	1.2471	0.8605	24.6162	25.3264	25.9153	25.3007
340133	1.0373	0.8865	24.8579	26.8850	27.2630	26.4263
340142	1.2764	0.8605	27.7555	28.2413	28.4951	28.1780
340151	1.2296	0.8657	23.2158	24.5782	25.9633	24.6026
340160	1.3943	0.8605	23.4631	24.2016	24.9127	24.2270
390185	1.2411	0.9811	27.1119	25.5318	28.1346	26.9989
390201	1.5128	0.9533	27.3542	28.5668	28.7755	28.2475
440025	1.2362	0.8592	22.6571	24.0289	25.5605	24.1012

9. On page 44079, in Table 3A—FY 2010 and 3-Year* Average Hourly Wage for Acute Care Hospitals in Urban Areas by CBSA, the listed entry is corrected to read as follows:

CBSA code	Urban area	FY 2010 average hourly wage	3-Year average hourly wage
15380	Buffalo-Niagara Falls, NY	32.9408	31.2001

10. On page 44084, in Table 3B.—FY 2010 and 3-Year* Average Hourly Wage for Acute Care Hospitals in Rural Areas by CBSA, the listed entry is corrected to read as follows:

CBSA code	Nonurban area	FY 2010 Average hourly wage	3-Year average hourly wage
05	California	39.9000	38.2787

11. On pages 44085 through 44090, in Table 4A.—Wage Index and Capital Geographic Adjustment Factor (GAF) for Acute Care Hospitals in Urban Areas by CBSA and by State—FY 2010, the listed entries are corrected to read as follows:

CBSA	CBSA name	State	Wage index	GAF
12540	Bakersfield, CA	CA	1.1831	1.1220
15380	Buffalo-Niagara Falls, NY	NY	0.9809	0.9869
17020	Chico, CA	CA	1.1831	1.1220
19804	Detroit-Livonia-Dearborn, MI	MI	0.9777	0.9847
20940	El Centro, CA	CA	1.1831	1.1220
23420	Fresno, CA	CA	1.1831	1.1220
23844	Gary, IN	IN	0.9168	0.9422
25260	Hanford-Corcoran, CA	CA	1.1831	1.1220
27340	Jacksonville, NC	NC	0.8605	0.9022
31460	Madera-Chowchilla, CA	CA	1.1831	1.1220
40140	Riverside-San Bernardino-Ontario, CA	CA	1.1831	1.1220

CBSA	CBSA name	State	Wage index	GAF
41740	San Diego-Carlsbad-San Marcos, CA	CA	1.1831	1.1220
42044	Santa Ana-Anaheim-Irvine, CA	CA	1.1831	1.1220
47300	Visalia-Porterville, CA	CA	1.1831	1.1220
49700	Yuba City, CA	CA	1.1831	1.1220

12. On page 44091, in Table 4B—Wage Index and Capital Geographic Adjustment Factor (GAF) for Acute Care Hospitals in Rural Areas by CBSA and by State—FY 2010, the listed entries are corrected to read as follows:

CBSA	CBSA name	State	Wage index	GAF
05	California	CA	1.1831	1.1220
34	Rural North Carolina	NC	0.8605	0.9022

13. On pages 44091 through 44095, in Table 4C.—Wage Index and Capital Geographic Adjustment Factor (GAF) for Acute Care Hospitals that are Reclassified by CBSA and by State—FY 2010, the listed entries are corrected by—

a. Correcting the wage indexes and GAFs for the following CBSAs:

CBSA	CBSA name	State	Wage index	GAF
05	California	CA	1.1831	1.1220
34	Rural North Carolina	NC	0.8605	0.9022
34	Rural North Carolina	TN	0.8592	0.9013
10900	Allentown-Bethlehem-Easton, PA–NJ	PA	0.9811	0.9870
15380	Buffalo-Niagara Falls, NY	NY	0.9809	0.9869
23844	Gary, IN	IN	0.9168	0.9422
31084	Los Angeles-Long Beach-Glendale, CA	CA	1.1831	1.1220
33700	Modesto, CA	CA	1.2202	1.1460
35644	New York-White Plains-Wayne, NY–NJ	CT	1.2651	1.1747
35644	New York-White Plains-Wayne, NY–NJ	NJ	1.2722	1.1792
35644	New York-White Plains-Wayne, NY–NJ	NY	1.2903	1.1907
42044	Santa Ana-Anaheim-Irvine, CA	CA	1.1831	1.1220

b. Removing the entry for the following CBSA:

CBSA	CBSA name	State	Wage index	GAF
19804	Detroit-Livonia-Dearborn, MI	MI	0.9788	0.9854

14. On pages 44121 and 44122, in Table 4J—Out-Migration Adjustment for Acute Care Hospitals—FY 2010, the listed entries are corrected to read as follows:

Provider number	Reclassified for FY 2010	Out-migration adjustment	Qualifying county name	County code
230002	*	0.0043	WAYNE	23810
230020	*	0.0043	WAYNE	23810
230024	*	0.0043	WAYNE	23810
230053	*	0.0043	WAYNE	23810
230089	*	0.0043	WAYNE	23810
230104	*	0.0043	WAYNE	23810
230135	*	0.0043	WAYNE	23810
230142	*	0.0043	WAYNE	23810
230146	*	0.0043	WAYNE	23810
230165	*	0.0043	WAYNE	23810
230176	*	0.0043	WAYNE	23810
230244	*	0.0043	WAYNE	23810
230270	*	0.0043	WAYNE	23810
230273	*	0.0043	WAYNE	23810
230297	*	0.0043	WAYNE	23810

15. On page 44140, in Table 6E.—Revised Diagnosis Code Titles, in the description (column 2) for diagnosis code 793.99 is the phrase ''radiological and other examination'' is corrected to read ''radiological and other examinations.''

16. On pages 44161 and 44173, in Table 9A.—Hospital Reclassifications and Redesignations—FY 2010 the table is corrected by—

a. Removing the following entries:

Provider number	Geographic CBSA	Reclassified CBSA	LUGAR
110230	11	16860	LUGAR
150015	33140	23844	
230195	47644	19804	
390201	39	10900	LUGAR

b. Adding following entry:

Provider number	Geographic CBSA	Reclassified CBSA	LUGAR
330106	35004	35644	

17. On page 44173, in Table 9C.—Hospitals Redesignated as Rural Under Section 1886(d)(8)(E) of the Act—FY2010 is corrected by adding the listed provider to read as follows:

Provider No.	Geographic CBSA	Redesignated rural area
340010	24140	34

18. On page 44195, in Table 12A.—LTCH PPS Wage Index for Urban Areas for Discharges Occurring From October 1, 2009 Through September 30, 2010, the LTCH PPS wage index for the listed entry is corrected to read as follows:

CBSA code	Urban area (Constituent Counties)	LTCH PPS wage index
15380	Buffalo-Niagara Falls, NY Erie County, NY. Niagara County, NY.	0.9740

19. On page 44212, in Table 12B.—LTCH PPS Wage Index for Rural Areas for Discharges Occurring From October 1, 2009 Through September 30, 2010, the LTCH PPS wage index for the listed entry is corrected to read as follows:

CBSA code	Nonurban area	LTCH PPS wage index
05	California	1.2051

20. On page 44213, first column, third paragraph,

a. Line 14, the figure ''$171'' is corrected to read ''$154.''

b. Line 15, the figure ''1.9'' is corrected to read ''1.7.''

21. On page 44228,

a. Second column,

(1) First partial paragraph, line 5, the figure ''1.4'' is corrected to read ''1.2.''

(2) First full paragraph, line 5, the figure ''0.9477'' is corrected to read ''0.9475.''

(3) Third full paragraph, the phrase ''proposed 1.4 percent'' is corrected to read ''1.2 percent.''

(4) Last paragraph, line 5, the figure ''1.4'' is corrected to read ''1.2.''

b. Third column,

(1) First partial paragraph, line 9, the figure ''1.9'' is corrected to read ''1.7.''

(2) First full paragraph,

(a) Line 3, the figure ''2.0'' is corrected to read ''1.8.''

(b) Line 7, the figure ''2.1'' is corrected to read ''1.9.''

(c) Last line, the figure ''1.5'' is corrected to read ''1.3.''

(3) Second full paragraph,

(a) Line 4, the figure ''0.7'' is corrected to read ''0.5.''

(b) Line 6, the figure ''2.8'' is corrected to read ''2.6.''

(4) Third full paragraph,

(a) Line 3, the figure ''1.9'' is corrected to read ''1.7.''

(b) Line 5, the figure ''2.0'' is corrected to read ''1.8.''

(5) Last paragraph,

(a) Line 10, the figure ''2.0'' is corrected to read ''1.8.''

(b) Line 13, the figures ''1.7'' and ''1.1'' are corrected to read ''1.4'' and ''0.9,'' respectively.

(c) Line 17, the figure ''1.9'' is corrected to read ''1.6.''

22. On pages 44229 and 44230, in Table III—Comparison of Total Payments Per Case [FY 2009 Payments Compared to FY 2010 Payments], the table is corrected to read as follows:

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TABLE III.—COMPARISON OF TOTAL PAYMENTS PER CASE

[FY 2009 Payments Compared To FY 2010 Payments]

	Number of hospitals	Average FY 2009 payments/ case	Average FY 2010 payments/ case	Change
By Geographic Location:				
All hospitals	3,517	788	802	1.7
Large urban areas (populations over 1 million)	1,377	869	885	1.9
Other urban areas (populations of 1 million of fewer)	1,148	780	793	1.6
Rural areas	992	546	553	1.3
Urban hospitals	2,525	829	843	1.8
0-99 beds	634	654	663	1.5
100-199 beds	808	712	723	1.6
200-299 beds	466	779	793	1.8
300-499 beds	426	858	872	1.7
500 or more beds	191	1,003	1,022	1.9
Rural hospitals	992	546	553	1.3
0-49 beds	349	437	443	1.4
50-99 beds	370	507	513	1.3
100-149 beds	164	552	559	1.3
150-199 beds	62	600	608	1.4
200 or more beds	42	671	678	1.1
By Region:				
Urban by Region	2,525	829	843	1.8
New England	120	857	878	2.4
Middle Atlantic	344	885	900	1.7
South Atlantic	388	787	799	1.6
East North Central	397	807	818	1.4
East South Central	160	742	754	1.7
West North Central	165	815	831	2.0
West South Central	346	772	786	1.7
Mountain	163	842	864	2.6
Pacific	391	978	996	1.9
Puerto Rico	51	370	376	1.8
Rural by Region	992	546	553	1.3
New England	24	728	732	0.5
Middle Atlantic	70	558	570	2.3
South Atlantic	171	539	546	1.3
East North Central	122	568	575	1.2
East South Central	176	496	504	1.6
West North Central	101	567	573	0.9
West South Central	224	508	511	0.6
Mountain	72	547	558	2.1
Pacific	32	693	700	1.0
By Payment Classification:				
All hospitals	3,517	788	802	1.7
Large urban areas (populations over 1 million)	1,422	867	884	1.9
Other urban areas (populations of 1 million of fewer)	1,171	779	792	1.6
Rural areas	924	545	552	1.2
Teaching Status:				
Non-teaching	2,475	672	683	1.6
Fewer than 100 Residents	804	793	807	1.7
100 or more Residents	238	1,123	1,145	1.9
Urban DSH:				
100 or more beds	1,538	856	871	1.8
Less than 100 beds	346	585	595	1.6

TABLE III.—COMPARISON OF TOTAL PAYMENTS PER CASE
[FY 2009 Payments Compared To FY 2010 Payments]

	Number of hospitals	Average FY 2009 payments/ case	Average FY 2010 payments/ case	Change
Rural DSH:				
Sole Community (SCH/EACH)	397	476	483	1.4
Referral Center (RRC/EACH)	207	602	610	1.3
Other Rural:				
100 or more beds	34	540	547	1.3
Less than 100 beds	150	450	456	1.2
Urban teaching and DSH:				
Both teaching and DSH	802	929	947	1.9
Teaching and no DSH	178	810	822	1.4
No teaching and DSH	1,082	715	727	1.8
No teaching and no DSH	531	733	743	1.5
Rural Hospital Types:				
Non special status hospitals	2,467	832	847	1.7
RRC/EACH	62	725	742	2.3
SCH/EACH	38	682	692	1.4
Medicare-dependent hospitals (MDH)	10	481	487	1.2
SCH, RRC and EACH	16	792	807	2.0
Hospitals Reclassified by the Medicare Geographic Classification Review Board:				
FY2010 Reclassifications:				
All Urban Reclassified	456	825	840	1.8
All Urban Non-Reclassified	2,045	831	846	1.8
All Rural Reclassified	351	591	600	1.4
All Rural Non-Reclassified	579	479	484	0.9
Other Reclassified Hospitals (Section 1886(d)(8)(B))	54	559	568	1.6
Type of Ownership:				
Voluntary	2,014	804	817	1.7
Proprietary	860	722	734	1.7
Government	583	784	799	1.8
Medicare Utilization as a Percent of Inpatient Days:				
0-25	317	1,005	1,030	2.4
25-50	1,433	869	885	1.8
50-65	1,331	686	696	1.4
Over 65	308	598	607	1.5

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23. On page 44234, third column, third full paragraph,

a. Line 21, the figure ''2.1'' is corrected to read ''1.7.''

b. Line 25, the figure ''$171'' is corrected to read ''$154.''

c. Line 28, the figure ''$1.899'' is corrected to read ''$1.892.''

24. On page 44235, first column, in Table V.—Accounting Statement: Classification of Estimated Expenditures under the IPPS from FY 2009 to FY 2010, the listed entries are corrected to read as follows:

Category	Transfers
Annualized Monetized Transfers.	$1.892 billion
Total	$1.892 billion

III. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

We are waiving proposed rulemaking and the 30-day delayed effective date for the technical corrections in this notice. This notice merely corrects typographical and technical errors in the preamble, and addendum of the FY 2010 IPPS/RY 2010 LTCH PPS final rule and does not make substantive changes to the policies or payment methodologies that were adopted in that final rule. As a result, this notice is intended to ensure that the FY 2010 IPPS/RY 2010 LTCH PPS final rule accurately reflects the policies adopted in that final rule and it would be impracticable, unnecessary, and contrary to the public interest to undertake further notice and comment procedures to incorporate these corrections into that final rule or delaying the effective date of these changes, especially in light of the October 1, 2009 start date for FY 2010.

Further, the changes that are being made to the Addendum by this Correction Notice, including the changes to reflect the correct CIPI of 1.2 percent, do not constitute rules subject to notice and comment rulemaking under section 553 of the Administrative Procedure Act, as the changes merely ensure that the Addendum conforms to the rules and methodologies that have already been adopted through such notice and comment rulemaking.

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

Dated: October 2, 2009.

Dawn L. Smalls,

Executive Secretary to the Department.

[FR Doc. E9–24202 Filed 10–2–09; 4:15 pm]

BILLING CODE 4120–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 503 and 552

GSAR Amendment 2009–12; GSAR Case 2008–G502 (Change 40) Docket 2008–0007; Sequence 7

RIN 3090–AI63

General Services Administration Acquisition Regulation; Rewrite of GSAR Part 503; Improper Personal Conflicts of Interest

AGENCIES: General Services Administration (GSA), Office of the Acquisition Policy.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) by revising the regulations pertaining to Improper Business Practices and Personal Conflicts of Interest. This rule is a product of the GSAM Rewrite Initiative undertaken by GSA to revise the regulation to maintain consistency with the FAR and implement streamlined and innovative acquisition procedures for contractors, offerors, and GSA contracting personnel. The GSAM incorporates the General Services Administration Acquisition Regulation (GSAR) as well as internal agency acquisition policy.

DATES: *Effective Date*: October 7, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ernest Woodson, Procurement Analyst, at (202) 501–3775. For information pertaining to status or publication schedules, contact the Regulatory Secretariat (MVR), Room 4041, 1800 F Street, NW, Washington, DC, 20405, (202) 501–4755. Please cite Amendment 2009–12, GSAR case 2008–G502 (Change 40).

SUPPLEMENTARY INFORMATION:

A. Background

This final rule is a result of the General Services Administration Acquisition Manual (GSAM) Rewrite initiative undertaken by GSA to revise the GSAM to maintain consistency with the FAR and to implement streamlined and innovative acquisition procedures that contractors, offerors, and GSA acquisition personnel can use when entering into and administering contractual relationships. The GSAM incorporates the General Services Administration Acquisition Regulation (GSAR) as well as internal agency acquisition policy.

An Advanced Notice of Proposed Rulemaking was published at 71 FR 7910, February 15, 2006, for the GSAM Rewrite Projects and public comments were received. However, none of the comments were specific to Part 503. The case was assigned to GSAM Part 503 Rewrite Team on February 18, 2008. A Team report was completed on March 3, 2008.

To ensure completeness, internal comments were solicited and received from GSA Regions 1, 2, 3, 6, 7, 8, 10, and 11, GSA published a proposed rule with request for comments in the **Federal Register** at 73 FR 45194, August 4, 2008. The public comment period closed October 3, 2008. One response was received with three comments. This final rule reconciles the conclusions from the Team report with the internal comments, and public comment as follows:

Public Comments

Comment: The respondent was concerned that the requirement in 503.204(c) for an agency fact-finding official to be designated by GSA Board of Contract Appeals was not revised to indicate that the Civilian Board of Contract Appeals (CBCA) would designate the official as means of ensuring that disputes over gratuities violations are handled independently and objectively.

Response: The CBCA will not designate an agency fact-finding official for the treatment of violations under 503.204, as its current operating procedures do not encompass the activity. The Senior Procurement Executive will refer matters under the jurisdiction of GSAR 503.204 to the Suspension and Debarment Official, in accordance with GSAR 509.403, because the Suspension and Debarment Official is the individual who can appoint a fact-finding official, should one be necessary.

Comment: The respondent was concerned that 503.1004 does not provide a specific rationale for establishing a lower threshold, or why that threshold would be $1,000,000. The respondent believes that the subsection makes the threshold sound arbitrary.

Response: FAR 3.1004(b)(1)(i) provides for agencies to establish a threshold lower than $5,000,000. Pursuant to FAR 1.302(b), agency acquisition regulations may supplement the FAR to include additional policies and procedures that satisfy the specific needs of the agency. GSA's lower threshold of $1,000,000 is based on GSA's unique acquisition mission and the dollar amount of an order that may be placed by GSA, under a task and delivery order contract. Further, the lower threshold insures greater visibility for the detection of fraud in Federal contracts ensuring protection for the taxpayer.

Comment: 503.1004(b)—The fill-in includes the acronym ''OIG''. Spell out as Office of the Inspector General. The FAR does otherwise include a reference to OIG.

Response: GSA concurs with the respondent and will make the change accordingly.

The Rewrite of Part 503

This final rule contains revisions to Part 503, Improper Business Practices and Personal Conflicts of Interest. There are no substantive changes to the policies. The rule revises GSAR Subpart 503.1 Safeguards; deletes 503.104–1 and 503.104–9, to ensure consistency with the GSAM that provides that the acquisition of leasehold interests in real property is established by GSAM Part 570; deletes 503.104–4, because post employment restrictions are covered under Federal conflicts of interest laws and the Procurement Integrity Act that every employee has a responsibility to know; adds 503.104–2, to indicate that acquisition officials are responsible for knowing the post-employment restrictions in FAR 3.104–2(b)(3) and in the Procurement Integrity Act; renumbers 503.104–5 to 503.104–4 and revises 503.104–4, adds appropriate GSAM and FAR references for the release of information to outside evaluators and deletes inappropriate forms and language already addressed in other GSAM subsections; and renumbers 503.104–10 to 503.104–7, for consistency with the FAR numbering sequence.

Revises Subpart 503.2 Contractor Gratuities to Government Personnel; revises 503.203(a) by deleting the reference to the Code of Federal Regulations and relocating the reference at the end of 503.203(c) in order to ensure the integrity of the subsection; revises 503.204(a)(2), by deleting the phrase ''joint venture'' in order to ensure grammatical and structural clarity; revises 503.204(c), by replacing ''the Chairman of the GSA Board of Contract Appeals'' with ''the Suspension and Debarment Official in accordance with FAR 509.403,'' because the GSA Board of Contract Appeals no longer exists; and revises 503.204(f), to ensure consistency with FAR 3.204(f).

Revises Subpart 503.3 Reports of Suspected Antitrust Violations; revises 503.303, to ensure grammatical and structural clarity.

Revises Subpart 503.4 Contingents Fees; by deleting 503.404, in order to ensure consistency with the GSAM which provides that the acquisition of leasehold interests in real property is established by GSAM Part 570, and revises 503.405 to ensure grammatical and structural clarity.

Revises Subpart 503.5 Other Improper Business Practices; revises 503.570–1 to delete the term ''referring'' and add ''making references'' for clarity.

Revises Subpart 503.7 Voiding and Rescinding Contracts; revises 503.702 to delete the definition for ''Notice'' and ''Voiding and rescinding official'' as the terms do not require definition; adds a new section 503.703 in order to identify the Senior Procurement Executive as having the authority to void and rescind contracts pursuant to FAR 3.703 and 3.705(b); relocates 503.705 from the GSAR to the manual part of the GSAM, because it relates to internal administrative procedures; revises 503.705 by revising 503.705(a)(1) to add ''the contracting officer shall'' to ensure clarity; revises 503.705(a)(2), to delete ''you may'' and ''voiding and rescinding official'' and add ''the contracting officer shall,'' ''Senior Procurement Executive,'' and ''and shall,'' to ensure clarity and continuity; revises 503.705(a)(2)(i) to add ''Identify'' to ensure clarity; revises 503.705(2) by adding paragraphs (ii) and (iii) to ensure grammatical and structural integrity; deletes 503.705(a)(3) because the contracting officer does not have the authority cited in the subsection; revises 503.705(b) to delete ''Voiding and rescinding official's,'' and add ''Senior Procurement Executive'' to ensure continuity; revises 503.705(b)(1), to delete ''the voiding and rescinding official'' to ensure continuity; revises 503.705(b)(2) to ensure grammatical and structural integrity; revises 503.705(b)(3) to ensure grammatical and structural integrity; revises 503.705(b)(4) to delete ''voiding and rescinding official'' and add ''Senior Procurement Executive,'' in order to ensure continuity; revises 503.705(b)(5), to delete ''The official'' to ensure clarity; and revises 503.705(c)(5), to ensure clarity.

Revises Subpart 503.8 Limitation on the Payment of Funds to Influence Federal Transactions; revises 503.806 to ensure grammatical and structural integrity, and deletes ''Inspector General for Investigation'' and adds ''Special Agent in Charge,'' to ensure clarity.

Adds a new Subpart 503.10 Contractor Code of Business Ethics and Conduct; establishes a lower threshold for the inclusion of FAR 52.203–14 Display of Hotline Poster(s) at 503.1004(a) and includes the name of the poster and where the poster may be obtained at 503.1004(b)(i) and (ii), pursuant to FAR 52.203–14(b)(3).

Deletes GSAR 552.203–5 Covenant Against Contingent Fees; in order to ensure consistency with the GSAM that provides that the acquisition of leasehold interests in real property is established by GSAM Part 570, and deletes GSAR 552.203–70 to ensure consistency with the GSAM requirements that leasehold interests in real property is established by GSAM Part 570.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because no new requirements are being placed on the vendor community. No comments on this issue were received from small business concerns or other interested parties.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

List of Subjects in 48 CFR Parts 503 and 552

Government procurement.

Dated: September 30, 2009

David A. Drabkin,

Senior Procurement Executive, Office of Acquisition Policy, General Services Administration.

■ Therefore, GSA amends 48 CFR parts 503 and 552 as set forth below:

PART 503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 1. The authority citation for 48 CFR part 503 is revised to read as follows:

Authority: 40 U.S.C. 121(c).

503.104–3 and 503.104–9 [Removed]

■ 2. Remove sections 503.104–3 and 503.104–9.

■ 3. Amend section 503.204 by—

■ a. Removing the period at the end of paragraph (a)(1) and adding ''; '' in its place;

■ b. Removing from paragraph (a)(2) ''or joint venture'' and adding ''; and'' in its place;

■ c. Revising the first sentence of the introductory text of paragraph (c); removing the period at the end of paragraphs (c)(1) and (c)(2) and adding ''; '' in its place; and removing the period at the end of paragraph (c)(3) and adding ''; and'' in its place; and

■ d. Revising the first sentence of paragraph (f).

The revised text reads as follows:

503.204 Treatment of violations.

* * * * *

(c) If there is a dispute of fact material to making a determination, the Senior Procurement Executive, or designee, may refer the matter to an agency fact-finding official, designated by the Suspension and Debarment Official, in accordance with GSAR 509.403. * * *

* * * * *

(f) If the Gratuities clause was violated, the contractor may present evidence of mitigating factors to the Senior Procurement Executive, or designee, in accordance with FAR 3.204(b) either orally or in writing, consistent with a schedule the Senior Procurement Executive, or designee, establishes. * * *

503.404 [Removed]

■ 4. Remove section 503.404.

503.570–1 [Amended]

■ 5. Amend section 503.570–1 by removing ''referring'' and adding ''making references'' in its place.

503.702 [Removed]

■ 6. Remove section 503.702.

503.703 [Added]

■ 7. Add section 503.703 to read as follows:

503.703 Authority.

Pursuant to FAR 3.703 and 3.705(b), the authority to void or rescind contracts resides with the Senior Procurement Executive.

503.705 [Removed]

■ 8. Remove section 503.705.

■ 9. Add Subpart 503.10 to read as follows:

Subpart 503.10—Contractor Code of Business Ethics and Conduct

503.1004 Contract clauses.

(a) The FAR threshold for the clause at 52.203–14, Display of Hotline Poster(s), is $5,000,000. However, GSA has exercised the authority provided at FAR 3.1004(b)(1)(i) to establish a lower threshold, $1,000,000, for inclusion of the clause when the contract or order is funded with disaster assistance funds.

(b) The information required to be inserted in the clause at FAR 52.203–14, Display of Hotline Poster(s), is as follows:

(1) Poster: GSA Office of Inspector General ''FRAUDNET HOTLINE''; and

(2) Obtain from: Contracting Officer.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 10. The authority citation for 48 CFR part 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

552.203–5 and 552.203–70 [Removed]

■ 11. Remove sections 552.203–5 and 552.203–70.

[FR Doc. E9–24158 Filed 10–6–09; 8:45 am]

BILLING CODE 6820–61–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0809251266–81485–02]

RIN 0648–XR94

Fisheries of the Northeastern United States; Scup Fishery; Commercial Quota Harvested for 2009 Summer Period

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces the closure of the scup commercial coastwide fishery from Maine through North Carolina for the remainder of the Summer Period. Regulations governing the scup fishery require publication of this notification to advise the coastal states from Maine through North Carolina that this quota has been harvested and to advise Federal vessel permit holders and Federal dealer permit holders that no commercial quota is available for landing scup in these states. Federally permitted commercial vessels may not land scup in these states for the remainder of the 2009 Summer quota period (through October 31, 2009).

DATES: Effective 0001 hours, Thursday, October 7 through October 31, 2009.

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

SUPPLEMENTARY INFORMATION: Regulations governing the scup fishery are found at 50 CFR part 648. The regulations at § 648.121 require the Regional Administrator to monitor the commercial scup quota for each quota period and, based upon dealer reports, state data, and other available information, to determine when the commercial quota for a period has been harvested. NMFS is required to publish a notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the scup commercial quota has been harvested and no commercial quota is available for landing scup for the remainder of the Summer Period. Based upon recent projections, the Regional Administrator has determined that the Federal commercial quota of 2,930,733 lb (1,329 mt) for the 2009 Summer Period will be fully harvested by or before October 31, 2009. To maintain the integrity of the 2009 Summer Period quota by avoiding or minimizing quota overages, the commercial scup fishery will close for the remainder of the Summer Period (through October 31, 2009) in Federal waters, effective as of the date specified above (see **DATES**).

Section 648.4(b) provides that Federal scup moratorium permit holders agree, as a condition of the permit, not to land scup in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for the period has been harvested and that no commercial quota for scup is available. Therefore, effective 0001 hours, Thursday, October 8, 2009, further landings of scup by vessels holding Federal scup moratorium permits are prohibited through October 31, 2009. Effective 0001 hours, Thursday, October 8, 2009, federally permitted dealers are also advised that they may not purchase scup from federally permitted vessels that land in coastal states from Maine through North Carolina for the remainder of the Summer Period (through October 31, 2009). The Winter II Period for commercial scup harvest will open on November 1, 2009.

Classification

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

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

Dated: October 2, 2009.

Emily H. Menashes,

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

[FR Doc. E9–24177 Filed 10–05–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 090601946–91010–01]

RIN 0648–AX94

Fisheries of the Exclusive Economic Zone Off Alaska, Groundfish Observer Program; Correction

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

ACTION: Correcting amendments.

SUMMARY: This action makes four corrections to regulations. It corrects a final rule removing the December 31, 2007, expiration date for regulations governing the North Pacific Observer Program. NMFS intended this final rule to remove the expiration date from all paragraphs, however, due to the overlay of an additional and overlooked expiration date in a different final rule, NMFS inadvertently removed the regulations governing observer coverage for catcher/processors and motherships participating in the pollock fisheries in the Bering Sea and Aleutian Islands management area. This correcting amendment reinstates those observer coverage requirements. In addition, this rule corrects a cross-reference error; removes an expiration date; and removes effective dates that have now passed from certain paragraphs.

DATES: Effective October 7, 2009.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS has determined that four errors exist in the North Pacific Groundfish Observer Program (Observer Program) regulations at § 679.50.

This final rule will correct an error that resulted when NMFS overlooked the existence of a sunset provision for observer coverage requirements. Observer program vessel and processor coverage requirements are set forth at 50 CFR 679.50. Prior to 2007, the observer program and the observer coverage requirements were subject to periodic sunset dates. The last sunset date extension prolonged the observer program and, with one exception explained further below, all coverage requirements to December 31, 2007, (67 FR 72595; December 6, 2002).

Although the observer program and coverage requirements were generally established and reauthorized in single rulemakings, one particular component of the observer coverage requirements was originally implemented under the American Fisheries Act (AFA) (67 FR 79692; December 30, 2002). This component established coverage requirements for catcher/processors and motherships participating in the BSAI pollock fisheries. These regulations are found at § 679.50(c)(5). These AFA regulations originally established an AFA Program-wide sunset date of December 31, 2007. Subsequent to the 2002 AFA program establishment, and except for the observer coverage requirements found at § 679.50(c)(5), the sunset date was removed and the AFA program became permanent by a final rule published on February 10, 2004 (69 FR 6198). NMFS left the AFA observer coverage requirements sunset date unchanged in the 2004 final rule because NMFS considered the AFA requirements an integrated component of the larger body of observer coverage requirements.

In a final rule published on June 13, 2007, NMFS attempted to remove the December 31, 2007, sunset date for the groundfish Observer Program (72 FR 32559). Although it was NMFS' intent to extend all coverage requirements set forth in § 679.50, NMFS overlooked the independent expiration date that continued to apply to § 679.50(c)(5) from the December 30, 2002, AFA final rule. NMFS should have addressed and removed this independent sunset date when it removed the sunset for the entire program and related coverage requirements in the June, 2007, final rule. This correcting amendment removes that sunset date applicable to the § 679.5(c)(5) regulations, and reinstates them.

The other sunset date reference (December 31, 2007) that was overlooked and is now removed is found in § 679.1(f).

Next, a cross-reference related to observer workload restrictions in § 679.50(c)(5)(i)(A) is corrected by removing ''(c)(5)(iii)'' and replacing it with ''(c)(5)(ii)'' which is the correct cross-reference.

The effective date (January 20, 2008) is removed from §§ 679.50(c)(4)(i)(A) and 679.50(c)(6) because it is no longer necessary. This effective date was added in a final rule (September 14, 2007, 72 FR 52668) to identify paragraphs with delayed effectiveness dates.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Acting Assistant Administrator of Fisheries (AA) finds good cause to waive prior notice and opportunity for public comment. Data collected by observers is critical for conservation and management of the groundfish fisheries off Alaska and for assessing the impact of these fisheries on other aspects of the marine environment. Without these regulations, fishing vessels could overfish the stock and exceed bycatch reduction allowances in violation of the Magnuson Stevens Fishery Conservation and Management Act (MSA). NMFS only recently discovered these errors and to ensure uninterrupted and comprehensive management of the fisheries, believes that it is in the public interest to institute the corrections without prior notice and opportunity for comment. Furthermore, the errors need to be corrected immediately to eliminate potential confusion.

For these reasons, the AA finds good cause to waive prior notice and opportunity for public comment and the 30-day delay in the effective date under 5 U.S.C. 553(d)(3), as such procedures would be contrary to the public interest. Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable.

The Acting AA for NMFS has determined that this action is consistent with MSA and other applicable law.

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

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: October 1, 2009

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the same reasons set out in the preamble, 50 CFR part 679 is corrected by making the following correcting amendments:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1540(f); 1801 *et seq.*; 1851 note; 3631 *et seq.*

■ 2. In § 679.1, revise the heading for paragraph (f) to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(f) *Groundfish Observer Program.*

* * * * *

■ 3. In § 679.50, add paragraph (c)(5); revise heading for paragraph (c)(4)(i)(A); and revise heading for paragraph (c)(6) to read as follows:

§ 679.50 Groundfish Observer Program.

* * * * *

(c) * * *

(4) * * *

(i) * * *

(A) *CDQ groundfish fisheries.*

* * * * *

(5) *AFA and AI directed pollock fishery catcher/processors and motherships*—(i) *Coverage requirement*—(A) *Listed AFA catcher/processors and AFA motherships.* The owner or operator of a listed AFA catcher/processor or AFA mothership must provide at least two NMFS-certified observers, at least one of which must be certified as a lead level 2 observer, for each day that the vessel is used to harvest, process, or take deliveries of groundfish. More than two observers are required if the observer workload restriction at paragraph (c)(5)(ii) of this section would otherwise preclude sampling as required under § 679.63(a)(1).

(B) *Unlisted AFA catcher/processors.* The owner or operator of an unlisted AFA catcher/processor must provide at least two NMFS-certified observers for each day that the vessel is used to engage in directed fishing for pollock in the BSAI, or takes deliveries of pollock harvested in the BSAI. At least one observer must be certified as a lead level 2 observer. When an unlisted AFA catcher/processor is not engaged in directed fishing for BSAI pollock and is not receiving deliveries of pollock harvested in the BSAI, the observer

coverage requirements at paragraph (c)(1)(iv) of this section apply.

(C) *AI directed pollock fishery catcher/processors and motherships.* A catcher/processor participating in the AI directed pollock fishery or a mothership processing pollock harvested in the AI directed pollock fishery must have on board at least two NMFS-certified observers, at least one of which must be certified as a lead level 2 observer, for each day that the vessel is used to harvest, process, or take deliveries of groundfish. More than two observers are required if the observer workload restriction at paragraph (c)(5)(ii) of this section would otherwise preclude sampling as required under § 679.63(a)(1).

(ii) *Observer work load.* The time required for the observer to complete sampling, data recording, and data communication duties may not exceed 12 consecutive hours in each 24-hour period, and the observer may not sample more than 9 hours in each 24-hour period.

(6) *Amendment 80 vessels and non-AFA trawl catcher/processors.*

* * * * *

[FR Doc. E9–24221 Filed 10–6–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0810141351–9087–02]

RIN 0648–XS03

Fisheries of the Exclusive Economic Zone Off Alaska; Greenland Turbot in the Aleutian Islands Subarea of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; apportionment of reserves; request for comments.

SUMMARY: NMFS apportions amounts of the non-specified reserve to the initial total allowable catch (ITAC) of Greenland turbot in the Aleutian Islands subarea. This action is necessary to allow the fisheries to continue operating. It is intended to promote the goals and objectives of the fishery management plan for the BSAI.

DATES: Effective October 2, 2009 through 2400 hrs, Alaska local time, December 31, 2009. Comments must be received at the following address no later than 4:30 p.m., Alaska local time, October 19, 2009.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by 0648–XS03, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at *http://www.regulations.gov*.
- Mail: P. O. Box 21668, Juneau, AK 99802.
- Fax: (907) 586–7557.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

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 (e.g., name, address) 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 portable document file (pdf) formats only.

FOR FURTHER INFORMATION CONTACT: Patty Britza, 907–586–7376.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2009 ITAC of Greenland turbot in the Aleutian Islands subarea was established as 1,947 metric tons (mt) by the final 2009 and 2010 harvest specifications for groundfish of the BSAI (74 FR 7359, February 17, 2009). In accordance with § 679.20(a)(3) the Regional Administrator, Alaska Region, NMFS, has reviewed the most current available data and finds that the ITAC for Greenland turbot in the Aleutian Islands subarea needs to be supplemented from the non-specified reserve in order to promote efficiency in the utilization of fishery resources in the BSAI and allow fishing operations to continue.

Therefore, in accordance with § 679.20(b)(3), NMFS apportions from the non-specified reserve of groundfish 343 mt to the Greenland turbot ITAC in the Aleutian Islands subarea. This apportionment is consistent with § 679.20(b)(1)(i) and does not result in overfishing of a target species because the revised ITAC is equal to or less than the specifications of the acceptable biological catch in the final 2009 and 2010 harvest specifications for groundfish in the BSAI (74 FR 7359, February 17, 2009).

The harvest specification for Greenland turbot included in the harvest specifications for groundfish in the BSAI (74 FR 7359, February 17, 2009) for the 2009 ITAC is revised as follows: 2,290 mt for Greenland turbot in the Aleutian Islands subarea.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and § 679.20(b)(3)(iii)(A) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the apportionment of the non-specified reserves of groundfish to the Greenland turbot fishery in the Aleutian Islands subarea. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 29, 2009.

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

Under § 679.20(b)(3)(iii), interested persons are invited to submit written comments on this action (see **ADDRESSES**) until October 19, 2009.

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

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

Dated: October 1, 2009.

Emily H. Menashes,

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

[FR Doc. E9–24170 Filed 10–7–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 09100091344–9056–02]

RIN 0648–XS06

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

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

ACTION: Temporary rule; closure.

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

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 4, 2009, through 2400 hrs, A.l.t., December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2009 TAC of pollock in Statistical Area 620 of the GOA is 14,098 metric tons (mt) as established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the 2009 TAC of pollock in Statistical Area 620 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 13,900 mt, and is setting aside the remaining 198 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 620 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 1, 2009.

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

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

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

Dated: October 2, 2009

Emily H. Menashes,

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

[FR Doc. E9–24173 Filed 10–2–09; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 679 and 680

[Docket No. 080312430–91317–02]

RIN 0648–AW56

Fisheries of the Exclusive Economic Zone Off Alaska; Western Alaska Community Development Quota Program, Rockfish Program, Amendment 80 Program; Bering Sea and Aleutian Islands Area Crab Rationalization Program

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to provide harvesting cooperatives, crab processing quota share holders, and Western Alaska Community Development Quota (CDQ) groups with the option to make intercooperative transfers, crab individual processing quota transfers, and inter-group transfers through an automated, web-based process. To facilitate web-based transfers, NMFS removes the requirement for notarized signatures for all crab non-permanent leases of individual fishing quota and individual processor quota and removes unnecessary quota share price-related questions. The purpose of this action is to reduce paperwork burdens on the fishing industry by providing the option of electronic transfer through the Internet. This action allows cooperatives, processors, and CDQ groups to shorten response time to management, market, weather, and other fishery and operational conditions and to increase harvesting and processing efficiency. This action also removes detailed description of information required on application forms from regulatory text; removes detailed NMFS mail, fax, and delivery addresses and replaces them with one paragraph stating that the form may be submitted in accordance with instructions on the form; removes outdated survey-type questions from two applications; divides one application into three separate applications; revises the NMFS Alaska Region web address; and corrects cross-references.

DATES: Effective November 6, 2009.

ADDRESSES: Electronic copies of the Regulatory Impact Review (RIR), the Final Regulatory Flexibility Analysis

(FRFA), and the Categorical Exclusion prepared for this action may be obtained from the Alaska Region website at *http://www.alaskafisheries.noaa.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted by mail to NMFS, Alaska Region, P. O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, Alaska to NMFS, Alaska Region; and by e-mail to *David__Rostker@omb.eop.gov*, or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7008.

SUPPLEMENTARY INFORMATION: NMFS manages the U.S. groundfish fisheries in the Exclusive Economic Zone off Alaska under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) and the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP). The crab fisheries are managed under the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP). The BSAI FMP, GOA FMP, and Crab FMP were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMPs appear at 50 CFR part 679 and part 680. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Background

The Council has adopted and NMFS has implemented numerous management programs that allocate quota share and associated harvesting or processing privileges to qualified entities and authorize transfer of these privileges among qualified entities upon approval by NMFS. The following four programs authorize transfers of quota shares under particular circumstances -- the Western Alaska Community Development Quota (CDQ) Program, the Central GOA Rockfish Pilot Program (Rockfish Program), Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (Amendment 80 Program), and the Bering Sea and Aleutian Islands Area Crab Rationalization (CR) Program.

Currently, applications for transfers must be submitted to NMFS by mail, courier, or fax. The current hard-copy application transfer process is too slow to meet operational and market demands of fishery participants. The efficacy of the current system of transfers is limited by NMFS business hours; requirements for original application documents and notarized signatures; and the lengths of time needed for application submission, approval, and receipt of permits.

To address these limitations, NMFS published a proposed rule on May 26, 2009 (74 FR 24762) that would provide harvesting cooperatives, crab processing quota share holders, and CDQ groups the option to make intercooperative transfers, crab individual processing quota transfers, and inter-group transfers through an automated, web-based process. To facilitate web-based transfers, NMFS proposed to remove the requirement for notarized signatures for all crab non-permanent leases of individual fishing quota and individual processor quota and removed unnecessary quota share price-related questions.

Electronic transfer service also benefits NMFS because this procedure reduces existing transfer processing labor needs, improves data quality, and promotes the objectives of the Government Paperwork Elimination Act. A full description of the need for this action and proposed regulatory changes is provided in the preamble to the proposed rule.

Summary of Final Rule

This rule accomplishes three broad goals. First, it reduces paperwork burdens placed on the fishing industry by providing the option for electronic transfer through the Internet. Second, it modifies the methods used to conduct transfers which allow cooperatives, processors, and CDQ groups to shorten response time to management, market, weather, and other fishery and operational conditions and increases harvesting and processing efficiency. Third, it accomplishes a variety of ''housekeeping'' revisions to the regulations which:

- Remove detailed descriptions of applications from regulatory text;
- Remove detailed NMFS mail, fax, and delivery addresses and replace them with a general, instructional paragraph pointing the participant to the form;
- Remove outdated survey-type questions from two applications;
- Divide one application into three separate applications;
- Revise the NMFS Alaska Region web address as it appears in the regulations to *http://alaskafisheries.noaa.gov*; and
- Correct cross-references.

NMFS published the proposed rule for this action in the **Federal Register** on May 26, 2009 (74 FR 24762), with a public comment period that closed June 10, 2009. NMFS received no comments. Additional information about this action can be found in the proposed rule.

Changes From the Proposed Rule

50 CFR 679.81(f) describes the application for inter-cooperative transfer of rockfish cooperative quota. Section 679.81(f)(1) describes the requirements to submit a completed application, whether non-electronic or electronic. The proposed rule did not include a current transfer requirement. The regulations at § 679.81(f)(1)(v) and (vi) currently set forth the requirement for signature of the associated rockfish processor. This requirement was overlooked and not included in the proposed rule. The final rule corrects this omission and the associated processor will continue to be included as a party to a catcher vessel sector transfer of cooperative quota.

Classification

Pursuant to Section 305(d) of the Magnuson-Stevens Act, the NMFS Acting Assistant Administrator has determined that this rule is necessary for the conservation and management of the Alaska groundfish and crab fisheries managed under the FMPs and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

Final Regulatory Flexibility Analysis (FRFA)

An FRFA was prepared for this rule, as required by section 604 of the Regulatory Flexibility Act (RFA). Copies of the FRFA prepared for this final rule are available from the Alaska Region website at *http://alaskafisheries.noaa.gov*. The FRFA incorporates the IRFA and a summary of the analysis completed to support the action. A summary of the FRFA follows.

Why Action by the Agency is Being Considered and Objectives of, and Legal Basis for, the Rule

The FRFA describes in detail the reasons why this action is necessary, describes the objectives and legal basis for the rule, and discusses both small and non-small regulated entities to adequately characterize the fishery participants. The Magnuson-Stevens Act provides the legal basis for the rule, as discussed in this preamble. The objectives of the rule are to: (1) maintain recordkeeping and reporting

requirements for the impacted programs that provide the information necessary to manage the fisheries and to enforce Federal regulations applicable to the programs, (2) reduce the time, effort, and documentation involved in the process of making quota transfers, and (3) maintain the overall economic and social goals and purpose of the programs.

Number of Small Entities to Which the Final Rule Would Apply

For purposes of an FRFA, the Small Business Administration (SBA) has established that a business involved in fish harvesting is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates), and if it has combined annual gross receipts not in excess of $4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

Because the SBA does not have a size criterion for businesses that are involved in both the harvesting and processing of seafood products, NMFS has in the past applied and continues to apply SBA's fish harvesting criterion for these businesses because catcher/processors are first and foremost fish harvesting businesses. Therefore, a business involved in both the harvesting and processing of seafood products is a small business if it meets the $4.0 million criterion for fish harvesting operations. NMFS currently is reviewing its small entity size classification for all catcher/processors in the United States. However, until new guidance is adopted, NMFS will continue to use the annual receipts standard for catcher/processors. NMFS plans to issue new guidance in the near future.

The FRFA contains a more detailed description and estimate of the number of small entities to which the rule would apply.

Currently, 642 entities hold quota shares and would now be authorized to conduct transfers online. Estimates of large entities were made, based on available records of employment information on participation in processing activities in other fisheries, and analysts' knowledge of foreign ownership of vertically integrated processing companies. Of the 642 recipients of quota, 294 are estimated to be large entities, leaving 348 small entities among the directly regulated universe affected by this final rule.

Public Comments Received on the IRFA

NMFS did not receive any public comments on the IRFA or on the economic impacts of the rule.

Projected Reporting, Recordkeeping, and Other Compliance Requirements

This rule changes existing reporting, recordkeeping, or other compliance requirements by providing the convenience and flexibility offered by electronic communication technology to conduct logistically and economically efficient transfers of fishing ''quota'' among program operations, subject to NMFS' approval.

Comparison of Alternatives

All the directly regulated individuals would be expected to benefit from the preferred alternative, Alternative 2 (described in this rule), relative to the status quo alternative because it creates a new option to transfer quota ''online'' among participants within each respective management program. It is expected to reduce their reporting requirements, increase operational flexibility, enhance potential for collaboration and coordination among transferors and transferees, and provide an augmented ability to respond in a timely way to market changes. Of the two alternatives considered, status quo and this action, this action minimizes adverse economic impacts on the individuals that are directly regulated and reflects the least burdensome of management structures available, in terms of directly regulated small entities, while fully achieving the conservation and management purposes consistent with applicable statutes.

NMFS initially considered an alternative that would have required use of the online systems, rather than making them optional. NMFS rejected this alternative, because NMFS could not be certain that all entities in all impacted industry sectors are capable of submitting forms electronically. For any that are not, such a mandate would have imposed an unnecessary and disproportionate economic burden.

Small Entity Compliance Guide

The preamble to the proposed rule and this final rule serve as the small entity compliance guide required by Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action does not require any additional compliance from small entities that is not described in the preamble. Copies of this final rule are available from NMFS at the following website: *http://alaskafisheries.noaa.gov*.

Collection-of-Information Requirements

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of Management and Budget (OMB). Public reporting burden estimates per response for these requirements are listed by OMB control number.

OMB Control No. 0648–0269: 30 minutes for CDQ or PSQ Transfer Request.

OMB Control No. 0648–0514: Two hours for Application for Transfer of Crab QS, IFQ, and IPQ; this form will be removed from this collection, and the following three new forms will be added in its place. Two hours each for: Application for Transfer of Crab Individual Fishing Quota, Application for Transfer of Individual Processor Quota, Application for Transfer of Crab Quota Share and Crab Processor Quota Share; Application for Transfer of Individual Fishing Quota Between Crab Harvesting Cooperatives; and two and one half hours for Application for Annual Crab Harvester Cooperative IFQ Permit.

OMB Control No. 0648–0565: Two hours for Application to Transfer Amendment 80 Cooperative Quota.

OMB Control No. 0648–0545: Two hours for Application for Inter-cooperative Transfer of Rockfish Quota Share.

Public reporting estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information.

Send comments on these or any other aspects of the collection-of-information to NMFS Alaska Region (see **ADDRESSES**) and 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, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Parts 679 and 680

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: October 1, 2009

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR parts 679 and 680 are amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447.

■ 2. In § 679.5, revise paragraph (n)(1) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(n) * * *

(1) *CDQ or PSQ transfer.* NMFS will process a request for CDQ or PSQ transfer between CDQ groups provided that the requirements of this paragraph are met.

(i) *Completed application.* A paper or electronic request form must be completed with all information fields accurately filled in by transferors and transferees, and all required additional documentation must be attached.

(ii) *Certification of transferor*—(A) *Non-electronic submittal.* The transferor's designated representative must sign and date the application certifying that all information is true, correct, and complete. The transferor's designated representative must submit the paper application as indicated on the application.

(B) *Electronic submittal.* The transferor's designated representative must log into the system and create a transfer request as indicated on the computer screen. By using the transferor's NMFS ID, password, and Transfer Key and submitting the transfer request, the designated representative certifies that all information is true, correct, and complete.

(iii) *Certification of transferee*—(A) *Non-electronic submittal.* The transferee's designated representative must sign and date the application certifying that all information is true, correct, and complete.

(B) *Electronic submittal.* The transferee's designated representative must log into the system and create a transfer request as indicated on the computer screen. By using the transferee's NMFS ID, password, and Transfer Key and submitting the transfer request, the designated representative certifies that all information is true, correct, and complete.

* * * * *

■ 3. In § 679.81, add paragraph (e)(1)(iv); and revise paragraphs (e)(2) and (f) to read as follows:

§ 679.81 Rockfish Program annual harvester and processor privileges.

* * * * *

(e) * * *

(1) * * *

(iv) Electronic: *http://alaskafisheries.noaa.gov*.

(2) *Application forms.* Application forms are available on the NMFS Alaska Region website at *http://alaskafisheries.noaa.gov*, or by contacting NMFS at 800–304–4846, Option 2.

* * * * *

(f) *Application for inter-cooperative transfer of cooperative quota (CQ)*—(1) *Completed application.* NMFS will process an application for inter-cooperative transfer of cooperative quota (CQ) provided that a paper or electronic online transfer application is completed by the transferor and transferee, with all applicable fields accurately filled-in, and all required additional documentation is attached.

(2) *Certification of transferor*—(i) *Non-electronic submittal.* The transferor's designated representative and the eligible rockfish processor with whom that rockfish cooperative in the catcher vessel sector is associated must sign and date the application certifying that all information is true, correct, and complete. The transferor's designated representative must submit the paper application as indicated on the application.

(ii) *Electronic submittal.* (A) The transferor's designated representative must log into the system and create a transfer request as indicated on the computer screen. By using the transferor's NMFS ID, password, and Transfer Key and submitting the transfer request, the designated representative certifies that all information is true, correct, and complete.

(B) (Catcher vessel transfer to catcher vessel only) The transferor's eligible rockfish processor must log into the system and accept the transfer request. By using the processor's NMFS ID, password, and Transfer Key, the designated representative certifies that all information is true, correct, and complete.

(3) *Certification of transferee*—(i) *Non-electronic submittal.* The transferee's designated representative and the eligible rockfish processor with whom that rockfish cooperative in the catcher vessel sector is associated must sign and date the application certifying that all information is true, correct, and complete.

(ii) *Electronic submittal*

(A) (Catcher vessel transfer to catcher vessel or catcher/processor transfer to catcher vessel only) The transferee's eligible rockfish processor must log into the system and accept the transfer request. By using the processor's NMFS ID, password, and Transfer Key, the designated representative certifies that all information is true, correct, and complete.

(B) The transferee must log into the system and accept the transfer request. By using the transferee's NMFS ID, password, and Transfer Key, the designated representative certifies that all information is true, correct, and complete.

* * * * *

■ 4. In § 679.91, add paragraph (b)(1)(iv); and revise paragraphs (b)(2) and (g) to read as follows:

§ 679.91 Amendment 80 Program annual harvester privileges.

* * * * *

(b) * * *

(1) * * *

(iv) Electronic: *http://alaskafisheries.noaa.gov*.

(2) *Application forms.* Application forms are available on the NMFS Alaska Region website at *http://alaskafisheries.noaa.gov*, or by contacting NMFS at 800–304–4846, Option 2.

* * * * *

(g) *Application for inter-cooperative transfer of Amendment 80 CQ*—(1) *Completed application.* NMFS will process an application for inter-cooperative transfer of Amendment 80 cooperative quota (CQ) provided that a paper or electronic application is completed by the transferor and transferee, with all applicable fields accurately filled in, and all required additional documentation is attached.

(2) *Amendment 80 species CQ assignment.* Amendment 80 species CQ must be assigned to a member of the Amendment 80 cooperative receiving the CQ for purposes of use cap calculations. No member of an Amendment 80 cooperative may exceed the CQ use cap applicable to that member.

(3) *Total amount of Amendment 80 species CQ.* For purposes of Amendment 80 species CQ use cap calculations, the total amount of Amendment 80 species CQ held or used by a person is equal to all metric tons of Amendment 80 species CQ derived

from all Amendment 80 QS units on all Amendment 80 QS permits held by that person and assigned to the Amendment 80 cooperative and all metric tons of Amendment 80 species CQ assigned to that person by the Amendment 80 cooperative from approved transfers.

(4) *Amendment 80 QS units.* The amount of Amendment 80 QS units held by a person, and CQ derived from those Amendment 80 QS units, is calculated using the individual and collective use cap rule established in § 679.92(a).

(5) *Certification of transferor*—(i) *Non-electronic submittal.* The transferor's designated representative must sign and date the application certifying that all information is true, correct, and complete. The transferor's designated representative must submit the paper application as indicated on the application.

(ii) *Electronic submittal.* The transferor's designated representative must log into the system and create a transfer request as indicated on the computer screen. By using the transferor's NMFS ID, password, and Transfer Key and submitting the transfer request, the designated representative certifies that all information is true, correct, and complete.

(6) *Certification of transferee*—(i) *Non-electronic submittal.* The transferee's designated representative must sign and date the application certifying that all information is true, correct, and complete.

(ii) *Electronic submittal.* The transferee's designated representative must log into the system and accept the transfer request as indicated on the computer screen. By using the transferee's NMFS ID, password and Transfer Key, the designated representative certifies that all information is true, correct, and complete.

* * * * *

PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 5. The authority citation for part 680 continues to read as follows:

Authority: 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

■ 6. In § 680.5, revise paragraphs (a)(2)(i)(G), (g)(1), and (g)(2) to read as follows:

§ 680.5 Recordkeeping and reporting (R&R).

(a) * * *

(2) * * *

(i) * * *

Recordkeeping and reporting report	Person responsible	Reference
* * *	*	*
(G) CR Crab Landing Report	RCR	§ 679.5(e)
* * *	*	*

* * * * *

(g) * * *

(1) *Applicability.* An RCR or the RCR's authorized representative, who receives any CR crab pursuant to § 680.44 must submit to NMFS online a complete RCR fee form as instructed on the form at NMFS Alaska Region website at *http://alaskafisheries.noaa.gov*.

(2) *Due date and submittal.* The reporting period of the RCR fee submission shall be the crab fishing year. An RCR must submit any crab cost recovery fee liability payment(s) and the RCR fee submission form to NMFS online not later than July 31 following the crab fishing year in which the CR crab landings were made.

* * * * *

■ 7. In § 680.20, add paragraph (a)(3); and revise paragraphs (d)(3), (d)(4), (e)(5), (f)(4)(ii)(B), (g)(2)(viii)(C)(*2*), and (h)(6) introductory text to read as follows:

§ 680.20 Arbitration System.

(a) * * *

(3) *Document submittal information.* Submit documents and reports to NMFS as follows: by mail to the Regional Administrator, NMFS, P.O. Box 21668, Juneau, AK 99802; by courier to NMFS, 709 West 9th Street, Juneau, AK 99801; or by fax to 907–586–7465.

* * * * *

(d) * * *

(3) An Arbitration Organization, with members who are QS or PQS holders, must submit a complete Annual Arbitration Organization Report to NMFS in accordance with paragraph (a)(3) of this section by August 20, 2005, for the crab fishing year beginning on July 1, 2005, and by May 1 of each subsequent year for the crab fishing year beginning on July 1 of that year.

(4) An Arbitration Organization, with members who are IFQ or IPQ holders, must submit a complete Annual Arbitration Organization Report to NMFS in accordance with paragraph (a)(3) of this section by not later than 15 days after the issuance of IFQ and IPQ for that crab QS fishery.

(e) * * *

(5) *Notification to NMFS.* Not later than June 1 for that crab fishing year, except as provided in paragraph (e)(6) of this section, the Arbitration Organizations representing the holders of Arbitration QS and PQS in each fishery shall notify NMFS of the persons selected as the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) for the fishery in accordance with paragraph (a)(3) of this section.

* * * * *

(f) * * *

(4) * * *

(ii) * * *

(B) NMFS Alaska Region in accordance with paragraph (a)(3) of this section; and

* * * * *

(g) * * *

(2) * * *

(viii) * * *

(C) * * *

(*2*) NMFS in accordance with paragraph (a)(3) of this section; and

* * * * *

(h) * * *

(6) *Information provided to NMFS.* The Contract Arbitrator must provide any information, documents, or data required under this paragraph to NMFS in accordance with paragraph (a)(3) of this section not later than 30 days prior to the end of the crab fishing year for which the open negotiation or arbitration applied. The contract with the Contract Arbitrator must specify that the Contract Arbitrator provide NMFS with:

* * * * *

■ 8. In § 680.21, revise paragraph (f) to read as follows:

§ 680.21 Crab harvesting cooperatives.

* * * * *

(f) *Application for transfer of crab harvesting cooperative IFQ*—(1) *Completed application.* NMFS will process an application for transfer of crab harvesting cooperative individual fishing quota (IFQ) provided that a paper or electronic request form is completed by the applicant, with all applicable fields accurately filled in, and all required additional documentation is attached.

(2) *Certification of transferor*—(i) *Non-electronic submittal.* The transferor's designated representative must sign and date the application certifying that all information is true, correct, and complete. The transferor's designated representative must submit the paper application as indicated on the application.

(ii) *Electronic submittal.* The transferor's designated representative

must log into the system and create a transfer request as indicated on the computer screen. By using the transferor's NMFS ID, password, and Transfer Key and submitting the transfer request, the designated representative certifies that all information is true, correct, and complete.

(3) *Certification of transferee*—(i) *Non-electronic submittal*. The transferee's designated representative must sign and date the application certifying that all information is true, correct, and complete.

(ii) *Electronic submittal*. The transferee's designated representative must log into the system and accept the transfer request as indicated on the computer screen. By using the transferee's NMFS ID, password, and Transfer Key, the designated representative certifies that all information is true, correct, and complete.

(4) *Submittal information*. An application for transfer of crab harvesting cooperative IFQ crab QS or PQS may be submitted to NMFS as instructed on the application. Forms are available on the NMFS Alaska Region website at *http://alaskafisheries.noaa.gov*, or by contacting NMFS at 800–304–4846, Option 2.

* * * * *

■ 9. In § 680.40, revise the section heading, paragraph (f) heading, and paragraph (f)(1)(ii) to read as follows:

§ 680.40 Crab Quota Share (QS), Processor QS (PQS), Individual Fishing Quota (IFQ), and Individual Processor Quota (IPQ) Issuance.

* * * * *

(f) *Application for crab QS or PQS*.

(1) * * *

(ii) An application for crab QS or PQS may be submitted to NMFS as instructed on the application. Forms are available on the NMFS Alaska Region website at *http://alaskafisheries.noaa.gov*, or by contacting NMFS at 800–304–4846, Option 2.

* * * * *

■ 10. In § 680.41, revise paragraphs (b) and (h) to read as follows:

§ 680.41 Transfer of QS, PQS, IFQ and IPQ.

* * * * *

(b) *Transfer applications*—(1) *Application*. An application is required to transfer any amount of QS, PQS, IFQ, or IPQ. A transfer application will not be approved until the necessary eligibility application has been submitted and approved by NMFS in accordance with paragraph (c) of this section. The Regional Administrator will not approve any transfers of QS, PQS, IFQ, or IPQ in any crab QS fishery from August 1 until the date of the issuance of IFQ or IPQ for that crab QS fishery.

(2) *Notification of application approval or disapproval*. Persons submitting any application for approval under § 680.41 will receive notification of the Regional Administrator's decision to approve or disapprove the application, and if applicable, the reason(s) for disapproval.

(3) *Reasons for disapproval*. Reasons for disapproval of an application include, but are not limited to:

(i) Lack of U.S. citizenship, where U.S. citizenship is required;

(ii) Failure to meet minimum requirements for sea time as a member of a harvesting crew;

(iii) An incomplete application, including fees and an EDR, if required;

(iv) An untimely application; or

(v) Fines, civil penalties, or other payments due and owing, or outstanding permit sanctions resulting from Federal fishery violations.

(4) QS, PQS, IFQ, or IPQ accounts. (i) QS, PQS, IFQ, or IPQ accounts affected by a transfer approved by the Regional Administrator will change on the date of approval.

(ii) For non-electronic submittals, any necessary IFQ or IPQ permits will be sent with the notification of approval if the receiver of the IFQ or IPQ permit has completed an annual application for crab IFQ or IPQ permit for the current fishing year as required under § 680.4.

(iii) For electronic submittals, the parties to the transfer would access and print approvals and permits online.

(5) Submittal. Submit applications and other documents to NMFS as instructed on the application. Forms are available on the NMFS Alaska Region website at *http://alaskafisheries.noaa.gov*, or by contacting NMFS at: 800–304–4846, Option 2.

* * * * *

(h) *Applications for transfer*—(1) *Application for transfer of crab IFQ*. NMFS will process a request for transfer of crab individual fishing quota (IFQ) provided that a paper application is completed, with all information fields accurately filled in, and all required additional documentation is attached. The transferor's and the transferee's designated representatives must sign and date the application certifying that all information is true, correct, and complete. The transferor's designated representative must submit the paper application as indicated on the application.

(2) *Application for transfer of crab IPQ*—(i) *Completed application*. NMFS will process a request for transfer of crab individual processor quota (IPQ) provided that a paper or electronic request form is completed, with all information fields accurately filled in, and all required additional documentation is attached.

(ii) *Certification of transferor*—(A) *Non-electronic submittal*. The transferor's designated representative must sign and date the application certifying that all information is true, correct, and complete. The transferor's designated representative must submit the paper application as indicated on the application.

(B) *Electronic submittal*. The transferor's designated representative must log into the system and create a transfer request as indicated on the computer screen. By using the transferor's NMFS ID, password, and Transfer Key and submitting the transfer request, the designated representative certifies that all information is true, correct, and complete.

(iii) *Certification of transferee*—(A) *Non-electronic submittal*. The transferee's designated representative must sign and date the application certifying that all information is true, correct, and complete.

(B) *Electronic submittal*. The transferee's designated representative must log into the system and accept the transfer request as indicated on the computer screen. By using the transferee's NMFS ID, password and Transfer Key and submitting the transfer request, the designated representative certifies that all information is true, correct, and complete.

(3) *Application for transfer of crab QS or PQS*. NMFS will process a request for transfer of crab quota share (QS) or crab processor quota share (PQS) provided that a paper request form is completed and notarized, with all information fields accurately filled in, and all required additional documentation is attached. The transferor's and the transferee's designated representatives must sign and date the application certifying that all information is true, correct, and complete.

* * * * *

■ 11. In § 680.44, revise paragraph (a)(4)(iii) to read as follows:

§ 680.44 Cost recovery.

(a) * * *

(4) * * *

(iii) *Payment address*. Submit payment and related documents as instructed on the fee form; payments may also be submitted electronically to NMFS. Forms are available on the

NMFS Alaska Region website at *http://alaskafisheries.noaa.gov*, or by contacting NMFS at: 800–304–4846, Option 2.

* * * * *

[FR Doc. E9–24217 Filed 10–6–09; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 193
Wednesday, October 7, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

[NRC–2008–0608]

RIN 3150–AI42

Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Extension of comment period.

SUMMARY: On July 31, 2009, the Nuclear Regulatory Commission (NRC) published a proposed rule for public comment that would amend its environmental protection regulations by updating the NRC's 1996 findings on the environmental impacts related to the renewal of operating licenses for nuclear power plants. The NRC stated that it intends to review the assessment of impacts and update it on a 10-year cycle, if necessary. The proposed rule redefines the number and scope of the environmental impact issues that must be addressed by the NRC in conjunction with the review of applications for nuclear power facility license renewal. As part of this 10-year update, the NRC revised the 1996 *Generic Environmental Impact Statement* (GEIS) *for License Renewal of Nuclear Plants.* Concurrent with the amendments described in this proposed rule, the NRC published for comment the revised GEIS and a revised Environmental Standard Review Plan (ESRP), *Standard Review Plans for Environmental Reviews for Nuclear Power Plants, Supplement 1: Operating License Renewal,* (74 FR 38239), and a revised Regulatory Guide (RG) 4.2, Supplement 1 *Preparation of Environmental Reports for Nuclear Power Plant License Renewal Applications* (74 FR 38238). A 75-day comment period was provided for the proposed rule, associated guidance documents, and information collection analysis that would have expired on October 14, 2009.

The proposed rule, regulatory analysis, related guidance documents (including the GEIS, ESRP, and Regulatory Guide), and the information collection analysis comment submittal deadline is extended from the original October 14, 2009 deadline to January 12, 2010.

DATES: The comment period for the proposed rule, regulatory analysis, related guidance documents, and information collection analysis has been extended by 90 days and now expires on January 12, 2010. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: Comments may be submitted by letter or electronic mail and will be made available for public inspection. Because comments will not be edited to remove any identification or contact information, such as name, addresses, telephone number, e-mail address, etc., the NRC cautions against including any personal information in your submissions that you do not want to be publicly disclosed. The NRC requests that any party soliciting on aggregating comments received from other persons for submission to the NRC inform these persons that the NRC will not edit their comments to remove any identifying or comment information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal eRulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2008–0608]. Address questions about NRC dockets to Carol Gallagher (301)–492–3668; e-mail *Carol.Gallager@nrc.gov.*

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments; contact us directly at (301)–415–1677.

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301)–415–1101.

Publicly available documents related to this rulemaking may be accessed using the following methods:

NRC's Public Document Room (PDR): Publicly available documents may be examined at the NRC's PDR, Public File Area O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee.

NRC's Agencywide Document Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this link, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If problems are encountered accessing documents in ADAMS, contact the NRC's PDR reference staff at (800)–397–4209, or (301)-415–4737, or by e-mail to *PDR.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Jason Lising, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301)–415–3220; e-mail: *Jason.Lising@nrc.gov;* or Mr. Jeffrey Rikhoff, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301)-415–1090; e-mail: *Jeffrey.Rikhoff@nrc.gov.*

SUPPLEMENTARY INFORMATION: During the period of July 31–September 11, 2009, the NRC received three letters requesting that the comment period for the proposed rulemaking be extended. One of the requests was for an extension of 61 days for a total of 136 days. The other two requests were for an extension of 90 days for a total of 165 days. The requestors stated various reasons to support their request (listed below):

(1) The related documents are voluminous (over 1,400 pages). Stakeholders should be given a more reasonable amount of time to properly analyze and develop meaningful comments.

(2) The proposed amendments and guidance documents cover many significant legal, regulatory, and policy issues related to a well-established licensing process that will require extensive review.

(3) The proposed rule attempts to update 13-year old findings related to

environmental reviews for nuclear power plant license renewals. Therefore, ample time is needed to thoroughly review the NRC's update to determine whether the proposed modifications accurately reflect the new environmental landscape that has developed over the last 13 years.

(4) After the first 10-year review cycle ended in 2006, the NRC has had three years to formulate the proposed changes. A 75-day comment period is not sufficient to review and comment on these proposed amendments to regulations and voluminous associated guidance documents.

(5) The NRC has scheduled a series of four public meetings that will occur throughout the second half of September, as well as an additional public meeting on October 1, 2009. Extending the comment period will allow stakeholders to use information presented at these public meetings to provide the agency with more comprehensive and meaningful comments.

(6) Additional meetings are requested for the public to provide comments.

The NRC wants the public to have sufficient time to provide the agency with constructive comments that will improve the quality of these regulations as well as the license renewal process. The NRC recognizes the quantity of information to be reviewed and is extending the comment period for the proposed rulemaking, related guidance documents, and information collection analysis for an additional 90 days. Based on feedback from stakeholders, the NRC believes that a 90-day extension will allow sufficient time for all stakeholders to develop and provide meaningful comments on these documents.

The proposed rule, regulatory analysis, related guidance documents (including the GEIS, ESRP, and Regulatory Guide), and information collection analysis comment submittal deadline is extended from the original October 14, 2009, deadline to January 12, 2010.

Dated at Rockville, Maryland, this 1st day of October 2009.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E9–24153 Filed 10–6–09; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0457; Airspace Docket No. 09–AAL–10]

Proposed Establishment of Class E Airspace; Point Thompson, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Point (Pt.) Thompson Airport at Pt. Thompson, AK. The privately funded Special Instrument Approach Procedures (IAPs) serving Pt. Thompson, AK have been drafted. The FAA's policy is to provide controlled airspace at airports serviced by instrument procedures for the safe and efficient use of Instrument Flight Rules (IFR) operations at Pt. Thompson Airport.

DATES: Comments must be received on or before November 23, 2009.

ADDRESSES: Send comments on the proposal 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. You must identify the docket number FAA–2009–0457/ Airspace Docket No. 09–AAL–10, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0457/Airspace Docket No. 09–AAL–10.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemakings (NPRMs)

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular

No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71, to establish Class E airspace extending upward from 700 feet (ft.) above the surface at Pt. Thompson, AK. Controlled airspace is necessary to accommodate two special IAPs developed for the Pt. Thompson Airport. They are the Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 4, Original, and the RNAV (GPS) RWY 22, Original. The textual ODP is unnamed. The FAA is proposing this action for the safety and management of IFR operations at the Pt. Thompson Airport, Pt. Thompson, AK.

The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be subsequently published in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, 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 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to establish Class E airspace at the Pt. Thompson Airport at Pt. Thompson, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR 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 Federal Aviation Administration Order 7400.9S, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, is to be amended as follows:

* * * * *

Paragraph 6005 Class E Airspace Extending Upward from 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Point Thompson, AK [New]

Pt. Thompson, Pt. Thompson Airport, AK
(Lat. 70°10′52″ N., long. 146°21′01″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Pt. Thompson Airport, AK.

* * * * *

Issued in Anchorage, AK, on September 18, 2009.

Anthony M. Wylie,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. E9–24174 Filed 10–6–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0197; Airspace Docket No. 09–AAL–4]

Proposed Establishment of Class E Airspace; Clarks Point, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at the Clarks Point Airport at Clarks Point, AK. Two Standard Instrument Approach Procedures (SIAPs) are being developed for the Clarks Point Airport at Clarks Point, AK. Additionally, one textual Obstacle Departure Procedure (ODP) is being developed. Adoption of this proposal would result in establishing Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at the Clarks Point Airport at Clarks Point, AK.

DATES: Comments must be received on or before November 23, 2009.

ADDRESSES: Send comments on the proposal 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. You must identify the docket number FAA–2009–0197/ Airspace Docket No. 09–AAL–4, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0197/Airspace Docket No. 09–AAL–4.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemakings (NPRMs)

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71, which would establish Class E airspace at the Clarks Point Airport, Clarks Point, AK. The intended effect of this proposal is to establish Class E airspace upward from 700 ft. and 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at the Clarks Point Airport, Clarks Point, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has created two new SIAPs for the Clarks Point Airport and one textual ODP. The SIAPs are (1) the Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 18, Original and (2) the RNAV (GPS) RWY 36, Original. Textual ODPs are unnamed and are published in the front of the U.S. Terminal Procedures for Alaska. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the Clarks Point Airport area would be established by this action. The proposed airspace is sufficient in size to contain aircraft executing the instrument procedures at the Clarks Point Airport, Clarks Point, AK.

The Class E airspace areas designated as 700/1,200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be subsequently published in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, 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 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to establish Class E airspace at Clarks Point Airport, Clarks Point, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR 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 Federal Aviation Administration Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, is to be amended as follows:

* * * * *

Paragraph 6005 Class E Airspace Extending Upward from 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Clarks Point, AK [New]

Clarks Point Airport, Clarks Point, AK
(Lat. 58°50′01″ N., long. 158°31′46″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Clarks Point Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Clarks Point Airport, AK.

* * * * *

Issued in Anchorage, AK, on September 18, 2009.

Anthony M. Wylie,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. E9–24179 Filed 10–6–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 90

[Docket Number 0908171239–91239–01]

RIN 0607–AA49

Temporary Suspension of the Population Estimates and Income Estimates Challenge Programs

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: This document provides notice to state and local governments and to federal agencies that, beginning on January 1, 2010, the Bureau of the Census (Census Bureau) proposes to temporarily suspend the Population Estimates Challenge Program and to indefinitely suspend the Per Capita Income Estimates Challenge Program (also known as Procedure for Challenging Certain Population and Income Estimates) during the decennial census year and the year following it to accommodate the taking of the 2010 Census. During this time, the Census Bureau would not provide the operations necessary to review the July 1, 2009, population or per capita income estimates for state, and other general-purpose governments, such as cities, towns, and villages. The Population Estimates Challenge Program is expected to resume in 2012 as the program begins operations based upon the results of the 2010 Census. The Per Capita Income Estimates Challenge Program would be suspended until a rulemaking can be initiated to remove those regulations from the Code of Federal Regulations.

DATES: Comments must be received by November 6, 2009.

ADDRESSES: Comments may be submitted through any of the following methods:

- *Federal eRulemaking Portal: www.Regulations.gov*
- *Mail:* Mr. Rodger Johnson, Population Division, Bureau of the Census, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: Mr. Rodger Johnson, Population Division, Bureau of the Census, Washington, DC 20233, telephone (301) 763–2461, e-mail at *rodger.v.johnson@census.gov.*

SUPPLEMENTARY INFORMATION: The Census Bureau first adopted procedures for initiating informal challenges to certain population or per capita income estimates prepared by the Census Bureau in 1979 by amending Title 15 of the Code of Federal Regulations (CFR) to provide for a new Part 90 (44 FR 20646). These regulations were needed to standardize and codify procedures and to extend to the state or local government the right to a hearing prior to a final determination of the challenged estimate by the Director of the Census Bureau. Legal authority for the challenge procedures remains 13 U.S.C. 4, which provides in pertinent part, that the Secretary may issue rules and regulations as he deems necessary to carry out his functions and duties under Title 13.

The Census Bureau prepares estimates of total population and per capita income for states and units of local government for the period between decennial censuses. States, counties, and other units of general-purpose government may initiate informal challenges to population and per capita income estimates under the procedures set forth in 15 CFR Part 90. Under the regulations, a challenge is defined as ''the process of objecting to or calling into question the Census Bureau's population or per capita income estimates of a state or unit of local government.'' Government entities are given 180 days after the release of the population or per capita income estimates to initiate an informal challenge. If the challenge cannot be resolved informally, the government submitting the challenge can choose to file a formal challenge (15 CFR 90.9), which is resolved in a hearing that is held at the Census Bureau and presided over by a hearing officer that is appointed by the Census Bureau Director.

As is done for other intercensal programs, the Census Bureau hereby notifies the public that it proposes to suspend the Population Estimates Challenge Program after the resolution of all challenges to the 2008 population estimates, which should occur by January 1, 2010. The Census Bureau will release the 2009 population estimates in 2010, however, the Census Bureau would not accept challenges to the 2009 estimates.

The Population Estimates Challenge Program would resume in 2012 after the Census Bureau concludes its responsibilities in the conduct of the decennial census. During the period when the program is suspended, the Census Bureau will be conducting demographic analysis of the 2010 Census, evaluating the results of the 2010 Census in comparison with the population estimates, conducting research to enhance the estimates and challenge programs and integrating the updates from the 2010 Census into the estimates program after the 2010 Census.

After the conduct of the decennial census, the Census Bureau would resume accepting challenges to the population estimates by publishing in the **Federal Register** a notice that announces the date when it will begin to accept challenges. The Census Bureau would accept challenges beginning with the 2011 population estimates. The 2011 population estimates are based upon the 2010 Census and are scheduled for release in 2012.

Suspending the Population Estimates Challenge Program is a necessary action in order to ensure that sufficient resources are allocated to the conduct of the decennial census, allowing the Census Bureau's Population Division staff to effectively evaluate the 2010 census results.

In addition, the Census Bureau notifies the public that it will also suspend the Per Capita Income Estimates Challenge Program, which are codified in the same part as the Population Estimates Challenge Program. This program has not been active since the general revenue sharing program ended in 1986, along with its requirement for per capita income estimates, and thus it has been determined to suspend the program indefinitely. The Census Bureau will undertake a rulemaking action in the near future to remove these regulations from the Code of Federal Regulations.

Classification

Executive Order 12866: It has been determined that this notice is not significant for purposes of E.O. 12866.

Executive Order 13132: It has been determined that this notice does not contain policies with federalism implications as that term is defined in EO 13132.

Regulatory Flexibility Act: The Chief Counsel for Regulations certified to the Chief Counsel for Advocacy that this rule, if implemented, would not have a significant economic impact on a substantial number of small entities. The entities that would be impacted by this rule are all States, counties, and other units of general-purpose government. Section 601(5) of the Regulatory Flexibility Act defines small

governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000. Under this definition, the Census Bureau estimates that there are 37,204 general purpose governmental units impacted by this rule that would be considered small entities based upon the 2008 population estimates. Although a substantial number of small entities would be impacted by this rule, the proposed rule is not expected to result in significant economic impact. The suspension of the Population Estimates Challenge Program does not directly impose economic costs to the impacted entities, as the program is a mechanism to allow affected entities to seek corrections to their population estimates. The indirect impacts of this rulemaking are unknown as it is infeasible to identify the programs that rely on the population estimates and to determine which of those programs would avail themselves of the challenge program results. However, it is noted that the 2010 Census population counts will be available shortly thereafter for comprehensive use in various programs in lieu of the population estimates.

List of Subjects in 15 CFR Part 90

Administrative practice and procedure; Census data; State and local governments.

For reasons discussed in the preamble, the Census Bureau proposed to amend 15 CFR Part 90 as follows:

PART 90—PROCEDURE FOR CHALLENGING CERTAIN POPULATION AND INCOME ESTIMATES [AMENDED]

1. The authority citation for Part 90 continues to read as follows:

Authority: 13 U.S.C. 4.

2. Effective January 1, 2010, PART 90—PROCEDURE FOR CHALLENGING CERTAIN POPULATION AND INCOME ESTIMATES is stayed.

Dated: September 30, 2009.

Robert M. Groves,

Director, Bureau of the Census.

[FR Doc. E9–24164 Filed 10–6–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–160871–04]

RIN 1545–BH37

Period of Limitations on Assessment for Listed Transactions Not Disclosed Under Section 6011

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the exception to the general three-year period of limitations on assessment under section 6501(c)(10) of the Internal Revenue Code (Code) for listed transactions that a taxpayer failed to disclose as required under section 6011. These regulations will affect taxpayers who fail to disclose listed transactions in accordance with section 6011.

DATES: Written or electronic comments and requests for a public hearing must be received by January 5, 2010.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–160871–04), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–160871–04), 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–160871–04).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Audra M. Dineen at (202) 622–4910; concerning submissions of comments and requests for a public hearing, Oluwafunmilayo Taylor of the Publications and Regulations Branch at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking 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 1545–1940. The collection of information in these proposed regulations is in § 301.6501(c)–1(g)(5). This information is required to provide the IRS, under penalties of perjury, with the information necessary to properly determine the taxpayer's applicable period of limitations. The collection of information in these proposed regulations is the same as the collection of information in Revenue Procedure 2005–26 (2005–1 CB 965), which was previously reviewed and approved by the Office of Management and Budget under control number 1545–1940. The collection of information in § 301.6501(c)–1(g)(6) is the same as the collection of information required under section 6112. *See* § 601.601(d)(2)(ii)(b).

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 control number assigned by the Office of Management and Budget.

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 proposed amendments to the Procedure and Administration Regulations (26 CFR Part 301) under section 6501(c) relating to exceptions to the period of limitations on assessment. Section 6501(a) provides that, except as otherwise provided, if a return is filed, tax with respect to that return must be assessed within 3 years from the later of the date the return was filed or the original due date of the return. Section 6501(c) contains several exceptions to the general three-year period of limitations on assessment.

Section 6501(c)(10) was added to the Code by section 814 of the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418, 1581 (2004)) (AJCA), enacted on October 22, 2004. Section 6501(c)(10) provides that, if a taxpayer fails to disclose a listed transaction as required under section 6011, the time to assess tax against the taxpayer with respect to that transaction will end no earlier than one year after the earlier of (1) the date on which the taxpayer furnishes the information required under section 6011, or (2) the date that a material advisor furnishes to the Secretary, upon written request, the information required under section 6112 with respect to the taxpayer related to the listed transaction. Accordingly, if neither the taxpayer nor a material advisor furnishes the requisite information, the period of limitations on assessment will remain open, and thus, the tax with respect to the listed

transaction may be assessed at any time. Section 6501(c)(10) is effective for taxable years with respect to which the period of limitations on assessment did not expire prior to October 22, 2004.

As noted, section 6501(c)(10) applies when a taxpayer does not properly disclose a listed transaction (as defined in section 6707A(c)(2)) as required under section 6011. Taxpayers are required under section 6011 and the regulations under section 6011 (collectively referred to as the ''section 6011 disclosure rules'') to disclose certain information regarding each reportable transaction in which the taxpayer participated. *See* Treas. Reg. §§ 1.6011–4; 20.6011–4; 25.6011–4; 31.6011–4; 53.6011–4; 54.6011–4; and 56.6011–4. Among the transactions that are reportable are ''listed transactions.'' *See* Treas. Reg. § 1.6011–4(b)(2). Under the section 6011 disclosure rules, a listed transaction is a transaction that is the same as, or substantially similar to, a transaction that the IRS has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance. Treas. Reg. § 1.6011–4(b)(2). Section 6707A(c)(2) incorporates the same definition of listed transaction. For a list of transactions the IRS has identified as listed transactions, see Notice 2009–59, 2009–31 IRB 1. *See* § 601.601(d)(2).

If the section 6011 disclosure rules require a taxpayer to disclose a listed transaction, the taxpayer must complete and file a disclosure statement in accordance with the section 6011 disclosure rules. The section 6011 disclosure rules currently require that Form 8886, ''Reportable Transaction Disclosure Statement'' (or successor form), be used as the disclosure statement and be completed in accordance with the instructions to the form. The Form 8886 (or successor form) generally must be attached to the taxpayer's original or amended tax return for each taxable year for which a taxpayer participates in a listed transaction. Treas. Reg. § 1.6011–4(e)(1). If a listed transaction results in a loss that is carried back to a prior year, Form 8886 (or successor form) must be attached to the taxpayer's application for tentative refund or amended tax return for that prior year. The taxpayer also must send a copy of Form 8886 (or successor form) to the IRS Office of Tax Shelter Analysis (OTSA), generally at the same time that a disclosure statement pertaining to a particular listed transaction is first filed. Under the current rules, when a transaction is identified as a listed transaction after the date on which the taxpayer files a tax return (including an amended return) for a taxable year reflecting the taxpayer's participation in the listed transaction and before the end of the period of limitations for assessment of tax for any taxable year in which the taxpayer participated in the listed transaction, then the taxpayer must file Form 8886 (or successor form) with OTSA within 90 calendar days after the date the transaction became a listed transaction.

If a taxpayer does not disclose its participation in a listed transaction in accordance with all of the requirements of the section 6011 disclosure rules and section 6501(c)(10) applies, then the time to assess tax related to the listed transaction will expire no earlier than the earlier of (1) one year after the date on which the information described in section 6501(c)(10)(A) is provided, or (2) one year after the date on which the information described in section 6501(c)(10)(B) is provided.

The IRS and Treasury Department issued Rev. Proc. 2005–26 (2005–1 CB 965) on April 25, 2005, to provide interim guidance on section 6501(c)(10). The revenue procedure prescribes how taxpayers and material advisors should disclose listed transactions that were not properly disclosed under section 6011 in order to start the one-year period under section 6501(c)(10). Taxpayers may continue to rely on Rev. Proc. 2005–26 until temporary or final regulations are issued under section 6501(c)(10). *See* § 601.601(d)(2). In that revenue procedure, the IRS and Treasury Department also requested comments concerning the procedures set forth in the revenue procedure, especially their application to partners and partnerships. One comment was received but it did not address the limitations period.

Explanation of Provisions

These proposed regulations provide rules reflecting the enactment of section 6501(c)(10) by the AJCA. They explain how to determine whether section 6501(c)(10) applies and, if so, the applicable period of limitations on assessment. As a preliminary matter, the effective date of section 6501(c)(10) limits its application to taxable years with respect to which the period of limitations on assessment was open on or after October 22, 2004 (the date the AJCA was enacted). Thus, for taxable years for which a return was due prior to October 22, 2004, an analysis under section 6501 must be conducted to determine if the period of limitations on assessment was open under the general three-year period or an exception other than section 6501(c)(10).

1. Application of Section 6501(c)(10)

The general rule for applying section 6501(c)(10) is set forth in § 301.6501(c)–1(g)(1) of these proposed regulations. The first step in analyzing whether section 6501(c)(10) applies is to determine whether the taxpayer failed to comply with any disclosure obligation under the section 6011 disclosure rules with respect to a listed transaction (as defined in section 6707A(c)(2)) for any taxable year. The IRS and Treasury Department have issued several regulations under section 6011, some of which apply only to certain types of taxpayers. The disclosure requirements also vary among the regulations. Therefore, particular attention must be paid to the effective dates of the various section 6011 disclosure rules in order to determine whether there was a disclosure obligation.

If there was no obligation to disclose the listed transaction, or if the taxpayer complied with its disclosure obligations, then section 6501(c)(10) does not apply. If there was a disclosure obligation and a failure to disclose as required, then section 6501(c)(10) applies. Section 6501(c)(10) applies to all open years for which the taxpayer failed to disclose its participation in the transaction as required under the section 6011 disclosure rules, even if the disclosures required under section 6011 were not due in, or with a return for, the year of participation but were due in a later year when the transaction was subsequently identified as a listed transaction. If section 6501(c)(10) applies because a taxpayer failed to disclose a listed transaction and the transaction is later removed from the category of listed transactions, section 6501(c)(10) will continue to apply with respect to the tax years for which disclosure was required. If section 6501(c)(10) applies, then the period of limitations with respect to the listed transaction will remain open until at least the earlier of (1) one year after the date on which the taxpayer provides a disclosure to satisfy section 6501(c)(10)(A) (as provided in § 301.6501(c)–1(g)(5) described elsewhere in this preamble), or (2) one year after the date on which a material advisor provides the IRS with information concerning the taxpayer's participation in the transaction sufficient to satisfy section 6501(c)(10)(B) (as provided in § 301.6501(c)–1(g)(6) described elsewhere in this preamble). If either paragraph (g)(5) or (g)(6) is satisfied, the period of limitations on assessment will end under the circumstances described

in § 301.6501(c)–1(g)(2) of these proposed regulations.

Section 301.6501(c)–1(g)(2) of these proposed regulations also provides guidance on how section 6501(c)(10) interacts with the otherwise applicable period of limitations provided in the Internal Revenue Code. The proposed regulations confirm that section 6501(c)(10) does not operate to extend a limitations period that expired before the effective date of section 6501(c)(10) or before the date on which the failure to disclose occurs. In addition, a taxpayer or material advisor cannot shorten any other applicable period of limitations on assessment by following the procedures to begin the one-year period provided under section 6501(c)(10), including, but not limited to, a limitations period that has been extended by agreement under section 6501(c)(4), or the limitations period described in section 6501(c)(1) relating to a false or fraudulent return.

The terms ''listed transaction,'' ''material advisor,'' and ''taxable year(s) to which the failure to disclose relates'' are defined in § 301.6501(c)–1(g)(3) of these proposed regulations by cross-reference to section 6707A and the relevant regulations under sections 6011 and 6111.

Under section 6501(c)(10), the term ''listed transaction'' is defined by reference to section 6707A(c)(2), which defines a listed transaction as ''a reportable transaction that is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.'' Although section 6707A was enacted by section 811 of the AJCA and is effective for returns and statements due after October 22, 2004, and which were not filed before that date, its definition of ''listed transactions'' incorporates transactions identified as listed transactions in the section 6011 disclosure rules before section 6707A was enacted. Accordingly, any transactions that were listed transactions as of October 22, 2004, under the section 6011 disclosure rules are listed transactions under section 6707A and, thus, for purposes of section 6501(c)(10). Therefore, section 6501(c)(10) applies to transactions that were identified as listed transactions prior to October 22, 2004.

The term ''taxable year(s) to which the failure to disclose relates'' identifies the years to which section 6501(c)(10) applies. Clarification is necessary because a taxpayer may participate in a listed transaction over multiple years, because a transaction may be identified as a listed transaction after the taxpayer enters into the transaction, and because the section 6011 disclosure rules may require disclosure in a year in which the taxpayer did not participate in the listed transaction. The term ''taxable year(s) to which the failure to disclose relates'' means each taxable year that the taxpayer participated (as defined by the regulations under section 6011) in a transaction that was identified as a listed transaction and for which there was no proper disclosure when required under the section 6011 disclosure rules. For these purposes, it does not matter whether the transaction was identified as a listed transaction before or after the taxpayer filed a tax return for any taxable year in which the taxpayer participated in the transaction. On occasion, the section 6011 disclosure rule may require that a disclosure be filed in a taxable year or with a tax return for a taxable year other than the taxable year in which the taxpayer participated in the listed transaction. In those circumstances, the taxable year(s) to which the failure to disclose relates is not the taxable year in which the disclosure is required to be filed, but each taxable year that the taxpayer participated in the listed transaction.

Section 301.6501(c)–1(g)(4) of these proposed regulations provides the rule for application of section 6501(c)(10) in the case of taxpayers who are partners in partnerships, shareholders in S corporations, or beneficiaries of trusts. If these taxpayers were required to disclose their participation in a listed transaction under the section 6011 disclosure rules, and failed to disclose, then the period of limitations on assessment with respect to each partner, shareholder, or beneficiary that failed to disclose will remain open under section 6501(c)(10) even if the partnership, S corporation, or trust disclosed in accordance with the section 6011 disclosure rules and even if another partner, shareholder, or beneficiary disclosed in accordance with the section 6011 disclosure rules. This rule is as adopted because the period of limitations on assessment is specific to each taxpayer. Consistent with the above rule, a failure to disclose by an entity will not cause section 6501(c)(10) to apply to all of the taxpayers who are partners, shareholders or beneficiaries of the entity.

2. One-Year Period Under Section 6501(c)(10)

Guidance on the events that will start the one-year period under section 6501(c)(10) is provided in § 301.6501(c)–1(g)(5) and (6) of these proposed regulations.

a. Disclosures by Taxpayers of Required Information

Under section 6501(c)(10)(A), if there is a failure to disclose information related to a listed transaction as required under the section 6011 disclosure rules, the time to assess tax will end no earlier than one year after the date ''the Secretary is furnished the information so required.'' Section 301.6501(c)–1(g)(5)(i)(A)–(C) of these proposed regulations sets forth the general procedures for how to furnish the information to the IRS. These procedures are similar to the ones required under the section 6011 disclosure rules because failure to comply with those rules triggers the application of section 6501(c)(10). Because the rules set forth in § 301.6501(c)–1(g)(5)(i) generally concern annual returns, § 301.6501(c)–1(g)(5)(ii) provides that the IRS may issue published guidance that prescribes alternative procedures to address particular listed transactions, if necessary, in the case of returns other than annual returns.

Section 301.6501(c)–1(g)(5)(i)(A) of these proposed regulations provides that to begin the one-year period under section 6501(c)(10)(A) taxpayers must complete Form 8886 (or successor form) in accordance with the instructions to the form and these proposed regulations and submit the completed form with a cover letter (as described in § 301.6501(c)–1(g)(5)(i)(B)) to OTSA. Under the procedures set forth in Revenue Procedure 2005–26, taxpayers were required to submit the completed form and cover letter both to OTSA and the Internal Revenue Service Center where the taxpayer filed its original return in all cases and, if applicable, to an IRS examiner or Appeals officer. These proposed regulations simplify the procedures taxpayers need to follow by only requiring them to submit the information to one IRS office instead of two, unless the taxpayer also needs to submit a copy to an IRS examiner or Appeals officer, as discussed later in this Preamble.

Taxpayers must complete the most current version of the form available at the time the taxpayer attempts to satisfy section 6501(c)(10). In other words, if the Form 8886 (or successor form) changes between the date that the taxpayer was required to disclose the listed transaction under the section 6011 disclosure rules and the date that the taxpayer discloses the listed transaction for purposes of section 6501(c)(10), then the taxpayer must follow the rules in effect on the date of the section 6501(c)(10) disclosure.

The taxpayer also must indicate on the form that the disclosure is for purposes of section 6501(c)(10) and the tax return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure. The section 6501(c)(10) disclosure will only be effective for the tax return(s) and taxable year(s) that the taxpayer specifies he or she is attempting to disclose for purposes of section 6501(c)(10). Thus, for example, if a taxpayer failed to disclose the taxpayer's participation in a listed transaction in three taxable years but the taxpayer's section 6501(c)(10) disclosure only specifies one taxable year, then the period of limitations on assessment for the other two taxable years will remain open under section 6501(c)(10). If the Form 8886 (or successor form) contains a line for that purpose, then taxpayers may use that line, so long as the line is completed in accordance with the instructions to the form. If no line is provided on the form, then the taxpayer must include on the top of Page 1 of the Form 8886, and each copy of the form, the following statement: ''*Section 6501(c)(10) Disclosure*'' followed by the tax return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure. This information is necessary to place the IRS on notice that the taxpayer is attempting to remedy its failure to properly disclose the listed transaction and, thus, the one-year period will start to run with respect to the tax years identified. Because the IRS may have as little as one year to determine whether to conduct an examination and, if it does conduct an examination, to determine whether any additional tax is due with respect to the listed transaction, it is important that the IRS receives proper notice that the one-year period has started.

Taxpayers must submit a separate Form 8886 (or successor form) and cover letter (discussed elsewhere in this Preamble) for each listed transaction that the taxpayer did not properly disclose under the section 6011 disclosure rules. If the taxpayer participated in one listed transaction over multiple years, then the taxpayer may submit one Form 8886 (or successor form), so long as the taxpayer indicates on the Form 8886 all of the tax returns and taxable years for which the taxpayer is making a section 6501(c)(10) disclosure. If a taxpayer participated in more than one listed transaction, then the taxpayer must submit separate Forms 8886 (or successor form) for each listed transaction, unless the listed transactions are the same or substantially similar, in which case all the listed transactions may be reported on one Form 8886.

Section 301.6501(c)–1(g)(5)(i)(B) of these proposed regulations provides the requirements for the cover letter. The cover letter must identify the tax return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure. In addition, the cover letter must include the statement provided in § 301.6501(c)–1(g)(5)(i)(B) signed under penalties of perjury by the taxpayer and, if applicable, by the paid preparer preparing the Form 8886. The cover letter is necessary because the Form 8886 does not currently contain a penalties-of-perjury statement or place for signature.

A special rule for taxpayers under examination or Appeals consideration by the IRS is provided in § 301.6501(c)–1(g)(5)(i)(C) of these proposed regulations. If the taxpayer wants to make a section 6501(c)(10) disclosure for a taxable year or a listed transaction under examination or Appeals consideration, then, in addition to the otherwise applicable filing obligations set forth in § 301.6501(c)–1(g)(5)(i)(A), the taxpayer must submit a copy of the submission made under paragraph (g)(5)(i)(A) to the IRS examiner or Appeals officer examining or considering the taxable year to which the section 6501(c)(10) disclosure relates. This rule is adopted to ensure that the IRS personnel who are considering the taxpayer's tax year(s) at issue are made aware as soon as possible that the one-year period under section 6501(c)(10) may have started to run, so that whatever action is necessary can be taken within the one-year period.

Section 301.6501(c)–1(g)(5)(i)(D) provides guidance concerning the date on which the taxpayer is considered to have furnished the information to the IRS to satisfy section 6501(c)(10)(A) and start the running of the one-year period. The one-year period under section 6501(c)(10)(A) will begin on the date that the taxpayer satisfies all the requirements set forth in § 301.6501(c)–1(g)(5)(i)(A) through (C). If the required procedures are not completed on the same date, the one-year period will begin on the date that the last procedure is satisfied. For example, if a taxpayer mails a completed Form 8886 to OTSA but not to the IRS examiner or Appeals officer who is examining or considering the taxable year to which the section 6501(c)(10) disclosure relates, the one-year period under section 6501(c)(10)(A) will not begin until both events occur.

Information provided under § 301.6501(c)–1(g)(5) is deemed furnished on the date the IRS receives the information. Section 7502 does not apply to the mailing of the information detailed in § 301.6501(c)–1(g)(5), because the information is not required to be filed within a prescribed period or on or before a prescribed date. Taxpayers can determine the date the IRS receives the information by using a delivery service that provides a way to track delivery, such as U.S. registered or certified mail, express or priority mail, or delivery confirmation from the U.S. post office or a private delivery service that provides tracking. Moreover, documentation from the post office or private delivery service showing the date the information was delivered to the IRS, together with evidence that the envelope was properly addressed to the office to which the information was required to be sent, generally will be sufficient proof that the IRS received the information, unless the IRS can establish that it did not in fact receive the information. Separate delivery confirmation documentation should be obtained to establish receipt by OTSA and the appropriate IRS revenue agent or Appeals officer, if applicable.

b. Disclosures by Material Advisors

Under section 6501(c)(10)(B), if a taxpayer fails to disclose information related to a listed transaction as required under the section 6011 disclosure rules, the time to assess tax will end no earlier than one year after the date ''a material advisor meets the requirements of section 6112 with respect to a request by the Secretary under section 6112(b) relating to such transaction with respect to such taxpayer.'' Section 6112 requires material advisors to maintain lists of advisees and other information with respect to reportable transactions, including listed transactions, and to furnish that information to the IRS upon request. The term ''material advisor'' is defined in § 301.6111–3(b). The IRS and Treasury Department finalized regulations under section 6112 in TD 9352 (72 FR 43154) published on August 3, 2007. Section 6112 and § 301.6112–1 provide guidance relating to the preparation, content, maintenance, retention, and furnishing of lists by material advisors.

Section 6501(c)(10)(B) provides that a material advisor must satisfy the requirements of section 6112 to begin the one-year period. Information provided in response to another method of inquiry, such as an Information Document Request in a section 6700 investigation, will not begin the one-year period. In addition, § 301.6501(c)–1(g)(6)(i) provides that the material advisor must furnish the information described in § 301.6112–1(e) with

respect to the taxpayer that failed to properly disclose the listed transaction. Thus, if the material advisor furnishes the information described in § 301.6112–1(e) for some, or even most, of its clients but not for a particular taxpayer that failed to properly disclose the listed transaction, then the assessment period for that taxpayer will remain open under section 6501(c)(10).

Section 301.6501(c)–1(g)(6)(ii) of these proposed regulations clarifies that the one-year period will begin once the material advisor furnishes the information in response to an IRS request under section 6112, regardless of whether the material advisor provides the information within 20 business days of the IRS's request as required by section 6708. If the material advisor furnishes the required information over the course of multiple days, the requirements of paragraph (g)(6) of this section will be deemed satisfied and the one-year period will begin on the date that the IRS is furnished the information that, together with prior information, satisfies the requirements of section 6112 and § 301.6112–1 with respect to the taxpayer. The information is deemed furnished for purposes of section 6501(c)(10) on the date the material advisor is treated as satisfying the requirements of section 6112 under the rules applicable to that section.

3. Taxes That Can Be Assessed Under Section 6501(c)(10)

Section 6501(c)(10) allows the IRS to assess any tax with respect to a listed transaction for the taxable year(s) to which the failure to disclose relates. Section 301.6501(c)–1(g)(7) of these proposed regulations provides that taxes with respect to the listed transaction include, but are not limited to, (1) adjustments made to the tax consequences claimed on the return, (2) adjustments to any item to the extent the item is affected by the listed transaction even if it is unrelated to the listed transaction, and (3) interest and penalties that are related to the listed transaction or the adjustments made to the tax consequences (*see* I.R.C. §§ 6601(e)(1) and 6665(a)(2)). An example of an item affected by the listed transaction but not related to the listed transaction is the threshold for the medical expense deduction under section 213 that varies if there is a change in an individual's adjusted gross income. Examples of a penalty related to the adjustments made to the tax consequences are the accuracy-related penalties under sections 6662 and 6662A. An example of a penalty related to the listed transaction is the penalty under section 6707A for failure to file the disclosure statement reporting the taxpayer's participation in the listed transaction.

4. Examples

Section 301.6501(c)–1(g)(8) of these proposed regulations contains examples of the application of section 6501(c)(10) to various types of taxpayers participating in listed transactions. Additional examples illustrate the application of the one-year period under section 6501(c)(10), the coordination of section 6501(c)(10) with other limitations periods provided by the Internal Revenue Code, and tax that can be assessed with respect to a listed transaction.

Proposed Effective/Applicability Date

When adopted as final regulations, these rules will apply to taxable years with respect to which the period of limitations on assessment did not expire before the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. However, taxpayers may rely on these proposed regulations for taxable years with respect to which the period of limitations on assessment expired before the publication of the Treasury decision. Otherwise, Rev. Proc. 2005–26 continues to apply for taxable years to which these regulations do not apply and for which the period of limitations on assessment did not expire before April 8, 2005—the effective date of Rev. Proc. 2005–26.

Effect on Other Documents

Upon the publication of final regulations under section 6501(c)(10) in the **Federal Register**, Rev. Proc. 2005–26 (2005–1 CB 965) will be superseded for taxable years with respect to which the period of limitations on assessment did not expire before the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

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.

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). Section 6501(c)(10) applies when taxpayers fail to comply with the reporting requirements set forth in section 6011. The Treasury Department and the IRS do not know the exact number and types of taxpayers that fail to comply with those requirements. However, although the Treasury Department and the IRS are aware that many tax avoidance transactions involve pass-through entities, when pass-through entities are utilized, the entities are not ultimately liable for the tax; rather, the taxpayers subject to section 6501(c)(10) will be the individuals and corporations owning, directly or indirectly, the interests in the pass-though entities. Therefore, the Treasury Department and the IRS have determined that these proposed regulations will not affect a substantial number of small entities.

In addition, the Treasury Department and the IRS have determined that any impact on small entities resulting from these proposed regulations will not be significant. Most of the information required under these proposed regulations is already required by other regulations or forms, namely § 1.6011–4, § 301.6112–1, and Form 8886, ''Reportable Transaction Disclosure Statement.'' The only new information required to be submitted to the IRS is a cover letter, which must contain a reference to the tax returns and taxable year(s) at issue and a statement signed under penalty of perjury. The cover letter should take minimal time and expense to prepare. Therefore, the additional requirement of the cover letter should not significantly increase the burden on taxpayers. Based on these facts, the Treasury Department and the IRS have determined that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Pursuant to section 7805(f) of the Internal Revenue Code, this 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 Requests for a 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 substance of the proposed regulations, as well as on the clarity of the proposed rules and how they can be made easier to understand. All comments submitted by the public will be made available for public

inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register.**

Drafting Information

The principal author of these regulations is Audra M. Dineen of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR Part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6501(c)–1 is amended by adding paragraph (g) to read as follows:

§ 301.6501(c)–1 Exceptions to general period of limitations on assessment and collection.

(g) *Listed transactions*—(1) *In general.* If a taxpayer is required to disclose a listed transaction under section 6011 and the regulations under section 6011 and does not do so in the time and manner required, then the time to assess any tax attributable to that listed transaction for the taxable year(s) to which the failure to disclose relates (as defined in paragraph (g)(3)(iii) of this section) will not expire before the earlier of one year after the date on which the taxpayer makes the disclosure described in paragraph (g)(5) of this section or one year after the date on which a material advisor makes a disclosure described in paragraph (g)(6) of this section.

(2) *Limitations period if paragraph (g)(5) or (g)(6) is satisfied.* If one of the disclosure provisions described in paragraphs (g)(5) or (g)(6) of this section is satisfied, then the tax attributable to the listed transaction may be assessed at any time before the expiration of the limitations period that would have otherwise applied under this section (determined without regard to paragraph (g)(1) of this section) or the period ending one year after the date that one of the disclosure provisions described in paragraphs (g)(5) or (g)(6) of this section was satisfied, whichever is later. If both disclosure provisions are satisfied, the one-year period will begin on the earlier of the dates on which the provisions were satisfied. Paragraph (g)(1) of this section does not apply to any period of limitations on assessment that expired before the date on which the failure to disclose the listed transaction under section 6011 occurred.

(3) *Definitions*—(i) *Listed transaction.* The term *listed transaction* means a transaction described in section 6707A(c)(2) of the Code and § 1.6011–4(b)(2) of this chapter.

(ii) *Material advisor.* The term *material advisor* means a person described in section 6111(b)(1) of the Code and § 301.6111–3(b) of this chapter.

(iii) *Taxable year(s) to which the failure to disclose relates.* The *taxable year(s) to which the failure to disclose relates* are each taxable year that the taxpayer participated (as defined under section 6011 and the regulations under section 6011) in a transaction that was identified as a listed transaction and the taxpayer failed to disclose the listed transaction as required under section 6011. If the taxable year in which the taxpayer participated in the listed transaction is different from the taxable year in which the taxpayer is required to disclose the listed transaction under section 6011, the taxable year(s) to which the failure to disclose relates are each taxable year that the taxpayer participated in the transaction.

(4) *Application of paragraph with respect to pass-through entities.* In the case of taxpayers who are partners in partnerships, shareholders in S corporations, or beneficiaries of trusts and are required to disclose a listed transaction under section 6011 and the regulations under section 6011, paragraph (g)(1) of this section will apply to a particular partner, shareholder, or beneficiary if that particular taxpayer does not disclose within the time and in the form and manner provided by section 6011 and § 1.6011–4(d) and (e), regardless of whether the partnership, S corporation, or trust or another partner, shareholder, or beneficiary discloses in accordance with section 6011 and the regulations under section 6011. Similarly, because paragraph (g)(1) of this section applies on a taxpayer-by-taxpayer basis, the failure of a partnership, S corporation, or trust that has a disclosure obligation under section 6011 and does not disclose within the time or in the form and manner provided by § 1.6011–4(d) and (e) will not cause paragraph (g)(1) of this section to apply automatically to all the partners, shareholders or beneficiaries of the entity. Instead, the application of paragraph (g)(1) of this section will be determined based on whether the particular taxpayer satisfied their disclosure obligation under section 6011 and the regulations under section 6011.

(5) *Taxpayer's disclosure of a listed transaction that taxpayer did not properly disclose under section 6011*—(i) *In general*—(A) *Method of disclosure.* The taxpayer must complete the most current version of Form 8886, ''Reportable Transaction Disclosure Statement'' (or successor form), available on the date the taxpayer attempts to satisfy this paragraph in accordance with § 1.6011–4(d) (in effect on that date) and the instructions to that form. The taxpayer must indicate on the Form 8886 that the form is being submitted for purposes of section 6501(c)(10) and the tax return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure. The section 6501(c)(10) disclosure will only be effective for the tax return(s) and taxable year(s) that the taxpayer specifies he or she is attempting to disclose for purposes of section 6501(c)(10). If the Form 8886 contains a line for this purpose then the taxpayer must complete the line in accordance with the instructions to that form. Otherwise, the taxpayer must include on the top of Page 1 of the Form 8886, and each copy of the form, the following statement: ''*Section 6501(c)(10) Disclosure''* followed by the tax return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure. For example, if the taxpayer did not properly disclose its participation in a listed transaction the tax consequences of which were reflected on the taxpayer's Form 1040 for the 2005 taxable year, the taxpayer must include the following statement: ''*Section 6501(c)(10) Disclosure; 2005 Form 1040''* on the form. The taxpayer must submit the properly completed Form 8886 and a cover letter, which must be completed in accordance with the requirements set forth in paragraph (g)(5)(i)(B) of this section, to the Office of Tax Shelter Analysis (OTSA). The taxpayer is permitted, but not required, to file an amended return with the Form 8886 and cover letter. Separate Forms 8886 and separate cover letters must be submitted for each listed transaction the taxpayer did not properly disclose under section 6011. If the taxpayer participated in one listed transaction

over multiple years, the taxpayer may submit one Form 8886 (or successor form) and cover letter and indicate on that form all of the tax returns and taxable years for which the taxpayer is making a section 6501(c)(10) disclosure. If a taxpayer participated in more than one listed transaction, then the taxpayer must submit separate Forms 8886 (or successor form) for each listed transaction, unless the listed transactions are the same or substantially similar, in which case all the listed transactions may be reported on one Form 8886.

(B) *Cover letter.* A cover letter to which a Form 8886 is to be attached must identify the tax return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure and include the following statement signed under penalties of perjury by the taxpayer and if the Form 8886 is prepared by a paid preparer, the Form 8886 must be signed under penalties of perjury by the paid preparer as well:

Under penalties of perjury, I declare that I have examined this reportable transaction disclosure statement and, to the best of my knowledge and belief, this reportable transaction disclosure statement is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which the preparer has any knowledge.

(C) *Taxpayer under examination or Appeals consideration.* A taxpayer making a disclosure under paragraph (g)(5) of this section with respect to a taxable year under examination or Appeals consideration by the IRS must satisfy the requirements of paragraphs (g)(5)(i)(A) and (B) of this section and also submit a copy of the submission to the IRS examiner or Appeals officer examining or considering the taxable year(s) to which the disclosure under paragraph (g) of this section relates.

(D) *Date the one-year period will begin to run if paragraph (g)(5) satisfied.* Unless an earlier expiration is provided for in paragraph (g)(6) of this section, the time to assess tax under paragraph (g) of this section will not expire before one year after the date on which the Secretary is furnished the information from the taxpayer that satisfies all the requirements of paragraphs (g)(5)(i)(A) and (B) of this section and, if applicable, paragraph (g)(5)(i)(C) of this section. If the taxpayer does not satisfy all of the requirements on the same date, the one-year period will begin on the date that the IRS is furnished the information that, together with prior disclosures of information, satisfies the requirements of paragraph (g)(5) of this section. For purposes of paragraph (g)(5) of this section, the information is deemed furnished on the date the IRS receives the information.

(ii) *Exception for returns other than annual returns.* The IRS may prescribe alternative procedures to satisfy the requirements of this paragraph (g)(5) in a revenue procedure, notice, or other guidance published in the Internal Revenue Bulletin for circumstances involving returns other than annual returns.

(6) *Material advisor's disclosure of a listed transaction not properly disclosed by a taxpayer under section 6011*—(i) *Method of disclosure.* In response to a written request of the IRS under section 6112, a material advisor with respect to a listed transaction must furnish to the IRS the information described in section 6112 and § 301.6112–1(b) in the form and manner prescribed by section 6112 and § 301.6112–1(e). If the information the material advisor furnishes identifies the taxpayer as a person who engaged in the listed transaction, regardless of whether the material advisor provides the information before or after the taxpayer's failure to disclose the listed transaction under section 6011, then the requirements of this paragraph (g)(6) will be satisfied for that taxpayer. The requirements of this paragraph (g)(6) will be considered satisfied even if the material advisor furnishes the information required under section 6112 to the IRS after the date prescribed in section 6708 or published guidance relating to section 6708.

(ii) *Date the one-year period will begin if paragraph (g)(6) is satisfied.* Unless an earlier expiration is provided for in paragraph (g)(5) of this section, the time to assess tax under paragraph (g) of this section will expire one year after the date on which the material advisor satisfies the requirements of paragraph (g)(6)(i) of this section with respect to the taxpayer. For purposes of paragraph (g)(6) of this section, information is deemed to be furnished on the date that, in response to a request under section 6112, the IRS receives the information from a material advisor that satisfies the requirements of paragraph (g)(6)(i) of this section with respect to the taxpayer.

(7) *Tax assessable under this section.* If the period of limitations on assessment for a taxable year remains open under this section, the Secretary has authority to assess any tax with respect to the listed transaction in that year. This includes, but is not limited to, adjustments made to the tax consequences claimed on the return plus interest, additions to tax, additional amounts, and penalties that are related to the listed transaction or adjustments made to the tax consequences. This also includes any item to the extent the item is affected by the listed transaction even if it is unrelated to the listed transaction. An example of an item affected by, but unrelated to, a listed transaction is the threshold for the medical expense deduction under section 213 that varies if there is a change in an individual's adjusted gross income. An example of a penalty related to the listed transaction is the penalty under section 6707A for failure to file the disclosure statement reporting the taxpayer's participation in the listed transaction. Examples of penalties related to the adjustments made to the tax consequences are the accuracy-related penalties under sections 6662 and 6662A.

(8) *Examples.* The rules of paragraph (g) of this section are illustrated by the following examples:

Example 1. No requirement to disclose under section 6011. P, an individual, is a partner in a partnership that entered into a transaction in 2001 that was the same as or substantially similar to the transaction identified as a listed transaction in Notice 2000–44 (2000–2 CB 255). P claimed a loss from the transaction on his Form 1040 for the tax year 2001. P filed the Form 1040 prior to June 14, 2002. P did not disclose his participation in the listed transaction because P was not required to disclose the transaction under the applicable section 6011 regulations (TD 8961). Although the transaction was a listed transaction and P did not disclose the transaction, P had no obligation to include on any return or statement any information with respect to a listed transaction within the meaning of section 6501(c)(10) because TD 8961 only applied to corporations, not individuals. Accordingly, section 6501(c)(10) does not apply.

Example 2. Taxable year to which the failure to disclose relates when transaction is identified as a listed transaction after taxpayer files a tax return for that year. (i) In January 2009, A, a calendar year taxpayer, enters into a transaction that at the time is not a listed transaction. A reports the tax consequences from the transaction on its individual income tax return for 2009 timely filed on April 15, 2010. The time for the IRS to assess tax against A under the general three-year period of limitations for A's 2009 taxable year would expire on April 15, 2013. A only participated in the transaction in 2009. On March 1, 2012, the IRS identifies the transaction as a listed transaction. A does not file the Form 8886 with OTSA by May 30, 2012.

(ii) The period of limitations on assessment for A's 2009 taxable year was open on the date the transaction was identified as a listed transaction. Under the applicable section 6011 regulations (TD 9350, 2007–38 IRB 607), A must disclose its participation in the transaction by filing a completed Form 8886 with OTSA on or before May 30, 2012, which is 90 days after the date the transaction became a listed transaction. A did not disclose the transaction as required. A's failure to disclose relates to taxable year 2009

even though the obligation to disclose did not arise until 2012. Section 6501(c)(10) operates to keep the period of limitations on assessment open for the 2009 taxable year with respect to the listed transaction until at least one year after the date A satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to A.

Example 3. Requirements of paragraph (g)(6) satisfied. Same facts as *Example 2,* except that on April 5, 2013, the IRS hand delivers to Advisor J, who is a material advisor, a section 6112 request related to the listed transaction. Advisor J furnishes the required list with all the information required by section 6112 and § 301.6112–1, including all the information required with respect to A, to the IRS on May 13, 2013. The submission satisfies the requirements of paragraph (g)(6) even though Advisor J furnishes the information outside of the 20-business-day period provided in section 6708. Accordingly, under section 6501(c)(10), the period of limitations with respect to A's taxable year 2009 will end on May 13, 2014, one year after the IRS received the required information, unless the period of limitations remains open under another exception. Any tax for the 2009 taxable year not attributable to the listed transaction must be assessed by April 15, 2013.

Example 4. Requirements of paragraph (g)(5) also satisfied.

Same facts as *Examples 2 and 3,* except that on May 23, 2013, A files a properly completed Form 8886 and signed cover letter with OTSA both identifying that the section 6501(c)(10) disclosure relates to A's Form 1040 for 2009. A satisfied the requirements of paragraph (g)(5) of this section as of May 23, 2013. Because the requirements of paragraph (g)(6) were satisfied first as described in *Example 3,* under section 6501(c)(10) the period of limitations will end on May 13, 2014 (one year after the requirements of paragraph (g)(6) were satisfied) instead of May 23, 2014 (one year after the requirements of paragraph (g)(5) were satisfied). Any tax for the 2009 taxable year not attributable to the listed transaction must be assessed by April 15, 2013.

Example 5. Period to assess tax remains open under another exception.

Same facts as *Examples 2, 3, and 4,* except that on April 1, 2013, A signed Form 872, consenting to extend, without restriction, its period of limitations on assessment for taxable year 2009 under section 6501(c)(4) until July 15, 2014. In that case, although under section 6501(c)(10) the period of limitations would otherwise expire on May 13, 2014, the IRS may assess tax with respect to the listed transaction at any time up to and including July 15, 2014, pursuant to section 6501(c)(4). Section 6501(c)(10) can operate to extend the assessment period but cannot shorten any other applicable assessment period.

Example 6. Requirements of (g)(5) not satisfied.

In 2009, X, a corporation, enters into a listed transaction. On March 15, 2010, X timely files its 2009 Form 1120, reporting the tax consequences from the transaction. X does not disclose the transaction as required under section 6011 when it files its 2009 return. The failure to disclose relates to taxable year 2009. On February 12, 2014, X completes and files a Form 8886 with respect to the listed transaction with OTSA but does not submit a cover letter, as required. The requirements of paragraph (g)(5) of this section have not been satisfied. Therefore, the time to assess tax against X with respect to the transaction for taxable year 2009 remains open under section 6501(c)(10).

Example 7. Taxable year to which the failure to disclose relates when transaction is identified as a listed transaction after first year of participation.

(i) On December 30, 2003, Y, a corporation, enters into a transaction that at the time is not a reportable transaction. On March 15, 2004, Y timely files its 2003 Form 1120, reporting the tax consequences from the transaction. On April 1, 2004, the IRS issues Notice 2004–31 that identifies the transaction as a listed transaction. Y also reports tax consequences from the transaction on its 2004 Form 1120, which it timely filed on March 15, 2005. Y did not attach a completed Form 8886 to its 2004 Form 1120 and did not send a copy of the form to OTSA. The general three-year period of limitations on assessment for Y's 2003 and 2004 taxable years would expire on March 15, 2007, and March 17, 2008, respectively.

(ii) The period of limitations on assessment for Y's 2003 taxable year was open on the date the transaction was identified as a listed transaction. Under the applicable section 6011 regulations (TD 9108), Y should have disclosed its participation in the transaction with its next filed return, which was its 2004 Form 1120, but Y did not disclose its participation. Y's failure to disclose with the 2004 Form 1120 relates to taxable years 2003 and 2004. Section 6501(c)(10) operates to keep the period of limitations on assessment open for the 2003 and 2004 taxable years with respect to the listed transaction until at least one year after the date Y satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to Y.

Example 8. Section 6501(c)(10) applies to keep one partner's period of limitations on assessment open.

T and S are partners in a partnership, TS, that enters into a listed transaction in 2010. T and S each receive a Schedule K–1 from TS on April 11, 2011. On April 15, 2011, TS, T and S each file their 2010 returns. Under the applicable section 6011 regulations, TS, T, and S each are required to disclose the transaction. TS attaches a completed Form 8886 to its 2010 Form 1065 and sends a copy of Form 8886 to OTSA. Neither T nor S files a disclosure statement with their respective returns nor sends a copy to OTSA on April 15, 2011. On May 17, 2011, T timely files a completed Form 8886 with OTSA pursuant to § 1.6011–4(e)(1). T's disclosure is timely because T received the Schedule K–1 within 10 calendar days before the due date of the return and, thus, T had 60 calendar days to file Form 8886 with OTSA. TS and T properly disclosed the transaction in accordance with the applicable regulations under section 6011, but S did not. S's failure to disclose relates to taxable year 2010. The time to assess tax with respect to the transaction against S for 2010 remains open under section 6501(c)(10) even though TS and T disclosed the transaction.

Example 9. Section 6501(c)(10) satisfied before expiration of three-year period of limitations under section 6501(a).

Same facts as *Example 8,* except that on August 27, 2012, S satisfies the requirements of paragraph (g)(5) of this section. No material advisor satisfied the requirements of paragraph (g)(6) of this section with respect to S on a date earlier than August 27, 2012. Under section 6501(c)(10), the period of time in which the IRS may assess tax against S with respect to the listed transaction would expire no earlier than August 27, 2013, one year after the date S satisfied the requirements of paragraph (g)(5). As the general three-year period of limitations on assessment under section 6501(a) does not expire until April 15, 2014, the IRS will have until that date to assess any tax with respect to the listed transaction.

Example 10. No section 6112 request.

B, a calendar year taxpayer, entered into a listed transaction in 2010. B did not comply with the applicable disclosure requirements under section 6011 for taxable year 2010; therefore, section 6501(c)(10) applies to keep the period of limitations on assessment open with respect to the tax related to the transaction until at least one year after B satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to B. In June 2011, the IRS conducts a section 6700 investigation of Advisor K, who is a material advisor to B with respect to the listed transaction. During the course of the investigation, the IRS obtains the name, address, and TIN of all of Advisor K's clients who engaged in the transaction, including B. The information provided does not satisfy the requirements of paragraph (g)(6) with respect to B because the information was not provided pursuant to a section 6112 request. Therefore, the time to assess tax against B with respect to the transaction for taxable year 2010 remains open under section 6501(c)(10).

Example 11. Section 6112 request but the requirements of paragraph (g)(6) are not satisfied with respect to B.

Same facts as *Example 10,* except that on January 2, 2014, the IRS sends by certified mail a section 6112 request to Advisor L, who is another material advisor to B with respect to the listed transaction. Advisor L furnishes some of the information required under section 6112 and § 301.6112–1 to the IRS for inspection on January 13, 2014. The list includes information with respect to many clients of Advisor L, but it does not include any information with respect to B. The submission does not satisfy the requirements of paragraph (g)(6) of this section with respect to B. Therefore, the time to assess tax against B with respect to the transaction for taxable year 2010 remains open under section 6501(c)(10).

Example 12. Section 6112 submission made before taxpayer failed to disclose a listed transaction.

Advisor M, who is a material advisor, advises C, an individual, in 2010 with respect to a transaction that is not a reportable transaction at that time. C files its return claiming the tax consequences of the transaction on April 15, 2011. The time for the IRS to assess tax against C under the general three-year period of limitations for C's 2010 taxable year would expire on April 15, 2014. The IRS identifies the transaction as a listed transaction on November 1, 2013. On December 5, 2013, the IRS hand delivers to Advisor M a section 6112 request related to the transaction. Advisor M furnishes the information to the IRS on December 30, 2013. The information contains all the required information with respect to Advisor M's clients, including C. C does not disclose the transaction on or before January 30, 2014, as required under section 6011 and the regulations under section 6011. Advisor M's submission under section 6112 satisfies the requirements of paragraph (g)(6) of this section even though it occurred prior to C's failure to disclose the listed transaction. Thus, under section 6501(c)(10), the period of limitations to assess tax against C with respect to the listed transaction will end on December 30, 2014 (one year after the requirements of paragraph (g)(6) of this section were satisfied), unless the period of limitations remains open under another exception.

Example 13. Transaction removed from the category of listed transactions after taxpayer failed to disclose.

D, a calendar year taxpayer, entered into a listed transaction in 2011. D did not comply with the applicable disclosure requirements under section 6011 for taxable year 2011; therefore, section 6501(c)(10) applies to keep the period of limitations on assessment open with respect to the tax related to the transaction until at least one year after D satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to D. In 2016, the IRS removes the transaction from the category of listed transactions because of a change in law. Section 6501(c)(10) continues to apply to keep the period of limitations on assessment open for D's taxable year 2011.

Example 14. Taxes assessed with respect to the listed transaction.

(i) F, an individual, enters into a listed transaction in 2009. F files its 2009 Form 1040 on April 15, 2010, but does not disclose his participation in the listed transaction in accordance with section 6011 and the regulations under section 6011. F's failure to disclose relates to taxable year 2009. Thus, section 6501(c)(10) applies to keep the period of limitations on assessment open with respect to the tax related to the listed transaction for taxable year 2009 until at least one year after the date F satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to F.

(ii) On July 1, 2014, the IRS completes an examination of F's 2009 taxable year and disallows the tax consequences claimed as a result of the listed transaction. The disallowance of a loss increased F's adjusted gross income. Due to the increase of F's adjusted gross income, certain credits, such as the child tax credit, and exemption deductions were disallowed or reduced because of limitations based on adjusted gross income. In addition, F now is liable for the alternative minimum tax. The examination also uncovered that F claimed two deductions on Schedule C to which F was not entitled. Under section 6501(c)(10), the IRS can timely issue a statutory notice of deficiency (and assess in due course) against F for the deficiency resulting from (1) disallowing the loss, (2) disallowing the credits and exemptions to which F was not entitled based on F's increased adjusted gross income, and (3) being liable for the alternative minimum tax. In addition, the IRS can assess any interest and applicable penalties related to those adjustments, such as the accuracy-related penalty under sections 6662 and 6662A and the penalty under section 6707A for F's failure to disclose the transaction as required under section 6011 and the regulations under section 6011. The IRS cannot, however, pursuant to section 6501(c)(10), assess the increase in tax that would result from disallowing the two deductions on F's Schedule C because those deductions are not related to, or affected by, the adjustments concerning the listed transaction.

(9) *Effective/applicability date.* The rules of this paragraph (g) apply to taxable years with respect to which the period of limitations on assessment did not expire before the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register.** However, taxpayers may rely on the rules of this paragraph (g) for taxable years with respect to which the period of limitations on assessment expired before the date of publication of the Treasury decision. If an individual does not choose to rely on the rules of this paragraph (g), Rev. Proc. 2005–26 (2005–1 CB 965) will continue to apply to taxable years with respect to which the period of limitations on assessment expired on or after April 8, 2005, and before the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E9–24112 Filed 10–6–09; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2009–0597; FRL–8966–6]

RIN 2060 AP87

Prevention of Significant Deterioration (PSD): Reconsideration of Interpretation of Regulations That Determine Pollutants Covered by the Federal PSD Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reconsideration.

SUMMARY: In a December 18, 2008 memorandum, EPA established an interpretation of the regulatory phrase ''subject to regulation'' that is applied to determine the pollutants subject to the federal Prevention of Significant Deterioration (PSD) program under the Clean Air Act (CAA or Act). On February 17, 2009, the EPA Administrator granted a petition for reconsideration of the regulatory interpretation in the memorandum. However, the Administrator did not grant a request to stay the memorandum, so the interpretation remains in effect for the federal PSD program pending completion of this reconsideration action. This document implements the grant of reconsideration by discussing and requesting public comment on various interpretations of the regulatory phrase ''subject to regulation.'' The interpretations discussed in this document include our current and preferred interpretation, which would make PSD applicable to a pollutant on the basis of an EPA regulation requiring actual control of emissions of a pollutant, as well as interpretations that would make PSD applicable to a pollutant on the basis of an EPA regulation requiring monitoring or reporting of emissions of a pollutant, the inclusion of regulatory requirements for specific pollutants in an EPA-approved state implementation plan (SIP), an EPA finding of endangerment, and the grant of a section 209 waiver. This document also takes comments on related issues and other interpretations that could influence this reconsideration.

DATES: *Comments.* Comments must be received on or before December 7, 2009.

Public Hearing. If anyone contacts EPA requesting a public hearing by October 22, 2009, we will hold a public hearing approximately 30 days after publication in the **Federal Register.**

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–

OAR–2009–0597, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Environmental Protection Agency, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0597. EPA's policy is that all comments received will be included in the public docket without change and may be made available online 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 *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web Site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: The December 18, 2008 interpretive memorandum, the petition for reconsideration, and all other documents in the record for this reconsideration are in Docket ID. No. EPA–HQ–OAR–2009–0597. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

Public Hearing: If a hearing is held, it will be held at the U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Svendsgaard, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–2380; fax number: (919) 541–5509; e-mail address *svendsgaard.dave@epa.gov.*

To request a public hearing, please contact Ms. Pam Long, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* (919) 541–0641; *fax number:* (919) 541–5509; *e-mail address: long.pam@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities affected by this rule include sources in all industry groups. Entities potentially affected by this rule also include states, local permitting authorities, and tribal authorities. The majority of categories and entities potentially affected by this action are expected to be in the following groups:

Industry group	NAICS [a]
Utilities (electric, natural gas, other systems)	2211, 2212, 2213.
Manufacturing (food, beverages, tobacco, textiles, leather)	311, 312, 313, 314, 315, 316.
Wood product, paper manufacturing	321, 322.
Petroleum and coal products manufacturing	32411, 32412, 32419.
Chemical manufacturing	3251, 3252, 3253, 3254, 3255, 3256, 3259.
Rubber product manufacturing	3261, 3262.
Miscellaneous chemical products	32552, 32592, 32591, 325182, 32551.
Nonmetallic mineral product manufacturing	3271, 3272, 3273, 3274, 3279.
Primary and fabricated metal manufacturing	3311, 3312, 3313, 3314, 3315, 3321, 3322, 3323, 3324, 3325, 3326, 3327, 3328, 3329.
Machinery manufacturing	3331, 3332, 3333, 3334, 3335, 3336, 3339.
Computer and electronic products manufacturing	3341, 3342, 3343, 3344, 3345, 4446.
Electrical equipment, appliance, and component manufacturing	3351, 3352, 3353, 3359.
Transportation equipment manufacturing	3361, 3362, 3363, 3364, 3365, 3366, 3366, 3369.
Furniture and related product manufacturing	3371, 3372, 3379.
Miscellaneous manufacturing	3391, 3399.
Waste management and remediation	5622, 5629.
Hospitals/Nursing and residential care facilities	6221, 6231, 6232, 6233, 6239.
Personal and laundry services	8122, 8123.
Residential/private households	8141.
Non-Residential (Commercial)	Not available. Codes only exist for private households, construction and leasing/sales industries.

[a] North American Industry Classification System.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this proposal will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this notice will be posted on the EPA's New Source Review (NSR) Web site, under Regulations & Standards, at *http://www.epa.gov/nsr.*

C. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.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. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2009–0597.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- 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.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

D. How can I find information about a possible public hearing?

People interested in presenting oral testimony or inquiring if a hearing is to be held should contact Ms. Pam Long, New Source Review Group, Air Quality Policy Division (C504–03), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–0641. If a hearing is to be held, persons interested in presenting oral testimony should notify Ms. Long at least 2 days in advance of the public hearing. Persons interested in attending the public hearing should also contact Ms. Long to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed rules.

E. How is the preamble organized?

The information presented in this preamble is organized as follows:

II. Background

On December 18, 2008, in order to address an ambiguity that existed in the federal PSD regulations, then-EPA Administrator Stephen Johnson issued a memorandum setting forth the official EPA interpretation regarding which pollutants were ''subject to regulation'' for the purposes of the federal PSD permitting program. Memorandum from Stephen Johnson, EPA Administrator, to EPA Regional Administrators, RE: EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program (Dec. 18, 2008) (''PSD Interpretive Memo'' or ''Memo''); *see also* 73 FR 80300 (Dec. 31, 2008) (public notice of Dec. 18, 2008 memo). The Memo was necessary after issues were raised regarding the scope of pollutants that should be addressed in PSD permitting actions following the Supreme Court's April 2, 2007 decision in *Massachusetts* v. *EPA,* 549 U.S. 497 (2007).

In *Massachusetts* v. *EPA,* the Supreme Court held that greenhouse gases (GHGs), including carbon dioxide (CO_2), are air pollutants under the CAA. The case arose from EPA's denial of a petition for rulemaking filed by more than a dozen environmental, renewable energy, and other organizations requesting that EPA control emissions of GHGs from new motor vehicles under section 202 of the CAA. The Court found that in accordance with CAA section 202(a), the Administrator was required to determine whether or not emissions of GHGs from new motor vehicles cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, or whether the science is too uncertain to make a reasoned decision.[1]

On August 30, 2007, EPA Region VIII issued a PSD permit to Deseret Power Electric Cooperative, authorizing it to construct a new waste-coal-fired electric generating unit near its existing Bonanza Power Plant, in Bonanza, Utah. Final Air Pollution Control Prevention of Significant Deterioration (PSD) Permit to Construct, Permit No. PSD–OU–0002–04.00, Deseret Power Electric Cooperative (Aug. 30, 2007). The Deseret PSD permit did not include best available control technology (BACT)

[1] On April 17, 2009, the EPA Administrator took the first step in the CAA section 202 rulemaking process by proposing endangerment and cause or contribute findings for GHGs under the CAA. *See* 74 FR 18886 (April 24, 2009). On September 15, 2009, the U.S. Department of Transportation Secretary and EPA Administrator jointly signed a proposed rule establishing a national program that would improve fuel economy and reduce GHGs from motor vehicles.

limits for CO_2. In responding to comments received during the permitting process, the Region acknowledged the *Massachusetts* decision but found that decision alone did not require PSD permits to include limits on CO_2 emissions. Region VIII explained that the requirement for PSD permits to contain BACT emissions limitations for each pollutant ''subject to regulation'' under the CAA, as found in the CAA section 165(a)(4) and 40 CFR 52.21(b)(12), did not apply to CO_2 emissions because the Agency had historically interpreted the phrase ''subject to regulation'' to ''describe pollutants that are presently subject to a statutory or regulatory provision that requires actual control of emissions of that pollutant.'' Region VIII explained that EPA codified this approach by defining the term ''regulated NSR pollutant'' in 40 CFR 52.21(b)(50) and requiring BACT for ''each regulated NSR pollutant'' in 40 CFR 52.21(j)(2). *See* Response to Public Comments on Draft Air Pollution Control Prevention of Significant Deterioration (PSD) Permit to Construct, Permit No. PSD–OU–0002–04.00 (Aug. 30, 2007) at 5–6.

On November 13, 2008, the Environmental Appeals Board (EAB) issued a decision in a challenge to the Deseret PSD permitting decision. *In re Deseret Power Electric Cooperative,* PSD Appeal No. 07–03 (EAB Nov. 13, 2008) (''*Deseret''*). In briefs filed in that case, Region VIII and the EPA Office of Air and Radiation maintained the position that the Agency had a binding, historic interpretation of the phrase ''subject to regulation'' in the federal PSD regulations that required PSD permit limits to apply only to those pollutants already subject to actual control of emissions under other provisions of the CAA. Response of EPA Office of Air and Radiation and Region VIII to Briefs of Petitioner and Supporting Amici (filed March 21, 2008). Accordingly, these EPA offices argued that the regulations contained in 40 CFR Part 75, which require monitoring of CO_2 at some sources, did not make CO_2 subject to PSD regulation. The order and opinion issued by the EAB remanded the permit after finding that prior EPA actions were insufficient to establish a historic, binding interpretation that ''subject to regulation'' for PSD purposes included only those pollutants subject to regulations that require actual control of emissions. However, the EAB also rejected arguments that the CAA compelled only one interpretation of the phrase ''subject to regulation'' and found ''no evidence of a Congressional intent to compel EPA to apply BACT to pollutants that are subject only to monitoring and reporting requirements.'' Thus, the Board remanded the permit to the Region to ''reconsider whether or not to impose a CO_2 BACT limit in light of the 'subject to regulation' definition under the CAA.'' The Board encouraged EPA to consider ''addressing the interpretation of the phrase 'subject to regulation under this Act' in the context of an action of nationwide scope, rather than through this specific permitting proceeding.'' *See Deseret* at 63–64.

Shortly thereafter, in order to address the ambiguity that existed in the federal PSD program following the EAB's *Deseret* decision, then-EPA Administrator Stephen Johnson issued the PSD Interpretive Memo. The Memo sets forth the official EPA interpretation regarding which pollutants are ''subject to regulation'' for the purposes of the federal PSD permitting program, interpreting the phrase to include pollutants ''subject to either a provision in the CAA or regulation adopted by EPA under the CAA that requires actual control of emissions of that pollutant,'' while excluding pollutants ''for which EPA regulations only require monitoring or reporting.'' *See* Memo at 1. On December 31, 2008, EPA received a Petition for Reconsideration of the position taken in the PSD Interpretive Memo from Sierra Club and 14 other environmental, renewable energy, and citizen organizations. Petition for Reconsideration, In the Matter of: EPA Final Action Published at 73 FR 80300 (Dec. 31, 2008), entitled ''Clean Air Act Prevention of Significant Deterioration (PSD) Construction Permit Program; Interpretation of Regulations That Determine Pollutants Covered by the Federal PSD Permit Program.'' Petitioners argued that the PSD Interpretive Memo ''was impermissible as a matter of law, because it was issued in violation of the procedural requirements of the Administrative Procedures Act * * * and the Clean Air Act * * *, it directly conflicts with prior agency actions and interpretations, and it purports to establish an interpretation of the Act that conflicts with the plain language of the statute.'' *See* Petition at 2. Accordingly, Petitioners requested that EPA reconsider and retract the PSD Interpretive Memo. Petitioners later amended their Petition for Reconsideration to include a request to stay the effect of the Memo pending the outcome of the reconsideration request. Amended Petition for Reconsideration (filed Jan. 6, 2009).[2]

On February 17, 2009, the EPA Administrator granted the Petition for Reconsideration on the PSD Interpretive Memo, citing to the authority under the Administrative Procedures Act, and announced her intent to conduct a rulemaking to allow for public comment on the issues raised in the Memo and on any issues raised by the opinion of the EAB's *Deseret* decision, to the extent they do not overlap with the issues raised in the Memo.[3] Administrator Jackson did not stay the effectiveness of the PSD Interpretive Memo pending reconsideration, but she did reiterate that the Memo ''does not bind States issuing [PSD] permits under their own State Implementation Plans.'' *See* Letter from Lisa P. Jackson, EPA Administrator, to David Bookbinder, Chief Climate Counsel at Sierra Club (Feb. 17, 2009) at 1.

III. This Action

A. Overview

In accordance with the Administrator's February 17, 2009 letter granting reconsideration, in the sections that follow, we summarize the interpretation contained in the PSD Interpretive Memo regarding when a pollutant becomes ''subject to regulation'' for the purposes of applying PSD program requirements and the Memo's arguments in support of that interpretation, as well as a summary of Petitioners' main arguments in favor of alternative interpretations, and request public comment on those interpretations.[4] Specifically, this reconsideration action addresses five interpretations of the regulatory phrase ''subject to regulation''—the actual control interpretation adopted by the PSD Interpretive Memo; the monitoring and reporting interpretation advocated

[2] On January 15, 2009, a number of environmental organizations that filed this Petition for Reconsideration also filed a petition challenging the PSD Interpretive Memo in U.S. Court of Appeals for the District of Columbia Circuit. *Sierra Club* v. *E.P.A.,* No. 09–1018 (D.C. Cir., filed Jan. 15, 2009).

Thereafter, various parties moved to intervene in that action or filed similar petitions challenging the Memo. The consolidated D.C. Circuit cases have been held in abeyance pending this reconsideration process. *Id.,* Order (filed March 9, 2009).

[3] Because Administrator Jackson's grant of reconsideration directed the Agency to conduct this reconsideration using a notice and comment process, this action does not address the procedural challenge presented in the Petition for Reconsideration.

[4] While the sections below provide a summary of the primary arguments contained in the PSD Interpretive Memo and the Petition for Reconsideration, we advise the public to review the original documents contained in Docket EPA–HQ–OAR–2009–0597 in preparing their comments.

by Petitioners; the inclusion of regulatory requirements for specific pollutants in SIPs, which is discussed in both the PSD Interpretive Memo and the Petition for Reconsideration; [5] an EPA finding of endangerment, which is discussed in the PSD Interpretive Memo; and the grant of a section 209 waiver, which was raised by commenters in another EPA action. EPA is also addressing other issues raised in the PSD Interpretive Memo and related actions that may influence the present reconsideration and request for public comment, as necessary.

Of the five interpretations described in this reconsideration, the EPA continues to favor the ''actual control interpretation,'' which remains in effect at this time. As explained in the following section, the actual control interpretation best reflects our past policy and practice, is in keeping with the structure and language of the statute and regulations, and best allows for the necessary coordination of approaches to controlling emissions of newly identified pollutants. While the other interpretations described herein may represent alternatives for interpreting ''subject to regulation,'' no particular one is compelled by the statute, nor did the EAB determine that any one of them was so compelled. Because we have overarching concerns over the policy and practical application of each of the other interpretations, as discussed in more detail later in this notice, we are inclined to adopt the actual control interpretation as our final interpretation. Nevertheless, in this notice, we are requesting comment on a wide range of issues related to each of these interpretations and will carefully consider those comments before reaching a final decision.

As a general matter, the stated purpose of the PSD Interpretive Memo is to ''establish[ ] an interpretation clarifying the scope of the EPA regulation that determines the pollutants subject to the federal Prevention of Significant Deterioration (PSD) program under the Clean Air Act (CAA or Act)'' by providing EPA's ''definitive interpretation'' of the definition of the term ''regulated NSR pollutants'' found at 40 CFR 52.21(b)(50) and resolving ''any ambiguity in subpart ([iv]) of that paragraph, which includes 'any pollutant that otherwise is subject to regulation under the Act.''' *See* Memo at 1. As the Memo explains, the statute and regulation use similar language—the regulation defines a regulated NSR pollutant to include ''[a]ny pollutant that otherwise is subject to regulation under the Act'' and requires BACT for ''each regulated NSR pollutant,'' 40 CFR 52.21(b)(50) and (j), while the Act requires BACT for ''each pollutant subject to regulation under this [Act],'' CAA sections 165(a)(4) and 169. The EAB has already determined that ''the meaning of the term 'subject to regulation under this Act' as used in [CAA] sections 165 and 169 is not so clear and unequivocal as to preclude the Agency from exercising discretion in interpreting the statutory phrase'' in implementing the PSD program. *See Deseret* at 63.

The PSD Interpretive Memo seeks to resolve the ambiguity in implementation of the PSD program by stating that ''EPA will interpret this definition of 'regulated NSR pollutant' to exclude pollutants for which EPA regulations only require monitoring or reporting but to include each pollutant subject to either a provision in the Clean Air Act or regulation adopted by EPA under the Clean Air Act that requires actual control of emissions of that pollutant.'' The Memo states that ''EPA has not previously issued a definitive interpretation of the definition of 'regulated NSR pollutant' in section 52.21(b)(50) or an interpretation of the phrase 'subject to regulation under the Act' that addressed whether monitoring and reporting requirements constitute 'regulation' within the meaning of this phrase.'' The Memo, however, explains that the interpretation reflects the ''considered judgment'' of then-Administrator Johnson regarding the PSD regulatory requirements and is consistent with both historic Agency practice and prior statements by Agency officials. *See* Memo at 1–2.

The Petition for Reconsideration generally argues that the interpretation in the Memo ''misconstrues the plain language of the Act, adopts impermissible interpretations of existing regulations, and ignores the distinct purpose of the PSD program.'' Petitioners assert that the PSD Interpretive Memo ''attempts to revive a definition [of ''subject to regulation''] that the EAB found was not supported by any prior interpretation of the statute.'' The Petition also claims that CO_2 is a pollutant ''subject to regulation'' for the purposes of the PSD program because CO_2 emissions are already regulated under an existing SIP and existing monitoring and reporting requirements. *See* Petition at 9–10.

Although EPA issued the Memo after the EAB's *Deseret* decision, which specifically concerned whether CO_2 emissions should be considered ''subject to regulation,'' the PSD Interpretive Memo establishes an interpretation of ''subject to regulation'' that applies generally to the PSD program and the treatment of all pollutants under that program. Petitioners requested reconsideration of the entire PSD Interpretive Memo, but their arguments primarily address the Memo's application to CO_2 and only address the broader applicability of the PSD program to other pollutants as a secondary matter. Issues of general and specific PSD applicability are somewhat interchangeable, but it is important to address the pollutant applicability issue for the PSD program as a whole. Accordingly, we will generally focus this reconsideration on the application of the interpretation of the definition of ''subject to regulation'' to all pollutants, instead of focusing on the specific applicability to CO_2 or GHGs, including particular actions that Petitioners argue have triggered PSD requirements for those pollutants. This will allow us to uniformly apply the final interpretation in the future as new pollutants become potentially ''subject to regulation.''

B. Actual Control of Emissions

The PSD Interpretive Memo established that EPA will interpret the ''subject to regulation'' provision of the ''regulated NSR pollutant'' definition ''to include each pollutant subject to either a provision in the Clean Air Act or regulation adopted by EPA under the Clean Air Act that requires actual control of emissions of that pollutant.'' (Hereinafter, referred to as the ''actual control interpretation.'') In so doing, the Memo observes that the EAB rejected claims that the language of the CAA compelled only one interpretation of the phrase ''subject to regulation,'' and instead found that the phrase is ambiguous.

The PSD Interpretive Memo explains that the ''structure and language of EPA's definition of 'regulated NSR pollutant' at 40 CFR 52.21(b)(50)'' supported the actual control interpretation. The Memo discusses how the first three parts of the definition describe pollutants that are subject to regulatory requirements that mandate control or limitation of the emissions of those pollutants, which suggests that the use of ''otherwise subject to regulation'' in the fourth prong also intended some prerequisite

[5] As noted previously, the only change between the original Petition (filed Dec. 31, 2008) and the Amended Petition (filed Jan. 6, 2009) is the addition of a request that EPA stay the effect of the PSD Interpretive Memo pending the outcome of the reconsideration request. Since the request for a stay was already denied in the February 17, 2009 letter granting reconsideration, the remainder of this notice references the original Petition when summarizing the arguments contained in those documents.

act or process of control. The Memo also explains that the definition's use of ''subject to regulation'' should be read in light of the primary meaning of ''regulation'' in various dictionaries, which each used or incorporated a control requirement. *See* Memo at 6–9.

The PSD Interpretive Memo observes that the actual control interpretation is consistent with EPA's broad responsibilities under the CAA. The Memo explains that the actual control interpretation gives a broad scope to the PSD permitting program while instilling ''reasonable boundaries'' for administration of the program in an ''effective, yet manageable,'' way. The Memo also explains that important policy concerns support application of PSD requirements only after actual control requirements are in place under another part of the Act, because the actual control interpretation: (1) Allows the Agency to assess ''whether there is a justification for controlling'' those emissions based on relevant criteria in the Act; (2) provides an opportunity for public notice and comment when a new pollutant is proposed to be regulated under other portions of the Act; (3) promotes ''the orderly administration of the permitting program by providing an opportunity for EPA to develop regulations to manage the incorporation of a new pollutant into the PSD program''; (4) preserves EPA's ''ability to gather information to inform the Administrator's judgment regarding the need to establish controls on emissions''; and (5) safeguards the Administrator's authority to require such controls on individual pollutants under other portions of the Act before triggering PSD requirements. Finally, the Memo clarifies that while the ''subject to regulation'' interpretation issue had been raised in the context of CO_2 emissions, ''adoption of [the actual control] interpretation is also necessary to preserve EPA's ability to collect emissions data on other pollutants for research and other purposes,'' both now and in the future, without triggering the requirements of the PSD permitting program. *See* Memo at 9–10.

The PSD Interpretive Memo next describes how an actual control interpretation of ''subject to regulation'' is ''consistent with the historic practice of the Agency and with prior statements by Agency officials.'' The Memo explains that a review of numerous federal PSD permits shows that EPA has been applying the actual control interpretation in practice—issuing permits that only contained emissions limitations for pollutants subject to regulations requiring actual control of emissions under other portions of the Act. The Memo also articulates that in 1998, well after promulgation of the CO_2 monitoring regulations, the EPA found CO_2 to be a pollutant under the Act and stated that EPA had the authority to regulate it, but found ''the Administrator has made no determination to date to exercise that authority under the specific criteria provided under any provision of the Act.'' [6] The PSD Interpretive Memo explains that the 1978 **Federal Register** notice promulgating the initial PSD regulations, which stated that pollutants ''subject to regulation'' in the PSD program included ''any pollutant regulated in Subchapter C of Title 40 of the Code of Federal Regulations,'' is not inconsistent with the actual control interpretation because actual control could be inferred by the specific list of regulated pollutants that followed the reference to 40 CFR. *See* Memo at 10–13.

Finally, the PSD Interpretive Memo finds that the actual control interpretation is supported, and not precluded, by the language and structure of the CAA. The Memo notes that the EAB had already concluded that the CAA's use of the phrase ''subject to regulation under this Act'' was ambiguous and susceptible to various interpretations, and explains that the Board determined that ''the terms of the statute do not preclude reading 'subject to regulations under this Act' to mean 'subject to control' by virtue of a regulation or otherwise.'' The Memo argues that the actual control interpretation was consistent with Congress' specification that BACT control under PSD ''could be no less stringent than NSPS [i.e., New Source Performance Standards] and other control requirements under the Act indicates that Congress expected BACT to apply to pollutants controlled under these programs.'' The Memo also finds support for the actual control interpretation in the non-PSD portions of the Act, reasoning that similar to those CAA sections that authorized the Administrator to establish emissions limitations or controls under other programs, Congress ''expected that pollutants would only be regulated for purposes of the PSD program after the Administrator has promulgated regulations requiring control of a particular pollutants. [*sic*]'' *See* Memo at 13–14.

In contrast, the Petition for Reconsideration argues that in putting forth the actual control interpretation, the PSD Interpretive Memo ''attempts to revive'' a definition of ''subject to regulation'' that was not supported by the EAB's *Deseret* decision. *See* Petition at 9–10. With regard to the Memo's assertion that the interpretation is supported by the language and structure of the ''regulated NSR pollutant'' definition, Petitioners disagree. The Petition argues that the Memo placed undue emphasis on the PSD regulation while ''[i]n reality, the [PSD Interpretive] Memo is interpreting the language of the statute'' because the regulation ''simply parrots'' the language contained in the Act. As such, Petitioners claim that the Agency's actual control interpretation is not entitled to any deference. Petitioners also argue that the Memo improperly relied on the other prongs of the definition in finding an actual control interpretation, contending that the EAB already rejected that type of analysis and that the first three prongs referred to a promulgated ''standard'' (and not to controls) such that the last prong should apply to pollutants regulated in some other way than a standard. *See* Petition at 18–20.

The Petition asserts that the PSD Interpretive Memo improperly relies on a number of Agency documents in arriving at the actual control interpretation. Petitioners argue that the EAB already determined that ''the *only* relevant interpretation of the applicable statutory and regulatory language was to be found in EPA's 1978 PSD rulemaking'' (emphasis in original) and that the 1978 preamble interpretation ''directly contradicted EPA's theory'' regarding an actual control interpretation. Petitioners also note that the EAB determined that the interpretation of ''subject to regulation'' found in the 1978 preamble language suggests that the phrase includes ''any pollutant covered by a regulation in Subchapter C of Title 40 of the CFR, such as CO_2.'' Petitioners argue that the Memo improperly attempts to alter the still-applicable 1978 interpretation because the EAB already rejected reliance on the types of control requirements identified following the ''subject to regulation'' sentence in the 1978 preamble, and because there is no ambiguity in the language used in the 1978 preamble's interpretation. *See* Petition at 3 and 15–18.

The Petition for Reconsideration also contends that the PSD Interpretive Memo ignores the plain language of the CAA because CO_2 is clearly ''subject to regulation under the Act.'' With regard to the EAB's finding of ambiguity in the Act's use of ''subject to regulation,''

[6] Memorandum from Jonathan Z. Cannon, General Counsel to Carol M. Browner, Administrator, entitled *EPA's Authority to Regulate Pollutants Emitted by Electric Power Generation Sources* (April 10, 1998).

Petitioners simply note that ''[t]o the extent the EAB declined to hold that the PSD provision requires use of BACT for CO_2 emissions, [Petitioners] disagree with the Board's decision in that case.'' *See* Petition at footnote 10. Petitioners assert that the Memo's reliance on the structure of the CAA contradicts the broad purpose of regulation under the PSD program. The Petition asserts that Congress ''deliberately established a much lower threshold'' for requiring PSD control mechanisms than they did when ''establishing generally applicable standards such as the NAAQS, [NSPS], or motor vehicle standard.'' *See* Petition at 21.

With this reconsideration, we note the policy and legal arguments stated in the PSD Interpretive Memo, and summarized above, for the actual control interpretation. This interpretation remains our preference for a number of reasons. The Memo explains that this interpretation best reflects our past policy and practice, as applied consistently over the years. The Memo also describes why such an interpretation allows for a more practical development of regulations and guidance concerning control of pollutants once they are determined to endanger public health or welfare. Triggering PSD prior to a judicious review of the pollutant's health and environmental effects, as well as its emission characteristics and control options for different source types, could lead to serious implementation consequences for the program as a whole. As part of this reconsideration, we request comment on whether the policy concerns EPA described in the PSD Interpretive Memo, as well as those noted in the Petition for Reconsideration, are also of concern to commenters.

For example, the Memo notes the importance of providing EPA the time to collect and assess data on newly identified pollutants prior to undertaking PSD reviews and determining emission control requirements. Without this time, the EPA's ability to make regulatory decisions that are based on analysis of a robust and relevant dataset on a pollutant would be significantly hampered. Furthermore, without this prior review period, individual technical BACT reviews could be time-consuming due to the need to research and develop the generally available emission control options for a new pollutant about which this information is not well known. Triggering PSD with the actual control interpretation would also allow EPA to review and promulgate a significant emissions rate for a pollutant before it would be subject to PSD permitting requirements, so that *de minimis* increases in emissions are not automatically captured, thus hindering efficient implementation of the program. Thus, the actual control interpretation allows the greatest opportunity for the EPA to address whether and how a pollutant should be ''subject to regulation'' based on the promulgation of more general control requirements.

This opportunity extends not only to CO_2 and other GHGs, but to non-GHG pollutants that may, in the future, become regulated NSR pollutants. Therefore, we request comment on the importance of affording EPA the necessary time to study and evaluate the emissions characteristics and control options for new pollutants prior to making emissions of those pollutants subject to PSD permitting requirements. Similarly, we ask for comment on the extent to which the availability of such time under the actual control interpretation should weigh in our consideration of whether to adopt this approach. Finally, we seek comment on any other policy factors we should consider that are not addressed in the Memo or the Petition for Reconsideration that would weigh for or against the actual control interpretation.

C. Monitoring and Reporting Requirement

In addition to finding that the actual control interpretation should be applied to the federal PSD program, the PSD Interpretive Memo also rejects an interpretation of ''subject to regulation'' in the regulated NSR pollutant definition that would have applied to pollutants for which EPA regulations only require monitoring or reporting. (Hereinafter, referred to as the ''monitoring and reporting interpretation.''). The Memo begins by noting that the EAB's *Deseret* decision found ''no evidence of a Congressional intent to compel EPA to apply BACT to pollutants that are subject only to monitoring and reporting requirements.'' *See* Memo at 4. The Memo finds such an interpretation is inconsistent with important policy considerations, past Agency practice and statements, and an overall reading of the CAA.

In describing policy concerns arising from the monitoring and reporting interpretation, the PSD Interpretive Memo explains that ''requiring [PSD emissions] limitations automatically for pollutants that are only subject to data gathering and study would frustrate EPA's ability to accomplish several objectives of the Clean Air Act.'' The Memo explains that administration of the CAA's pollutant control programs relies on reasoned decision-making that is often based on collection of emissions data under CAA section 114(a)(1). The Memo predicts that adopting the monitoring and reporting interpretation would impair EPA's decision-making, leading to the ''perverse result'' of requiring PSD limits for a pollutant while the Agency is still deciding whether to establish controls on that pollutant under other parts of the Act. The Memo also stresses that the monitoring and reporting interpretation had broader implications than PSD limits for CO_2 because it would apply to other pollutants that may emerge in the future. *See* Memo at 9–10.

The PSD Interpretive Memo also finds that the monitoring and reporting interpretation is inconsistent with past agency practice because ''EPA has not issued PSD permits containing emissions limitations for pollutants that are only subject to monitoring and reporting requirements,'' including CO_2 emissions. The Memo determines that the monitoring and reporting interpretation is not required under the 1978 preamble language, explaining that the preamble language could be interpreted in a variety of ways and ''did not specifically address the issue of whether a monitoring or reporting requirement makes a pollutant 'regulated in' [Subpart C of Title 40] of the Code of Federal Regulations.'' *See* Memo at 11–12.

Finally, the PSD Interpretive Memo articulates that the monitoring and reporting interpretation is not required by the language of the CAA. The Memo emphasizes that the EAB rejected arguments that the language of the CAA required application of the monitoring and reporting interpretation, instead finding ''no evidence of Congressional intent to compel EPA to apply BACT to pollutants that are subject only monitoring and reporting requirements.'' The Memo reasons that the overall regulatory direction given to EPA in the CAA is ''evidence that Congress generally expected that EPA would gather emissions data prior to establishing plans to control emissions or developing emissions limitations'' and finds rejection of the monitoring and reporting interpretation ''fully consistent with Congressional design.'' *See* Memo at 4.

The Petition for Reconsideration asserts that applying the monitoring and reporting interpretation to the PSD program is appropriate because ''monitoring and reporting requirements clearly constitute regulation'' and CO_2 emissions are subject to PSD permitting

requirements based on the existing requirement to monitor and report CO_2 emissions. Petitioners state that the policy concerns expressed in the Memo are a ''red herring'' because ''EPA has not identified a single pollutant other than CO_2 that would be affected by an interpretation of 'regulation' in Section 165 to include monitoring and reporting regulations.'' The Petition argues that EPA can gather pollutant information about pollutants under Section 114 without adopting regulations, and thus avoid triggering PSD requirements for those pollutants. *See* Petition at 13 and 22.

The Petition stresses that the PSD Interpretive Memo could not eliminate the monitoring and reporting interpretation based on concerns about applying it to future pollutants because Congress could choose to expressly exclude future pollutants from PSD requirements in express terms. Petitioners also argue that the Memo does not provide a statutory provision to support the claim that requiring BACT for pollutants under a monitoring and reporting interpretation would conflict with the information-gathering objectives of the CAA. The Petition also contends that the Memo fails to demonstrate anything ''unworkable'' about requiring PSD for pollutants subject to monitoring regulations. *See* Petition at 22–23.

Finally, Petitioners assert that CO_2 is clearly ''subject to regulation'' under the interpretation provided in the 1978 preamble language because the CO_2 monitoring and reporting regulations are contained in the Subpart C of Title 40 of the CFR. Petitioners contend that the CO_2 monitoring and reporting requirements meet the statutory and regulatory definition of ''subject to regulation'' and have the force of law in the same way as control requirements. The Petition also claims that each of the dictionary definitions of ''regulation'' relied upon in the Memo would include monitoring. Petitioners also contend that a monitoring and reporting interpretation is consistent with an actual control requirement because there must be some control of pollutant emissions in order to monitor them. *See* Petition at 14–16.

We note that the EAB already found ''no evidence of Congressional intent to compel EPA to apply BACT to pollutants that are subject only monitoring and reporting requirements.'' *See Deseret* at 63. In light of that finding, we request comment on the arguments made in the Memo and discussed further in this reconsideration proposal. Our review of the arguments in the PSD Interpretive Memo indicates that a monitoring and reporting interpretation would be unlikely to preserve the Agency's ability to conduct monitoring or reporting for investigative purposes to inform future rulemakings involving actual emissions control or limits. The Petition for Reconsideration argues that these concerns are a ''red herring'' because EPA has not identified a pollutant other than CO_2 that would be affected by the monitoring and reporting interpretation. We believe that additional comment would assist us in evaluating this concern.

However, we also note that EPA has issued regulations, such as NSPS, that require monitoring of noncriteria pollutant emissions in order to demonstrate compliance with the regulation on the criteria pollutant(s). For example, one of our NSPS stipulates that if a source uses Continuous Emissions Monitoring Systems (CEMS) to measure emissions of NO_x and SO_2 from its boiler, the source must also have a CEMS to measure oxygen gas (O_2) or CO_2. 40 CFR 60.49Da(b) and (c). Clearly, there is no intent by the EPA to consider O_2 as ''subject to regulation,'' and therefore subject to PSD, as a result of this NSPS requirement, but the application of the monitoring and reporting interpretation as put forward in the Petition could require just that.

In addition, it is not always possible to predict when a new pollutant will emerge as a candidate for regulation. In such cases, the Memo's reasoning is correct in that we would be unable to promulgate any monitoring or reporting rule for such a pollutant without triggering PSD under this interpretation. Nonetheless, we seek additional comment on the extent to which our interest in preserving the ability to investigate unregulated pollutants as stated in the memo is a real, rather than hypothetical, concern. We further seek comment on any other policy factors we should consider that are not addressed in the Memo or the Petition for Reconsideration that would weigh for or against the monitoring and reporting interpretation.

D. EPA-Approved State Implementation Plan

In discussing the application of the actual control interpretation to specific actions under the CAA, the PSD Interpretive Memo rejects an interpretation of ''subject to regulation'' in which regulatory requirements for an individual pollutant in the SIP for a single state would ''require regulation of that pollutant under the PSD program nationally.'' (Hereinafter, referred to as the ''SIP interpretation.'') The Memo reasons that application of the SIP interpretation would convert EPA's approval of regulations applicable only in one state into a decision to regulate a pollutant on a nationwide scale for purposes of the PSD program. The PSD Interpretive Memo explains that the establishment of SIPs is better read in light of the ''cooperative federalism'' underlying the Act, whereby Congress allowed individual states to create and apply some regulations more stringently than federal regulations within its borders, without allowing individual states to set national regulations that would impose those requirements on all states. In rejecting the SIP interpretation, the PSD Interpretive Memo also explains that a similar position had been adopted in EPA's promulgation of the NSR regulations for fine particulate matter (or ''$PM_{2.5}$''), without any public comments opposing that position. *See* Memo at 15–16.

The Petition for Reconsideration argues that the SIP interpretation is appropriate for the PSD program and applies to CO_2 emissions at this time. Petitioners note that the Delaware SIP established regulations limiting CO_2 emissions in 2008 and that, in approving that SIP provision, EPA stated it was doing so under the CAA, thus making the CO_2 standards enforceable under various provisions of the CAA. The Petition argues that the Memo rejected the SIP interpretation without providing a relevant statutory or regulatory basis for that position. Instead, Petitioners claim that the SIP interpretation is directly supported by the plain language of ''subject to regulation under the Act'' because those emissions are restricted under the CAA, whether in one state or all. Finally, the Petition asserts that because SIP regulations are incorporated into Subpart C of Title 40 of the CFR after approval by EPA, the SIP interpretation must apply given the 1978 preamble language interpreting ''subject to regulation'' for the PSD program. *See* Petition at 10–12.

EPA continues to believe that the CAA and our implementing regulations are intended to provide states flexibility to develop and implement SIPs to meet the air quality goals of their state. Each state's implementation plan is a reflection of the air quality concerns in that state, allowing a state to dictate treatment of specific pollutants of concern (or their precursors) within its borders based on air quality, economic, and other environmental concerns of that state. As such, pollutant emissions in one state may not present the same problem for a state a thousand miles away. As expressed in the PSD

Interpretive Memo, we have concerns that the SIP interpretation would improperly limit the flexibility of states to develop and implement their own air quality plans because the act of one state to establish regulatory requirements for a particular pollutant would drive national policy by determining that a new pollutant is ''subject to regulation,'' thus requiring all states to subject the new pollutant to PSD permitting. Whether one state, five states, or 45 states make the decision that their air quality concerns are best addressed by imposing regulations on a new pollutant, we do not think those actions should trump the cooperative federalism inherent in the CAA. While several states may face similar air quality issues and may choose regulation as the preferred approach to dealing with a particular pollutant, we are concerned that allowing the regulatory choices of some number of states to impose PSD regulation on all other states would do just that.

The SIP interpretation could have significant negative consequences to the PSD program and the ability for states to manage their own air quality programs. One practical effect of allowing state-specific concerns to create national policy upon EPA's approval of a state's preferred implementation policy is that EPA's review of SIPs would likely be much more time-consuming, since we would have to consider each nuance of the SIP as a potential statement of national policy. Thus, there would be heightened oversight of air quality actions in all states—even those regarding local and state issues that are best decided by local agencies—for fear of having a national policy compelled by the action of one state. Given the need for states to effectively manage their own air quality programs, we believe ''subject to regulation under the Act'' is best interpreted as those pollutants subject to a nationwide standard, binding in all states, that EPA promulgates on the basis of its CAA rulemaking authority.

Although we remain concerned about the consequences to the PSD program of the SIP interpretation as described in the Memo, we are seeking comment on the issues raised in the Petition for Reconsideration. However, our request for comment is limited because we have already finalized a position very similar to that in the Memo in our final NSR implementation rule for $PM_{2.5}$ (73 FR 28321, May 16, 2008). As we explained in the final rule, we adopted the position contained in the proposed rule without receiving any public comments opposing that position. That final rule did not require ammonia to be regulated as a $PM_{2.5}$ precursor but did give states the option to regulate ammonia as a precursor to $PM_{2.5}$ in nonattainment areas for purposes of NSR on a case-by-case basis. In that final rule, we explained that if a state demonstrates to the Administrator's satisfaction that ammonia emissions in a specific nonattainment area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations, the state would regulate ammonia as a $PM_{2.5}$ precursor under the NSR program in that nonattainment area. We explained that once this demonstration is made, ammonia would be a ''regulated NSR pollutant'' under nonattainment NSR for that particular nonattainment area. In all other nonattainment areas in that state and nationally, ammonia would not be subject to the NSR program. With regard to PSD, we specifically stated that ''the action of any State identifying ammonia emissions as a significant contributor to a nonattainment area's $PM_{2.5}$ concentrations, or [EPA's] approval of a nonattainment SIP doing so, does not make ammonia a regulated NSR pollutant for the purposes of PSD'' in any areas nationally. *See* 73 FR 28330 (May 16, 2008). Therefore, we request comment on the question of whether there is a basis that can be upheld under the Act and our CAA implementing regulations that would allow for application of a different SIP-based interpretation than the interpretation established in that final $PM_{2.5}$ NSR implementation rule. If so, we ask for comment on how the adoption of that different interpretation could be done in a way that addresses the specific policy concerns raised in the Memo.

E. Finding of Endangerment

In providing the reasoning as to which actions make a pollutant ''subject to regulation'' for the purposes of the PSD program, the PSD Interpretive Memo states that the ''otherwise subject to regulation'' prong of the regulated NSR pollutant definition should not be interpreted ''to apply at the time of an endangerment finding.'' *See* Memo at 14. (Hereinafter, referred to as the ''endangerment finding interpretation.'') As explained in the Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the CAA, there are actually two separate findings involved in what is often referred to as an endangerment finding. 74 FR 18886 (April 24, 2009). First, whether air pollution may reasonably be anticipated to endanger public health or welfare, and second, whether emissions from the relevant source category cause or contribute to this air pollution. In that proposal, we referred to the first finding as the endangerment finding, and the second as the cause or contribute finding. Often, however, both tests are referred to collectively as the endangerment finding. In this reconsideration package, we will consider the phrase ''endangerment finding'' to refer to both findings.

The only reference to an endangerment finding in the Petition for Reconsideration is in the argument that Congress ''clearly intended that BACT apply regardless of whether an endangerment finding had been made for that pollutant.'' However, the Petition does not argue that an endangerment finding itself should trigger PSD requirements. In fact, Petitioners argue against the endangerment finding interpretation, stating that Congress ''deliberately established a much lower threshold for requiring BACT than an 'endangerment finding.' '' *See* Petition at 21.

The issue of whether ''lower thresholds'' (such as monitoring and reporting requirements) should make a pollutant ''subject to regulation'' within the meaning of the PSD program is already being addressed in other sections of this notice. However, in accordance with the February 17, 2009 grant of reconsideration, EPA has reconsidered the endangerment finding interpretation included in the PSD Interpretive Memo and proposes to reaffirm that an endangerment finding is not an appropriate trigger for PSD regulation. To be clear, this proposed affirmation applies to both steps of what is often referred to as the endangerment finding—the finding that air pollution may reasonably be anticipated to endanger public health or welfare and the finding that emissions of an air pollutant from a particular source category causes or contributes to this air pollution—regardless of whether the two findings occur together or separately.

As the PSD Interpretive Memo explains, an endangerment finding should not be construed as ''regulating'' the air pollutant(s) at issue. It is, rather, a prerequisite to issuing regulations that themselves impose control requirements. As such, it is unlike the other triggering actions identified in the ''regulated NSR pollutant'' definition, which set standards that require imposition of actual limitations on emissions that a source or sources must comply with. An endangerment finding, a cause or contribute finding, or both, on the other hand, do not contain or require source limits that are backed by rule of law; rather, they are often the

first step required before EPA may set specific emissions limits through a rule.

Furthermore, the other actions addressed in the ''regulated NSR pollutant'' definition weigh against the endangerment finding interpretation. Under the first prong of that definition, PSD regulation is triggered by promulgation of a National Ambient Air Quality Standard (NAAQS) under CAA section 109. However, in order to promulgate NAAQS standards under section 109, since 1970 EPA must list and issue air quality criteria for a pollutant under section 108, which in turn can only happen after the Administrator makes an endangerment finding and a version of a cause or contribute finding, in addition to meeting other requirements. *See* CAA sections 108(a)(1) and 109(a)(2). Thus, if we were to find that an endangerment finding and/or cause or contribute findings would make a pollutant ''subject to regulation'' within the meaning of the PSD program, it would read all meaning out of the first prong of the ''regulated NSR pollutant'' definition because a pollutant would become subject to PSD permitting requirements well before the promulgation of the NAAQS under section 109.40 CFR 52.21(b)(50)(i).

Similarly, the second prong of the definition of ''regulated NSR pollutant'' includes any pollutant that is subject to a standard promulgated under section 111 of the CAA. Section 111 requires the Administrator to list a source category, if in his or her judgment, ''it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.'' *See* CAA section 111(B)(1)(A). After EPA lists a source category, it promulgates NSPS for that source category. For a source category not already listed, if we were to list it on the basis of its emissions of a pollutant that was not previously regulated, and such a listing made that pollutant ''subject to regulation'' within the meaning of the PSD program, this chain of events would result in triggering PSD permitting requirements for that pollutant well in advance of the point contemplated by the second prong of the regulated NSR pollutant definition. 40 CFR 52.21(b)(50)(ii).

In addition, as explained in the Memo, waiting to apply PSD requirements until after the actual promulgation of control requirements that follow an endangerment finding ''makes sense.'' The Memo explains that when promulgating the final regulations establishing the control requirements for a pollutant, EPA often makes decisions that are also relevant to decisions that must be made in implementing the PSD program for that pollutant. *See* Memo at 14. For example, EPA often does not make a final decision regarding how to identify the specific pollutant subject to an NSPS standard until the NSPS is issued, which occurs after both the endangerment finding and the source category listing.

Accordingly, we believe that the prerequisite act of making an endangerment finding, a cause or contribute finding, or both, should not make a pollutant ''subject to regulation'' for the purposes of the PSD program. As explained above, EPA believes that there are strong legal and policy reasons for rejecting the endangerment finding interpretation. EPA seeks comment on any other policy factors or legal arguments that are not addressed above but could weigh for or against our consideration of the endangerment finding interpretation.

F. Granting of Section 209 Waiver

While neither the PSD Interpretive Memo nor the Petition for Reconsideration raise the issue of whether a decision to grant a waiver under the section 209 of the CAA would trigger PSD requirements under the CAA section 165(a)(4), EPA received comments in response to the proposed grant of a CAA section 209 waiver to the state of California to establish GHG emission standards for new motor vehicles that suggested that arguments might be made that the grant of the waiver made GHGs subject to regulation for the purposes of PSD. *See* 74 FR 32744, 32783 (July 8, 2009). Those commenters requested that EPA state clearly that granting the California Waiver did not render GHGs ''subject to regulation'' under the CAA, while others commented that the question of when and how GHGs should be addressed in the PSD program or otherwise regulated under the Act should instead be addressed in separate proceedings. At that time, EPA stated that the PSD interpretation issues were not a part of the waiver decision and would be more appropriately addressed in another forum.

Accordingly, we are taking this opportunity to state our position that a decision to grant a CAA section 209 waiver to the state of California to establish GHG emission standards for new motor vehicles does not trigger PSD requirements for GHGs. As explained below, EPA does not interpret the CAA or the Agency's PSD regulations to make the PSD program applicable to pollutants that may be regulated by states after EPA has granted a waiver under section 209 of the CAA.

As the EPA Administrator previously explained to Congress, ''a decision to grant a waiver under section 209 of the Act removes the preemption of state law otherwise imposed by the Act. Such a decision is fundamentally different from the decisions to establish requirements under the CAA that the Agency and the [EAB] have considered in interpreting the provisions governing the applicability of the PSD program.'' Letter from Lisa P. Jackson to Senator James M. Inhofe (March 17, 2009). As explained more fully below, the decision to grant a CAA section 209 waiver is different from the other actions that have been alleged to trigger the statutory and regulatory PSD requirements, including the other interpretations of ''subject to regulation'' discussed above, in two key respects.

First, a waiver granted under CAA section 209(b)(1) simply removes the prohibition found in section 209(a) that forbids states from adopting or enforcing their own standards relating to control of emissions from new motor vehicles or new motor vehicle engines. Thus, the grant of the waiver simply allows California the authority to adopt and enforce state emissions standards for new motor vehicles that it would have otherwise had without the initial prohibition in section 209(a). As EPA previously explained, by removing the section 209(a) prohibition, the waiver ''merely gives back to California what was taken away by section 209(a)—the ability to adopt and enforce its own state emission standards.'' *See* 74 FR 32751 (July 8, 2009). Importantly, granting the waiver does not itself establish any federal emission standards or other federal requirements for the pollutants. Courts have recognized such a distinction. *See American Automobile Manufacturers Association* v. *Commissioner, Massachusetts Department of Environmental Protection, 31 F.3d 18, 21 (1st Cir. 1994)* (stating that ''there can be only two types of cars 'created' under emissions regulations in this country: 'California' cars and 'federal' (that is, EPA-regulated) cars''). Thus, grant of a section 209 waiver to the California emissions standards does not render those standards to be federal standards and does not make a pollutant covered by the California standards ''subject to regulation'' under the CAA. [7]

[7] EPA recognizes that two courts have addressed the issue of whether the California motor vehicle standards have the effect of federal standards once a section 209 waiver is granted, but those cases are not applicable to our current determination because they did not involve interpretation of the CAA. Those cases were examining whether the California standards were ''other motor vehicle standards of

Second, enforcement of any emission standard that might be established after a waiver is granted would occur pursuant to regulation under state law, not regulation ''under the Act.'' Specifically, section 209(b)(3) of the CAA provides that for any new motor vehicle to which state emission standards apply pursuant to a waiver granted under section 209(b)(1), ''compliance with such State standards shall be treated as compliance with applicable Federal standards'' for purposes of Title II of the Act. This provision was added when Congress amended section 209 to allow some California standards to be less stringent than federal standards as long as California's standards are ''in the aggregate'' at least as protective of human health and the environment. Section 209(b)(3) ensures that a vehicle complying with California's standards for which a waiver has been granted, but not necessarily all federal standards, is not subject to enforcement under the Act for failure to meet all federal standards. However, EPA would not enforce California's standards as it would its own. Although the California standards for which EPA has granted a waiver include GHG emissions standards, EPA's granting of a waiver does not promulgate those GHG standards as EPA standards, nor does it lead to EPA enforcement of those GHG standards. Therefore, the grant of a waiver to California does not render GHG emissions subject to regulation under the CAA.

We are also aware that some states have chosen, pursuant to section 177 of the CAA, to adopt the California low emission vehicle (CAL LEV) program into their state pollution control programs, including specific pollutant emissions standards that are included in CAL LEV after the grant of a section 209 waiver. However, for the same reasons as discussed above, the adoption of those standards by other states under section 177 does not change the fact that those standards are still state standards enforced under state law. Accordingly, we find that adoption of waived standards pursuant to CAA section 177 should not trigger PSD requirements for the pollutants included in those standards.[8]

Accordingly, we believe that neither the act of granting a section 209 waiver for emission standards nor the adoption of such standards pursuant to section 177 makes a pollutant ''subject to regulation'' for the purposes of the PSD program. EPA believes there is strong legal support for this position. EPA requests comment on this position and any other legal or policy factors that weigh for or against our consideration of the grant of a section 209 waiver interpretation.

G. Timing of Regulation

In a related matter concerning the final interpretation of the regulatory language found in 40 CFR 52.21(b)(50)(iv), we are seeking comment on whether the interpretation of ''subject to regulation'' should also more clearly identify the specific date on which PSD regulatory requirements would apply. In the PSD Interpretative Memo, the Administrator stated that EPA interprets language in the definition of ''regulated NSR pollutant'' to mean that the fourth part of the definition should ''apply to a pollutant upon promulgation of a regulation that requires actual control of emissions.'' *See* Memo at 14. However, after evaluating the underlying statutory requirement in the CAA and the language in all parts of the regulatory definition more closely, EPA proposes to modify its interpretation of the fourth part of the definition with respect to the timing of PSD applicability.

In considering the actual application of PSD requirements to regulated NSR pollutants that are ''subject to regulation,'' we believe that the term ''subject to regulation'' in the statute and regulation is most naturally interpreted to mean that PSD requirements apply when the regulations addressing a particular pollutant become final and effective. The CAA requires PSD controls ''for each pollutant *subject to* regulation'' under the Act that are emitted from a source and does not mention promulgation. *See* 42 U.S.C. 7475(a)(4) and 7479(3) (emphasis added). The regulatory language of 40 CFR 52.21(b)(50)(iv) does not specify the exact time at which the PSD requirements should apply to pollutants in that class, whether upon promulgation or effective date of the underlying regulation. However, the use of ''subject to'' in the Act suggests that PSD requirements are intended to be triggered when those standards become effective for the pollutant. No party is required to comply with a regulation until it has become final and effective. Prior to that date, an activity covered by a rule is not in the ordinary sense ''subject to'' any regulation. Regardless of whether one interprets regulation to mean monitoring or actual control of emissions, prior to the effective date of a rule there is no regulatory requirement to monitor or control emissions.

In addition, applying PSD to a pollutant upon the effective date of a regulation would harmonize application of the PSD program with the requirements of the Congressional Review Act (CRA). Under the CRA, major regulations promulgated by EPA do not become effective until after Congress has had an opportunity to review them. *See* 5 U.S.C. 801 *et seq.* As part of that review, Congress can potentially disapprove final actions issued by federal agencies within a specified time period. Accordingly, under the CRA, a major rule cannot take

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the government'' under the specific provisions of the Energy Policy and Conservation Act (EPCA). *See Century Valley Chrysler-Jeep, Inc.* v. *Goldstene,* 529 F.Supp. 2d 1151 (E.D. Cal. 2007), appeals pending Nos. 08–17378, 08–17380 (9th Cir., filed Oct. 30, 2008); *Green Mountain Chrysler Plymouth Dodge Jeep* v. *Crombie,* 508 F.Supp. 2d 295 (D. Vt. 2007). In those cases, automobile dealers and manufacturers brought action challenging the validity of the California GHG emissions standards, arguing that the standards were preempted by the fuel economy standards established by EPCA. After examining the statutory language and legislative history of EPCA, the courts found that the EPCA fuel standards were not preemptive of the California standards. The courts noted that the term ''Federal standards fuel economy reduction'' as used in the original codification of section 502(d) of the Energy Policy and Conservation Act (EPCA), referred to EPA-approved California emission standards, and noted that ''there is nothing in [EPCA] or in case law to support the proposition that a regulation promulgated by California and granted waiver of preemption under [CAA] section 209 is anything other than a 'law of the Government' whose effect on fuel economy must be considered by NHTSA in setting fuel economy standards.'' *Century Valley Chrysler-Jeep,* 529 F.Supp. 2d at 1173. *See also Green Mountain Chrysler Plymouth Dodge Jeep,* 508 F.Supp. 2d at 347.

However, these Courts did not examine whether California standards were federal standards under the specific provisions of the CAA. Accordingly, their holdings are properly limited to interpretation of EPCA's preemption provisions and are not binding on our present consideration of whether the California standards should be considered federal standards under the provisions of the CAA, in particular, provisions such as the PSD program. As noted above, a waiver granted to California motor vehicle emissions standards does not preempt the federal CAA standards but instead lifts the preemption that the Act would normally have under CAA § 209(a). Accordingly, we believe these courts' determinations that the California emissions standards were a type of ''Federal standards fuel economy reduction'' that were not preempted by EPCA's fuel economy provisions do not change the fact that the California standards are *not* federal standards that EPA adopts or enforces as part of its CAA regulatory program, and thus should not trigger PSD permitting requirements.

[8] To the extent that some states adopt the CAL LEV emission standards pursuant to section 177 and then incorporate by reference those standards into their SIPs, including the emission standards included in the CAL LEV program pursuant to a section 209 waiver, the PSD Interpretive Memo already expressed the view that inclusion of a pollutant standard in a SIP does not make that pollutant subject to the PSD program requirements. While we are taking comment on that SIP interpretation as part of this reconsideration, the current inclusion of the CAL LEV standards into state SIPs does not make the pollutants covered by those standards ''subject to regulation'' under the Act since the PSD Interpretive Memo remains in effect for the federal PSD program.

effect until 60 days after it is published in the **Federal Register**. Since an EPA regulation that would trigger PSD requirements for a pollutant could be disapproved by Congress after it is promulgated, it would be more consistent with the CRA to defer application of PSD requirements to a pollutant until the rule regulating the pollutant is final and effective, and not simply promulgated.

Since the fourth part of the definition of ''regulated NSR pollutant'' (40 CFR 52.21(b)(50)(iv)) does not use the word promulgated and uses the ''subject to regulation'' language from the CAA, the language in the fourth part of the definition can be interpreted to render PSD requirements applicable to a pollutant upon the effective date of a regulation. Because this is consistent with a more natural reading of the statutory language in the Clean Air Act, the application of the Congressional Review Act to EPA regulations, and the ''actual control interpretation'' favored by EPA at this time, we propose upon reconsideration to interpret 40 CFR 52.21(b)(50)(iv) to make PSD requirements applicable to a pollutant upon the effective date of a regulation covered by this part of the definition.

The PSD Interpretive Memo relied on other parts of the definition of ''regulated NSR pollutant'' to conclude that PSD requirements apply to a pollutant upon promulgation of a control requirement. However, a closer reading of the other parts of that definition indicates that the language used in several parts of the definition may in fact be construed to make PSD applicable upon the effective date of regulatory requirements, rather than the date of promulgation. The definition says that PSD requirements apply to NSPS or Title VI pollutants once they are ''subject to a[ny] standard promulgated under'' particular provisions of the CAA. 40 CFR 52.21(b)(50)(ii)–(iii). While the word ''promulgated'' appears in the definition, this term qualifies the underlying standard and does not directly address the actual application of PSD requirements. Under the language in these two parts of the definition, PSD requirements apply when a pollutant becomes ''subject to'' the underlying standard, which is ''promulgated under'' a particular part of the Act. For the same reasons as discussed above, we think it is best to interpret these two provisions to apply PSD requirements to NSPS and Title VI pollutants on the effective date of the underlying standards.

However, different timing language is used for the first class of pollutants described in the regulated NSR pollutant definition: PSD requirements apply once a ''standard has been promulgated'' for a NAAQS pollutant or its precursors. 40 CFR 52.21(b)(50)(i). The use of ''has been'' in the regulation indicates that a pollutant becomes a ''regulated NSR pollutant,'' and hence PSD requirements for the pollutant are triggered, on the date a NAAQS is promulgated. Thus, it may not be possible for EPA to read the regulatory language in this provision to make PSD applicable to a NAAQS pollutant upon the effective date of the NAAQS. Although our present view is that the Clean Air Act is most naturally read to make PSD requirements applicable upon the effective date of a rule that ''regulates'' the pollutant, we are not at this time proposing to modify the language in 40 CFR 52.21(b)(50)(i). Since EPA is not presently proposing to establish a NAAQS for any additional pollutants, the timing of PSD applicability for a newly identified NAAQS pollutant does not appear to be of concern at this time. If EPA adopts the interpretation proposed here with respect to the timing of PSD applicability, we will consider whether a revision of this regulatory language is needed at such time as EPA may be considering promulgation of a NAAQS for an additional pollutant.

Accordingly, in considering statutory language and the actual application of PSD requirements in practice, we believe the ''subject to regulation'' language in the fourth part of the regulated NSR pollutant definition should be interpreted such that PSD requirements would not apply to pollutants covered by this part of the definition until the effective date of the underlying regulation. EPA believes the underlying statutory requirements and the structure of the regulation support this position. EPA requests comment on our interpretation that a pollutant becomes ''subject to regulation'' under section 52.21(b)(50)(iv) upon the effective date of the underlying regulation, as well as any other legal or policy factors that that could inform this interpretation.

H. Other Issues

As a general matter, during the public comment period for other GHG rulemaking actions, such as the GHG Mandatory Reporting Rule (74 FR 16447, April 10, 2009) and the proposed Endangerment Finding (74 FR 18885, April 24, 2009), EPA received some comments that discussed the interpretation of the PSD applicability issues we are reconsidering here. The notices of proposed rulemaking for those packages clearly indicated that the issue of how and when PSD permitting requirements would apply to GHG pollutants would be addressed during this reconsideration action (74 FR at 16456, n. 8 and 18905, n. 29), and EPA will not be searching other rulemaking dockets for comments that might be applicable to our current reconsideration of the PSD Interpretive Memo. Accordingly, we direct all parties that might have submitted comments regarding interpretation of the PSD applicability definitions in those other rulemakings to submit new comments in accordance with the requests in this reconsideration process. In particular, commenters should submit only those portions of their previously submitted comments that respond to the specific requests for comment in this action.

We believe the above summary of the PSD Interpretive Memo, the summary of Petitioners' arguments for reconsideration of the Memo, and the requests for comments presented thus far provide an adequate basis for the public to comment on the Agency's reconsideration of the PSD Interpretive Memo. However, in accordance with Administrator Jackson's February 17, 2009 grant of reconsideration, EPA also seeks comment on any other interpretations of ''subject to regulation'' and any other issues that were not addressed in the PSD Interpretive Memo but may help to inform our present reconsideration of that Memo, including those raised by the EAB's *Deseret* decision.

For example, there is an issue from the *Deseret* case that is relevant to our consideration of the monitoring and reporting interpretation. Briefs submitted by Region VIII and the EPA Office of Air and Radiation (OAR) in that case argued that even if the monitoring and reporting interpretation was adopted by the Board, PSD permitting requirements would not apply to CO_2 emissions. Region VIII and OAR reasoned that the existing CO_2 monitoring and reporting regulations were not promulgated ''under the Act'' because the text, context, and legislative history of the underlying statutory provision ''demonstrate that Congress did not intend section 821 of the 1990 Public Law'' amending the CAA to become part of the CAA. *See Deseret* at 55. The EAB found that the statutory text both supported and subverted this argument, and also that the Agency's prior actions and statements were inconsistent with and contradictory to it. Accordingly, the Board declined to rely on this argument in deciding the case and directed Region VIII to

consider the issue more fully on remand. Should the EPA adopt the monitoring and reporting interpretation, it will be necessary for EPA to resolve whether or not the existing CO_2 monitoring and reporting regulations were promulgated ''under the Act'' since the position taken by Region VIII and OAR in the *Deseret* case would keep us from applying that interpretation in some instances. We therefore welcome comments on this issue. We note that there are several factors that make us less inclined to maintain the position advocated by Region VIII and OAR in the *Deseret* case on remand. Notably, the EAB found that EPA's previous statements on whether section 821 was part of the Clean Air Act had been inconsistent and that EPA had taken actions that were contradictory to the position advocated by Region VIII and OAR. Although we are considering changing our position, we want our review of this issue to be informed by public comments. Accordingly, consistent with our grant of reconsideration, we seek comment on the section 821 issue and any other issues or interpretations to the extent they could inform our final interpretation of the regulatory phrase ''subject to regulation.''

In addition, this reconsideration of the PSD Interpretive Memo is following the type of notice and comment process normally found in formal rulemaking proceedings. *See* CAA section 307(d). Accordingly, EPA is also seeking comment on whether or not, upon completion of this reconsideration, the Agency should codify the final interpretation of what makes a pollutant ''subject to regulation'' for the purposes of PSD applicability into the definitions section of the federal PSD regulations. 40 CFR 52.21(b). If a commenter supports EPA codifying its ''subject to regulation'' PSD applicability position, we request that the commenter include in their comment suggested amendatory language for inclusion in 40 CFR 52.21.

As we are requesting comment on whether to codify the Agency's final interpretation in the federal PSD rules found at 40 CFR 52.21, we also request comment on whether that interpretation should be also codified in 40 CFR 51.166 for permitting authorities with approved implementation plans. We note that the PSD Interpretive Memo expressly limits the applicability of the interpretation to permitting jurisdictions that fall under the federal PSD program. Since the EAB determined that the interpretation adopted in this memorandum was not previously established by the Agency, that interpretation should not apply retroactively to prior approvals of SIPs by EPA Regional Offices. However, the Memo gives discretion to EPA Regional Office authorities to apply the Memo's interpretation prospectively when reviewing and approving new submissions for approval or revision of state plans under 40 CFR 51.166. The Memo also explains that when states use the same language in their approved implementation plans as contained in 40 CFR 52.21(b)(50), those states may interpret that language in their state regulations in the same manner as reflected in the Memo. *See* Memo at 3, n. 1. For the sake of consistent application of EPA's final interpretation, we are soliciting comment on whether we should also codify the Agency's final interpretation as a revision to 40 CFR 51.166.

Finally, we note that, in addition to the policy questions raised by each of the interpretations above, there is another overarching consideration upon which we seek comment: the consequence that a given interpretation would have on the scope and timing of the triggering of the PSD program for GHGs. Although the policy questions discussed earlier extend beyond the immediate issues surrounding triggering of PSD for GHGs, we also seek comment on whether these immediate issues, discussed below, warrant consideration in this reconsideration effort.

The actual control interpretation would mean that GHGs become ''subject to regulation'' upon final promulgation of the GHG Light Duty Vehicle Rule. We are concerned about millions of small and previously unpermitted sources becoming immediately subject to PSD permitting as a result of finalization of that rule. The basis for this concern, and EPA's approach to addressing it, are explained in a separate notice published in the Proposed Rules section of this **Federal Register** known as the GHG Tailoring Rule. The GHG Tailoring Rule proposes to establish temporary applicability thresholds for PSD and Title V purposes to levels that reflect the administrative capabilities of permitting authorities to address GHG emissions from stationary sources. Without the GHG Tailoring Rule, PSD permitting requirements would apply to numerous small sources, resulting in a program that is impossible to administer due to a tremendous influx of permit applications accompanied by, at least initially, a shortfall of resources, training, and experience by permitting authorities, the regulated community, and other stakeholders.

The GHG Tailoring Rule is intended to address this problem in advance of regulation under the GHG Light Duty Vehicle Rule. Therefore, under our preferred interpretation of ''subject to regulation'', EPA will not face the administrative impossibility problem if the GHG Tailoring Rule is finalized according to this planned timing. However, if EPA adopts any other interpretation (which thereby would void the PSD Interpretive Memo), additional timing considerations arise. Finalizing any other interpretation prior to promulgating the GHG Light Duty Vehicle Rule would result in earlier triggering of PSD permitting requirements for future new and modified sources of GHGs including the large numbers of small sources addressed by the GHG Tailoring Rule. On the other hand, finalizing any other interpretation after EPA promulgates the GHG Light Duty Vehicle Rule would likely have a limited effect on triggering PSD permitting requirements for future new and modified sources of GHGs, because we expect that the GHG Light Duty Vehicle Rule would already have triggered PSD for the same pollutants and the GHG Tailoring Rule would be in place. Our strong preference is that these three actions—the GHG Light Duty Vehicle Rule, the GHG Tailoring Rule, and this reconsideration—work together with EPA's other GHG-related actions to yield a common sense and efficient approach to GHG regulation that does not result in the imposition of an impossible administrative burden on permitting agencies. Our preferred approach has the added benefit of achieving this goal by triggering PSD only after the GHG Tailoring Rule can be put in place. We seek comment on whether and how this goal could be achieved were EPA to adopt any of the other four interpretations.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' The action was identified as a ''significant regulatory action'' because it raises novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction

Act, 44 U.S.C. 3501 *et seq.* We are not promulgating any new paperwork requirements (e.g., monitoring, reporting, and recordkeeping) as part of this proposed action. The OMB has previously approved the information collection requirements contained in the existing NSR regulations (40 CFR parts 51 and 52) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* and has assigned OMB control number 2060–0003, EPA ICR number 1230.23. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

This proposed reconsideration of the PSD Interpretive Memo is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. In the case of this reconsideration process, public notice and comment was not required under the APA or CAA, but rather was voluntarily conducted in accordance with the February 17, 2009 letter granting reconsideration. Accordingly, an RFA analysis is not required.

However, EPA recognizes that some small entities continue to be concerned about the potential impacts of the statutory imposition of PSD requirements that may occur given the various EPA rulemakings currently under consideration concerning greenhouse gas emissions. As explained in the preamble for the proposed GHG Tailoring Rule, located in the Proposed Rules section of this **Federal Register**, EPA is using the discretion afforded to it under the RFA to consult with OMB and the Small Business Administration, with input from outreach to small entities, regarding the potential impacts of PSD regulatory requirements as that might occur as EPA considers regulations of GHGs. Concerns about the potential impacts of statutorily imposed PSD requirements on small entities will be the subject of deliberations in that consultation and outreach. Concerned small entities should direct any comments relating to potential adverse economic impacts on small entities from PSD requirements for GHG emissions, including any concerns about the impacts of this reconsideration action, to the docket for the GHG Tailoring Rule.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

This proposed reconsideration does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, this proposed rule is not subject to the requirements of sections 202 or 205 of UMRA.

In developing this reconsideration notice, EPA consulted with small governments pursuant to a plan established under section 203 of UMRA to address impacts of regulatory requirements in the rule that might significantly or uniquely affect small governments.

E. Executive Order 13132—Federalism

This action does not have federalism implications. It will not 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, as specified in Executive Order 13132. This action would ultimately simplify and reduce the burden on state and local agencies associated with implementing the PSD program by providing clarity on what pollutants are ''subject to regulation'' to the CAA for PSD applicability purposes. Therefore, this proposed rule will not impose substantial direct compliance costs on state or local governments, nor will it preempt state law. Thus, the requirements of sections 6(b) and 6(c) of the Executive Order do not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed rule from state and local officials.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Subject to the Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

EPA has concluded that this action may have tribal implications. However, it will neither impose substantial direct compliance costs on tribal governments nor preempt tribal law. There are no tribal authorities currently issuing major NSR permits; however, this may change in the future.

Although Executive Order 13175 does not apply to this proposed rule, EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because this proposed reconsideration merely proposes to reconsider EPA's previous PSD applicability with regards to what constitutes a pollutant being ''subject to regulation'' under the CAA for the purposes of PSD applicability.

H. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action proposes options and positions that would clarify PSD applicability for pollutants ''subject to regulation'' under the CAA and does

not, in and of itself, pose any new requirements.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed reconsideration does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the U.S.

EPA has determined that this proposed reconsideration of PSD applicability will not have a disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed reconsideration merely proposes to reconsider EPA's previous PSD applicability with regards to what constitutes a pollutant being ''subject to regulation'' under the CAA for the purposes of PSD applicability.

V. Statutory Authority

The statutory authority for this action is provided by sections 101, 107, 110, and 301 of the CAA as amended (42 U.S.C. 7401, 7410, and 7601).

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 30, 2009.

Lisa P. Jackson,

Administrator.

[FR Doc. E9–24196 Filed 10–6–09; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 74, No. 193
Wednesday, October 7, 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.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Request for a Revision of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Commodity Credit Corporation (CCC) to request a revision of a currently approved information collection in support of the CCC's Dairy Export Incentive Program (DEIP) based on re-estimates. This information collection has applied to CCC's Export Enhancement Program (EEP) as well as the DEIP. However, the EEP has been repealed by the Food, Conservation, and Energy Act of 2008. The program regulations at 7 CFR 1494 will be updated to delete references to the EEP.

DATES: Comments on this notice must be received by December 7, 2009.

Additional Information or Comments: Contact Mark Rowse, Director, Credit Programs Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture, AgBox 1025, Washington, DC 20250–1025, or by telephone at (202) 720–0624.

SUPPLEMENTARY INFORMATION:

Title: CCC's Dairy Export Incentive Program (DEIP).

OMB Number: 0551–0028.

Expiration Date of Approval: January 31, 2010.

Type of Request: Revision of a currently approved information collection.

Abstract: The major objective of the DEIP is to expand U.S. dairy product exports by paying cash to exporters as bonuses, allowing them to sell U.S. dairy products in targeted countries at competitive prices. Currently, 102 countries and 3 country regions are targeted export destinations and 650 exporters are eligible to participate under the DEIP. Under 7 CFR part 1494, exporters are required to submit the following: (1) Information required for program participation (section 1494.301), (2) performance security (section 1494.401), (3) export sales information in connection with applying for a CCC bonus (section 1494.501), and (4) evidence of export and related information (section 1494.701). In addition, each exporter must maintain accurate records showing sales and deliveries of the eligible commodity exported in connection with an agreement made under the DEIP, as outlined in section 1494.1001. The information collected is used by CCC to manage, plan for and evaluate the use of, and account for Government resources. The reports and records are required to ensure the proper and judicious use of public funds.

Estimate of Burden: The public reporting burden for these collections is estimated to average 41 minutes per response.

Respondents: Exporters of U.S. agricultural commodities, banks or other financial institutions, producer associations, export trade associations, and U.S. Government agencies.

Estimated Number of Respondents: 10 per annum.

Estimated Number of Responses per Respondent: 81 per annum.

Estimated Total Annual Burden on Respondents: 553.5 hours.

Copies of this information collection can be obtained from Tamoria Thompson-Hall, the Agency Information Collection Coordinator, at (202) 690–1690.

Requests for comments: Send comments regarding (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Mark Rowse, Director, Credit Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, AgBox 1025, Washington, DC 20250–1025, or to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD). All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on September 22, 2009.

John D Brewer,

Acting Administrator, Foreign Agricultural Service, and Acting Vice President, Commodity Credit Corporation.

[FR Doc. E9–24181 Filed 10–6–09; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest, Mystic Ranger District, South Dakota, Section 30 Limestone Mining Proposal

AGENCY: Forest Service, USDA.

ACTION: Corrected Notice of Intent to prepare an environmental impact statement.

SUMMARY: A Plan of Operation has been submitted by Pete Lien and Sons, Inc., for the purpose of mining for chemical grade limestone within mining claims on National Forest System land. The proposal is to mine within Pennington County totaling approximately 100 acres about one mile north of the northwest boundary of Rapid City, South Dakota. The original Notice of Intent for this project was published in **Federal Register** (71 FR 208, pg. 62989) on Friday, October 27, 2006. This corrected Notice of Intent is being republished due to time lapse between the original publication of the NOT and the new estimated Draft and Final ETS publication dates.

DATES: The draft environmental impact statement is expected to be available for public review in December of 2009 and the final environmental impact statement is expected to be completed by March of 2010.

FOR FURTHER INFORMATION CONTACT: Dave Slepnikoff, Project Coordinator, Black Hills National Forest, Mystic Ranger District, at above address, phone (605) 343–1567.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Purpose and Need for this project is authorization of Pete Lien and Sons, Inc., proposal to exercise their rights under U.S. mining laws while protecting the environment in accordance with Forest Service regulations for locatable minerals. The Purpose and Need has several components. Pete Lien and Sons, Inc. has a statutory right to extract locatable minerals (chemical grade limestone) as proposed in accordance with the General Mining Law of 1872, as amended (30 U.S.C. 21–54). The Forest Service has the responsibility to protect surface resources of National Forest System lands to the extent practicable. Forest Service mining regulations state that, ''operations shall be conducted so as, where feasible, to minimize adverse impacts on National Forest System surface resources (36 CFR 228.8).''

Proposed Action

The proposed action is to approve the Plan of Operation (PoO) submitted by Pete Lien and Sons, Inc. to mine approximately 100 acres of National Forest System lands on the PLS 30–1 through PLS 30–10 Lode Mining Claims, SDMMC #209097. The Plan of Operations was developed by Pete Lien and Sons, Inc. It was submitted to the Forest Service in accordance with the General Mining Law of 1872, as amended and Forest Service mining regulations at 36 CFR 228 Subpart A. The Project is located between Rapid City and Black Hawk, South Dakota. Legal description is; T.2N., R.7E., NE. ¼ Section 30, BHM.

The Plan of Operation is summarized as follows:

- It is estimated that the operation will process approximately 10 million tons of limestone. The life of the proposed mine is estimated at 10 years, not including final reclamation.
- Remove vegetation, stockpile topsoil for future reclamation, drill and blast rock to remove an approximate 20 foot bed of limestone rock resulting in an open pit with approximately 20 foot high walls.
- Blasted rock may be crushed on site to reduce size for hauling. Raw materials will be hauled to the east of Highway 79 for processing into chemical grade limestone products.
- Concurrent reclamation is planned. Therefore approximately 60 acres will be disturbed at any one time. Reclamation will result in a depression on the existing hillside. High walls will be reduced, site graded, topsoil applied, and vegetation planted once mineral extraction is complete.
- The Mine Safety and Health Administration (MSHA) will be responsible for enforcing mine safety regulations. The mine site will be enclosed by fences and gates as required by MSHA and other regulatory guidance.

Pete Lien and Sons, Inc. will secure permits for all mining and reclamation activities as required by law. Several permits have been obtained or will be obtained pending the NEPA analysis and decision. Notable permit requirements include:

- *Clean Water Act*—Apply for construction/mining activity permit with National Pollutant Discharge Elimination System (NPDES).
- *Clean Air Act*—Permit or permits will be obtained to ensure that equipment and dust control measures comply with the Clean Air Act.
- *South Dakota Mining License*—Pete Lien and Sons, Inc. currently has a mining license inclusive of the relevant portion of Section 30. The proposed mine may be exempt from further state permitting per a statutory exemption for the extraction of cement precursors.
- *Pennington County Construction (Mining) Permit*—Pete Lien and Sons, Inc. will notify the County of its schedule and plans to initiate mining on Section 30. Construction permit CP 01–05 specifies the scope of the County's further review of road impacts, drainage, and other matters related to mining on Section 30.

Responsible Official

Craig Bobzien, Forest Supervisor, Black Hills National Forest, 1019 North 51 Street, Custer, South Dakota 57730–7239.

Nature of Decision To Be Made

The Forest Supervisor will decide whether the proposed action will proceed as proposed or as modified by an alternative. Also, he will decide which recommended mitigation measures and monitoring requirements will be applied. Finally, he will decide if a Forest Plan Amendment is required.

Scoping Process

The Forest Service advertised the proposal in the Rapid City Journal, newspaper of record on Friday, October 27, 2006. The project is listed in the Black Hills National Forest Quarterly NEPA calendar. Adjacent landowners, known interested parties, and government agencies received letters describing the project and identifying the project timeframe. Scoping comments were received by November 27, 2006. Art informational and public meeting was held on November 14, 2006, at 7 p.m. in the Black Hawk Elementary School Gymnasium regarding this project proposal.

Preliminary Issues

At this time, project planners are aware of issues related to cultural (heritage) resources and scenic quality. Through the Scoping process, we will use comments obtained about the proposed action to determine the breadth of issues to be addressed in the analysis.

The potential for adverse affects to heritage resources has been identified as an issue for this proposed undertaking. A number of archaeological sites have been identified and recorded in the project area as a result of heritage resource surveys. Five of these sites have been evaluated as eligible for nomination to the National Register of Historic Places. Through consultation with Indian Tribes, use of this area for religious activities has also been documented. Pursuant to the National Historic Preservation Act (NHPA), the Forest is in consultation with Indian Tribes and the South Dakota State Historic Preservation Office to develop measures of avoidance and/or mitigation for significant cultural and archaeological values by the proposed undertaking. Successful completion of consultation pursuant to the NHPA would result in a Memorandum of Agreement that will implement avoidance or mitigation of significant heritage resources in the Area of Potential Affect.

The existing vegetation will be removed prior to mining. The current scenic view will be altered from visible vantage points.

Comment Requested

This notice of intent corrects information in the original NOI. The original NOI initiated the scoping process which guides the development of the environmental impact statement. The Forest Service sought information that planners may not have been aware of, or comments and/or concerns

regarding potential effects of the proposal to authorize mining on the Section 30 PLS Lode Mining Claims. Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment.

The comment period on the draft environmental impact statement will be for 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the Draft Environmental Impact Statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: September 29, 2009.

Craig Bobzien,

Forest Supervisor, Black Hills National Forest.

[FR Doc. E9–24027 Filed 10–6–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tri-County Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Beaverhead-Deerlodge National Forest's Tri-County Resource Advisory Committee will meet on Friday, October 15, 2009, from 5 p.m. until 8 p.m., in Deer Lodge, Montana. The purpose of the meeting is to review funding proposals for Title II funding.

DATES: Friday, October 15, 2009, from 5 p.m. until 8 p.m.

ADDRESSES: The meeting will be held at the USDA building located 1002 Hollenback Road, Deer Lodge, Montana (MT 59722).

FOR FURTHER INFORMATION CONTACT: Patty Bates, Committee Coordinator, Beaverhead-Deerlodge National Forest, 420 Barrett Road, Dillon, MT 59725 (406) 683–3979; E–MAIL *pbates@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda for this meeting include discussion about accomplishments, monitoring, priorities and funding for new project proposals. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: September 28, 2009.

David R. Myers,

Designated Federal Official.

[FR Doc. E9–24028 Filed 10–6–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Announcement for the 2010 U.S. Forest Service Urban and Community Forestry Challenge Cost-Share Grant Opportunity.

SUMMARY: The National Urban and Community Forestry Advisory Council (Council) is charged, by law, to provide recommendations to the Secretary of Agriculture on urban forestry related issues and opportunities. Part of the Council's role is to recommend the criteria for the U.S. Forest Service's Urban and Community Forestry (U&CF) Challenge Cost-Share Grant Program.

The Council has revised their criteria for the U.S. Forest Service's U&CF Challenge Cost-Share Grant Program for 2010. The 2010 Grant Program will solicit innovative grant proposals. A total anticipated amount of $900,000 would be available in 2010 for Innovation Grants.

Innovation Grants

Innovation grants are to focus on one of the Council's identified priority issues confronting the U&CF community: Energy Conservation, Climate Change, Public Health, and Green Infrastructure Assessment.

The Council will seek proposals from organizations and partnerships that demonstrate the reach, resources, and expertise to deliver meaningful, replicable results.

DATES: Applications are available electronically at the following Web site, *http://www.grants.gov.* Applications must be submitted by 11:59 p.m., December 15, 2010.

Those that do not have access to a computer may request a hardcopy of the application and instructions by contacting Nancy Stremple at the address below.

ADDRESSES: Written comments concerning this announcement should be addressed to Nancy Stremple, Executive Staff to National Urban and Community Forestry Advisory Council, 201 14th St., SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151. Comments may also be sent via e-mail to *nstremple@fs.fed.us,* or via facsimile to 202–690–5792

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 201 14th St., SW., Yates Building (1 Central) MS–1151, Washington, DC. Visitors are encouraged to call ahead to 202–205–1054 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Nancy Stremple, Executive Staff or the U&CF Staff Assistant to National Urban

and Community Forestry Advisory Council, 201 14th St., SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151, phone 202–205–1054.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern, Monday through Friday.

SUPPLEMENTARY INFORMATION: The 2010 U. S. Forest Service Urban and Community Forestry Challenge Cost-Share Grant instructions and application are posted on *http://www.grants.gov.* The instructions only will be posted on the U.S. Forest Service Web site at: *http://www.fs.fed.us/ucf.*

If interested applicants are not already registered in Grants.gov, they are encouraged to register now. The process may take up to 2 weeks to collect the required information.

Dated: October 1, 2009.

Robin L. Thompson,

Associate Deputy Chief, State & Private Forestry.

[FR Doc. E9–24137 Filed 10–6–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR39

Endangered and Threatened Species; Recovery Plans

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

ACTION: Notice of availability; request for comments and notice of public meetings.

SUMMARY: The National Marine Fisheries Service (NMFS) announces availability for public review and comment of the Draft Central Valley Salmon and Steelhead Recovery Plan (Draft Plan). The Draft Plan addresses the Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*) Evolutionarily Significant Unit (ESU), the Central Valley spring-run Chinook salmon (*O. tshawytscha*) ESU, and the Distinct Population Segment (DPS) of Central Valley Steelhead (*Oncorhynchus mykiss*). NMFS is soliciting review and comment from the public and all interested parties on the Draft Plan. In addition, four public meetings will be held in October 2009 as opportunities for providing comments on the Draft Plan (dates to be determined).

DATES: NMFS will consider and address all substantive comments received during the comment period. Comments must be received no later than 5 p.m. Pacific Standard Time on December 7, 2009. Public meetings will also be held (see Public Meetings below).

ADDRESSES: Please send written comments and materials to Brian Ellrott, National Marine Fisheries Service, 650 Capitol Mall, Suite 8–300, Sacramento, CA 95816. Comments may also be submitted by e-mail to: CentralValleyPlan.SWR@noaa.gov. Include in the subject line of the e-mail comment the following identifier: ''Comments on Central Valley Salmon and Steelhead Draft Plan.'' Comments may be submitted via facsimile (fax) to (916) 930–3629.

Persons wishing to review the Draft Plan can obtain an electronic copy (i.e., CD-ROM) from Aimee Diefenbach by calling (916) 930–3600 or by e-mailing a request to *aimee.diefenbach@noaa.gov* with the subject line ''CD-ROM Request for Central Valley Salmon and Steelhead Recovery Draft Plan.'' Electronic copies of the Draft Plan are also available on-line on the NMFS website *http://swr.nmfs.noaa.gov/recovery/centralvalleyplan.htm.*

The specific dates, times, and locations of public meetings will be posted on this website as they become available.

FOR FURTHER INFORMATION CONTACT: Brian Ellrott at (916) 930–3612 or Howard Brown, NMFS Sacramento River Basin Branch Chief at (916) 930–3608.

SUPPLEMENTARY INFORMATION:

Background

Recovery plans describe actions beneficial to the conservation and recovery of species listed under the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*). The ESA requires that recovery plans incorporate: (1) objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered; (2) site-specific management actions necessary to achieve the plan's goals; and (3) estimates of the time required and costs to implement recovery actions. The ESA requires the development of recovery plans for each listed species unless such a plan would not promote its recovery.

NMFS is responsible for developing and implementing ESA recovery plans for listed salmon and steelhead. In so doing, NMFS' goal is to restore endangered and threatened Pacific salmonids to the point that they are again self-sustaining members of their ecosystems and no longer need the protections of the ESA.

Recovery Plans developed under the ESA are guidance documents, not regulatory documents. However, the ESA envisions Recovery Plans as the central organizing tool for guiding the recovery of listed species. Recovery Plans also guide Federal agencies in fulfilling their obligations under section 7(a)(1) of the ESA, which calls on all Federal agencies to ''utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species.'' In addition to outlining proactive measures to achieve species recovery, Recovery Plans provide a context and framework for implementing other provisions of the ESA with respect to a particular species, including consultations on Federal agency activities under section 7(a)(2) and the development of Habitat Conservation Plans in accordance with section 10(a)(1)(B).

This Draft Plan serves as a guideline for achieving recovery criteria and goals by describing the criteria by which NMFS would measure species recovery, the strategy to achieve recovery, and the recovery actions necessary to achieve viable ESU's of Sacramento River winter-run Chinook salmon and Central Valley spring-run Chinook salmon, and a viable DPS of Central Valley steelhead.

Recovery Criteria

Recovery criteria are built upon criteria recommended by the NMFS Technical Recovery Team (TRT) for the identification of viable anadromous salmonid populations and ESUs/DPSs. A viable population is defined as a population having a negligible risk (<5%) of extinction due to threats from demographic variation, non-catastrophic environmental variation, and genetic diversity changes over a 100–year time frame. A viable ESU/DPS is comprised of a sufficient number of viable populations sufficiently dispersed spatially, but well connected enough to maintain long-term (1,000–year) persistence and evolutionary potential (McElhany et al. 2000). The viability criteria are intended to describe characteristics of the species and its natural environments necessary for both individual populations and the ESU/DPS as a whole to be viable, i.e., persist over a specific period of time.

Recovery of winter-run Chinook salmon, spring-run Chinook salmon, and steelhead in the Central Valley will

require recovery of a sufficient number of viable populations of each species within each of the species' historic diversity groups defined by the TRT. Recovery of individual populations is necessary to conserve the natural diversity (genetic, phenotypic, and behavioral), spatial distribution, and abundance of each species, and thus the long-term viability of each ESU/DPS as a whole. Additionally, the ESU/DPS as a whole must contain a minimal number of viable populations, or interacting trans-basin populations, within each diversity group in order to withstand environmental variation of the sort known to have occurred in the Central Valley over the last 500–1,000 years. Such variation has included natural catastrophes such as prolonged drought, volcanic eruptions, large wildfires, and anthropogenic impacts such as the 1991 Cantara metam sodium spill. Therefore, for ESUs/DPSs to be considered viable, they should be able to persist if challenged by these types of catastrophes as well as anthropogenic climate change.

Recovery Strategy

Achieving recovery of winter-run Chinook salmon, spring-run Chinook salmon, and steelhead will require a number of coordinated activities, such as: (1) implementing the strategic and threat-specific recovery actions identified in this Draft Plan, including actions directed at increasing the quantity and quality of habitat available to anadromous salmonids, minimizing hatchery effects, and improving harvest management; (2) monitoring the abundance and distribution of existing populations for all three species and their response to recovery actions; and (3) researching the diverse life-history patterns and adaptations of Central Valley steelhead to a highly dynamic environment (e.g., the ecological relationship between anadromous and non-anadromous life-history forms).

There remain uncertainties regarding the level of recovery necessary to achieve population viability, therefore, additional research and monitoring of winter-run Chinook salmon, spring-run Chinook salmon, and steelhead in the Central Valley is an essential component of this Draft Plan. As this Draft Plan is implemented over time, additional information will become available to: (1) refine the viability criteria; (2) update and refine the species-specific threats assessments and related recovery actions; (3) determine whether individual threats have been abated; and (4) evaluate the overall viability of winter-run Chinook salmon, spring-run Chinook salmon, and steelhead in the Central Valley. There will be a review of the recovery actions implemented and population and habitat responses to these actions at the 5–year and 10–year status reviews for each ESU/DPS.

Effective implementation of recovery actions will also entail: (1) extensive public education (including the general public, non-governmental agencies, and local, regional, State, and Federal governmental agencies,) regarding the role and value of these species within the larger watershed environment; (2) development of cooperative relationships with private land owners, special districts, federally-recognized tribes, and local governments with direct control and responsibilities over non-federal land-use practices; (3) participation in the land use and water planning and regulatory processes of local, regional, State, and Federal agencies; (4) close cooperation with other state resource agencies such as the California Department of Fish and Game, California Department of Water Resources, CalTrans, and the California Department of Parks and Recreation, and (5) partnering with Federal resource agencies, including the U.S. Forest Service, U.S. Fish and Wildlife Service, National Park Service, U.S. Bureau of Reclamation, U.S. Bureau of Land Management, U.S. Army Corps of Engineers, U.S. Department of Transportation, U.S. Department of Defense, and the U.S. Environmental Protection Agency.

Recovery Actions

Many complex and inter-related biological, economic, social, and technological issues must be addressed in order to recover anadromous salmonids in the Central Valley. Policy changes at the Federal, state, and local levels will likely be necessary to implement many of the recovery actions identified in this Draft Plan. For example, without substantial strides in water conservation throughout California, flow conditions for anadromous salmonids will limit recovery. Similarly, recovery is unlikely without programs to restore properly functioning historic habitat such as estuaries, and access to upstream spawning and rearing habitat.

Implementation and Cost Estimates

Implementation of this Draft Plan by NMFS will take many forms. To achieve recovery, NMFS will need to promote the Draft Plan and provide needed technical information and assistance to other entities responsible for actions that may impact the species' recovery. NMFS should work with key partners on planning and implementation of all high priority recovery actions. Additionally it will be important to work with local governments to ensure that protective measures consistent with recovery objectives are included in their general and local plans. NMFS should also work with state and Federal regional entities on Regional Water Control Board Basin Plans and U.S. Forest Service Plans.

An implementation schedule describing time frames and costs associated with individual recovery actions is included in the Draft Plan and is continuing to be developed as information becomes available. Estimating total cost to recovery is much more challenging, if not impossible to estimate for a variety of reasons. These include the large geographic extent of the Central Valley; the long-term duration (e.g., likely decades) expected to achieve full recovery; and the uncertainty associated with population responses to changing environmental conditions. In some instances, however, NMFS is able to estimate the costs associated with certain common restoration activities such as those undertaken as part of the Calfed Ecosystem Restoration Program, the U.S. Fish and Wildlife Service Anadromous Fish Restoration Program, or the California Department of Water Resource's Fish Passage Improvement Program. An appendix to the Draft Plan contains estimates for these categories of typical watershed restoration actions.

The criteria and recovery actions identified in the Draft Plan provide a comprehensive road-map for recovery and are consistent with many ongoing activities intended to protect and or restore ecosystem functions in Central Valley watersheds. As a result, many of these recovery actions will be undertaken by local, state and Federal agencies, as well as non-governmental organizations and other private entities as a part of their local ecosystem protection efforts. Also, the wide variety of threats to Central Valley salmon and steelhead provide for a variety of potential funding sources available to develop and implement these recovery actions, often as part of other ongoing natural resource restoration, management, and mitigation programs.

Public Comments Solicited

NMFS solicits written comments on the Draft Plan. All comments received by the date specified above will be considered prior to NMFS' decision whether to approve the Draft Plan. NMFS seeks comments particularly in the following areas: (1) the analysis of limiting factors and threats; (2) the

recovery objectives, strategies, and actions, especially in regard to the selection of core populations, priority areas for reintroduction, and critical recovery actions; (3) the criteria for removing ESUs/DPSs from the Federal list of endangered and threatened wildlife and plants; and (4) estimates of time and cost to implement recovery actions. NMFS will also hold public meetings to provide an opportunity for the public to learn more about the Draft Plan, ask questions of NMFS staff, and submit oral or written comments on the Draft Plan.

Public Meetings

Four public meetings will be held, two in Chico, CA and two in Sacramento, CA . The two Chico meetings will occur on the same date with one three-hour meeting during the day followed by one two-hour meeting in the evening. The Sacramento meetings will follow this same day/evening approach. The meetings will be targeted toward receiving comments from key stakeholders and salmon recovery ''practitioners'' such as local jurisdiction officials, state and local agency personnel, industry representatives, public and non-profit interest representatives, and others who have a professional involvement and knowledge of salmon recovery issues, as well as general public and other constituencies.

Literature Cited

McElhany, P., Ruckelshaus, M.H., Ford, M.J., Wainwright, T.C., and Bjorkstedt, E.P. 2000. Viable Salmonid Populations and the Conservation of Evolutionarily Significant Units. U.S. Department of Commerce. NOAA Technical Memorandum. NMFS NWFSC 42. Seattle, WA.Authority: 16 U.S.C. 1531 *et seq.*

Dated:September 30, 2009.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–24224 Filed 10–6–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Expected Non-Market Economy Wages: Request for Comments on 2009 Calculation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Request for comments.

SUMMARY: The Department of Commerce (''Department'') has a longstanding practice of calculating expected non-market economy (''NME'') wages for use as the surrogate value for direct labor in antidumping proceedings involving NME countries. These expected NME wages are calculated annually in accordance with the Department's regulations, *see* 19 CFR 351.408(c)(3). This notice constitutes the Department's 2009 expected NME wages, which were calculated from 2007 data made available in 2009 according to the Department's revised methodology described in the **Federal Register** notice entitled *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716, Oct. 19, 2006 (hereafter, the *Antidumping Methodologies notice*). The Department further provides the public with an opportunity to comment on potential clerical errors in the calculation. *Id.*

DATES: Any comments must be submitted no later than 10 days after publication of this notice.

ADDRESSES: Written comments (original and six copies) should be sent to Ronald Lorentzen, Acting Assistant Secretary for Import Administration, U.S. Department of Commerce, Central Records Unit, Room 1870, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Bobby Wong, Senior International Trade Analyst, China/NME Group, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 482–0409.

Background

The Department's regulations generally describe the methodology by which the Department calculates expected NME wages. For labor, the Secretary will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries. The Secretary will calculate the wage rate to be applied in non-market economy proceedings each year.[1] The calculation will be based on current data, and will be made available to the public. *See* 19 CFR 351.408(c)(3).

The Department's expected NME wages are calculated each year in two steps. First, the relationship between hourly wage rates (obtained from the International Labour Organization's (''ILO'') Yearbook of Labour Statistics) and per-capita gross national income (''GNI'') (obtained from the World Bank) is estimated using ordinary least squares (''OLS'') regression analysis. Second, the GNI of each of the countries designated by the Department to be an NME is applied to the regression, which yields an expected hourly wage rate for each NME.

The Department published a notice in the **Federal Register** on October 19, 2006, which detailed its revised methodology for calculating expected NME wages in antidumping proceedings involving NME countries. *See* the *Antidumping Methodologies notice.* In that notice, the Department stated that ''{e}ach year, the Department's annual calculation will be subject to public notice prior to the adoption of the resulting expected NME wage rates for use in antidumping proceedings. Comment will be requested only with regard to potential clerical errors in the Department's calculation.'' *Antidumping Methodology notice,* 71 FR 61722. This notice constitutes the Department's 2009 calculation of expected NME wages in Attachment 1, which were calculated from 2007 data made available in 2009 according to the Department's revised methodology described in the *Antidumping Methodologies notice.* The Department is requesting public comment only on the potential clerical errors in the calculation. Comments with regard to the methodology were addressed in the Antidumping Methodologies notice and will not be considered.

In order to facilitate a full opportunity for comment, and because the underlying data are voluminous, the preliminary results and underlying data for the preliminary 2009 expected NME wages calculation have been posted on the Import Administration Web site (*http://www.ia.ita.doc.gov*). This preliminary calculation will not be used for antidumping purposes until it has been finalized by the Department following the public comment period.

Submission of Comments

Persons wishing to comment on clerical errors in the Department's 2009 calculation of expected NME wages presented in Attachment 1 should file

[1] Pursuant to the *Antidumping Methodologies Notice,* 71 FR 61722, the Department intends to publish the annual revisions of the expected NME wage rates on its Web site in the fall. Since there is no fixed deadline for the submission of the relevant country data to the World Bank and ILO, the Department cannot specify a date certain by which the revision will be published. We can say, however, that because not all countries submit their data at the same time and because the Department must wait until all relevant data is submitted, publication of the revision will likely take place in late fall.

one signed original and six copies of each set of comments by the date specified above. The Department will consider all comments regarding clerical errors received before the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them. All comments responding to this notice will be a matter of public record and will be available for inspection and copying at Import Administration's Central Records Unit, Room 1117. The Department requires that comments be submitted in written form. The Department recommends submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted either by e-mail to the Webmaster below, or on CD–ROM, as comments submitted on diskettes are likely to be damaged by postal radiation treatment. Comments received in electronic form will be made available to the public in Portable Document Format (''PDF'') on the Internet at the Import Administration Web site at the following address: *http://www.ia.ita.doc.gov.* Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, e-mail address: *Webmaster-support@ita.doc.gov.*

Dated: September 29, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Attachment 1—2009 Calculation of Expected NME Wages

Following the criteria and methodology described in the Antidumping Methodologies notice, and using the data available to the Department as of September 22, 2009, the Department used 2006 and 2007 data in Chapter 5B of the International Labour Statistics (''ILO'') that had available and suitable ''earnings'' data for 88 entities: Albania, Andorra, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Belgium, Bermuda, Bosnia and Herzegovina, Botswana, Bulgaria,[2] Canada, Chile, China, Colombia, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Egypt, El Salvador, Estonia, Finland, France, Georgia, Germany, Gibraltar, Guam, Guatemala, Guyana, Honduras, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Japan, Jersey, Kazakhstan, Republic of Korea, Kyrgyzstan, Latvia, Lithuania, Luxembourg, Macau, Macedonia, Malta, Mauritius, Mexico, Moldova, Mongolia, Montenegro, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Puerto Rico, Qatar, Romania, Russian Federation, Serbia, Seychelles, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Taiwan, Ukraine, United Kingdom, United States, Virgin Islands (U.S.), and West Bank and Gaza Strip.

Within the earnings data set above, for 2006 and 2007, Armenia, Azerbaijan, China, Georgia, Kyrgyz Republic (Kyrgyzstan), and Moldova, were not included in the regression because they are designated as NME countries by the Department.[3]

Of the remaining 82 entities, for the reasons further discussed below, 16 additional entities were excluded from the regression data set.

The Department notes that the earnings data from Switzerland and Paraguay appear to be aberrant, and may be the result of a typographical or reporting error by the ILO Web site, and has thus been excluded from the regression data set.

There were no 2007 GNI data available for Andorra, Bahrain, Bermuda, Cuba, Gibraltar, Guam, Isle of Man, Jersey, Puerto Rico, Qatar, Taiwan, Virgin Islands (U.S.), and West Bank and Gaza Strip.

The Department also excluded Bosnia & Herzegovina, as the IFS CPI datum was unavailable to inflate the entities' reported 2006 ILO earnings.

There were no further entities eliminated based on the availability of the 2006 and 2007 earnings, CPI, GNI, or exchange rate data for the remaining 66 entities.

Accordingly, the Department ran its preliminary 2009 expected NME wage regression on the following 66 countries: Albania, Argentina, Australia, Austria, Belgium, Botswana, Bulgaria, Canada, Chile, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Egypt, El Salvador, Estonia, Finland, France, Germany, Guatemala, Guyana, Honduras, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Israel, Japan, Kazakhstan, Korea, Latvia, Lithuania, Luxembourg, Macao, Macedonia, Malta, Mauritius, Mexico, Mongolia, Montenegro, New Zealand, Nicaragua, Norway, Panama, Peru, Philippines, Poland, Portugal, Romania, Russia, Serbia, Seychelles, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Ukraine, United Kingdom, and the United States.

Following the data compilation and regression methodology described in the *Antidumping Methodologies notice,* and using GNI and wage data for Base Year 2007, the regression results are: Expected Wages = 0.0004265(GNI)—0.2616639.

	2007 GNI	Expected wages
Armenia	2,580.00	1.36
Azerbaijan	2,710.00	1.42
Belarus	4,240.00	2.07
China (PRC)	2,360.00	1.27
Georgia	2,090.00	1.15
Kyrgyz Republic	610.00	0.52
Moldova	1,130.00	0.74
Tajikistan	460.00	0.46
Uzbekistan	730.00	0.57
Vietnam	770.00	0.59

The World Bank did not publish a GNI for Turkmenistan.

As stated above, the full preliminary results and underlying data for the 2009 expected NME wages calculation have been posted on the Import Administration Web site (*http://ia.ita.doc.gov*).

[FR Doc. E9–24231 Filed 10–6–09; 8:45 am]

BILLING CODE P

[2] On August 11, 2008, the United Nations Department of Economic and Social Affairs published the 4th revision of the International Standard Industrial Classification of All Economic Activities (''ISIC classification''). Therefore, with respect to the data selection criteria established in the *Antidumping Methodologies Notice,* where more than one record in the ILO database meet the requirements, the Department has prioritized the most recent update of the ISIC classification, ISIC Rev.4–C—manufacturing, over previous revisions. *See Antidumping Methodologies Notice,* 71 FR 61722.

[3] The Department considers Armenia, Azerbaijan, Belarus, The People's Republic of China, Georgia, Kyrgyz Republic, Moldova, Tajikistan, Uzbekistan, and Vietnam to be non-market economies.

DEPARTMENT OF COMMERCE

International Trade Administration

[{A–570–898}]

Chlorinated Isocyanurates from the People's Republic of China, Notice of Intent to Partially Rescind Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: Pursuant to 19 CFR 351.213(b)(2), Zhucheng Taisheng Chemcial Co., Ltd. (''Zhucheng Taisheng''), submitted a timely request for an administrative review of the antidumping duty order on chlorinated isocyanurates from the People's Republic of China (''PRC'') purporting to be a producer and exporter of subject merchandise. We initiated this review on July 29, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 37690 (July 29, 2009) (''*Initiation Notice*''). In a letter dated August 24, 2009, Zhucheng Taisheng explained that, in the process of preparing the section A questionnaire response for this review, it discovered that the actual producer and exporter of the subject merchandise was Zhucheng Taisheng Angmu Chemical Co., Ltd. (''Zhucheng Taisheng Angmu''), with whom Zhucheng Taisheng claims to be affiliated.[1] Pursuant to 19 CFR 351.213(b)(2), only a producer or an exporter of the subject merchandise may request an administrative review. Because Zhucheng Taisheng is not an exporter or producer of subject merchandise, we intend to rescind the administrative review for Zhucheng Taisheng.

FOR FURTHER INFORMATION CONTACT: John Hollwitz, AD/CVD Enforcement, Group III, NME Office 8, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2336.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2009, the Department of Commerce (''the Department'') published a notice of opportunity to request an administrative review of the antidumping duty order on chlorinated isocyanurates.[2] On June 29, 2009, Zhucheng Taisheng requested a review, claiming to be a producer and exporter of merchandise covered by the order. On July 29, 2009, we initiated an administrative review of the antidumping order on chlorinated isocyanurates. *See Initiation Notice*. In its August 24, 2009, letter, Zhucheng Taisheng stated that while completing its response to section A of the Department's questionnaire, it discovered that the producer and exporter of the subject merchandise was actually Zhucheng Taisheng Angmu. While Zhucheng Taisheng claims that the two companies are affiliated, Zhucheng Taisheng acknowledged that it is neither a producer nor an exporter of the subject merchandise. Accordingly, on August 24, 2009, Zhucheng Taisheng requested a confirmation from the Department as to whether Zhucheng Taisheng's administrative review can continue.

Rescission of Antidumping Duty Administrative Review

The Department's regulations at 19 CFR 351.213(b)(2) state that an exporter or producer covered by an antidumping order may request that the Department conduct an administrative review of only that party during the anniversary month of the publication of an antidumping order. As Zhucheng Taisheng was neither a producer nor an exporter of the subject merchandise during the period of review, Zhucheng Taisheng is not entitled to request an administrative review pursuant to 19 CFR 351.213(b)(2).

Because Zhucheng Taisheng did not have standing to request an administrative review, the Department has determined that it initiated the review with respect to Zhucheng Taisheng in error. Therefore, the Department intends to rescind the administrative review with respect to Zhucheng Taisheng, covering the period of June 1, 2008 through May 31, 2009. This administrative review will continue with respect to Hebei Jiheng Chemical Company, Ltd.

Public Comment

Interested parties are invited to comment on the Department's intent to rescind the administrative review with respect to Zhucheng Taisheng, and may submit case briefs and/or written comments within 10 days of the publication of this notice. See 19 CFR 351.309(c). Interested parties may file rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, no later than five days after the date on which the case briefs are due. See 19 CFR 351.309(d). Interested parties may request a hearing within 10 days of the publication of this notice. See 19 CFR 351.310. Interested parties will be notified by the Department of the location and time of any hearing, if one is requested.

This determination and notice are 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 30, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–24223 Filed 10–6–09; 8:45 am]

BILLING CODE 3510–DS–S

[1] *See* Letter from Zhucheng Taisheng, ''Chlorinated Isocyanurates from China; Inquiry Regarding Status of Administrative Review'' (August 24, 2009) (''Inquiry Regarding Status of Administrative Review'').

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 26202 (June 1, 2009).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XS07

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Salmon Advisory Subpanel (SAS) will hold a work session by telephone conference to develop recommendations for the November 2009 Council meeting.

DATES: The telephone conference will be held Thursday, October 22, 2009, from 10:30 a.m. to noon.

ADDRESSES: A public listening station will be available at the Pacific Council Office, Small Conference Room, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384; telephone: (503) 820–2280.

Council address: Pacific Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Salmon Management Staff Officer, Pacific Council: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the work session is to review information in the Pacific Council(s November 2009 meeting briefing book related to salmon management, and to develop comments and recommendations for consideration at

the November 2009 Pacific Council meeting.

Although non-emergency issues not contained in the meeting agenda may come before the SAS for discussion, those issues may not be the subject of formal SAS action during this meeting. SAS action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the SAS's intent to take final action to address the emergency.

Special Accommodations

The public listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: October 2, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–24193 Filed 10–6–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–955]

Certain Magnesia Carbon Bricks From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Nicholas Czajkowski or Justin Neuman, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1395 and (202) 482–0486, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 18, 2009, the Department of Commerce (the Department) initiated the countervailing duty investigation of certain magnesia carbon bricks from the People's Republic of China. *See Certain Magnesia Carbon Bricks from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 74 FR 42858 (August 25, 2009). Currently, the preliminary determination is due no later than October 22, 2009.

Postponement of Due Date for the Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which the Department initiated the investigation. However, the Department may postpone making the preliminary determination until no later than 130 days after the date on which the administering authority initiated the investigation if the petitioner makes a timely request for an extension pursuant to section 703(c)(1)(A) of the Act. In the instant investigation, the petitioner made a timely request on September 25, 2009, requesting a postponement until 120 days from the initiation date. *See* 19 CFR 351.205(e) and the petitioner's September 25, 2009 letter requesting postponement of the preliminary determination. Therefore, pursuant to the discretion afforded the Department under 703(c)(1)(A) of the Act and because the Department does not find any compelling reason to deny the request, we are extending the due date until 120 days after the Department's initiation for the preliminary determination. Therefore, the deadline for the completion of the preliminary determination is now December 16, 2009.

This notice is issued and published pursuant to section 703(c)(2) of the Act.

Dated: October 1, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–24213 Filed 10–6–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–843]

Certain Lined Paper Products From India: Notice of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain lined paper products (CLPP) from India. For the period September 1, 2007, through August 31, 2008, we have preliminarily determined that U.S. sales have been made below normal value (NV) by Navneet Publications (India) Limited (Navneet) and Blue Bird India Ltd. (Blue Bird). Because Blue Bird is a selected mandatory respondent and was not responsive to the Department's requests for information, we have preliminarily assigned to Blue Bird a margin based on adverse facts available (AFA). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties based on the difference between the export price (EP) and NV. *See* ''Preliminary Results of Review'' section of this notice. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* October 7, 2009

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Cindy Robinson, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3692 or (202) 482–3797, respectively.

Background

On September 2, 2008, the Department issued a notice of opportunity to request an administrative review of this order for the period of review (POR) of September 1, 2007, through August 31, 2008. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review,* 73 FR 51272 (September 2, 2008).

Pursuant to requests from interested parties,[1] the Department published in

[1] On September 29, 2008, the Department received a timely request for an administrative review filed on behalf of Kejriwal Paper Limited and a timely request for an administrative review filed on behalf of Navneet. On September 30, 2008, the Department received a timely request for an administrative review of the following 25 companies, filed on behalf of the Association of American School Paper Suppliers (the Association or Petitioner), a domestic interested party: Agility Logistics Pvt. Ltd., Blue Bird, Ceal Shipping Logistics Pvt. Ltd., Cello International Pvt. Ltd., Corporate Stationary Pvt. Ltd., Creative Divya, Exel India Pvt. Ltd., FFI International, Global Art India Inc., International Greetings Pvt. Ltd., Karim General Handmade Paper DIAR, Kejriwal Exports, M/S Super ImpEx., Magic International, Marigold ExIm Pvt. Ltd., Marisa International, Navneet Publications (India) Ltd., Pentagon Waterlines Pvt. Ltd., Pioneer Stationery Pvt. Ltd., Rajvansh International, Riddhi Enterprises, SAB International, TKS Overseas, Unlimited Accessories Worldwide, and V. Joshi Co.

We inadvertently listed Kejriwal Paper Limited and Kejriwal Exports separately in our notice of initiation of this review. However, in Kejriwal Paper Limited's response to the Department's questionnaire, Kejriwal Exports was identified as a

the **Federal Register** the notice of initiation of this antidumping duty administrative review with respect to 25 companies, including Navneet, Kejriwal Paper Limited (Kejriwal) and Blue Bird for the period September 1, 2007, through August 31, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Review,* 73 FR 64305 (October 29, 2008) (*Initiation Notice*).[2] On November 25, 2008, the Department selected Kejriwal and Blue Bird as companies to be individually examined in this, the second administrative review of the antidumping duty order on CLPP from India. *See* Memorandum to Melissa Skinner from George McMahon titled ''Certain Lined Paper Products from India: Selection of Respondents for Individual Review'' (Respondent Selection Memo), dated November 25, 2008. On December 4, 2008, the Department issued an antidumping questionnaire (original questionnaire) to Kejriwal and Blue Bird with a due date of January 12, 2009.

After two extension requests [3] to file its response to the original questionnaire, Blue Bird submitted its Section A questionnaire response on February 3, 2009. On February 10, 2009, Blue Bird requested a 13-week extension of time from February 16 to May 18, 2009, to respond to the Sections B, C, and D of the Department's original questionnaire. In light of the fact that the Department had previously granted two extensions and that the requested due date by Blue Bird, May 18, 2009, was only 15 days before the scheduled date of the preliminary results for this review, the Department granted Blue Bird a two-week extension until March 3, 2009. Nonetheless, Blue Bird failed to respond to the Department's Sections B through D questionnaire and had no further communication with the Department. *See* the Department's letter to Blue Bird dated February 13, 2009 (Extension 3). *See also* the ''Application of Facts Available'' section below for further details.

On December 22, 2008, both Kejriwal and petitioner timely withdrew their requests for a review of Kejriwal. On January 2, 2009, petitioner requested that, because Kejriwal was no longer a mandatory respondent, the Department select a second mandatory respondent. On January 9, 2009, after we determined that we would rescind the review with respect to Kejriwal, we selected Navneet as a mandatory respondent because we determined that it was practicable to individually examine two respondents, and issued a questionnaire to Navneet. Navneet submitted its Section A questionnaire response on March 3, 2009; its Sections B and C response on March 20, 2009; and its Section D response on March 31, 2009. The Department issued its first and second supplemental questionnaires to Navneet on April 30, 2009, and June 19, 2009, respectively. Navneet submitted its first and second supplemental questionnaire responses on May 26, 2009, and July 1, 2009, respectively.

On March 4, 2009, and March 24, 2009, petitioner submitted its comments on Blue Bird and Navneet's Section A responses, respectively. On April 21, 2009, petitioner submitted its comments on Navneet's Sections B and C responses. On June 11, 2009, petitioner submitted its comments on Navneet's Sections A through C supplemental responses. On July 11, 2009, petitioner submitted pre-verification comments.

On March 9, 2009, petitioner requested that the Department select another mandatory respondent in this review. On April 14, 2009, the Department declined to select another mandatory respondent because it was too late in the proceeding. *See* Memorandum to File from James Terpstra titled ''Non-selection of addition respondent'' dated April 14, 2009.

On May 4, 2009, petitioner made a submission requesting that the Department modify its model match methodology. On May 14, 2009, Navneet submitted a letter arguing that this change was submitted too late to be considered and that the proposed change was unwarranted. On May 19, 2009, petitioner submitted a letter arguing that it was not too late to propose this change and that the change was warranted.

On May 11, 2009, the Department published a notice of partial rescission with respect to Kejriwal and extended the time limit for issuing the preliminary results of this review by 120 days to September 30, 2009. *See Certain Lined Paper Products from India: Notice of Partial Rescission of Antidumping Duty Administrative Review and Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review,* 74 FR 21781 (May 11, 2009) (*Rescission and Preliminary Extension Notice*).

The Department conducted the cost verification from June 29, 2009, through July 3, 2009, and the sales verification from July 13, 2009, through July 17, 2009, in Mumbai, India. On July 27, 2009, the Department requested that Navneet provide an updated sales file to reflect the minor corrections presented to the sales verification team. On August 10, 2009, Navneet provided a revised U.S. sales file.

Period of Review

The POR is September 1, 2007, through August 31, 2008.

Scope of the Order

The scope of this order includes certain lined paper products, typically school supplies (for purposes of this scope definition, the actual use of or labeling these products as school supplies or non-school supplies is not a defining characteristic) composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets (there shall be no minimum page requirement for loose leaf filler paper) including but not limited to such products as single- and multi-subject notebooks, composition books, wireless notebooks, loose leaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8¾ inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or ''tear-out'' size), and are measured as they appear in the product (*i.e.,* stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest

division of Kejriwal Paper Limited, and not as a separate company. Therefore, Kejriwal Exports should not be assigned a separate rate. Accordingly, the Department's initiation is on Kejriwal Paper Limited and Kejriwal Exports, (collectively Kejriwal Paper Limited). *See Initiation Notice.*

[2] *See also Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 73 FR 70964 (November 24, 2008) at footnote 1, in which the Department states, ''{w}e note that the Department erred by inadvertently including the manufacturer/exporter name: ''Ria ImpEx Pvt. Ltd.'' in the prior initiation notice under case number A–533–843 for the period of review: 9/1/07–8/31/08.'' *See* 73 FR 64305 (October 29, 2008). The Department did not receive a timely request to review Ria ImpEx Pvt. Ltd. for case number A–533–843, therefore, the Department retracts its initiation of an administrative review of the antidumping order with respect to Ria ImpEx Pvt. Ltd. for the POR.

[3] On January 9, 2009, in response to Blue Bird's January 8, 2009, letter requesting a five-week extension until February 16, 2009, to file a response to the Department's original questionnaire, the Department, due to time constraints, granted a three-week extension until February 3, 2009 (Extension 1). Subsequently, on January 29, 2009, in response to Blue Bird's January 23, 2009, letter requesting a two-week extension until February 16, 2009, to file a response to Sections B through D of the Department's original questionnaire, the Department granted a full extension to Blue Bird to respond to Sections B through D until February 16, 2009 (Extension 2).

points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this order whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated, included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of this order are:

- Unlined copy machine paper;
- Writing pads with a backing (including but not limited to products commonly known as ''tablets,'' ''note pads,'' ''legal pads,'' and ''quadrille pads''), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper;
- Three-ring or multiple-ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- Index cards;
- Printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- Newspapers;
- Pictures and photographs;
- Desk and wall calendars and organizers (including but not limited to such products generally known as ''office planners,'' ''time books,'' and ''appointment books'');
- Telephone logs;
- Address books;
- Columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
- Lined business or office forms, including but not limited to: pre-printed business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- Lined continuous computer paper;
- Boxed or packaged writing stationary (including but not limited to products commonly known as ''fine business paper,'' ''parchment paper,'' and ''letterhead''), whether or not containing a lined header or decorative lines;
- Stenographic pads (''steno pads''), Gregg ruled (''Gregg ruling'' consists of a single- or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book), measuring 6 inches by 9 inches;

Also excluded from the scope of this order are the following trademarked products:

- Fly™ lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly™ pen-top computer. The product must bear the valid trademark Fly™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- Zwipes™: A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially-developed permanent marker and erase system (known as a Zwipes™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- FiveStar®Advance™: A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1'' wide elastic fabric band. This band is located 2⅜'' from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar®Advance™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- FiveStar Flex™: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3-ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

Merchandise subject to this order is typically imported under headings 4810.22.5044, 4811.90.9050, 4811.90.9090, 4820.10.2010, 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2050, 4820.10.2060, and 4820.10.4000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS headings are provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Model Match Methodology

On May 4, 2009, petitioner requested that the Department modify its model match methodology. We determine that it would be inappropriate to make such a substantial change in the model match methodology at this late stage in the administrative review. The physical characteristics used in the model matching hierarchy were established during the LTFV investigation in this proceeding by the Department, in consultation with all parties.[4] The Department continued to use this model match methodology in the first review of this proceeding.[5] In order to modify the model match methodology, according to section 782(g) of the Tariff Act of 1930, as amended (the Act), the Department must allow ''reasonable opportunity'' for interested parties to comment. *See Koyo Seiko,* 516 F. Supp. 2d 1323 at 1333 (Ct. Int'l Trade 2007); *see also Certain Frozen and Canned Warmwater Shrimp from India: Final Results of Administrative Review,* and accompanying Issues and Decision Memorandum at Comment 4 (*Shrimp from India*), 74 FR 33409 (July 13, 2009). It is the Department's practice to allow sufficient time to solicit comments from all parties, consider the merits of the proposed revisions, including an opportunity for the Department to clarify aspects of the party's proposal and the information and basis that supports the proposal.[6] In the past, the Department has revised model match characteristics prior to the issuance of questionnaires.[7]

In this case, petitioner submitted its request for a change in model match methodology on May 4, 2009, which was six months after the initiation of this review and 29 days before the scheduled date of the preliminary results for this review. At the time of the request, the Department had already issued the original and first supplemental questionnaires to respondents based on the same model-match methodology established in the original investigation and the first administrative review. Even with a subsequent extension of the deadline for completing the preliminary results, the timing of the request did not allow the Department sufficient time to solicit comments from all interested parties, to finalize the specifics of the model match changes, and to issue a revised questionnaire to respondents in time for the preliminary results. Moreover, parties have already committed significant resources to preparing their questionnaire responses, and petitioner has commented on same, using the original model match methodology. To change the methodology at this time would require the collection of additional information and place an increased burden on respondents.[8] Therefore, consistent with the Department's practice, the Department agrees, in part, with Navneet that petitioner's request for changing the model match methodology in this review was submitted too late to be considered. For purposes of these preliminary results of this review, we have continued to rely on our established model matching methodology in this case. The Department will consider the petitioner's arguments if raised at an early date in the next proceeding.

Verification

As provided in section 782(i) of the Act, we have verified information provided by Navneet in the administrative review of the order on subject merchandise from India using standard verification procedures, including the examination of relevant sales and cost information, financial records, and the selection and review of original documentation containing relevant information. Our verification results are outlined in the public version of our verification report dated August 17, 2009, which is on file in the CRU.

During the sales verification, Navneet reported four minor corrections which the Department has accepted. In addition, the Department made findings with respect to bonus pack sales, retail merchandising, and market research selling activity in the United States. *See* the Department's Verification of Sales Responses of Navneet Publications (India) Ltd., in the Antidumping Review of Certain Lined Paper Products from India (Sales Verification Report), dated August 17, 2009, at page 2 for a full discussion.

Application of Facts Available

Section 776(a) of the Act provides that the Department will apply ''facts otherwise available'' if, *inter alia,* necessary information is not available on the record or an interested party: (1) Withholds information that has been requested by the Department; (2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department,

[4] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Certain Lined Paper Products from India,* 71 FR 19706 (April 17, 2006), unchanged in the *Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India* (*India Lined Paper Investigation Final*), 71 FR 45012 (August 8, 2006).

[5] *See Certain Lined Paper Products from India: Preliminary Results of the First Antidumping Duty Administrative Review,* 73 FR 58548 (October 7, 2008), unchanged in the *Notice of Final Results of the First Antidumping Duty Administrative Review* (*India Lined Paper AR1 Final*) 74 FR 17149 (April 14, 2009).

[6] *See also Honey From Argentina: Final Results of Antidumping Duty Administrative Review,* 69 FR 30283 (May 27, 2004), and accompanying Issues and Decision Memorandum at Comment 15 (declining to address arguments for changing the model matching methodology raised for the first time in the case brief); *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania: Final Results of Antidumping Duty Administrative Review and Final Determination Not To Revoke Order in Part,* 70 FR 7237 (Feb. 11, 2005), and accompanying Issues and Decision Memorandum at Comment 10 (stating that arguments on the model matching methodology should be presented early in the case).

[7] *Structural Steel Beams from Korea: Notice of Final Results of Antidumping Duty Administrative Review,* 70 FR 6837 (Feb. 9, 2005), and accompanying Issues and Decision Memorandum at Comment 1 (noting that parties were invited to comment prior to the issuance of questionnaires in the third administrative review on model matching changes which initially had been raised too late in the second administrative review).

[8] This process often takes a significant amount of time, and may span more than one review period before being implemented. *See, e.g., Antifriction Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Reviews in Part, and Determination To Revoke Order in Part (Ball Bearings),* 69 FR 55574 (September 15, 2004), and accompanying Issues and Decision Memorandum at Comment 2. The Department declined to consider the issue of making a fundamental change to the model match methodology when it was first raised in the 2002–2003 administrative review. Instead the Department decided to allow further time for comment and analysis of the issue in the context of the next administrative review and to ensure that all parties in the companion bearings cases were provided ample opportunity to consider and provide comment on the proposed change to the model match methodology. *See* the accompanying memorandum titled ''Ball Bearings (and Parts Thereof) From France, Germany, Italy, Japan, Singapore, and the United Kingdom—Model-Match Methodology'' to James J. Jochum, Assistant Secretary for Import Administration, from Jeffrey A. May, Deputy Assistant Secretary for Import Administration, dated December 3, 2003, which is being placed on the record of this segment of the proceeding in the Central Records Unit (CRU) in room 1117 of the Department's main building. *See also Certain Pasta from Italy: Notice of Preliminary Results of Twelfth Antidumping Duty Administrative Review* (*Pasta from Italy*) 74 FR 39285 (August 6, 2009), and the accompanying memorandum, titled ''Antidumping Duty Administrative Review of Certain Pasta from Italy: Preliminary Model Match Clarification on Pasta Wheat Code Classifications'' to John M. Andersen, Acting Deputy Assistant Secretary, through Melissa Skinner, Office Director, AD/CVD Operations 3, from James Terpstra, Program Manager, AD/CVD Operations 3 for Antidumping and Countervailing Duty Operations, dated July 31, 2009, which is being placed on the record of this segment of the proceeding.

subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information, but the information cannot be verified.

As discussed in the ''Background'' section above, on November 25, 2008, the Department selected Kejriwal and Blue Bird as companies to be individually examined in this review, and on December 4, 2008, the Department issued its original questionnaire to Kejriwal and Blue Bird. *See* the Respondent Selection Memo and the Department's December 4, 2008, Letter to Kejriwal and Blue Bird. The review of Kejriwal has since been rescinded. *See* Rescission and Preliminary Extension Notice.

With respect to Blue Bird, the due date for the original questionnaire response was January 12, 2009. As noted in footnote 3 and in the ''Background'' section, above, Blue Bird made three extension requests (five-weeks, two-weeks, and 13-weeks, respectively) to respond to the original questionnaire. The Department granted a three-week and a two-week extension, respectively, in response to Blue Bird's first and second extension requests. In response to Blue Bird's third request for a 13-week extension, however, the Department determined that it could only grant a maximum extension of two additional weeks because (1) the Department had previously granted Blue Bird two extensions for a total of five weeks; and (2) Blue Bird's third extension request was impractical because the requested due date, May 18, 2009, was only 15 days before the original scheduled date of the preliminary results for this review.[9] The revised deadline for Blue Bird to respond to the Department's Sections B through D questionnaire was March 3, 2009. However, despite multiple extensions, Blue Bird never submitted any responses to the Department's Sections B through D questionnaire. By failing to respond to the Department's requests, Blue Bird withheld requested information and significantly impeded the proceeding. Therefore, pursuant to sections 776(a)(2)(A) and (C) of the Act, the Department preliminarily finds that the use of facts available for Blue Bird is appropriate.

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. *See also India Lined Paper AR1 Final; Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (August 30, 2002). Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. No. 103–316, Vol. 1, at 870 (1994) (*SAA*), reprinted in 1994 U.S.C.C.A.N. 4040, 4198–99. Furthermore, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997); *see also Nippon Steel Corp.* v. *United States*, 337 F.3d 1373, 1382–83 (Fed. Cir. 2003) (*Nippon*).

In this case, the Department granted Blue Bird three extensions for a total of seven weeks. Despite the clear explanation in the Department's February 13, 2009, letter concerning its antidumping procedures and time limits imposed by the statute, and despite multiple extensions granted by the Department, Blue Bird never responded to the Department's Section B through D questionnaires. Not only did it not take the opportunity to respond to the Department's questionnaire, Blue Bird ceased to communicate with the Department after its third extension request. Therefore, we preliminarily find that Blue Bird did not act to the best of its ability in this proceeding, within the meaning of section 776(b) of the Act, because it failed to respond to the Department's requests for information and failed to provide any additional information. Thus, an adverse inference is warranted in selecting from the facts otherwise available with respect to Blue Bird. *See Nippon*, 337 F.3d at 1382–83.

Section 776(b) of the Act provides that the Department may use as AFA information derived from: (1) The petition; (2) the final determination in the investigation; (3) any previous review; or (4) any other information placed on the record. The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See, e.g., Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65084 (November 7, 2006).

In order to ensure that the margin is sufficiently adverse so as to induce cooperation, we have preliminarily assigned a rate of 72.96 percent, which is the highest transaction-specific rate calculated for a respondent in this review. Since this is not secondary information, we do not have to corroborate this rate pursuant to section 776(c) of the Act. The Department finds that this rate is sufficiently high to ensure that the respondent does not benefit from its failure to cooperate and to encourage participation in future segments of this proceeding in accordance with section 776(b) of the Act. When the Department selects a transaction-specific margin to use as AFA it analyzes the underlying transaction to ensure that it is not aberrational. *See, e.g., Magnesium Metal From the Russian Federation: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 39919 (August 10, 2009). For example, if the highest margin involves a transaction with an unusually small quantity, or involves an unusual product, the Department may reject it as aberrational. However, none of these factors are present for the margins in this review. *See* Selection of AFA Margin for Blue Bird for our analysis of the relevant transactions.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by Navneet covered by the description in the ''Scope of the Order'' section above and sold in India during the POR are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on eight criteria to match

[9] In its letter to Blue Bird dated February 13, 2009, the Department further stated that it could only grant a two-week extension rather than a 13-week extension because ''prior to issuing the preliminary results, the Department must have complete, reliable, and accurate sales and costs information submitted by Blue Bird. In addition, the Department must have adequate time to review and analyze such sales and costs information and issue and analyze responses to any necessary supplemental questionnaires prior to issuance of the preliminary results. Further, because Blue Bird has not been reviewed previously, the Department planned to conduct verification in this segment of the proceeding. Therefore, it is impracticable for the Department to grant Blue Bird a three-month extension until May 18, 2009, which comes 15 days before the scheduled date for issuance of the preliminary results.''

U.S. sales of subject merchandise to comparison market sales of the foreign like product: (1) Form, (2) paper volume, (3) brightness, (4) binding type, (5) cover material, (6) back material, (7) number of inserts, and (8) insert material. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above.

For purposes of the preliminary results, where appropriate, we have calculated the adjustment for differences in merchandise based on the difference in the variable cost of manufacturing (VCOM) between each U.S. model and the most similar home market model selected for comparison.

Normal Value Comparisons

To determine whether sales of CLPP from Navneet to the United States were made at less than NV, we compared EP to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transaction prices. We used the information provide by Navneet, including certain minor changes from verification. *See* Sales Verification Report at page 2.

Export Price

For all U.S. sales made by Navneet, we used the EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price methodology was not warranted based on the facts of record. We based EP on packed prices to the first unaffiliated purchaser in the United States. Navneet reported that it did not offer any discounts or rebates in the U.S. market; therefore, the EP prices were not reduced to reflect discounts or rebates.

In accordance with section 772(c)(2)(A) of the Act, we made deductions, where appropriate, for movement expenses including foreign inland freight from plant/warehouse to the port of exportation, foreign brokerage and handling, and foreign bill of lading charges. In addition, we deducted the costs for the sales of non-subject merchandise that were included in the value pack sales, where appropriate. We also increased EP by an amount equal to the countervailing duty (CVD) rate attributed to export subsidies in the most recently completed countervailing duty administrative review of CLPP from India, in accordance with section 772(c)(1)(C) of the Act.

Normal Value

Selection of Comparison Market

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Navneet's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and 773(a)(1)(C) of the Act, because Navneet had an aggregate volume of home market sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, the Department determines NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transactions. In order to perform the LOT analysis, we examine the selling functions provided to different customer categories to evaluate the LOT in a particular market. Specifically, we compare the selling functions performed for home market sales with those performed with respect to the EP or CEP transactions, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act and 19 CFR 351.412, to determine if the home market LOT constituted a different LOT than the EP or CEP LOT.

Consistent with 19 CFR 351.412, to determine whether comparison market sales were at a different LOT, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's-length) customers. If the comparison market sales were at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we will make an LOT adjustment under section 773(a)(7)(A) of the Act.

Navneet reported that it has five channels of distribution or five LOTs in the home market (*i.e.,* distributors with merchandising—full service; distributors with no merchandising—limited service; retail chain stores; institutional end-users who purchase materials for their own use; and schools that purchase customized products for their own use and for selling to students).

Section 351.412(c)(2) of the Department's regulations provides that the Department will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not a sufficient, condition for determining that there is a difference in the stage of marketing. Some overlap in selling activities will not preclude a determination that sales are at different stages of marketing.

We disagree with Navneet that there are five LOTs in the home market. Our analysis of the selling activities for Navneet shows that Navneet performs similar selling activities for different customer categories, although some of the activities were at different levels of intensity. Moreover, some selling activities within the claimed LOT1 are at a higher level of intensity than the same selling activities in the claimed LOT2 through LOT5. In addition, there is overlap among the channels of distribution for the different customer categories between LOT1 and LOT2 through LOT5 customers. Although there are differences in intensity of selling activities among LOT2 through LOT5 customers, this, in and of itself, does not show a substantial difference in selling activities that would form the basis for finding distinct LOTs. *See, e.g.*, *Certain Frozen Warmwater Shrimp from Ecuador: Final Results of Antidumping Duty Administrative Review*, 72 FR 52070 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 4. The differences in Navneet's selling activities chart indicate that there are two LOTs in the home market: (1) LOT1 and (2) a combined LOT2, which is comprised of Navneet's reported LOT2 through LOT5. The selling activities in the combined LOT2 in the home market are comparable to the selling activities in the LOT in the U. S. market. Due to the proprietary nature of this issue, please refer to Navneet's Preliminary Calculation Memorandum for further discussion, dated September 30, 2009.

In the U.S. market, Navneet reported that its sales were made through one channel of distribution to one customer category, and therefore, at one LOT. The Department has determined that Navneet's home market sales in the combined LOT2 are at the same stage of marketing as the U.S. sales. We only compared home market sales in the combined LOT2 to the U.S. sales and determined that no LOT adjustment for

Navneet's sales to the United States was necessary.

Cost of Production Analysis

A ''sales-below-cost'' analysis was conducted in the investigation with respect to Navneet, pursuant to section 773(b) of the Act, because there were reasonable grounds to ''believe or suspect'' that sales of the foreign like product have been made below the cost of production (COP). However, in the investigation, the Department found that Navneet failed to provide the required information in the manner requested and therefore determined that Navneet did not act to the best of its ability. Consequently, in selecting from among the facts otherwise available, the Department found that the use of AFA was warranted under section 776(a)(2) of the Act. *See India Lined Paper Investigation Final*. In the first administrative review, Navneet was a non-selected company. *See India Lined Paper AR1 Final*.

Because Navneet failed to act to the best of its ability in the only proceeding in which it was individually examined by the Department, we therefore have reasonable grounds to believe or suspect, pursuant to section 773(b)(2)(A)(ii) of the Act, that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below COP. Thus, pursuant to section 773(b)(1) of the Act, we examined whether sales from Navneet in the home market were made at prices below the COP.

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general and administrative expenses (SG&A) and packing expenses. For these preliminary results, we have adjusted Navneet's reported cost of manufacturing to include common production costs not allocated to divisions and other common production costs of the stationery division not allocated to subdivisions. We have calculated the G&A expense for each control number (CONNUM) based on the G&A ratio submitted by Navneet in its May 26, 2009, COP/constructed value (CV) file. As Navneet did not incur net financial expense during fiscal year 2008, we excluded the interest expense (INTEX) field from the calculation of COP for each CONNUM. We calculated the COP and CV of all CONNUMs sold in the home market to exclude the central excise tax on raw material inputs. For further details, *see* the Memorandum to Neal M. Halper, Director, Office of Accounting, through Michael P. Martin, Lead Accountant, from Robert B. Greger, Senior Accountant, titled ''Antidumping Duty Administrative Review of Certain Lined Paper Products from India: Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Navneet Publications (India) Ltd.,'' dated September 30, 2009.

Test of Comparison Market Prices

As required under section 773(b)(2) of the Act, we compared the weighted-average COP to the per-unit price of the comparison market sales of the foreign like product, to determine whether these sales were made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below-cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses and packing expenses which were excluded from COP for comparison purposes. In addition, we made an adjustment for excise taxes that were paid on certain inputs that were included in the price. *See also* excise tax discussion below.

Results of COP Test

Pursuant to sections 773(b)(2)(B) and (C)(i) of the Act, where less than 20 percent of sales of a given product during the POR were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities'' within an extended period of time. Where 20 percent or more of Navneet's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in ''substantial quantities.'' *See* sections 773(b)(2)(B) and (C) of the Act. Further, such sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to POR-average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of this administrative review, we disregarded below-cost sales of a given product and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

Calculation of Normal Value Based on Comparison Market Prices

We based home market prices on packed prices to unaffiliated purchasers in India. Where appropriate, in accordance with section 773(a)(6)(B) of the Act, we deducted from the starting price inland freight. Pursuant to 19 CFR 351.401(c), we deducted rebates and discounts. In accordance with sections 773(a)(6)(A) and (B) of the Act, we added U.S. packing costs and deducted comparison market packing, respectively. We also made adjustments for Navneet, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or the United States where commissions were granted on sales in one market but not in the other, the (''commission offset''). Specifically, where commissions are incurred in one market, but not in the other, we will limit the amount of such allowance to the amount of either the selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

In addition, for comparisons made to EP sales, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b) by deducting direct selling expenses incurred for home market sales (credit expense) and adding U.S. direct selling expenses (credit, bank charges, and commissions directly linked to sales transactions). In accordance with section 773(a)(1)(B)(i) of the Act, we based NV on LOTH2 sales. *See* the ''Level of Trade'' section above.

Finally, consistent with section 773(a)(6)(B)(iii) of the Act, we made an adjustment for central excise taxes that Navneet paid on raw material inputs used to produce merchandise that was sold in the home market that were not paid on the same inputs used to produce merchandise that was exported from India. Under Indian law, Navneet was prohibited from charging this excise tax on sales of school supplies. In addition, the excise tax that Navneet paid on inputs into school supplies was not refunded and was not otherwise recovered by Navneet. Therefore, we find the tax is included in the price and adjustment is warranted. For products other than school supplies, Navneet reported home market selling prices net of the excise tax.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section

773A(a) of the Act based on exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Non-Selected Rate

The statute and the Department's regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. However, the Department normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 735(c)(5) of the Act. Section 735(c)(5)(A) of the Act instructs the Department to calculate an all-others rate using the weighted average of the dumping margins established for the producers/exporters individually examined, excluding any zero or *de minimis* margins or any margins based on total facts available.

In this review, Navneet is the only respondent for which the Department has calculated a company-specific rate that is based on the average of the margins calculated during the review, other than those which were zero, *de minimis*, or based on total facts available. Therefore, for purposes of these preliminary results, the 22 remaining non-selected companies subject to this review will receive the rate calculated for Navneet in this review. *See also* the ''Suspension of Liquidation'' section, below.

Preliminary Results of the Review

We preliminarily determine that weighted-average dumping margins exist for the respondents for the period September 1, 2007, through August 31, 2008, as follows:

Manufacturer/exporter	Weighted average margin (percent)
Navneet Publications (India) Ltd.	2.08
Blue Bird	72.96

Review-Specific Average Rate Applicable to the 22 Non-Selected Companies Subject to This Review:

Manufacturer/exporter	Weighted average margin (percent)
Agility Logistics Pvt. Ltd.	2.08
Ceal Shipping Logistics Pvt. Ltd.	2.08
Cello International Pvt. Ltd.	2.08
Corporate Stationary Pvt. Ltd.	2.08
Creative Divya	2.08
Exel India Pvt. Ltd.	2.08
FFI International	2.08
Global Art India Inc.	2.08
International Greetings Pvt. Ltd.	2.08
Karim General Handmade Paper DIAR	2.08
M/S Super ImpEx.	2.08
Magic International	2.08
Marigold ExIm Pvt. Ltd.	2.08
Marisa International	2.08
Pentagon Waterlines Pvt. Ltd.	2.08
Pioneer Stationery Pvt. Ltd.	2.08
Rajvansh International	2.08
Riddhi Enterprises	2.08
SAB International	2.08
TKS Overseas	2.08
Unlimited Accessories World-wide	2.08
V. Joshi Co.	2.08

Public Comment

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties to this proceeding in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs are limited to issues raised in the case briefs and may be filed no later than five days after the time limit for filing the case briefs. *See* 19 CFR 351.309(d). Parties submitting arguments in this proceeding are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities, in accordance with 19 CFR 351.309(d)(2). Further, parties submitting case and/or rebuttal briefs are requested to provide the Department with an additional electronic copy of the public version of any such comments on a computer diskette. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, ordinarily will be held two days after the due date of the rebuttal briefs in accordance with 19 CFR 351.310(d)(1). The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of these preliminary results, unless extended. *See* section 751(a)(3)(A) of the Act, and 19 CFR 351.213(h).

Assessment Rate

Upon completion of the final results of this administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department will calculate importer-specific assessment rates for each respondent based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales. Where the respondent did not report the entered value for U.S. sales, we have calculated importer-specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* rates based on the estimated entered value. Where the assessment rate is above *de minimis,* we will instruct CBP to assess duties on all entries of subject merchandise by that importer. 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). The Department intends to issue assessment instructions directly to CBP 15 days after publication of the final results of this 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). This clarification will apply to entries of subject merchandise during the POR produced by the respondents subject to this review for which the reviewed companies did not know that the merchandise which it sold to an 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 if there is no rate for the intermediary involved in the transaction. For a full discussion of this clarification, see *id.*

Cash Deposit Requirements

To calculate the cash deposit rate for Navneet, we divided its total dumping margin by the total net value of its sales during the review period. For the responsive companies which were not selected for individual review, we have calculated a cash deposit rate based on the simple average of the cash deposit

rates calculated for the companies selected for individual review. In this instance, there is only one non-AFA rate which we applied.

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of CLPP from India entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for companies subject to this review will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis,* no cash deposit will be required; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results for a review in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 3.91 percent, the all-others rate established in the LTFV investigation. *See Lined Paper Orders.*[10] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this 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.

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

[10] *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949 (September 28, 2006) (*Lined Paper Orders*).

Dated: September 30, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–24210 Filed 10–6–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Seventh Administrative Review of Honey From the People's Republic of China: Second Extension of Time Limit for the Preliminary Results

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 7, 2009.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand, 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) 482–3207.

Background

On February 2, 2009, the Department of Commerce (''Department'') published a notice of initiation of an administrative review of honey from the People's Republic of China (''PRC''), covering the period December 1, 2007 through November 30, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 5821 (February 2, 2009). On March 6, 2009, after receiving comments on U.S. Customs and Border Protection data, the Department selected Anhui Native Produce Import & Export Corp. (''Anhui Native'') and Qinhuangdao Municipal Dafeng Industrial Co., Ltd. (''QMD'') as the mandatory respondents for this review.

The Department sent its antidumping questionnaire to Anhui Native and QMD on March 9, 2009. The Department was unable to deliver its questionnaire to QMD due to incorrect addresses. *See* Memorandum to the File from Blaine Wiltse, Case Analyst, RE: Seventh Administrative Review of Honey from the People's Republic of China (''PRC''): Incorrect Addresses for QMD, dated March 27, 2009. On March 30, 2009, Dongtai Peak Honey Industry Co., Ltd. (''Dongtai Peak'') requested treatment as a voluntary respondent, and submitted its Section A response to the Department.

On April 13, 2009, the Department selected Dongtai Peak as a voluntary respondent for this review. On April 14, 2009, Dongtai Peak submitted its Sections C and D response to the Department. On April 15, 2009, Anhui Native withdrew its participation from the current review.

On June 8, 2009, and June 16, 2009, the Department sent its Supplemental Sections A, C, and D Questionnaire and its Importer Specific Supplemental Questionnaire to Dongtai Peak. On July 8, 2009, and July 13, 2009, Dongtai Peak submitted its response to the Department's Importer Specific Supplemental Questionnaire and Supplemental Sections A, C, and D Questionnaire. The Department previously extended this review by 60 days. *See Seventh Administrative Review of Honey from the People's Republic of China: Extension of Time Limit for the Preliminary Results*, 74 FR 41679 (August 18, 2009). The preliminary results of this administrative review are currently due on November 2, 2009.

Extension of Time Limit for the Preliminary Results

The Department determines that completion of the preliminary results of this review by November 2, 2009 is not practicable. The Department requires more time to gather and analyze surrogate value information pertaining to this company. Additionally, the Department intends to provide additional time for interested parties to provide comments on supplemental questionnaires and suggested surrogate values. Lastly, the Department requires additional time to analyze the supplemental questionnaire that was already issued. Therefore, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''Act''), we are extending the time period for issuing the preliminary results of review by 45 days until December 16, 2009. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is published pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: September 30, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–24239 Filed 10–6–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2009–OS–0143]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Secretary of Defense proposes to alter DWHS E03, a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on November 6, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from **ADDRESSES** above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on September 25, 2009, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: September 25, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

DWHS E03

SYSTEM NAME:

Security Review Index File (March 28, 2007, 72 FR 14531).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Office of Security Review, Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Current active duty and Department of Defense (DoD) civilian employees including Foreign Nationals, retired personnel, former DoD employees, and non-active duty members of the Reserve Components that use the review process to ensure that information they submit for public release does not compromise national security.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name, personal phone numbers (home/cell), personal/home e-mail address, home mailing address of individuals submitting material for security review, and title/subject of submitted document.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''DoD Directive 5230.9, Clearance of DoD Information for Public Release; DoD Instruction 5230.29, Security and Policy Review of DoD Information for Public Release; 5 U.S.C. 301, Departmental Regulations.''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records and electronic storage media.''

RETRIEVEABILITY:

Delete entry and replace with ''By name and title/subject of submitted document.''

SAFEGUARDS:

Delete entry and replace with ''Paper records are accessed only by officials with need to know and appropriate security clearance in accordance with assigned duties. Electronic records require Common Access Card to access and are further password protected with access limited to those individuals who have a need-to-know.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records are destroyed 2 years after clearance without amendment; destroyed 6 years after record was cleared with amendment, or denied clearance. Security review appeal files which are cleared are destroyed 2 years after clearance; and destroyed 6 years after record was cleared with amendment or denied. Records are destroyed by burn bag.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Chief, Office of Security Review, Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to Office of Security Review, Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should include the individual's name and title/subject of submitted document.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system of records should address written inquiries to Office of the Secretary of Defense/Joint Staff, Freedom of Information Requester Service Center, Office of Freedom of Information, Executive Services Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should include the name and number of this system of records notice, the individual's name, title/subject of the submitted document, and be signed.''

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''From the individual.''

* * * * *

DWHS E03

SYSTEM NAME:

Security Review Index File.

SYSTEM LOCATION:

Office of Security Review, Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current active duty and Department of Defense (DoD) civilian employees including Foreign Nationals, retired personnel, former DoD employees, and non-active duty members of the Reserve Components that use the review process to ensure that information they submit for public release does not compromise national security.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, personal phone numbers (home/cell), personal/home email

address, home mailing address of individuals submitting material for security review, and title/subject of submitted document.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

DoD Directive 5230.9, Clearance of DoD Information for Public Release; DoD Instruction 5230.29, Security and Policy Review of DoD Information for Public Release; 5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

To manage the security review process for documents or materials before they are released outside of the DoD. The documents and materials of completed security reviews are maintained for historical reference to ensure subsequent reviews, which may be similar in content, are handled consistently.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVEABILITY:

By name and title/subject of submitted document.

SAFEGUARDS:

Paper records are accessed only by officials with need to know and appropriate security clearance in accordance with assigned duties. Electronic records require Common Access Card to access and are further password protected with access limited to those individuals who have a need-to-know.

RETENTION AND DISPOSAL:

Records are destroyed 2 years after clearance without amendment; destroyed 6 years after record was cleared with amendment, or denied clearance. Security review appeal files which are cleared are destroyed 2 years after clearance; and destroyed 6 years after record was cleared with amendment or denied. Records are destroyed by burn bag.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Security Review, Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to Office of Security Review, Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should include the individual's name and title/subject of document submitted.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to Office of the Secretary of Defense/Joint Staff, Freedom of Information Requester Service Center, Office of Freedom of Information, Executive Services Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should include the name and number of this system of records notice, the individual's name, title/subject of submitted document, and be signed.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–24129 Filed 10–6–09; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2009–OS–0142]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary of Defense is proposing to alter a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on November 6, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Office of the Secretary of Defense, Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard at (703) 588–2386.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, was submitted on September 25, 2009, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: September 25, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

DTMA 02

SYSTEM NAME:

Medical/Dental Care and Claims Inquiry Files (March 29, 2006, 71 FR 15707).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Inquiries received from private individuals for information on TRICARE/CHAMPUS and CHAMPVA, and replies thereto; congressional inquiries on behalf of constituents and replies thereto; and files notifying personnel of eligibility or termination of benefits. Information may include: Name; Social Security Number (SSN); date of birth; case number; dates of

treatment; medical diagnosis; Defense Enrollment Eligibility Reporting System (DEERS) data; address; telephone number; marital status; adoption information; and sponsor name.''

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''41 CFR 101–11.000, Federal Records and Standard and Optional Forms; 10 U.S.C. 55, Medical and Dental Care; 38 U.S.C. 1781, Medical Care for survivors and dependents of certain veterans, and E.O. 9397 (SSN), as amended.''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records and electronic storage media.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Paper records are retained in active files until end of calendar year in which they are received, then closed out and held 1 additional year. Then transferred to the Federal Records Center (FRC), the FRC shall destroy after an additional 5 years. Paper copy records that have been converted to electronic, microfilm, imaging or optical formats, the paper copy is destroyed after verification of data, and the electronic, microfilm, imaging, or optical format are kept by the contractor for 6 years after the claim is processed to completion, and then destroyed by cross shredding, macerating, degaussing or by a commercially bonded or insured vendor who must provide a certificate of destruction. The destruction of the records must be witnessed. Destruction of the records is dependent on any records preservation orders that may be in effect.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''TRICARE Management Activity, Department of Defense, Communications and Customer Service Division, Skyline 5, 5111 Leesburg Pike, Falls Church, VA 22041–3206.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Communications and Customer Service Division, Skyline 5, 5111 Leesburg Pike, Falls Church, VA 22041–3206; or TRICARE Management Activity Privacy Office, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3201.

Written requests should include name, Social Security Number (SSN) and dates treatment received.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the OSD/JS FOIA Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should include name, Social Security Number (SSN) and dates treatment received.''

* * * * *

DTMA 02

SYSTEM NAME:

Medical/Dental Care and Claims Inquiry Files.

SYSTEM LOCATION:

TRICARE Management Activity, Department of Defense, 16401 East Centretech Parkway, Aurora, CO 80011–9066, and contractors under contract to TRICARE. A listing of TRICARE contractors maintaining these records is available from the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who seek information concerning health care (medical and dental) under TRICARE/CHAMPUS and CHAMPVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inquiries received from private individuals for information on TRICARE/CHAMPUS and CHAMPVA, and replies thereto; congressional inquiries on behalf of constituents and replies thereto; and files notifying personnel of eligibility or termination of benefits. Information may include: Name; Social Security Number (SSN); date of birth; case number; dates of treatment; medical diagnosis; Defense Enrollment Eligibility Reporting System (DEERS) data; address; telephone number; marital status; adoption information; and sponsor name.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

41 CFR 101–11.000, Federal Records and Standard and Optional Forms; 10 U.S.C. 55, Medical and Dental Care; 38 U.S.C. 1781, Medical Care for survivors and dependents of certain veterans and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To maintain and control records pertaining to requests for information concerning an individual's TRICARE/CHAMPUS eligibility status, the benefits provided under programs of TRICARE/CHAMPUS and CHAMPVA and the processing of individual TRICARE/CHAMPUS and CHAMPVA claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a (b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a (b) (3) as follows:

To the Department of Health and Human Services and/or the Department of Veterans Affairs consistent with their statutory administrative responsibilities under TRICARE/CHAMPUS and CHAMPVA pursuant to chapter 55, 10 U.S.C. and section 613, chapter 17, 38 U.S.C.

To Federal, state, local, or foreign governmental agencies, and to private business entities, including individual providers of care (participating and non-participating), on matters relating to eligibility, claims pricing and payment, fraud, program abuse, utilization review, quality assurance, peer review, program integrity, third-party liability, coordination of benefits, and civil or criminal litigation related to the operation of TRICARE/CHAMPUS.

To third-party contacts in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning his or her entitlement, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal.

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

Information is retrieved by case number, sponsor name and/or Social Security Number (SSN) and inquirer name.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Automated segments are accessible only by authorized persons possessing user identification codes. Security systems and/or security guards protect buildings where records are maintained.

RETENTION AND DISPOSAL:

Paper records are retained in active files until end of calendar year in which they are received, then closed out and held 1 additional year. Then transferred to the Federal Records Center (FRC), the FRC shall destroy after an additional 5 years. Paper copy records that have been converted to electronic, microfilm, imaging or optical formats, the paper copy is destroyed after verification of data, and the electronic, microfilm, imaging, or optical format are kept by the contractor for 6 years after the claim is processed to completion, and then destroyed by cross shredding, macerating, degaussing or by a commercially bonded or insure vendor who must provide a certificate of destruction. The destruction of the records must be witnessed. Destruction of the records is dependent on any records preservation orders that may be in effect.

SYSTEM MANAGER(S) AND ADDRESS:

TRICARE Management Activity, Department of Defense, Communications and Customer Service Division, Skyline 5, 5111 Leesburg Pike, Falls Church, VA 22041–3206.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Communications and Customer Service Division, Skyline 5, 5111 Leesburg Pike, Falls Church, VA 22041–3206; or TRICARE Management Activity Privacy Office, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3201.

Written requests should include name, Social Security Number (SSN) and dates treatment received.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the OSD/JS FOIA Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should include name, Social Security Number (SSN) and dates treatment received.

If it is determined that the release of medical information to the requester could have an adverse effect upon the individual's physical or mental health, the requester should be prepared to provide the name and address of a physician who would be willing to receive the medical record, and at the physician's discretion, inform the individual covered by the system of the contents of that record. In the event the physician does not agree to convey the information contained within the record to the individual, TRICARE Management Activity will take positive measures to ensure the individual is provided the requested information.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents, and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Contractors, congressional offices, Health Benefits Advisors, all branches of the Uniformed Service, congressional offices, providers of care, consultants, and individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–24130 Filed 10–6–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Senior Executive Service Performance Review Board

AGENCY: Office of Inspector General, DoD.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Senior Executive Service (SES) Performance Review Board (PRB) for the Department of Defense Office of Inspector General (DoD OIG), as required by 5 U.S.C. 4314(c)(4). The PRB provides fair and impartial review of SES performance appraisals and makes recommendations regarding performance ratings and performance awards to the Inspector General.

DATES: Effective October 1, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Phyllis Hughes, Director, Human Capital Advisory Services, Administration and Management, DoD OIG, 400 Army Navy Drive, Arlington, VA 22202, (703) 602–4516.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the DoD OIG, PRB:

Charles Coe, Jr.	Assistant Inspector General for Information Technology Audits and Computer Crime Investigations, Department of Education.
Karen Ellis.	Assistant Inspector General for Investigations, Department of Agriculture.
Marla Freedman.	Assistant Inspector General for Audit, Department of Treasury.
Lisa Martin.	General Counsel, United States Postal Service, Office of Inspector General.
Linda Snider.	Assistant Inspector General for Resource Management, Department of Energy.

Dated: September 28, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–24128 Filed 10–6–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of Air Force

[Docket No. USAF–2009–0058]

Privacy Act of 1974; System of Records

AGENCY: Department of Air Force, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of Air Force proposes to amend a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on November 6, 2009 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCPPI, 1800 Air Force Pentagon, Washington, DC 20330–1800.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Swilley at (703) 696–6172.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as

amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 24, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

F036 AF DP G

SYSTEM NAME:

Leadership Mirror 360 (LM 360) (September 22, 2009, 74 FR 48241).

CHANGES:

System Identifier.

Delete Entry and replace with ''F036 AF DP H''.

* * * * *

F036 AF DP H

SYSTEM NAME:

Leadership Mirror 360 (LM 360).

SYSTEM LOCATION:

Headquarters United States Air Force, Directorate of Personnel Force Development, 1040 Air Force Pentagon, Washington, DC 20330–1040.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Personnel and DoD civilians who participate in Force Development.

CATEGORIES OF RECORDS IN THE SYSTEM:

First name, last name, middle name (when available), e-mail and mailing address, rank, Major Command (MAJCOM), Air Force Specialty Code (AFSC) and/or Occupational Series, and Electronic Data Interchange-Personal Identifier (EDI–PI).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction (AFI) 36–2640, Executing Total Force Development; and Air Force Policy Directive (AFPD) 36–26, Total Force Development.

PURPOSE(S):

Used to support Force Development (FD) needs of United States Air Force personnel by allowing an invited user to conduct a 360 degree assessment that is designed to collect perception-based feedback for individuals based on Air Force institutional competencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

In addition to those disclosures generally permitted under 5 U.S.C. 552A(b) of the Privacy Act of 1974, these records or information contained therein may be specifically disclosed outside the Department of Defense as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

Combination of first and last name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by persons responsible for servicing the record system in performance of their official duties that are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms, and in computer storage devices and protected by computer system software.

RETENTION AND DISPOSAL:

Data stored digitally within the system is retained only for the period required to satisfy recurring processing requirements and/or historical requirements. Backup data files will be retained for a period not to exceed 45 days. Backup files are maintained only for system restoration and are not to be used to retrieve individual records. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Force Development Integration, Directorate of Personnel Force Development, Headquarters United States Air Force (HQ USAF/A1DI), 1040 Air Force Pentagon, Washington, DC 20330–1040.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about them is contained in this system should address written inquiries to or visit the agency officials at the respective installation education center. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Request must contain full name and current mailing address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them contained in this system of records should address written inquiries to AF/A1DI, 1040 Air Force Pentagon, Washington, DC 20330–1040.

Request must contain full name and current mailing address.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332, Privacy Act Program; 32 CFR part 806b or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Data gathered from the individual, data gathered from other personnel records, transcripts and/or evaluations from schools and test results from testing agencies. Education, training and personnel information is obtained from approved automated system interfaces.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–24131 Filed 10–6–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting 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 December 7, 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 Acting 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: October 2, 2009.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Evaluation and Accountability Reports for Title II, Part D of ESEA.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 53.

Burden Hours: 1,590.

Abstract: This submission requests approval to require States to submit to the Department two annual written reports consistent with the statutory requirement: (1) A written report that describes the State's process and accountability measures that the State educational agency will use to evaluate Ed Tech funded activities. The first report will be due on March 1, 2010 and will describe for school years (SYs) 2009–2010 and 2010–2011 (and in subsequent reports for subsequent years): (a) The process and accountability measures that the SEA will use to evaluate the effectiveness of Ed Tech-supported activities; and (b) how the SEA will ensure that LEAs and eligible local entities that receive Ed-Tech funds (either competitively or by formula) are meeting their evaluation responsibilities. Subsequent reports will be due on October 1 of each year, beginning on October 1, 2011, and will describe the accountability system in place for that school year. (2) An annual report on the State's evaluation of Ed-Tech funded activities. The first report will be due on October 1 of each year, beginning on October 1, 2010, and will report on the effectiveness of Ed-Tech funded activities during the previous school year.

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 4128. 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. E9–24219 Filed 10–6–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13392–000]

Lock+™ Hydro Friends Fund II, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

September 30, 2009.

On March 6, 2009, Lock+™ Hydro Friends Fund II, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Mississippi River Lock and Dam No. 9 Water Power Project (Gumby Project), to be located on the Mississippi River in Allamakee County, Iowa, and Crawford, Wisconsin, and near the town of Lynxville, WI.

The proposed Lock & Dam 9 Project would be integral with: (1) The existing U.S. Army Corps of Engineers Lock & Dam No. 9 comprised of an 811-foot-long gated dam section with 5 roller gates and 8 tainter gates, and a 600 foot-long lock, and; (2) an existing 17-mile-long reservoir extending from River Mile 648 to River Mile 679 at a normal pool elevation of 620.0 feet mean sea level.

The proposed project would consist of: (1) Seven generating units and installed in a new door installed in the auxiliary lock with a total capacity of 4,963; and (2) a new 1,000-foot-long, 36.7-kilovolt transmission line connected to an existing above ground local distribution system. The project would have an estimated average annual generation of 41.3 gigawatt-hours.

Applicant Contact: Mr. Wayne F. Krouse, Hydro Friends Fund II LLC, 5090 Richmond Avenue #390, Houston, TX 77056, phone (877) 556–6566 x709.

FERC Contact: Michael Spencer, (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project 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-13392) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–24126 Filed 10–6–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–468–000]

Dominion Transmission, Inc.; Notice of Application

September 30, 2009.

Take notice that on September 23, 2009, Dominion Transmission, Inc., (Dominion), 120 Tredegar Street, Richmond, Virginia 23219, filed with the Commission an application in Docket No. CP09–468–000, pursuant to section 7(b) of the Natural Gas Act (NGA), for authorization to reclassify from jurisdictional transmission to gathering, exempt from the Commission's jurisdiction under Section 1(b) of the NGA, approximately 1.5 miles of 4-inch diameter pipeline (Line No. TL–447) and the O'Dell Compressor Station, which consists of one 115 H.P. compressor unit, in Upshur County, West Virginia, as more fully set forth in the application which is open to public inspection. This filing may be also viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERCOnline Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to Brad A. Knisley, Regulatory and Certificates Analyst II, Dominion Transmission, Inc., 701 East Cary Street, Richmond, Virginia 23219, or via telephone at (804) 771–4412, facsimile number (804) 771–4804, and *e-mail: Brad.A.Knisley@dom.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions via the Internet in lieu of paper. 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.

Comment Date: October 21, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–24125 Filed 10–6–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 739–022]

Appalachian Power Company; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

September 30, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 739–022.

c. *Date filed:* June 29, 2009.

d. *Applicant:* Appalachian Power Company.

e. *Name of Project:* Claytor Project.

f. *Location:* The existing project is located on the New River in Pulaski County, Virginia. The project does not affect Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Teresa Rogers, Reservoir Superintendent, Appalachian Power Company, 40 Franklin Road, Roanoke, VA 24011, (540) 985–2441, *tprogers@aep.com.*

i. *FERC Contact:* John Smith, (202) 502–8972 or *john.smith@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions may

be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''eFiling'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.'' For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *The Project Description:* The Claytor Project consists of: (1) A 1,142-foot-long, 137-foot-high concrete gravity dam; (2) a 4,472-acre reservoir with a storage capacity of 225,000 acre-feet at normal pool elevation 1,846.0 feet National Geodetic Vertical Datum (NGVD); (3) four 16-foot-diameter penstocks; (4) a powerhouse integral with the dam containing four generating units with a combined capacity of 75 megawatts; (5) a 1,000-foot-long transmission line; and (6) switching and appurtenant equipment.

The applicant proposes to expand its current levelized flow mode whereby releases from the project approximate inflows to the project over a 24-hour period from April 15 through October 15 to April 1 through November 30. Reservoir levels would continue to be maintained between 1,845 feet NGVD and 1,846 feet NGVD and a minimum average hourly flow of 750 cubic feet per second (cfs), or inflow, whichever is less, would be provided downstream of the project. The applicant would also modify the current period for peaking operations from October 16 through April 14 to December 1 through March 31 and increase its minimum average hourly downstream flow from 750 cfs to 1,000 cfs, or inflow, whichever is less. During this period, the applicant would extend the time to ramp down during peaking operations from 15 minutes to 30 minutes but continue to bring units on line in 15 minute intervals to meet system demands. Reservoir levels would be maintained between 1,844 feet NGVD and 1,846 feet NGVD. In addition, the applicant would eliminate the current winter drawdown to protect aquatic resources including State-listed mussel populations. For recreation purposes, the applicant is proposing to provide weekend releases of 1,000 cfs when inflow falls below 1,000 cfs but is above 800 cfs and would provide recreation releases for the annual squirt boat competition each May.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) Bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. *Procedural Schedule:*

The application will be processed according to the following revised Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Commission issues Draft EA.	May 28, 2010.
Comments on Draft EA.	June 27, 2010.
Modified Terms and Conditions.	August 26, 2010.
Commission Issues Final EA.	November 24, 2010.

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–24122 Filed 10–6–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

September 29, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC09–110–000

Applicants: Monmouth Energy, Inc., Montauk Energy Capital, LLC, Johnnic Holdings USA LLC, Johnnic Holdings Limited, Tsogo Investment Holding Company, Hosken Consolidated Investments Limited

Description: Application for authorization under Section 203 of the federal power act request for expedited consideration and confidential treatment re Monmouth Energy, Inc. *et al.*

Filed Date: 09/28/2009.

Accession Number: 20090929–0123.

Comment Date: 5 p.m. Eastern Time on Monday, October 19, 2009.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG09–95–000.

Applicants: Raleigh Wind Power Partnership.

Description: Notice of Self-Certification of Exempt Wholesale Status of Raleigh Wind Power Partnership.

Filed Date: 09/29/2009.

Accession Number: 20090929–5049.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 20, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–3359–014.
Applicants: Florida Power & Light Company.
Description: Florida Power & Light Company submits notice of change in status.
Filed Date: 09/25/2009.
Accession Number: 20090928–0087.
Comment Date: 5 p.m. Eastern Time on Friday, October 16, 2009.

Docket Numbers: ER02–537–025; ER07–758–017.
Applicants: Inland Empire Energy Center, L.L.C., Shady Hills Power Company, L.L.C.
Description: Notice of Non-Material Change in Status for Shady Hills Power Company, L.L.C. *et al.*
Filed Date: 09/29/2009.
Accession Number: 20090929–5045.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 20, 2009.

Docket Numbers: ER03–774–013.
Applicants: Eagle Energy Partners I, LP.
Description: Notice of Non-Material Change in Status of Eagle Energy Partners I, LP.
Filed Date: 09/25/2009.
Accession Number: 20090925–5104.
Comment Date: 5 p.m. Eastern Time on Friday, October 16, 2009.

Docket Numbers: ER08–1113–006.
Applicants: California Independent System Operator Corporation.
Description: The California Independent System Operator Corp submits a compliance filing re FERC's 7/30/09 Order on Rehearing and Clarification.
Filed Date: 09/28/2009.
Accession Number: 20090928–0100.
Comment Date: 5 p.m. Eastern Time on Monday, October 19, 2009.

Docket Numbers: ER08–1272–002.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. submits Fourth Revised Sheet 751 *et al.* to FERC Electric Tariff, Original Volume 1.
Filed Date: 09/28/2009.
Accession Number: 20090929–0086.
Comment Date: 5 p.m. Eastern Time on Monday, October 19, 2009.

Docket Numbers: ER08–83–002.
Applicants: Idaho Power Company.
Description: Idaho Power Co submits a compliance filing re the 7/30/09 Order.
Filed Date: 09/28/2009.
Accession Number: 20090928–0099.
Comment Date: 5 p.m. Eastern Time on Monday, October 19, 2009.

Docket Numbers: ER09–1590–001.
Applicants: Xcel Energy Services Inc.
Description: Amendment to Application of Xcel Energy Services Inc.
Filed Date: 09/28/2009.
Accession Number: 20090925–5103.
Comment Date: 5 p.m. Eastern Time on Monday, October 19, 2009.

Docket Numbers: ER09–1699–001.
Applicants: Eurus Combine Hills II LLC.
Description: Eurus Combine Hills II LLC submits an amended application for market based rate authority and associated waivers and Blanket Approvals.
Filed Date: 09/28/2009.
Accession Number: 20090928–0101.
Comment Date: 5 p.m. Eastern Time on Monday, October 19, 2009.

Docket Numbers: ER09–1749–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits Large Generator Interconnection Agreement Facilities Maintenance Agreement.
Filed Date: 09/28/2009.
Accession Number: 20090928–0102.
Comment Date: 5 p.m. Eastern Time on Monday, October 19, 2009.

Docket Numbers: ER09–1750–000.
Applicants: American Electric Power Service Corporation.
Description: American Electric Power submits Nineteenth Revised Interconnection and Local Delivery Service Agreement between AEP and Buckeye Power, Inc.
Filed Date: 09/28/2009.
Accession Number: 20090928–0088.
Comment Date: 5 p.m. Eastern Time on Monday, October 19, 2009.

Docket Numbers: ER09–1751–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc. *et al.* submit Third Revised Sheet No. 9 *et al.* to First Revised Rate Schedule FERC No 169.
Filed Date: 09/28/2009.
Accession Number: 20090928–0089.
Comment Date: 5 p.m. Eastern Time on Monday, October 19, 2009.

Docket Numbers: ER09–1752–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc. *et al.* submits Third Revised Sheet 11 & 1 to the Wholesale Electric Service Agreement, designated as First Revised Rate Schedule FERC 170 between Kansas Gas and Electric Co and the City of Elsmore, KS.
Filed Date: 09/28/2009.
Accession Number: 20090928–0090.
Comment Date: 5 p.m. Eastern Time on Monday, October 19, 2009.

Docket Numbers: ER09–1753–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc. submits Third Revised No. 11 *et al.* to the Wholesale Electric Service Agreement with the City of Blue Mound, Kansas.
Filed Date: 09/28/2009.
Accession Number: 20090928–0091.
Comment Date: 5 p.m. Eastern Time on Monday, October 19, 2009.

Docket Numbers: ER09–1754–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc. *et al.* submits Third Revised Sheet No. 10 *et al.* to the Wholesale Electric Service Agreement.
Filed Date: 09/28/2009.
Accession Number: 20090928–0092.
Comment Date: 5 p.m. Eastern Time on Monday, October 19, 2009.

Docket Numbers: ER09–1755–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc. submits Third Revised No. 8 *et al.* to the Wholesale Electric Service Agreement with the City of Mulberrry, Kansas.
Filed Date: 09/28/2009.
Accession Number: 20090928–0094.
Comment Date: 5 p.m. Eastern Time on Monday, October 19, 2009.

Docket Numbers: ER09–1756–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc. submits Third Revised No. 12 *et al.* to the Wholesale Electric Service Agreement with the City of Bronson, Kansas.
Filed Date: 09/28/2009.
Accession Number: 20090928–0093.
Comment Date: 5 p.m. Eastern Time on Monday, October 19, 2009.

Docket Numbers: ER09–1757–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc. submits Third Revised No. 11 *et al.* to the Wholesale Electric Service Agreement with the City of Savonburg, Kansas.
Filed Date: 09/28/2009.
Accession Number: 20090928–0095.
Comment Date: 5 p.m. Eastern Time on Monday, October 19, 2009.

Docket Numbers: ER09–1758–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc. submits Third Revised No. 10 *et al.* to the Wholesale Electric Service Agreement with the City of Mindenmines, Kansas.
Filed Date: 09/28/2009.
Accession Number: 20090928–0096.
Comment Date: 5 p.m. Eastern Time on Monday, October 19, 2009.

Docket Numbers: ER09–1759–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc. submits Eighth Revised Sheet No. 4 *et*

al. to the Wholesale Electric Service Agreement.

Filed Date: 09/28/2009.

Accession Number: 20090928–0097.

Comment Date: 5 p.m. Eastern Time on Monday, October 19, 2009.

Docket Numbers: ER09–1761–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc. submits Third Revised No. 4 *et al.* to the Wholesale Electric Service Agreement with the City of Vermillion, Kansas.

Filed Date: 09/28/2009.

Accession Number: 20090928–0098.

Comment Date: 5 p.m. Eastern Time on Monday, October 19, 2009.

Docket Numbers: ER09–1762–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc. submits its Full Requirements Electric Service Rate Schedule and Electric Service Agreement.

Filed Date: 09/28/2009.

Accession Number: 20090928–0104.

Comment Date: 5 p.m. Eastern Time on Monday, October 19, 2009.

Docket Numbers: ER09–1763–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits Notice of Cancellation for Service Agreement 425 with Bonneville Power Administration.

Filed Date: 09/28/2009.

Accession Number: 20090929–0088.

Comment Date: 5 p.m. Eastern Time on Monday, October 19, 2009.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC09–1–000.

Applicants: SunEdison Canada, LLC.

Description: Notice of Self Certification of Foreign Utility Company Status of SunEdison Canada, LLC as FUCO.

Filed Date: 09/28/2009.

Accession Number: 20090928–5098.

Comment Date: 5 p.m. Eastern Time on Monday, October 19, 2009.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–32–005.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection, LLC submits Second Substitute Seventh Revised Sheet 183 *et al.* to Third Revised Rate Schedule FERC 24.

Filed Date: 09/28/2009.

Accession Number: 20090929–0087.

Comment Date: 5 p.m. Eastern Time on Monday, October 19, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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 dockets(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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–24114 Filed 10–6–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

September 28, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER05–118–007; ER03–796–008; ER05–131–007; ER05–454–006; ER06–1446–005; ER06–642–005; ER06–784–004; ER06–804–002; ER06–805–003; ER07–528–004; ER08–1125–002.

Applicants: Brookfield Energy Marketing Inc., Erie Boulevard Hydropower, L.P., Bear Swamp Power Company LLC, Rumford Falls Hydro LLC, Brookfield Power Piney & Deep Creek LLC, Brookfield Renewable Energy Marketing US, Carr Street Generating Station, L.P., Great Lakes Hydro America, LLC, Hawks Nest Hydro LLC, Katahdin Paper Company LLC, Brookfield Energy Marketing US LLC.

Description: Notice of Non-Material Change in Status of Bear Swamp Power Company LLC, *et al.*

Filed Date: 09/28/2009.

Accession Number: 20090928–5053.

Comment Date: 5 p.m. Eastern Time on Monday, October 19, 2009.

Docket Numbers: ER09–1359–002.

Applicants: PECO Energy Company.

Description: PECO Energy Company submits Transmission Facilities Agreement with Delmarva Power and Light Company.

Filed Date: 09/25/2009.

Accession Number: 20090928–0001.

Comment Date: 5 p.m. Eastern Time on Friday, October 16, 2009.

Docket Numbers: ER09–1386–001.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc., submits Substitute Original Service Agreement 1824 *et al.* to FERC Electric Tariff, Fifth Revised Volume 1.

Filed Date: 09/25/2009.

Accession Number: 20090928–0002.

Comment Date: 5 p.m. Eastern Time on Friday, October 16, 2009.

Docket Numbers: ER09–1605–001.

Applicants: Silver Sage Windpower, LLC.

Description: Silver Sage Windpower, LLC submits First Substitute Sheet 1 *et al.* to FERC Electric Tariff, Volume 1.

Filed Date: 09/24/2009.

Accession Number: 20090925–0020.

Comment Date: 5 p.m. Eastern Time on Thursday, October 15, 2009.

Docket Numbers: ER09–1729–000.

Applicants: Conectiv Mid Merit, LLC.

Description: Conectiv Mid Merit, LLC submits application for market based rate authorization, request for related waivers and request for blanket approval under 18 CFR part 34 of all future issuances of securities.

Filed Date: 09/25/2009.

Accession Number: 20090925–0018.

Comment Date: 5 p.m. Eastern Time on Friday, October 16, 2009.

Docket Numbers: ER09–1739–000.

Applicants: ResCom Energy LLC.

Description: ResCom Energy, LLC submits Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority.

Filed Date: 09/25/2009.

Accession Number: 20090925–0019.

Comment Date: 5 p.m. Eastern Time on Friday, October 16, 2009.

Docket Numbers: ER09–1743–000.

Applicants: Tampa Electric Company.

Description: Tampa Electric Company submits First Revised Rate Schedule FERC No. 32 *et al.*

Filed Date: 09/25/2009.

Accession Number: 20090925–0017.

Comment Date: 5 p.m. Eastern Time on Friday, October 16, 2009.

Docket Numbers: ER09–1741–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits an updated Exhibit A to the Amended and Restated Transmission Agreement with Tri-State Generation and Transmission Association Inc., to be designated as Second Revised Sheet 26 *et al.*

Filed Date: 09/24/2009.

Accession Number: 20090925–0015.

Comment Date: 5 p.m. Eastern Time on Thursday, October 15, 2009.

Docket Numbers: ER09–1742–000.

Applicants: TransCanada Energy Marketing ULC.

Description: TransCanada Energy Marketing ULC submits Notice of Cancellation of its market based rate tariff, Rate Schedule FERC No 1 *et al.*

Filed Date: 09/24/2009.

Accession Number: 20090925–0016.

Comment Date: 5 p.m. Eastern Time on Thursday, October 15, 2009.

Docket Numbers: ER09–1744–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits Second Revised Sheet 222 *et al.* to FERC Electric Tariff, Fourth Replacement Volume 1 to be effective 11/1/09.

Filed Date: 09/25/2009.

Accession Number: 20090928–0005.

Comment Date: 5 p.m. Eastern Time on Friday, October 16, 2009.

Docket Numbers: ER09–1745–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits revisions to its business practices.

Filed Date: 09/25/2009.

Accession Number: 20090928–0004.

Comment Date: 5 p.m. Eastern Time on Friday, October 16, 2009.

Docket Numbers: ER09–1746–000.

Applicants: ISO New England Inc. & New England Power Pool.

Description: ISO New England Inc. *et al.* submit revisions to the Forward Capacity Market rules, effective 11/25/09.

Filed Date: 09/25/2009.

Accession Number: 20090928–0003.

Comment Date: 5 p.m. Eastern Time on Friday, October 16, 2009.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES09–55–000.

Applicants: ITC Midwest LLC.

Description: Application of ITC Midwest LLC, FPA Section 204 for authorization to issue securities (deemed filed on Sept. 25 due to efiling server outage).

Filed Date: 09/25/2009.

Accession Number: 20090928–5011.

Comment Date: 5 p.m. Eastern Time on Friday, October 16, 2009.

Docket Numbers: ES09–56–000.

Applicants: Commonwealth Edison Company.

Description: Application of Commonwealth Edison Company under Section 204 of the Federal Power Act for Authorization of the Issuance of Securities.

Filed Date: 09/28/2009.

Accession Number: 20090928–5032.

Comment Date: 5 p.m. Eastern Time on Monday, October 19, 2009.

Docket Numbers: ES09–57–000.

Applicants: PECO Energy Company.

Description: Application of PECO Energy Company under Section 204 of the Federal Power Act for Authorization of the Issuance of Securities.

Filed Date: 09/28/2009.

Accession Number: 20090928–5041.

Comment Date: 5 p.m. Eastern Time on Monday, October 19, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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 dockets(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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–24115 Filed 10–6–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–428–000]

Blue Sky Gas Storage, LLC; Notice of Availability of the Environmental Assessment for the Proposed Blue Sky Gas Storage Project

September 30, 2009.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas facilities proposed by Blue Sky Gas Storage, LLC (Blue Sky) in the above-referenced docket. Blue Sky's proposal (the Blue Sky Gas Storage Project) involves the conversion of a

depleted natural gas reservoir to a natural gas storage facility in Logan County, Colorado. The purpose of the project is to provide approximately 4.4 billion cubic feet of gas storage capacity to interstate shippers of natural gas in the region.

The EA assesses the potential environmental effects of the construction and operation of the proposed Blue Sky Gas Storage Project in accordance with the requirements of the National Environmental Policy Act of 1969. The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The proposed Blue Sky Gas Storage Project includes the following proposed facilities:

- 5.3 miles of 16-inch-diameter header pipeline extending north from the storage facility to interconnect with Rockies Express Pipeline, LLC, and Trailblazer Pipeline, LLC's interstate pipeline systems;
- 9.8 miles of 16-inch-diameter header pipeline extending southwest to interconnect with Kinder Morgan Interstate Gas Transmission, LLC's interstate pipeline system;
- 10 new natural gas storage wells;
- One metering station at each of the two proposed interconnections; and
- One 2,370 horsepower compressor station.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426. (202) 502–8371.

Copies of the EA have been mailed to Federal, State, and local agencies; interested groups and individuals; newspapers and libraries in the project area; and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments as specified below.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC, on or before October 30, 2009.

For your convenience, there are three methods in which you can use to submit your comments to the Commission. In all instances please reference the project docket number CP09–428–000 with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202–502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the *Quick Comment* feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''*Sign up''* or ''*eRegister.''* You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

If you choose the option to mail your comments, label one copy of the comments for the attention of Gas Branch 1, PJ–11.1.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decisions.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, then on ''General Search'' and enter the docket number excluding the last three digits in the docket number field (*i.e.,* CP09–428). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notifications of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Kimberly D. Bose,

Secretary.

[FR Doc. E9–24123 Filed 10–6–09; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion of filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. AC09–179–000, AC09–179–001]

XTO Energy Inc.; Notice of Filing

September 30, 2009.

Take notice that on September 4, 2009, and September 17, 2009, XTO Energy Inc. submitted requests for the waiver of the requirement to file the FERC Form No. 6 from December 1, 2008 to December 31, 2008.

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 or 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. On or before the comment date, it is not necessary to 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: October 30, 2009.

Kimberly Bose,

Secretary.

[FR Doc. E9–24127 Filed 10–6–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1729–000]

Connectiv Mid Merit, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 29, 2009.

This is a supplemental notice in the above-referenced proceeding of Connectiv Mid Merit, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 19, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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 dockets(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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–24117 Filed 10–6–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1739–000]

ResCom Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

September 29, 2009.

This is a supplemental notice in the above-referenced proceeding of ResCom Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 19, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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 dockets(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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–24116 Filed 10–6–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–467–000]

CenterPoint Enery Gas Transmission Company; Notice of Request Under Blanket Authorization

September 30, 2009.

Take notice that on September 22, 2009, CenterPoint Energy Gas Transmission Company (CEGT), 1111 Louisiana Street, Houston, Texas 77002–5231, filed in Docket No. CP09–467–000 an application pursuant to sections 157.205, 157.208(b), 157.211(a), and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) as amended, to abandon and replace certain deteriorated pipeline facilities in Garland and Hot Spring Counties, Arkansas, under CEGT's blanket certificate issued in Docket No. CP82–384–000,[1] as amended in Docket No. CP82–384–001,[2] all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CEGT proposes to abandon 18.5 miles of 10-inch and 12-inch diameter pipeline on its Line AM–22 [3] in Hot Spring and Garland Counties; replace approximately 7.5 miles of Line AM–22 with approximately 7.9 miles of 10-inch diameter pipeline, and abandon approximately 0.171 mile of 2-inch pipeline on Line AM–121.[4] CEGT also proposes to replace approximately 7.5 miles of Line AM–22 with approximately 7.9 miles of 10-inch diameter pipeline. CEGT also proposes to install various taps and meter stations to continue natural gas service to its existing customers currently served by the facilities that CEGT would abandon and replace. CEGT estimates that the proposed replacement facilities would cost $11,096,296 to construct and install.

Any questions regarding this application should be directed to Michele Willis, Manager, Compliance & Regulatory, CenterPoint Energy Gas Transmission Company, P.O. Box 21734, Shreveport, Louisiana 71151, or via telephone at (318) 429–3708.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at FERC *OnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–24124 Filed 10–6–09; 8:45 am]

BILLING CODE 6717–01–P

[1] 20 FERC ¶ 62,408 (1982).

[2] 22 FERC ¶ 61,148 (1983).

[3] Line AM–22 was constructed in 1920 under authorization granted in Docket No. G–252 [3 FPC 910 (1943)].

[4] Line AM–121 was constructed in 1948 under authorization granted in Docket No. G–10887 [16 FPC 1382 (1956)].

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2009–0105; FRL–8430–9]

Agency Information Collection Activities; Proposed Collection; Comment Request; Voluntary Cover Sheet for TSCA Submissions; EPA ICR No. 1780.05, OMB Control No. 2070–0156

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, entitled: ''Voluntary Cover Sheet for TSCA Submissions'' and identified by EPA ICR No. 1780.05 and OMB Control No. 2070–0156, is scheduled to expire on July 31, 2010. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

DATES: Comments must be received on or before December 7, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2009–0105, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2009–0105. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2009–0105. 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, 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 legal 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.

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: Ron Carlson, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8631; fax number: (202) 564–7480; e-mail address: *carlson.ron@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it 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 estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline identified under **DATES**.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

III. What Information Collection Activity or ICR Does this Action Apply to?

Affected entities: Entities potentially affected by this action are companies that manufacture, process, use, import, or distribute in commerce chemical substances that are subject to reporting requirements under sections 4, 8(d), or 8(e) of the Toxic Substances Control Act (TSCA), or are subject to voluntary reporting under the Voluntary Children's Chemical Evaluation Program (VCCEP).

Title: Voluntary Cover Sheet for TSCA Submissions.

ICR numbers: EPA ICR No. 1780.05, OMB Control No. 2070–0156.

ICR status: This ICR is currently scheduled to expire on July 31, 2010. 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. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: TSCA requires industry to submit information and studies for existing chemical substances under TSCA sections 4, 6, and 8, and requests voluntary submission of such information under the Voluntary Children's Chemical Evaluation Program (VCCEP). EPA typically receives thousands of such submissions each year; each submission represents on average three studies. In addition, EPA can impose specific data call-ins on industry.

As a follow-up to industry experience with a 1994 TSCA data call-in, the Chemical Manufacturers Association (CMA, now known as the American Chemistry Council [ACC]), the Specialty Organics Chemical Manufacturers Association (SOCMA), and the Chemical Industry Data Exchange (CIDX), in cooperation with EPA, took an interest in pursuing electronic transfer of TSCA summary data and of full submissions to EPA. In particular, ACC developed a standardized cover sheet for voluntary use by industry as a first step to an electronic future and to begin familiarizing companies with standard requirements and concepts of electronic transfer. This form is designed for voluntary use as a cover sheet for submissions of information under TSCA sections 4, 8(d), and 8(e) and VCCEP. The cover sheet facilitates submission of information by displaying certain basic data elements, permitting EPA more easily to identify, log, track, distribute, review and index submissions, and to make information publicly available more rapidly and at reduced cost, to the mutual benefit of both the respondents and EPA. The referenced information collection request addresses the use of this cover sheet.

Responses to the collection of information are voluntary. Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 2,123.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.0.

Estimated total annual burden hours: 1,062 hours.

Estimated total annual costs: $52,779. This includes an estimated burden cost of $52,779 and an estimated cost of $0 for capital investment or maintenance and operational costs.

IV. Are There Changes in the Estimates from the Last Approval?

There is a decrease of 8,074 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease reflects a decrease in the estimated number of affected submissions, based on EPA's recent experience with those submissions. This change is an adjustment.

V. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: October 1, 2009.

Stephen A. Owens,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E9–24162 Filed 10–06–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0709; FRL–8438–9]

Amendment of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted amended experimental use permits (EUPs) to the following pesticide applicants. EUPs permit use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8097; e-mail address: *bacchus.shanaz@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, 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 information in this action, consult the 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–OPP–2009–0709. 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 Office of Pesticide Programs (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.

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. EUPs

EPA has amended the following EUPs:

71693–EUP–1. Amendment. Mr. Larry C. Antilla. Arizona Cotton Research and Protection Council, 3721 Wier Avenue, Phoenix, AZ 85040. This EUP is amended to allow the use of 40,000 pounds of the end-use product per year (equivalent to 0.32 pound active ingredient per year) of the anti fungal agent *Aspergillus flavus* AF36 on 4,000 acres of pistachio to evaluate the control reduction of aflatoxin. The program is authorized only in the States of Arizona and California. The EUP is amended to expire on December 31, 2011.

71693–EUP–2. Amendment. Mr. Larry C. Antilla. Arizona Cotton Research and Protection Council, 3721 Wier Avenue, Phoenix, AZ 85040. This EUP is amended to allow the use of 80,000 pounds of the end-use product per year (equivalent to 0.64 pound active ingredient per year) of the anti fungal agent *Aspergillus flavus* AF36 on 8,000 acres of corn to evaluate the control reduction of aflatoxin. The program is authorized only in the States of Arizona and Texas. The EUP is amended to expire on January 4, 2011.

Authority: 7 U.S.C. 136c.

List of Subjects

Environmental protection, Experimental use permits.

Dated: September 24, 2009.

Keith A. Matthews,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E9–23933 Filed 10–6–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2009–0742; FRL–8793–8]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from August 17, 2009 through September 4, 2009, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before November 6, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2009–0742, by one of the following methods:

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

• *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2009–0742. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2009–0742. 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. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. 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.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the 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 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. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from August 17, 2009 through September 4, 2009, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit I. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 54 PREMANUFACTURE NOTICES RECEIVED FROM: 8/17/09 TO 9/4/09

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–09–0569	08/14/09	11/11/09	CBI	(S) Laminating adhesive	(G) Polyester polyol
P–09–0570	08/17/09	11/14/09	CBI	(G) Intermediate in the production of a commercial product	(G) Alkyl thiol, manufacture of, by-products from, distn. heavies
P–09–0571	08/17/09	11/14/09	CBI	(G) Intermediate in the production of a commercial product	(G) Alkyl thiol, manufacture of, by-products from, distant residues heavies
P–09–0572	08/17/09	11/14/09	CBI	(G) Intermediate in the production of a commercial product	(G) Alkyl thiol, manufacture of, by-products from, distant heavies
P–09–0573	08/17/09	11/14/09	CBI	(G) Intermediate in the production of a commercial product	(G) Alkyl thiol, manufacture of, by-products from, distant residues heavies
P–09–0574	08/18/09	11/15/09	CBI	(G) Additive	(G) Acrylic based copolymer
P–09–0575	08/18/09	11/15/09	CBI	(G) Pigment additive for industrial coatings and ink manufacture and for plastics compounding	(G) Naphthalenesulfonic acid, [(chloro-methyl-sulfophenyl)diazenyl]-hydroxy-metal salt
P–09–0576	08/18/09	11/15/09	CBI	(G) Pigment additive for industrial coatings and ink manufacture and for plastics compounding	(G) Naphthalenesulfonic acid, [(methyl-sulfophenyl)diazenyl]-hydroxy-metal salt
P–09–0577	08/18/09	11/15/09	CBI	(G) Pigment additive for industrial coatings and ink manufacture and for plastics compounding	(G) Naphthalenesulfonic acid, [(chloro-methyl-sulfophenyl)diazenyl]-hydroxy-metal salt
P–09–0578	08/18/09	11/15/09	CBI	(G) Pigment additive for industrial coatings and ink manufacture and for plastics compounding	(G) Naphthalenesulfonic acid, [(methyl-sulfophenyl)diazenyl]-hydroxy-metal salt
P–09–0579	08/18/09	11/15/09	Republic conduit manufacturing	(S) Sulfuric acid, zinc salt for electroplating (in house use)	(S) Sulfuric acid, zinc salt (1:1)
P–09–0580	08/19/09	11/16/09	Republic conduit manufacturing	(S) Sodium zincate (in house use)	(S) Zincate (ZNO22-), sodium (1:2)
P–09–0581	08/19/09	11/16/09	CBI	(S) Raw material intermediate used in the manufacture of polymerized pigments	(G) Styrenyl surface treated manganese ferrite
P–09–0582	08/19/09	11/16/09	CBI	(S) Polymerized pigment used in the manufacture of electronic inks.	(G) Acrylate polymer stabilized manganese ferrite
P–09–0583	08/20/09	11/17/09	CBI	(G) Ink ingredient	(G) Anthraquinone acid dye salt

I. 54 PREMANUFACTURE NOTICES RECEIVED FROM: 8/17/09 TO 9/4/09—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–09–0584	08/20/09	11/17/09	CBI	(G) Ink ingredient	(G) Copper phthalocyanine direct dye salt
P–09–0585	08/21/09	11/18/09	DIC International (USA), LLC.	(G) Plastic coatings	(G) Polymer of aliphatic cyclic methacrylic acid and aliphatic methacrylic acid ester
P–09–0586	08/24/09	11/21/09	CBI	(G) Non-dispersive adhesive application	(G) Aromatic modified terpene polymer
P–09–0587	08/24/09	11/21/09	CBI	(G) Thermoset adhesive additive intermediate	(S) Butanedioic acid, 2-methylene-, monoisooctadecyl ester
P–09–0588	08/24/09	11/21/09	CBI	(G) Thermoset adhesive additive	(S) Butanedioic acid, 2-methylene-, monoisooctadecyl ester, palladium(2+) salt (2:1)
P–09–0589	08/19/09	11/16/09	CBI	(G) Chain extender	(G) Oximosilane
P–09–0590	08/19/09	11/16/09	CBI	(G) Chain extender	(G) Oximosilane
P–09–0591	08/24/09	11/21/09	H.B. Fuller	(G) Industrial adhesive	(G) Polyester fatty acid polymer
P–09–0592	08/25/09	11/22/09	CBI	(G) Open non-dispersive use	(G) Aqueous polyurethane resin dispersion
P–09–0593	08/26/09	11/23/09	CBI	(G) Open non-dispersive use	(G) Urethane acrylate dispersion
P–09–0594	08/26/09	11/23/09	CBI	(G) Analytical chemistry (same for both enzymes)	(G) Nitrate reductase
P–09–0595	08/26/09	11/23/09	CBI	(G) Analytical chemistry (same for both enzymes)	(G) Nitrate reductase
P–09–0596	08/27/09	11/24/09	CBI	(G) Sealant	(G) Poly[oxyalkylene], alpha, alpha′, alpha″-1,2,3-propanetriyltris [/-[3-(dialkoxyalkylsilyl) alkoxy]-
P–09–0597	08/27/09	11/24/09	Firmenich Incorporated	(S) Aroma for use in fragrance mixtures, which in turn are used in perfumes, soaps, cleansers, etc.	(S) Definition: Extractives and their physically modified derivatives. *Cupressus funebris*.
P–09–0597	08/27/09	11/24/09	Firmenich Incorporated	(S) Aroma for use in fragrance mixtures, which in turn are used in perfumes, soaps, cleansers, etc.	(S) Oils, cypress, *Cypressus funebris*.
P–09–0598	08/28/09	11/25/09	CBI	(G) Textile processing aid	(G) Alkyl acrylic acid, polymer with alkyl acrylate alkyl ester and alkyldiyl diacrylate
P–09–0599	08/27/09	11/24/09	CBI	(G) Material for photosensitive resin	(G) Triaryl sulfonium salts with haloalkyl phosphate
P–09–0600	08/28/09	11/25/09	CBI	(G) Intermediate in the production of a commercial product	(G) Alkyl thiol, manufacture of, by-products from, distant lights
P–09–0601	08/28/09	11/25/09	Kemira Chemicals	(G) Chemical intermediate, destructive use	(G) Organohalocarboxylate
P–09–0602	08/28/09	11/25/09	Kemira Chemicals	(G) Polymer additive intermediate: Destructive use.	(G) Diorganotrithiocarbonate
P–09–0603	08/28/09	11/25/09	Kemira Chemicals	(G) Polymer additive intermediate: Destructive use.	(G) Diorganotrithiocarbonate
P–09–0604	08/28/09	11/25/09	Kemira Chemicals	(G) Polymer additive intermediate: Destructive use.	(G) Diorganotrithiocarbonate
P–09–0605	08/28/09	11/25/09	DIC International (USA) LLC	(G) Coating for plastic films.	(G) Styrene methyl methacrylate acrylic resin
P–09–0606	08/28/09	11/25/09	The Dow Chemical Company	(S) Adhesives; binders; sealants	(G) MDI based polyester prepolymer
P–09–0607	08/28/09	11/25/09	The Dow Chemical Company	(S) Adhesives; binders; sealants	(G) MDI based polyester prepolymer
P–09–0608	08/28/09	11/25/09	The Dow Chemical Company	(S) Adhesives; binders; sealants	(G) MDI based polyester prepolymer
P–09–0609	08/28/09	11/25/09	CBI	(G) Detergents and cleaner additive	(G) Acrylic copolymer
P–09–0610	08/31/09	11/28/09	CBI	(G) Starting material	(G) Alkylbenzene sulfonic acid
P–09–0611	09/02/09	11/30/09	CBI	(G) Stabilizer for poly vinyl chloride	(G) Condensed polyol
P–09–0612	08/28/09	11/25/09	CBI	(G) Filler	(G) Silane treated glass
P–09–0613	09/03/09	12/01/09	CBI	(S) Compounding process aid	(G) Cardanol-based alkyl phosphate
P–09–0614	09/03/09	12/01/09	CBI	(G) Lubricant additive	(G) 2-propenoic acid, 2-methyl-, $C_{12–15}$-branched and linear alkyl esters, polymers with alkyl methacrylates alkyl peroxide-initiated
P–09–0615	09/03/09	12/01/09	CBI	(G) Ink additive	(S) Alkenes, $C_{26–30}$ .alpha.-, polymd.
P–09–0616	09/04/09	12/02/09	CBI	(G) Unsaturated polyester resin for filled and fiber reinforced composites	(G) Unsaturated polyester polyol

I. 54 PREMANUFACTURE NOTICES RECEIVED FROM: 8/17/09 TO 9/4/09—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–09–0617	09/04/09	12/02/09	CBI	(G) Unsaturated polyester resin for filled and fiber reinforced composites	(G) Unsaturated polyester polyol
P–09–0618	09/04/09	12/02/09	The Dow Chemical Company	(S) Polymer for production of polyurea articles	(G) MDI polyureau prepolymer
P–09–0619	09/04/09	12/02/09	The Dow Chemical Company	(S) Polymer for production of polyurea articles	(G) MDI polyureau prepolymer
P–09–0620	09/04/09	12/02/09	The Dow Chemical Company	(S) Polymer for production of polyurea articles	(G) MDI polyureau prepolymer
P–09–0621	09/04/09	12/02/09	The Dow Chemical Company	(S) Polymer for production of polyurea articles	(G) MDI polyureau prepolymer
P–09–0622	09/04/09	12/02/09	The Dow Chemical Company	(S) Polymer for production of polyurea articles	(G) MDI polyureau prepolymer
P–09–0623	09/04/09	12/02/09	The Dow Chemical Company	(S) Polymer for production of polyurea articles	(G) MDI polyureau prepolymer

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 16 NOTICES OF COMMENCEMENT FROM: 8/17/09 TO 9/4/09

Case No.	Received Date	Commencement Notice End Date	Chemical
P–04–0269	09/01/09	08/17/09	(G) Mixed metal oxide
P–05–0613	08/14/09	07/17/09	(G) Bisphenol S mono ester
P–07–0070	08/18/09	07/28/09	(G) MDI and polymeric mdi prepolymer
P–08–0093	08/18/09	08/01/09	(G) Aromatic polyester polyol
P–08–0256	09/02/09	08/04/09	(S) Fatty acids, $C_{16–18}$ and C_{18}-unsaturated, me esters, epoxidized, polymers with ethylene glycol
P–08–0485	08/18/09	08/12/09	(G) Isocyanate functional polyester polyether urethane polymer
P–08–0687	08/27/09	08/18/09	(G) First substance: Amines, polyethylenepoly-, reaction products with isostearic acid and disubstituted methanal; Second substance: Alkylamide, *N*-(2-ethylhexyl)-
P–08–0733	08/26/09	07/26/09	(G) A multi-walled carbon nanotube
P–09–0235	08/27/09	07/28/09	(G) Aspartic ester resin
P–09–0237	08/26/09	08/10/09	(G) Formaldehyde, polymers with alkylphenol, branched and alkylamine
P–09–0276	09/02/09	08/19/09	(G) Aliphatic diol polymer with isocyanates and acrylates
P–09–0290	08/20/09	08/05/09	(G) Solid epoxy resin
P–09–0315	08/26/09	07/27/09	(G) Modified (poly) lactic acid
P–09–0320	08/28/09	08/14/09	(G) Silsesquioxanes
P–09–0330	09/02/09	08/28/09	(G) Substituted butyric propionic acid copolymer
P–09–0337	08/19/09	08/06/09	(G) Polyol, polyester polyol

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: September 24, 2009.

Chandler Sirmons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E9–23936 Filed 10–6–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2009–0741; FRL–8793–7]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from July 1, 2009 through August 14, 2009, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number,

must be received on or before November 6, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2009–0741, by one of the following methods:

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

• *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2009–0741. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2009–0741. 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. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. 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.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the 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 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. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or

an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from July 1, 2009 through August 14, 2009, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit I. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 100 PREMANUFACTURE NOTICES RECEIVED FROM: 7/1/09 TO 8/14/09

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–09–0416	06/11/09	09/08/09	CBI	(G) a polymer in an encapsulated photovultaic module	(G) 3′*H*-cyclopropacal- bopolycle-3′butanoic acid. 3′-phenyl-, methyl ester; 3′*H*-cyclopropacarbopolycyle-3' butanoic acid, 3'- phenyl-, methyl ester
P–09–0470	06/30/09	09/27/09	The Dow Chemical Company	(G) Gas treatment agent, contained use	(G) Sulfo-substituted metal heteropolycycle-mixed sodium, alkanolamine salt
P–09–0471	06/30/09	09/27/09	The Dow Chemical Company	(G) Gas treatment agent, contained use	(G) Sulfo-substituted metal heteropolycycle-mixed sodium, alkanolamine salt
P–09–0472	06/30/09	09/27/09	The Dow Chemical Company	(G) Gas treatment agent, contained use	(G) Sulfo-substituted metal heteropolycycle-mixed sodium, alkanolamine salt
P–09–0473	06/30/09	09/27/09	PPG Industries, Inc.	(G) Component of a coating	(G) Polyurea isocyanate
P–09–0474	06/30/09	09/27/09	PPG Industries, Inc.	(G) Component of a coating	(G) Polyurea isocyanate
P–09–0475	06/30/09	09/27/09	PPG Industries, Inc.	(G) Component of a coating	(G) Polyurea isocyanate
P–09–0476	06/30/09	09/27/09	PPG Industries, Inc.	(G) Component of a coating	(G) Polyurea isocyanate
P–09–0477	07/01/09	09/28/09	3M Company	(G) Fluorinated intermediate	(G) Fluoroalkyl sulfonamide
P–09–0478	07/01/09	09/28/09	PPG Industries, Inc.	(G) Component of a coating	(G) Modified polyol
P–09–0479	06/25/09	09/22/09	Lamberti USA, Inc.	(S) Co-photoinitiator for ultra violet-curable pigmentated inks; co-photoinitiator for photoresists, optical fibers and printed plates; co-photoinitiator for ultra violet-curable coatings; co-photoinitiator for ultra violet-curable adhesives and other coatings; non dispersive use	(S) Benzoic acid, 4-(dimethylamino)-, 1,1′-[(methylimino)di-2, 1-ethanedyl] ester
P–09–0480	06/25/09	09/22/09	Lamberti USA, Inc.	(S) Co-photoinitiator for ultra violet-curable pigmentated inks; co-photoinitiator for photoresists, optical fibers and printed plates; co-photoinitiator for ultra violet-curable coatings; co-photoinitiator for ultra violet-curable adhesives and other coatings; non dispersive use	(S) 1-propanone, 1,1′ (oxydi-4, 1-phenylene) bis [2-hydroxy-2-methyl-
P–09–0481	07/01/09	09/28/09	3M Company	(S) Protector for textile	(G) Fluorinated polymer
P–09–0482	07/01/09	09/28/09	CBI	(S) Dispersed rosin size for sizing of paper and paperboard	(G) Rosin, maleic anhydride, amine resin
P–09–0483	07/02/09	09/29/09	CBI	(G) Additive, open, non-dispersive use	(G) Polyether modified polyamine
P–09–0484	07/02/09	09/29/09	CBI	(G) Additive, open, non-dispersive use	(G) Polyether modified polyamine
P–09–0485	07/01/09	09/28/09	3M Company	(G) Fluorinated intermediate	(G) Fluorinated sulfonamide alcohol
P–09–0486	07/02/09	09/29/09	CBI	(G) Lubricant additive	(G) Polyalkenyl, *N,N*′-bistriazole
P–09–0487	07/02/09	09/29/09	CBI	(G) Emulsifier	(G) Organic phosphate esters
P–09–0488	07/02/09	09/29/09	CBI	(G) Component of consumer product	(G) Substituted acrylic acid maleic anhydride copolymer
P–09–0489	07/02/09	09/29/09	Firmenich Inc.	(S) Aroma for use in fragrance mixtures, which in turn are used in perfumes, soaps, cleansers, etc.	(S) Definition: Extractives and their physically modified derivatives. *Periploca sepium*.
P–09–0490	07/06/09	10/03/09	Firmenich Inc.	(S) Aroma for use in fragrance mixtures, which in turn are used in perfumes, soaps, cleansers, etc.	(S) 2*H*-1,5-benzodioxepin-3 (4h)-one, 7-(1-methylethyl)-

I. 100 PREMANUFACTURE NOTICES RECEIVED FROM: 7/1/09 TO 8/14/09—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–09–0491	07/06/09	10/03/09	Forests Pacific Biochemicals Corporation	(S) Fragrance ingredient	(S) Definition: Extractives and their physically modified derivatives. callitropsis nootkatensis. Oil, *Callitropsis nootkatensis*
P–09–0492	07/08/09	10/05/09	CBI	(G) Sealant; adhesive	(G) Isocyanate polymer, amine blocked
P–09–0493	07/08/09	10/05/09	CBI	(G) Sealant; adhesive	(G) Isocyanate polymer, amine blocked
P–09–0494	07/08/09	10/05/09	CBI	(G) Sealant; adhesive	(G) Isocyanate polymer, amine blocked
P–09–0495	07/08/09	10/05/09	CBI	(G) Sealant; adhesive	(G) Isocyanate polymer, amine blocked
P–09–0496	07/08/09	10/05/09	CBI	(G) Sealant; adhesive	(G) Isocyanate polymer, amine blocked
P–09–0497	07/09/09	10/06/09	Nanocyl Corporation, a Georgia Corporation	(S) Additivies to improve electrical, thermal and/or mechanical properties of thermoplastic, thermoset and coating materials	(S) Short tangled multi-wall carbon nanotubes obtained by catalytical chemical vapour deposition
P–09–0498	07/10/09	10/07/09	CBI	(S) Part of a two-component gravure ink and overprinting lacquer system	(G) Aromatic dicarboxylic acid, polymer with cycloaliphatic diamine, 2-(chloromethyl)oxirane, alkyldioic acid and an aryl diphenol
P–09–0499	07/13/09	10/10/09	CBI	(S) Raw material used in fuel cell applications.	(G) Aromatic polyether polymer
P–09–0500	07/14/09	10/11/09	CBI	(S) Fluorescent whitening agent for uncoated paper (formulation 1). Fluorescent whitening agent for coated paper (formulation 2).	(G) 1,4-benzenedisulfonic acid, 2,2′-[1,2-ethenediylbis[(3-sulfo-4,1-phenylene)imino[6-[bis(alkanol)amino]-1,3,5-triazine-4,2-diyl]imino]]bis-, hexasodium salt
P–09–0501	07/14/09	10/11/09	CBI	(G) Hole injection layer in a polymeric photovoltaic module.	(G) Hetromonocyclic[3,4-b]thiophene, homopolymer, 2-[1-difluoro[(1,2,2-trifluoroethenyl)oxy]methyl]-1,2,2,2-tetrafluoroethoxy]-1,1,2,2-tetrafluoroethyoxy]-1,1,2,2-tetrafluoroethanesulfonic acid-tetrafluoroethylene polymer-doped
P–09–0502	07/14/09	10/11/09	CBI	(G) Open, non-dispersive use	(G) Blocked aromatic isocyanate
P–09–0503	07/15/09	10/12/09	CBI	(G) Polymerization feedstock	(G) Fluoromaleate
P–09–0504	07/15/09	10/12/09	CBI	(G) Carpet treatment additive	(G) Fluoroalkyl acrylate copolymer
P–09–0505	07/15/09	10/12/09	CBI	(G) Coatings	(G) Aliphatic urethane acrylate
P–09–0506	07/14/09	10/11/09	Coim USA Inc.	(S) Form insulation board	(S) Hexanedioic acid, polymer with oxybis[propanol] and 1,2,3,-propanetriol
P–09–0507	07/15/09	10/12/09	Essential Industries	(S) Raw material for industrial coating	(G) Aliphatic polyurethane dispersion
P–09–0508	07/15/09	10/12/09	Essential Industries	(S) Raw material for industrial coating	(G) Aliphatic polyurethane dispersion
P–09–0509	07/15/09	10/12/09	Essential Industries	(S) Raw material for industrial coating	(G) Aliphatic polyurethane dispersion
P–09–0510	07/16/09	10/13/09	CBI	(G) Paper treatment additive	(G) Fluoroalkyl acrylate copolymer
P–09–0511	07/16/09	10/13/09	CBI	(G) Paper treatment additive	(G) Fluoroalkyl acrylate copolymer
P–09–0512	07/16/09	10/13/09	Gelest, Inc.	(S) Automotive part coating; research	(S) Silane, dichlorodimethyl-, homopolymer
P–09–0513	07/17/09	10/14/09	CBI	(S) Fixative for cellulose based substrates in paper manufacturing industry	(G) Aminoalkyl polymer with (chloromethyl)oxirane
P–09–0514	07/17/09	10/14/09	Coim USA Inc.	(S) Packaging adhesives	(S) Hexanedioic acid, polymer with 2-methyl-1,3-propanediol
P–09–0515	07/16/09	10/13/09	Kuraray America, Inc.	(S) Lubricants; dispersants; adhesives	(S) 2,5-furandione, polymer with 2-methyl-1-propene, amide, ammonium salt
P–09–0516	07/20/09	10/17/09	CBI	(S) Part of two-component gravure inks and overprinting lacquers	(G) Fatty acids, $C_{16–18}$ and C_{18}-unsaturated, polymer with alkyldioic acid, cycloalkylamine, aromatic diol, C_{18}-unsaturated fatty acid dimers, epichlorohydrin, an aromatic acid and triethylenetetramine
P–09–0517	07/21/09	10/18/09	Essential Industries	(S) Raw material for industrial coating	(G) Aliphatic polyurethane dispersion
P–09–0518	07/22/09	10/19/09	CBI	(G) Paper processing aid	(G) Furandione derivative
P–09–0519	07/24/09	10/21/09	CBI	(G) Latent hardener curing agent for one and two component polyurethane products	(G) Aromatic bis-oxalolidine

I. 100 PREMANUFACTURE NOTICES RECEIVED FROM: 7/1/09 TO 8/14/09—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–09–0520	07/24/09	10/21/09	CBI	(G) Coating	(G) Silane polymer mixture
P–09–0521	07/27/09	10/24/09	CBI	(G) Functional fluid, plasticiser, solvent	(G) Dialkyl imidazolium salt
P–09–0522	07/27/09	10/24/09	The Dow Chemical Company	(G) Surfactant	(G) Ethoxylated, butoxylated alcohol
P–09–0523	07/27/09	10/24/09	The Dow Chemical Company	(G) Surfactant	(G) Ethoxylated, butoxylated alcohol
P–09–0524	07/29/09	10/26/09	CBI	(G) Chemical intermediate	(G) Aromatic polyester
P–09–0525	07/29/09	10/26/09	Huntsman Corporation	(G) Coatings	(G) Hydroxyamino aryl amine
P–09–0526	07/28/09	10/25/09	Huntsman Corporation	(G) Coatings	(G) Hydroxyamino aryl triamine
P–09–0527	07/28/09	10/25/09	CBI	(S) Hardener for two-part coating systems	(G) Fatty acids, polymer with an aromatic diol, C_{18}-unsaturated fatty acids dimers, epichlorohydrin and triethylenetetramine
P–09–0528	07/30/09	10/27/09	CBI	(G) Rubber additive	(G) Vinylsilane
P–09–0529	07/30/09	10/27/09	CBI	(G) Open, non-dispersive use.	(G) Diacid, half ester
P–09–0530	07/30/09	10/27/09	Forbo Adhesives, LLC	(G) Hot melt polyurethane adhesive	(G) Isocyanate functional polyester polyether urethane polymer
P–09–0531	07/30/09	10/27/09	CBI	(G) Acrylic pressure sensitive adhesive	(G) Acrylic solution polymer
P–09–0532	07/30/09	10/27/09	CBI	(G) Sealant	(G) Bisurea compound
P–09–0533	07/27/09	10/24/09	Wacker Chemical Corporation	(S) Adhesion promoter	(S) Siloxanes and silicones, me hydrogen, me 3-(2-oxiranylmethoxy)propyl, ethoxy- and methoxy-terminated
P–09–0534	07/29/09	10/26/09	CBI	(G) Open, non-dispersive use (waterborne coatings systems)	(G) Carbamic acid, (methylenedicyclohexanediyl)bis-mixed diesters with polyethylene glycol and polyethylene glycol mono ethers
P–09–0535	08/03/09	10/31/09	CBI	(S) Synthetic intermediate	(G) Aromatic hydrocarbon
P–09–0536	07/29/09	10/26/09	CBI	(G) Open, non-dispersive use (waterborne coatings systems)	(G) Carbamic acid, (methylenedicyclohexanediyl)bis-mixed diesters with unsaturated alcohols, polyethylene glycol and polyethylene glycol mono ethers
P–09–0537	07/29/09	10/26/09	CBI	(G) Open, non-dispersive use (waterborne coatings systems)	(G) Polyethylene glycol, alpha, alpha′, alpha″-propanetrilmonoesters with [[[carboxyaminitrimethylcyclohexyl]methyl]amino]carbonyl]-octadecenyloxy)polyethylene glycol
P–09–0538	07/29/09	10/26/09	CBI	(G) Open- non-dispersive use (waterborne coatings systems)	(G) Carbamic acid, (methylenedicyclohexanediyl)bis-mixed diesters with isoalcohols, polyethylene glycol and polyethylene glycol mono ethers
P–09–0539	07/29/09	10/26/09	CBI	(G) Open, non-dispersive use (waterborne coatings systems)	(G) Carbamic acid, (trimethylhexanediyl)bis-mixed diesters with unsaturated alcohols, isoalcohols and polyethylene glycol
P–09–0540	08/03/09	10/31/09	CBI	(S) Synthetic intermediate	(G) Halogenated aromatic hydrocarbon
P–09–0541	08/03/09	10/31/09	CBI	(S) A semiconductor host material for oled devices	(G) Aromatic heterocycle
P–09–0542	08/03/09	10/31/09	CBI	(S) Uses per FFDCA: Food / flavors; fragrance material in cosmetics; Uses per TSCA: Fragrance uses; scented papers, detergents, candles, etc.	(S) 3-nonen-1-ol, 1-acetate, (3*Z*)-
P–09–0543	08/05/09	11/02/09	CBI	(G) Coatings	(G) Aromatic urethane acrylate
P–09–0544	08/04/09	11/01/09	CBI	(G) Coating raw material	(G) Polyalkyleneglycol, reaction products with hydroxyalkyl acrylate, dihydroxyalkyl alkanoic acid, sodium-aminoalkyl-alaninate, sodium salt
P–09–0545	08/04/09	11/01/09	Dic International (USA) LLC	(G) Additive for lubricating oil	(G) Fluorinated acrylic ester copolymer (telomer type)
P–09–0546	08/04/09	11/01/09	CBI	(G) Intermediate	(G) Formaldehyde reaction products with aromatic amine

I. 100 PREMANUFACTURE NOTICES RECEIVED FROM: 7/1/09 TO 8/14/09—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–09–0547	08/04/09	11/01/09	CBI	(G) Lubricant additive	(G) Formaldehyde, reaction products with aromatic amine and alkenyl anhydride
P–09–0548	08/07/09	11/04/09	CBI	(G) Intermediate in the production of a commercial product	(G) Alkyl thiol, manufacturer of, by-products from, distant lights
P–09–0549	08/07/09	11/04/09	CBI	(G) Intermediate in the production of a commercial product	(G) Alkyl thiol, manufacturer of, by-products from, distant residues
P–09–0550	08/07/09	11/04/09	CBI	(G) Intermediate in the production of a commercial product	(G) Alkyl thiol, manufacturer of, by-products from, distant lights
P–09–0551	08/07/09	11/04/09	CBI	(G) Intermediate in the production of a commercial product	(G) Alkyl thiol, manufacturer of, by-products from, distant residues
P–09–0552	08/10/09	11/07/09	Henkel Corporation	(S) A site limited starting material in novel polymer synthesis reactions	(S) Benzene, 1,3-bis(1-chloro-1-methylethyl)-
P–09–0553	08/10/09	11/07/09	CBI	(G) Flame retardant polymer additive	(G) Metal phosphinate
P–09–0554	08/10/09	11/07/09	Dynamic Fuels LLC c/o Syntroleum Corporation	(S) Renewable diesel fuel to be blended with petroleum-derived diesel	(S) Fuels, diesel C_8-C_{18} alkane branched and linear definition: A complex combination of hydrocarbons obtained by the hydrodeoxygenation and catalytic hydroisomerization of animal fats and vegetable oils followed by distillative fractionation. It consists predominantly of branched and linear paraffins having carbon numbers in the range of C_9 to C_{18} and boiling in the range of 179c to 309c (354.2f to 588.3f) fuels, diesel, $C_{9–18}$-alkane branched and linear
P–09–0555	08/11/09	11/08/09	CBI	(G) Dispersing resin	(G) Acrylate, polymer with aromatic vinyl monomer and acrylates
P–09–0556	08/10/09	11/07/09	CBI	(G) Monomers for polymers and oligo ester; additive for cleaning products and / or plastics	(G) Modified ketal
P–09–0557	08/10/09	11/07/09	CBI	(G) Monomers for polymers and oligo ester; additive for cleaning products and / or plastics	(G) Modified ketal
P–09–0558	08/10/09	11/07/09	CBI	(G) Additive for cleaning products and / or plastics	(G) Modified ketal
P–09–0559	08/11/09	11/08/09	CBI	(G) Treating agent	(G) Alkoxysilane
P–09–0560	08/11/09	11/08/09	CBI	(S) Intermediate	(G) Chloroalkoxysilane
P–09–0561	08/11/09	11/08/09	CBI	(S) Silane coupling agent	(G) Alkoxysilane
P–09–0562	08/12/09	11/09/09	CBI	(G) Oilfield polymer	(G) Polymer of acrylamido alkyl propane sulfonic acid sodium salt and two acrylic monomers.
P–09–0563	08/12/09	11/09/09	Interfacial solutions	(S) Interior building materials; injection molded goods - electronics	(G) Modified (poly) lactic acid
P–09–0564	08/10/09	11/07/09	CBI	(G) Lamination adhesive	(G) Polyurethane prepolymer
P–09–0565	08/11/09	11/08/09	CBI	(G) Chemical for use in paper making	(G) Hydrophobically modified cationic polyamide resin
P–09–0566	08/13/09	11/10/09	CBI	(G) Open, non-dispersive use.	(G) Polysiloxane epoxy polymer
P–09–0567	08/13/09	11/10/09	Angus Chemical Company, a subsidiary of the Dow Chemical Company	(G) Radical scavenger	(G) Hydroxylamine derivative
P–09–0568	08/14/09	11/11/09	CBI	(S) Aerospace structural adhesive filler / syntatic system	(G) Formaldehyde, polymer with 2-(chloromethyl)oxirane, polyoxyalkane, and phenols

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 43 NOTICES OF COMMENCEMENT FROM: 7/1/09 TO 8/14/09

Case No.	Received Date	Commencement Notice End Date	Chemical
P–05–0668	07/23/09	07/03/09	(G) Maleic anhydride, adipic acid, propylene glycol, polyglycol copolymer
P–06–0325	07/22/09	06/19/09	(G) Fatty acid polymer with aliphatic diol and aromatic diacid
P–06–0560	07/16/09	06/23/09	(G) Fluoroalkyl methacrylate copolymer
P–07–0015	07/29/09	03/16/09	(G) Substituted naphthalenedisulfonic acid, substituted amino azo]-, sodium salt (same generic name for both isomers)
P–07–0016	07/06/09	06/08/09	(G) Hydrolyzed wheat silicone copolymer
P–08–0135	07/14/09	07/06/09	(G) Silylated acrylic resin
P–08–0137	07/28/09	06/22/09	(G) MDI polyester prepolymer
P–08–0206	07/24/09	06/29/09	(G) Styrene/acrylate copolymer (carboxylated)
P–08–0316	07/15/09	07/08/09	(G) Polyether polyphosphate ester
P–08–0317	07/15/09	07/08/09	(G) Polyether polyalcohol derivative
P–08–0393	07/30/09	07/15/09	(G) Urethane resin
P–08–0410	07/28/09	06/25/09	(G) Glycidyl methacrylate alkyl (meth) acrylate copolymer
P–08–0476	07/21/09	09/23/08	(G) Amine functional acrylic polymer
P–08–0504	07/14/09	06/15/09	(G) Formaldehyde, polymer with amine and a phenol
P–08–0505	07/08/09	06/19/09	(G) Copolymer of substituted propanesulfonic acid, maleate of ethylene oxide-propylene oxide
P–08–0546	07/20/09	06/30/09	(S) 1,3-butanediol, manufacturer of, by-products from, distant residues
P–08–0682	07/15/09	03/16/09	(G) Ethoxylated maleated triglyceride polymer
P–08–0751	07/14/09	07/04/09	(G) Ester diol
P–08–0753	07/14/09	07/04/09	(G) Organosilane derivative
P–09–0030	07/16/09	06/16/09	(G) Polyester acrylate
P–09–0043	07/14/09	06/16/09	(G) Benzenesulfonic acid, disodium salt
P–09–0112	07/28/09	07/06/09	(G) Bis-A-epoxy resin - CTBN adduct
P–09–0122	07/23/09	07/19/09	(G) Silicone modified polycarbonate
P–09–0177	07/16/09	06/21/09	(G) Aliphatic urethane acrylate
P–09–0214	07/22/09	07/08/09	(G) Styrene-methacrylate copolymer
P–09–0224	07/07/09	06/08/09	(G) Isocyanate terminated urethane polymer
P–09–0284	07/08/09	06/30/09	(G) Unsaturated polyester resin
P–09–0297	07/24/09	07/09/09	(G) Copolymer of acrylic acid and methacrylic acid esters, and vinylcaprolactam
P–05–0351	08/05/09	07/23/09	(G) SMA imide polyquat salt
P–05–0613	08/14/09	07/17/09	(G) Bisphenol *S* mono ester
P–06–0340	08/12/09	07/28/09	(S) Hexanedioic acid, potassium salt
P–07–0594	08/07/09	07/18/09	(G) *N,N,N*-trialkylalkylamine chloride
P–07–0595	08/07/09	07/18/09	(G) *N,N,N*-trialkylalkylamine acetate
P–08–0089	08/04/09	07/23/09	(G) Fatty acid oils polymer with aromatic acid, acrylates, styrene, polyol and conjugated anhydrides
P–08–0115	08/05/09	07/13/09	(G) Olefin copolymer
P–09–0062	08/06/09	07/22/09	(G) Alkyl aryl ether
P–09–0132	08/12/09	07/27/09	(G) Alkyl substituted polyamide
P–09–0170	08/04/09	07/20/09	(G) Isocyanate terminated polyether polyurethane
P–09–0186	08/05/09	08/02/09	(S) Phenol, polymer with formaldehyde, bu ether
P–09–0204	08/11/09	07/24/09	(G) Siloxanes and silicones, di-me, hydroxyalkyl me, alkoxylated, polymers with diisocyanatoalkane, polyalkylene-glycol monoallyl ether-blocked
P–09–0236	08/11/09	07/31/09	(S) Alkenes, $C_{20–24}$ .alpha.-, polymers with maleic anhydride, $C_{16–18}$- alkyl esters
P–98–0673	08/04/09	04/28/08	(G) Alkyl benzene
P–98–0679	08/04/09	04/28/08	(G) Alkyl benzenesulfonic acid

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: September 24, 2009.

Chandler Sirmons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E9–23934 Filed 10–6–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8966–5; Docket ID No. EPA–HQ–ORD–2009–0613]

Exposure Factors Handbook: 2009 Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: EPA is announcing a 60-day public comment period for the external review draft document titled, ''Exposure Factors Handbook: 2009 Update'' (EPA/600/R–09/052A), which was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development (ORD). The Exposure Factors Handbook provides a summary of the available statistical data on various factors used in assessing human exposure. This Handbook is aimed at exposure assessors inside the Agency as well as those outside who use data on standard factors to calculate human exposure to toxic chemicals. These factors include: drinking water consumption; mouthing behavior; soil ingestion rates; inhalation rates; dermal factors, including skin area and soil adherence factors; consumption of fruits and vegetables, fish, meats, dairy products, and homegrown foods; breast milk intake; human activity factors;

consumer product use; and residential characteristics. Recommended values are for the general population and also for various segments of the population who may have characteristics different from the general population. An external peer-review workshop is expected to be scheduled at a later date and announced in the **Federal Register**. The public comment period and the external peer-review workshop are separate processes that provide opportunities for all interested parties to comment on the document. EPA intends to forward the public comments that are submitted in accordance with this notice to the external peer-review panel prior to the meeting for their consideration. When finalizing the draft document, EPA intends to consider any public comments that EPA receives in accordance with this notice.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

The draft document and EPA's peer-review charge are available via the Internet on the NCEA home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea.*

DATES: The 60-day public comment period begins October 7, 2009, and ends December 7, 2009. Technical comments should be in writing and must be received by EPA by December 7, 2009.

ADDRESSES: The external review draft ''Exposure Factors Handbook: 2009 Update'' is available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea.* A limited number of CDs are available from NCEA's Information Management Team, NCEA; *telephone:* 703–347–8561; *facsimile:* 703–347–8691. If you are requesting a CD, please provide your name, your mailing address, and the document title, ''Exposure Factors Handbook: 2009 Update.''

Comments may be submitted electronically via *http://www.regulations.gov,* by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; *telephone:* 202–566–1752; *facsimile:* 202–566–1753; or *e-mail: ORD.Docket@epa.gov.*

For technical information, contact Jacqueline Moya, NCEA; *telephone:* 703–347–8539; *facsimile:* 703–347–8694; or *e-mail: moya.jacqueline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. How To Submit Technical Comments to the Docket at *http://www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD 2009–0613 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334 EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center's Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2009–0613. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: Documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: September 30, 2009.

Peter Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. E9–24189 Filed 10–6–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0759; FRL–8794–7]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be an informational meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA

SAP) to present the approach to re-evaluate atrazine.

DATES: The meeting will be held on November 3, 2009 from approximately 9 a.m. to 12 p.m.

Comments. The Agency encourages that written comments be submitted by October 23, 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 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.**

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–2009–0759, 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–2009–0759. 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.

Requests to present oral comments, and requests for special accommodations. Submit 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 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–2009–0759 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 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 October 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 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.

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

Atrazine is currently one of the most widely used agricultural pesticides in the United States, with approximately 70 million pounds of active ingredient applied domestically per year. First registered for use in December 1958, its primary uses are on corn and sugarcane, and to a lesser extent, on residential lawns in the Southeast. Consistent with the requirements of FIFRA and FFDCA, EPA and its predecessor agencies have required extensive evaluation of the potential adverse effects of atrazine over the years. Based on these extensive evaluations, most recently in 2003, EPA had determined that atrazine can be used with a reasonable certainty of no harm to human health if the product is used according to the label. Nonetheless, concerns have been raised recently about the health impacts of atrazine. Since 2003, there have been many studies of its ability to cause health effects. In order to evaluate this new science, EPA is launching a year long, comprehensive scientific re-evaluation of the potential human health impacts of atrazine by using information about atrazine's mode of action and by carefully considering the potential for cancer and non-cancer effects based on the available data from laboratory animal and human epidemiology studies.

The Agency relies on transparency and sound science, including independent scientific peer review, to inform its regulatory decisions. The Agency's 2003 evaluation of atrazine provided a detailed evaluation of the mode of action and human health effects of atrazine. Through a series of SAP meetings, EPA's evaluation of the new scientific evidence available since that time will be described in the context of how it is similar to or differs from that available for the last atrazine assessment, and how this new evidence does or does not affect the Agency's human health risk assessment of atrazine.

In the kick-off meeting to be held on November 3, 2009, the Panel members and public will be informed about EPA's plans for three subsequent SAP meetings to be held in February, April and September, 2010.

In February 2010 the Agency will present its proposed approach for incorporating epidemiology and human incident data in the risk assessment. It will also present its evaluations of the human epidemiology studies which use an ecological design that have been published since the last atrazine assessment. The SAP will be asked to comment on the soundness of the scientific approach.

At the April 2010 meeting, EPA will present its evaluation of non-cancer effects based on an evaluation of studies used in past assessments, as well as those that have been published since then. The Agency will also present new data on alternative modes of action not considered in the 2003 evaluation as well as EPA's plans for sampling frequency and monitoring of community water systems. The SAP will be asked to comment about the soundness of the scientific approach.

In September 2010, EPA will discuss its evaluation of cancer effects, based on an evaluation of studies used in past assessments, as well as those that have been published since then, including new findings from the Agricultural Health Study anticipated in 2010. EPA will also present any changes to its plans for monitoring community water systems based on its analysis and the SAP's guidance from the April meeting. Further, any new scientific developments related to the Agency's evaluation of non-cancer effects or setting the FQPA safety factor which may have become available since the April meeting will also be presented. The SAP will be asked to comment about the soundness of the scientific approach.

At the end of this year-long effort, the Agency will determine if the current risk assessment for atrazine should be revised and whether or not the Agency's current regulatory position and community water system monitoring requirements should be changed.

C. FIFRA SAP Documents and Meeting Minutes

EPA's background paper, related supporting materials, FIFRA SAP panel members, and the meeting agenda will be available by mid-October for the November 3, 2009 meeting. 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 30, 2009.

Frank Sanders,

Director, Office of Science Coordination and Policy.

[FR Doc. E9–24229 Filed 10–6–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0683; FRL–8794–3]

FIFRA Scientific Advisory Panel; Notice of Change to Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA issued a notice in the **Federal Register** of September 16, 2009, concerning a 4–day consultation meeting of the FIFRA Scientific Advisory Panel 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. This document is being issued to revise the times for the meetings.

DATES: The consultation meeting will be held Tuesday, November 3, 2009 from approximately 1:30 p.m. to 5 p.m.; and Wednesday thru Friday, November 4 - 6, 2009 from approximately 8:30 a.m. to 5 p.m. (eastern time).

FOR FURTHER INFORMATION CONTACT: Joseph E. Bailey, Designated Federal Official, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–2045; e-mail address: *bailey.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the original notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the 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–OPP–2008–0683. 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 Office of Pesticide Programs (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.

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 Does this Notice Do?

The notice changes the time for a FIFRA Scientific Advisory Panel meeting 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. The meeting announcement was published in the **Federal Register** of September 16, 2009. The meeting was originally scheduled for November 3, 2009 through November 6, 2009 and was to begin at 8:30 a.m. The time for the November 3, 2009 meeting has been changed from 8:30 a.m. – 5 p.m. to 1:30 p.m. to 5 p.m. (eastern time). All of the other information concerning the November 3, as well as the November 4 – 6, 2009 meeting remains the same.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 30, 2009.

Frank Sanders,

Director, Office of Science Coordination and Policy.

[FR Doc. E9–24195 Filed 10–6–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8966–2]

Notice of Public Meeting of the Interagency Steering Committee on Radiation Standards

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA) will host a meeting of the Interagency Steering Committee on Radiation Standards (ISCORS) on October 15, 2009, in Washington, DC. The purpose of ISCORS is to foster early resolution and coordination of regulatory issues associated with radiation standards. Agencies represented as members of ISCORS include the following: EPA; Nuclear Regulatory Commission; Department of Energy; Department of Defense; Department of Transportation; Department of Homeland Security; Department of Labor's Occupational Safety and Health Administration; and the Department of Health and Human Services. ISCORS meeting observer agencies include the Office of Science and Technology Policy, Office of Management and Budget, Defense Nuclear Facilities Safety Board, as well as representatives from both the States of Illinois and Pennsylvania. ISCORS maintains several objectives: (1) Facilitate a consensus on allowable levels of radiation risk to the public and workers; (2) promote consistent and scientifically sound risk assessment and risk management approaches in setting and implementing standards for occupational and public protection from ionizing radiation; (3) promote completeness and coherence of Federal standards for radiation protection; and (4) identify interagency radiation protection issues and coordinate their resolution. ISCORS meetings include presentations by the chairs of the subcommittees and discussions of current radiation protection issues. Committee meetings normally involve pre-decisional intra-governmental discussions and, as such, are normally not open for observation by members of the public or media. One of the four ISCORS meetings each year is open to all interested members of the public. There will be time on the agenda for members of the public to provide comments. Summaries of previous ISCORS meetings are available at the ISCORS Web site, *http://www.iscors.org*. The final agenda for the October 2009 meeting will be posted on the Web site shortly before the meeting.

DATES: The meeting will be held on October 15, 2009, from 1 p.m. to 4 p.m.

ADDRESSES: The ISCORS meeting will be held in Room 152 at the EPA building located at 1310 L Street, NW., in Washington, DC. Attendees are required to present a photo ID such as a government agency photo identification badge or valid driver's license. Visitors and their belongings will be screened by EPA security guards. Visitors must sign the visitors log at the security desk and will be issued a visitors badge by the security guards to gain access to the meeting.

FOR FURTHER INFORMATION CONTACT: Marisa Savoy, Radiation Protection Division, Office of Radiation and Indoor Air, Mailcode 6608J, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone 202–343–9237; fax 202–343–2302; e-mail address *savoy.marisa@epa.gov*.

SUPPLEMENTARY INFORMATION: Pay parking is available for visitors at the Colonial parking lot next door in the garage of the Franklin Square building. Visitors can also ride metro to the McPherson Square (Blue and Orange Line) station and leave the station via the 14th Street exit. Walk two blocks north on 14th Street to L Street. Turn right at the corner of 14th and L Streets. EPA's 1310 L Street building is on the right towards the end of the block. Visit the ISCORS Web site, *http://www.iscors.org* for more detailed information.

Dated: September 29, 2009.

Tom Kelly,

Acting Director, Office of Radiation and Indoor Air.

[FR Doc. E9–24190 Filed 10–6–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0045; FRL–8792–7]

Notice of Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Agency's receipt of several initial filings of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before November 6, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, 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 the docket ID number and the pesticide petition number of interest as shown in the body of this document. 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: A contact person, with telephone number and e-mail address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

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 at the end of the pesticide petition summary of interest.

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.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have a typical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerances

1. *PP 9E7591.* (EPA–HQ–OPP–2009–713). Interregional Research Project Number 4 (IR-4), IR-4 Project, 500 College Rd. East, Suite 201W, Princeton, NJ 08540, proposes to establish a tolerance in 40 CFR part 180 for the combined residues of the fungicide mefenoxam, (R)- and (S)-2-[(2,6-dimethyl(phenyl)-methoxyacetylamine]-propionic acid methyl ester, and its metabolites containing the 2,6 dimethylaniline moiety, and N -(2-hydroxy methyl-6-methylphenyl)- N -(methoxyacetyl)-alanine methyl ester in or on bean, snap, succulent at 0.35 parts per million (ppm); caneberry, subgroup 13-07A at 0.80 ppm; bushberry, subgroup 13-07B at 2.0 ppm; onion, bulb, subgroup 3-07A at 3.0 ppm; onion, green, subgroup 3-07B at 10.0 ppm, and spinach at 8.0 ppm. Snap bean and caneberry samples were analyzed for mefenoxam (parent only) using a procedure derived from ''Confirmatory Analytical Method for the Enantioselective Determination of Residues of Parent Metalaxyl (CGA-48988) or Mefenoxam (CGA-329351) in Crop Substrates by Chiral High Performance Liquid Chromatography with Mass Spectrometric Detection'' (Novartis Crop Protection, Inc., Procedure 456–98, March, 1999). Minor modifications were made to improve the performance of the method. The limit of quantitation (LOQ) for the method is 0.028 ppm for snap beans and 0.059 for caneberries. Selected samples from the snap bean and caneberry trials were also analyzed with the combined residue method that converts everything to N-(2,6-dimethylpheny1)-N(methoxyacetyl)alanine methyl ester. This served as a bridging study for the other samples that were only analyzed for parent.

The common moiety method was also used for the spinach trials. The analytical method used was Ciba-Geigy Corporation Procedure AG-395, ''Improved Method for the Determination of Total Residues of Metalaxyl in Crop as 2,6-dimethylaniline,'' December 1982. This total residue method is used for the determination of the combined residues of metalaxyl N-(2,6-dimethylpheny1)-N-(methoxyacetyl)alanine methyl ester and its metabolites which contain the 2,6-dimethylaniline (2, 6-DMA) moiety in crop samples. Contact: Laura Nollen, (703) 305–7390; *nollen.laura@epa.gov*.

2. *PP 9E7594.* (EPA–HQ–OPP–2009–0644). Interregional Research Project Number 4 (IR-4), 500 College Rd. East, Suite 201W, Princeton, NJ 08540, proposes to establish a tolerance in 40 CFR part 180 for residues of the insecticide fenpropathrin, alpha-cyano-3-phenoxy-benzyl 2,2,3,3-tetramethylcyclopropanecarboxylate in or on guava, acerola, feijoa, jaboticaba, passionfruit, starfruit and wax jambu at 1.5 ppm; lychee, longan, Spanish lime, pulasan and rambutan at 3.0 ppm; sugar apple, atemoya, biriba, cherimoya, custard apple, ilama, and soursop at 1.0 ppm; and tea at 2.0 ppm. Adequate analytical methodology is available to detect and quantify fenpropathrin at residue levels in numerous matrices. The methods use solvent extraction and partition and/or column chromatography clean-up steps, followed by separation and quantitation using capillary gas liquid chromatography (GLC) with flame ionization detector (FID). The extraction efficiency has been validated using radiocarbon samples from the plant and animal metabolism studies. The

enforcement methods have been validated at independent laboratories and by EPA. The limit of quantification (LOQ) for fenpropathrin in raw agricultural commodity samples is usually 0.01 ppm. Contact: Laura Nollen, (703) 305–7390; *nollen.laura@epa.gov*.

3. *PP 8F7371*. (EPA–HQ–OPP–2008–0732). BASF Corporation, 26 Davis Drive, Research Triangle Park, NC 27709, proposes to establish a tolerance in 40 CFR part 180 for residues of the fungicide metrafenone in or on grapes, fruit at 4.5 ppm; grapes, juice at 0.45 ppm; and grapes, raisin at 17 ppm. BASF analytical methods No. FAMS 105–01 ''CL 375839: Analytical method for the determination of the active ingredient in grapes,'' and No. FAMS 106–01 ''CL 4375839: Analytical method for the determination of the active ingredient in must and wine,'' were developed to determine residues of metrafenone in grapes and wine, respectively. Quantitative determination of metrafenone is carried out by capillary gas chromatography with an electron capture detector (GC/ECD). An independent laboratory validation demonstrated good performance of these methods. Contact: Tony Kish, (703) 308–9443; *kish.tony@epa.gov*.

4. *PP 9F7528*. (EPA–HQ–OPP–2009–0672). BASF Corporation, P.O. Box 13528, Research Triangle Park, NC, 27709, proposes to establish a tolerance in 40 CFR part 180 for residues of the fungicide pyraclostrobin, carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester and its metabolite methyl-N-[[[1-(4-chlorophenyl) pyrazol-3-yl]oxy]o-tolyl] carbamate (BF 500–3); expressed as parent compound, in or on alfalfa, forage at 9 ppm and alfalfa, hay at 27 ppm. In plants the method of analysis is aqueous organic solvent extraction, column clean-up and quantitation by liquid chromatography/mass spectrometry/mass spectrometry (LC/MS/MS). In animals the method of analysis involves base hydrolysis, organic extraction, column clean-up and quantitation by LC/MS/MS or derivatization (methylation) followed by quantitation by gas chromatography/MS (GC/MS). Contact: John Bazuin, (703) 305–7381; *bazuin.john@epa.gov*.

5. *PP 9F7567*. (EPA–HQ–OPP–2009–0677). Arysta LifeScience North America, LLC, 15401 Weston Parkway, Suite 150, Cary, NC 27513, proposes to establish a tolerance in 40 CFR part 180 for residues of the fungicide fluoxastrobin, (1E)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimydinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime, and its Z isomer, (1Z)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimydinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime in or on wheat, grain at 0.09 ppm; wheat, bran at 0.2 ppm; wheat, forage at 7.0 ppm; wheat, hay at 17 ppm; wheat, straw at 11 ppm; aspirated grain fractions at 15 ppm; sweet corn (kernels plus cob with husks removed) at 0.02 ppm; sweet corn, forage at 13 ppm; sweet corn, stover at 10 ppm; and meat byproducts (cattle, goat, horse sheep) at 0.2 ppm. Adequate analytical methodology using high performance liquid chromatography/mass spectrometry/mass spectrometry (HPLC/MS/MS) detection is available for enforcement purposes. Contact: John Bazuin, (703) 305–7381; *bazuin.john@epa.gov*.

6. *PP 9F7602*. (EPA–HQ–OPP–2009–0682). Bayer CropScience, P.O. Box 12014, 2 T.W. Alexander Dr., Research Triangle Park, NC 27709, proposes to establish a tolerance in 40 CFR part 180 for residues of the insecticide spiromesifen; 2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro(4,4)non-3-en-4-yl 3,3-dimethylbutanoate and its enol metabolite; 4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4,4]non-3-en-2-one, calculated as parent compound equivalents in or on vegetable, leafy petiole, crop group 4B at 6.0 ppm. Adequate analytical methodology using liquid chromatography/mass spectrometry/mass spectrometry (LC/MS/MS) detection is available for enforcement purposes. Contact: Jennifer Gaines, (703) 305–5967; *gaines.jennifer@epa.gov*.

Amended Tolerances

1. *PP 9E7591*. (EPA–HQ–OPP–2009–0713). Interregional Research Project Number 4 (IR-4), IR-4 Project, 500 College Rd. East, Suite 201W, Princeton, NJ 08540, proposes to remove the tolerance in 40 CFR 180.546 for the combined residues of the fungicide mefenoxam, (R)- and (S)-2-[(2,6-dimethyl(phenyl)-methoxyacetylamine]-propionic acid methyl ester, and its metabolites containing the 2,6 dimethylaniline moiety, and N -(2-hydroxy methyl-6-methylphenyl)- N -(methoxyacetyl)-alanine methyl ester in or on lingonberry at 2.0 ppm. Contact: Laura Nollen, (703) 305–7390; *nollen.laura@epa.gov*.

2. *PP 9E7592*. (EPA–HQ–OPP–2009–0714). Arysta LifeScience North America, LLC, 15401 Weston Parkway, Cary, NC 27513, proposes to amend the tolerances in 40 CFR 180.560 by establishing a tolerance for the combined residues of cloquintocet-mexyl, (acetic acid, [(5-chloro-8-quinolinyl)oxy-,1-methylhexyl ester) (CAS Reg. No. 99607–70–2) and its acid metabolite (5-chloro-8-quinolinoxyacetic acid, also known as CGA-153433) when used as a pesticide inert ingredient (safener) in pesticide formulations containing the herbicide flucarbazone-sodium (wheat only), pinoxaden (wheat or barley), clodinafop-propargyl (wheat only), or pyroxsulum (wheat only) in or on barley, grain at 0.10 ppm; barley, hay at 0.10 ppm; barley, straw at 0.10 ppm; wheat, grain at 0.10 ppm; wheat, forage at 0.2 ppm; wheat, hay at 0.50 ppm; and wheat, straw at 0.10 ppm. The analytical methodology for detecting and measuring combined levels of cloquintocet-mexyl and its acid metabolite 5-chloro-8-quinolinoxylacetic acid has been submitted to the Agency. The method is based upon acid hydrolysis extraction, which converts the parent and all conjugates to the acid metabolite. The acid metabolite is subject to commodity specific clean-up procedures and high performance liquid chromatography (HPLC) determination with triple stage quadruple mass spectrometry (LC/MS/MS). The limit of quantitation (LOQ), as demonstrated by the lowest acceptable recovery samples, is 0.01 ppm for grain and 0.02 ppm for forage, hay and straw. Contact: Karen Samek, (703) 347–8825; *samek.karen@epa.gov*.

New Tolerance Exemptions

1. *PP 9E7574*. (EPA–HQ–OPP–2009–0480). UDL Laboratories, Inc., 12720 Dairy Ashford, Sugar Land, TX 77478, proposes to establish an exemption from the requirement of a tolerance for residues of poly(oxy-1,2-ethanediyl), α-hydro-ω-hydroxy-, polymer with 1,1'-methylene-bis-[4-isocyanatocyclohexane and having a number average molecular weight of 1,858 (CAS No. 39444–87–6) under 40 CFR 180.960 for use as an excipient when used as a pesticide inert ingredient in pesticide formulations. The petitioner believes an analytical method to determine residues is not relevant based upon the definition of a low risk polymer under 40 CFR 723.250. Contact: Elizabeth Fertich, (703) 347–8560; *fertich.elizabeth@epa.gov*.

2. *PP 9E7584*. (EPA–HQ–OPP–2009–0663). Pimi Agro CleanTech, Ltd., P.O. Box 117, Hutzot Alonim, 30049, Israel c/o Wagner Regulatory Associates, Inc., P.O. Box 640, Hockessin, DE 19707, proposes to establish an exemption from the requirement of a tolerance for residues of silver nitrate (CAS No. 7761–88–8) under 40 CFR 180.910 on stored potatoes when used as a pesticide inert ingredient (stabilizer) in pesticide

formulations of the active ingredient hydrogen peroxide as a post-harvest treatment to control sprouting. The petitioner believes no analytical method is needed because it is proposed that silver nitrate be exempt from the requirement for a tolerance for residues. Contact: Alganesh Debesai, (703) 308–8353; *debesai.alganesh@epa.gov*.

3. *PP 9E7586*. (EPA–HQ–OPP–2009–0676). WHITMIRE MICROGEN c/o Landis International, Inc., P.O. Box 5126, Valdosta, GA 31603–5126, proposes to establish an exemption from the requirement of a tolerance for residues of isobutane (CAS No. 75–28–5) when used as a pesticide inert ingredient in pesticide formulations used in accordance with good agricultural practice as an aerosol propellant in pesticide formulations used pre- and post-harvest 40 CFR 180.910 and when applied to animals 40 CFR 180.930. The petitioner believes no analytical method is needed because it is proposed that isobutane be exempt from the requirement for a tolerance for residues. Contact: Keri Grinstead, (703) 308–8373; *grinstead.keri@epa.gov*.

4. *PP 9E7595*. (EPA–HQ–OPP–2009–0675). BASF Corporation, 100 Campus Dr., Florham Park, NJ 07932, proposes to establish an exemption from the requirement of a tolerance for residues of oxirane, 2-methyl-, polymer with oxirane, dimethyl ether (CAS No. 61419–46–3) under 40 CFR 180.960 when used as a pesticide inert ingredient as a surfactant in pesticide formulations without limitation. The petitioner believes no analytical method is needed because it is proposed that oxirane, 2-methyl-, polymer with oxirane, dimethyl ether be exempt from the requirement of a tolerance for residues. Contact: Keri Grinstead, (703) 308–8373; *grinstead.keri@epa.gov*.

5. *PP 9E7599*. (EPA–HQ–OPP–2009–0662). Akzo Nobel Surface Chemistry, LLC, 909 Mueller Ave., Chattanooga, TN 37406, proposes to establish an exemption from the requirement of a tolerance for residues and requests the elimination of the need to establish a maximum permissible level for residues of acrylic acid-benzyl methacrylate-1-propanesulfonic acid, 2-methyl-2-[1(1-oxo-2-propenyl)amino]-, monosodium salt copolymer (CAS No. 1152297–42–1) when used as a pesticide inert ingredient as a dispersant in pesticide formulations under 40 CFR 180.960 in or on all raw agricultural commodities. The petitioner believes no analytical method is needed because this information is generally not required when all criteria for polymer exemption under 40 CFR 723.250 are met. In addition, Akzo Nobel is petitioning for an exemption from the requirement of a tolerance without any numerical limitations. Contact: Alganesh Debesai, (703) 308–8353; *debesai.alganesh@epa.gov*.

6. *PP 9E7603*. (EPA–HQ–OPP–2009–0693). Croda, Inc., 315 Cherry Lane, New Castle, DE, proposes to establish an exemption from the requirement of a tolerance for residues of the following polymerized fatty acid copolymer esters under 40 CFR 180.960 low risk polymers:
Dimethylaminoethanol, ethoxylated, reaction products with fatty acid dimers (CAS Reg. No. 1173188–38–9);
Dimethylaminoethanol, ethoxylated, propoxylated, reaction products with fatty acid dimers (CAS Reg. No. 1173188–42–5);
Diethylaminoethanol, ethoxylated, reaction products with fatty acid dimers (CAS Reg. No. 1173188–72–1);
Diethylaminoethanol, ethoxylated, propoxylated, reaction products with fatty acid dimers (CAS Reg. No. 1173188–75–4);
Dimethylaminoethanol, ethoxylated, reaction products with fatty acid trimers (CAS Reg. No. 1173188–49–2);
Dimethylaminoethanol, ethoxylated, propoxylated, reaction products with fatty acid trimers (CAS Reg. No. 1173188–67–4);
Diethylaminoethanol, ethoxylated, reaction products with fatty acid trimers (CAS Reg. No. 1173188–81–2);
Diethylaminoethanol, ethoxylated, propoxylated, reaction products with fatty acid trimers (CAS Reg. No. 1173188–83–4);
Hydroxyethylmorpholine, ethoxylated, reaction products with fatty acid dimers (CAS Reg. No. 1173189–00–8);
Hydroxyethylmorpholine, ethoxylated, propoxylated, reaction products with fatty acid dimers (CAS Reg. No. 1173189–06–4);
Hydroxyethylpiperidine, ethoxylated, reaction products with fatty acid dimers (CAS Reg. No. 1173189–20–2);
Hydroxyethylpiperidine, ethoxylated, propoxylated, reaction products with fatty acid dimers (CAS Reg. No. 1173189–22–4);
Hydroxyethylmorpholine, ethoxylated, reaction products with fatty acid trimers (CAS Reg. No. 1173189–09–7);
Hydroxyethylmorpholine, ethoxylated, propoxylated, reaction products with fatty acid trimers (CAS Reg. No. 1173189–17–7);
Hydroxyethylpiperidine, ethoxylated, reaction products with fatty acid trimers (CAS Reg. No. 1173189–25–7);
and Hydroxyethylpiperidine, ethoxylated, propoxylated, reaction products with fatty acid trimers (CAS Reg. No. 1173189–28–0)

when used as a pesticide inert ingredient in pesticide formulations. Requirements for an analytical method are not applicable to a request to establish an exemption from the requirement of a tolerance. An analytical method is not provided as the Agency does not require it to rule on the exemption from the requirement of a tolerance for a Low Risk Polymer inert ingredient. Contact: Deirdre Sunderland, (703) 603–0851; *sunderland.deirdre@epa.gov*.

7. *PP 9E7608*. (EPA–HQ–OPP–2009–0691). BASF Corporation, 100 Campus Dr., Florham Park, NJ 07932, proposes to establish an exemption from the requirement of a tolerance for residues of 2–propenoic acid, butyl ester, polymer with ethenylbenzene, methyl 2–methyl–2–propenoate and 2–propenoic acid (CAS No. 27306–39–4) under 40 CFR 180.960 when used as a pesticide inert ingredient as a surfactant in pesticide formulations without limitation. The petitioner believes no analytical method is needed because this petition is a request for an exemption from the requirement of a tolerance. Contact: Lisa Austin, (703) 305–7894; *austin.lisa@epa.gov*.

8. *PP 9E7609*. (EPA–HQ–OPP–2009–0699). BASF Corporation, 100 Campus Dr., Florham Park, NJ 07932, proposes to establish an exemption from the requirement of a tolerance for residues of 2-propenoic acid, 2-ethylhexyl ester, polymer with ethenylbenzene and 2-methylpropyl 2-methyl-2-propenoate (CAS No. 68240–06–2) under 40 CFR 180.960 when used as a pesticide inert ingredient as a surfactant in pesticide formulations without limitation. The petitioner believes no analytical method is needed because this petition is a request for an exemption from the requirement of a tolerance. Contact: Elizabeth Fertich, (703) 347–8560; *fertich.elizabeth@epa.gov*.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 24, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E9–24061 Filed 10–6–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0684; FRL–8436–1]

Receipt of Petition Requesting EPA to Suspend the Registration of Rozol Prairie Dog Bait and Cancel Certain Application Sites; Opening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is publishing for public comment a June 5, 2009 petition from World Wildlife Fund (WWF) available in docket number EPA–HQ–OPP–2009–0684, requesting that the Agency suspend the registration of the chlorophacinone product, Rozol Prairie Dog Bait (EPA Reg. No. 7173–286), and cancel certain application sites for the product.

DATES: Comments must be received on or before November 6, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0684, 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–2009–0684. 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: Dan Peacock, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5407; fax number: (703) 308–0029; e-mail address: *peacock.dan@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 groups; farmers; ranchers; State regulatory partners; other interested Federal agencies; members of the public interested in the sale, distribution, or use of pesticides; and other pesticide registrants and pesticide users.

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. 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. What Action is the Agency Taking?

EPA is providing an opportunity for public comment on a petition received from the World Wildlife Fund (WWF) that asks the Agency to suspend the registration of Rozol Prairie Dog Bait (EPA Reg. No. 7173–286) and cancel certain application sites for the product. This product is currently registered for use to control black-tailed prairie dogs and its active ingredient is the anticoagulant rodenticide chlorophacinone.

The primary basis for the petition is the potential effect of this product on non-target species, including certain predators and scavengers of the black-tailed prairie dog. Specifically, the petition contends that the poisoning risks to non-target species from the use of this product are unjustified, given the availability of alternative products to control black-tailed prairie dogs. Petitioners request EPA to require the completion of an Avian Reproduction Study before further product use to control black-tailed prairie dogs is permitted. The petition also asks EPA to initiate formal consultation, under section 7 of the Endangered Species Act, with the U.S. Fish and Wildlife Service (FWS) regarding the registration of this product. Third, it requests that EPA develop a memorandum of understanding with FWS to show how EPA will promote the conservation of birds protected under the Migratory Bird Treaty Act. Petitioners ask that EPA suspend the use of Rozol Prairie Dog Bait while these activities are ongoing and also request that the application of the product be prohibited in those counties where black-footed ferrets are present.

As additional background, EPA is providing a recent letters from FWS and other interested parties expressing similar concerns about the potential impact of Rozol Prairie Dog Bait on non-target wildlife protected under the Endangered Species Act and the Migratory Bird Treaty Act (available in the public docket accompanying this notice at EPA–HQ–OPP–2009–0684).

EPA regulates non-food use pesticides, such as Rozol Prairie Dog Bait, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Under FIFRA, EPA registers a pesticide if it determines that the use of the pesticide will not cause ''unreasonable adverse effects'' to human health or the environment. This standard involves risk-benefit balancing when risks exist above EPA's level of concern. Both registration decision under section 3 of FIFRA and cancellation decisions under section 6 of FIFRA depend on the outcome of adverse effects determinations. If this adverse effects standard is not satisfied, EPA may not register the pesticide and existing pesticides are subject to cancelation. See FIFRA sections 3(c)(5) and 6(b).

If EPA issues a notice of intent to cancel a pesticide registration and further determines that a suspension of the registration prior to the completion of the ensuing cancellation proceedings is necessary to prevent an imminent hazard, EPA may take steps to suspend the registration during the pendency of cancellation proceedings, as described in section 6(c) of FIFRA. FIFRA defines an ''imminent hazard'' as a situation in which the continued use of a pesticide, during the time required for a cancellation hearing, would likely cause unreasonable adverse effects or will involve an unreasonable hazard to the survival of a species listed as threatened or endangered pursuant to the Endangered Species Act.

WWF's petition requests both suspension of the registration for Rozol Prairie Dog Bait and cancellation of certain application sites for the product. EPA therefore anticipates that its response to the petition will address its risk-benefit analysis for this pesticide. EPA conducted such an analysis at the time it registered Rozol Prairie Dog Bait under section 3 of FIFRA. For this notice, EPA has compiled a list of topics relevant to EPA's risk-benefit balancing decision for Rozol Prairie Dog Bait (available in the public docket accompanying this topic at EPA–HQ–OPP–2009–0684). EPA is providing an opportunity for public comment and the submission of additional information pertinent to these topics (if any is available), as such information would further assist the Agency in responding to the petition.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 24, 2009.

Debra Edwards,

Director, Office of Pesticide Programs.

[FR Doc. E9–23932 Filed 10–6–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8967–3]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree, to address a lawsuit filed by Sierra Club in the United States District Court for the District of Columbia: *Sierra Club* v. *Jackson,* No. 1:09–cv–01028–CKK (D.D.C). Plaintiff filed a deadline suit to compel the Administrator to respond to an administrative petition seeking EPA's objection to a CAA Title V operating permit issued by the Kentucky Department for Environmental Protection, Division for Air Quality to the East Kentucky Power Cooperative William C. Dale Power Station. Under the terms of the proposed consent decree, EPA has agreed to respond to the petition by December 15, 2009.

DATES: Written comments on the proposed consent decree must be received by November 6, 2009.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2009–0763, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Mark Kataoka, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone:* (202) 564–5584; *fax number:* (202) 564–5603; *e-mail address: kataoka.mark@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

This proposed consent decree would resolve a lawsuit alleging that the Administrator failed to perform a nondiscretionary duty to grant or deny, within 60 days of submission, an administrative petition to object to a CAA Title V permit issued by the Kentucky Department for

Environmental Protection, Division for Air Quality to the East Kentucky Power Cooperative William C. Dale Power Station. Under the terms of the proposed consent decree, EPA has agreed to respond to the petition by December 15, 2009. In addition, the proposed consent decree states that after EPA fulfills its obligations under the decree, and the Plaintiff's claims for costs of litigation have been resolved, the case shall be dismissed with prejudice.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment submitted, that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get a Copy of the Consent Decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2009–0763) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use the *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: September 29, 2009.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E9–24183 Filed 10–6–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8967–4]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree, to address a lawsuit filed by Environmental Integrity Project and Sierra Club (collectively ''Plaintiffs'') in the United States District Court for the District of Columbia: *Environmental Integrity Project, et al.* v. *Jackson,* No. 1:09–cv–01025–EGS (D.D.C). On June 2, 2009, Plaintiffs filed a deadline suit to compel the Administrator to respond to an administrative petition seeking EPA's objection to a CAA Title V operating permit issued by the Arkansas Department of Environmental Quality to Southwestern Electric Power Company (a unit of American Electric Power) for the operation of the John W. Turk, Jr. Power Plant. Under the terms of the proposed consent decree, EPA has agreed to respond to the petition by December 15, 2009.

DATES: Written comments on the proposed consent decree must be received by *November 6, 2009.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2009–0756, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301

Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: David Orlin, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone:* (202) 564–1222; *fax number:* (202) 564–5603; *e-mail address: orlin.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

This proposed consent decree would resolve a lawsuit alleging that the Administrator failed to perform a nondiscretionary duty to grant or deny, within 60 days of submission, an administrative petition to object to a CAA Title V permit issued by the Arkansas Department of Environmental Quality to Southwestern Electric Power Company (a unit of American Electric Power) for the operation of the John W. Turk, Jr. Power Plant. Under the terms of the proposed consent decree, EPA has agreed to respond to the petition by December 15, 2009. In addition, the proposed consent decree states that within fifteen (15) business days following the signature of its response EPA shall deliver notice of such action to the Office of the Federal Register for prompt publication. The proposed consent decree states that, after EPA fulfills its obligations under the decree, and the Plaintiffs' claims for costs of litigation have been resolved, the case shall be dismissed with prejudice.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment submitted, that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get a Copy of the Consent Decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2009–0756) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use the *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: October 1, 2009.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E9–24185 Filed 10–6–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 21, 2009.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Craig E. Scherber, Mound, Minnesota; to acquire 10 percent or more of the shares of American Eagle Financial Corporation, Otsego, Minnesota, and thereby indirectly gain control of Riverview Community Bank, Otsego, Minnesota.

Board of Governors of the Federal Reserve System, October 2, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–24140 Filed 10–6–09; 8:45 am]

BILLING CODE 6210–01–S

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.: 010071–036.

Title: Cruise Lines International Association Agreement.

Parties: AMA Waterways; American Cruise Lines, Inc.; Azamara Cruises; Carnival Cruise Lines; Celebrity Cruises, Inc.; Costa Cruise Lines; Crystal Cruises; Cunard Line; Disney Cruise Line; Holland America Line; Hurtigruten, Inc.; Majestic America Line; MSC Cruises; NCL Corporation; Oceania Cruises; Orient Lines; Princess Cruises; Regent Seven Seas Cruises; Royal Caribbean International; Seabourn Cruise Line; SeaDream Yacht Club; Silversea Cruises, Ltd.; Uniworld River Cruises, Inc.; and Windstar Cruises.

Filing Party: Terry Dale, President; Cruise Lines International Association, Inc., 910 SE. 17th Street, Suite 400, Fort Lauderdale, FL 33316.

Synopsis: This corrects an earlier notice that appeared on September 23, 2009, to reflect Pearl Seas Cruises as an additional party to the agreement.

Agreement No.: 010982–047.

Title: Florida-Bahamas Shipowners and Operators Association.

Parties: Bernuth Lines, Ltd.; Crowley Caribbean Services LLC/Crowley Liner Services, Inc.; Seaboard Marine, Ltd.; and Seafreight Line, Ltd.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell LLP, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment removes Atlantic Caribbean Line, Inc. as a party to the agreement.

Dated: October 2, 2009.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. E9–24238 Filed 10–6–09; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Public Workshops and Roundtables: From Town Crier to Bloggers: How Will Journalism Survive the Internet Age?

AGENCY: Federal Trade Commission.

ACTION: Notice Announcing Public Workshops and Opportunity for Comment.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') announces that it will hold two days of public workshops on December 1 and 2, 2009, to examine the Internet's impact on journalism in newspapers, magazines, broadcast television and radio, and cable television. The Internet has changed how many consumers receive news and altered the advertising landscape. Low entry barriers on the Internet have allowed new voices of journalism to emerge; the Internet-enabled links from one web site to another have given consumers easy access to all types of news; efficiencies available through the Internet have substantially reduced advertising costs. These and other changes related to the Internet have benefitted consumers greatly.

At the same time, however, lower online advertising costs have reduced advertising revenues to news organizations that rely on those revenues for the majority of their funding. The explosion in the number and types of web sites has increased the supply of advertising locations. As that supply has increased, advertisers now pay less for online advertising, and some advertising has moved from print, television, or radio to online sites. In addition, most online news is offered free, so online readers of news frequently do not contribute subscription revenues to news media.

These developments are challenging the ability of news organizations to fund journalism. The workshops will consider a wide range of issues, including: (1) the economics of journalism on the Internet and in more traditional media; (2) how the business models of different types of news organizations may evolve in response to the challenges associated with the Internet; (3) innovative forms of journalism that have emerged on the Internet; (4) how competition may evolve in markets for journalism and advertising; and (5) changes in governmental policies that have been proposed as ways to support journalism.

The Commission seeks the views of the news media and the legal, academic, consumer, and business communities on the issues to be explored at the hearings. This notice poses a series of questions on which the Commission seeks comment.

DATES: The dates for the workshops are December 1 and 2, 2009. Comments must be received by November 6, 2009, to be considered in preparing for the workshops.

ADDRESSES: The workshops will be held at the FTC's Conference Center located at 601 New Jersey Ave., N.W., Washington, D.C. 20001. Those who plan to attend are encouraged to pre-register by sending an email to (*newsmediaworkshop@ftc.gov*). This information will be used for planning purposes only. Interested parties are invited to submit written comments electronically or in paper form, by following the instructions in the Instructions For Filing Comments part of the **SUPPLEMENTARY INFORMATION** section below. Comments filed in electronic form should be submitted by using the following weblink: (*http://public.commentworks.com/ftc/newsmediaworkshop*) and following the instructions on the web-based form. Comments in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex F), 600 Pennsylvania Avenue, NW, Washington, DC 20580, in the manner detailed in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Jessica Hoke, Office of Policy Planning, FTC, 600 Pennsylvania Avenue, N.W.,

Washington, D.C. 20580; telephone (202) 326-3291; e-mail: (*newsmediaworkshop@ftc.gov*). Detailed agendas for the workshops will be made available at the workshop webpage, which will be accessible from the FTC Home Page (*http://www.ftc.gov*).

SUPPLEMENTARY INFORMATION: The Internet has given consumers access to an unprecedented number of information sources. The Internet's low entry barriers, in comparison to traditional media, have created new publication opportunities resulting in multiple innovative forms of journalism. Websites run by citizen journalists and bloggers, for instance, provide information, analysis, and opinion on a wide variety of topics. In addition, websites have been created that aggregate stories from many different publications, so a particular news story may be seen at multiple locations on the Internet. These changes have benefitted consumers in a wide variety of ways.

At the same time, changes associated with Internet technology pose fundamental financial challenges to many news organizations. To a large extent, these challenges reflect changes in the business of advertising. News organizations traditionally have provided valuable venues through which advertisers can reach consumers, and advertising revenues – not consumer purchases – have funded most of the costs of producing and distributing the news. Now this business model is under stress. Online websites provide an almost limitless supply of advertising venues – a fact that has reduced advertising revenues to many traditional forms of news media. Particularly in the case of classified advertising, much lower costs combined with a much larger network of potential purchasers and sellers have encouraged advertisers to move online to a significant extent, eliminating a substantial portion of the advertising revenues that newspapers rely on.

Other developments raise additional issues. Consumers are using ''news aggregator'' websites, which collect and link to stories produced by news organizations. Aggregators generally do not pay for that content, claiming that they help news organizations by enabling readers to link back to the original news story, thereby driving traffic to the news organization's website and the advertising located there. News organizations respond that some aggregators not only link to the original news story, but also post a substantial portion of the original news story at the aggregators' sites. This diminishes the value of advertising at the original news story's website, they claim, by decreasing the likelihood that a reader will visit the complete story at the news organization's website. There are currently various proposals to address this issue, including possible amendments to copyright laws.

These financial challenges have prompted cost-cutting measures at many news organizations. Additionally, a recession, bursting real estate bubble, and automobile industry crisis also have reduced advertising sales and revenues. In this economic context, the debt burdens from heavily leveraged purchases of news organizations, combined with other factors, have forced several large daily newspapers to declare bankruptcy and others to impose significant cuts in staff and other expenditures to lower costs.

The reduction in news staffs raises questions over whether certain types of news are receiving less coverage as a result. Many have expressed concern that investigative journalism will suffer.[1] Some economists believe that public affairs reporting may indeed be particularly subject to market failure.[2] Non-profit organizations, some associated with universities or supported by foundations, have developed to provide investigative journalism,[3] and proposals exist to amend tax rules to make it easier for foundations to support such news organizations.

There are also concerns about the extent to which local journalism will continue to thrive. New websites run by citizen journalists, which generate local and hyperlocal news (covering neighborhoods of just a few blocks), provide alternative sources of local news. For the most part, however, these new journalism models have not yet proven profitable. Various tax proposals seek to make it easier for foundations and other low-profit ventures to support local journalism.

The FTC's workshops will bring competition, consumer welfare, and First Amendment perspectives to analyze (1) the financial challenges facing news organizations in the Internet age, and (2) the potential for new opportunities for sustainable journalism. Workshop participants will discuss, among other things:

- Internet-related changes in advertising that affect news organizations, and ideas for potential responses to those changes;
- Internet-related changes in ways that consumers obtain news, and ideas for potential responses to those changes;
- Ideas for reducing the costs of providing the news and restructuring news organizations to become more efficient (without sacrificing quality);
- Potential profit and non-profit models for journalism, including innovative forms of journalism; and
- Potential evolution in competition among news organizations.

The FTC workshops will also explore whether recent changes in the news industry require consideration of additional or alternative governmental policies to ensure that journalism provides news of value to consumers.[4] Workshop participants will discuss, among other things:

- Proposals for new tax treatment for news organizations;
- Proposals for changes in copyright law and doctrine, including the ''fair use'' of news stories;
- Proposals for an antitrust exemption applied to certain conduct of news organizations; and
- Proposals for greater public funding of public affairs news.

Other relevant topics for the workshops may be proposed as well. An agenda for the December 1 and 2, 2009, workshops will be circulated at a later time. Participants will include journalists, editors, owners, and other representatives of news organizations, online advertisers, new media representatives (such as bloggers and local news web sites), consumer advocates, academics, economists, and government representatives.

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[1] *E.g.*, Will Skowronski, *Investigative Teem: New nonprofit centers aim to fill the gap in state and local investigations*, Am. Journalism Rev. (Feb./Mar. 2009) (describing new nonprofit centers dedicated to investigative journalism as a result of concern that news organizations have declining revenues for investigative reporting), *available at* (*http://www.ajr.org/Article.asp?id=4693*).

[2] Matthew Gentzkow & Jesse Shapiro, *Competition and Truth in the Market for News*, 22 J. Econ. Perspectives 133, 146 (2008) (''As Downs (1957), Coase (1974), Posner (1986), and others have pointed out, when it comes to the kind of information that the First Amendment is most concerned with, there may be large social gains that consumers do not internalize. Consumers will prefer to free-ride and let others invest in casting informed votes.'' (citations omitted)). *See also* James t. Hamilton, all the News That's Fit to Sell: How the Market Transforms Information into News (Princeton Univ. Press 2004) at 13 (''The point here is that since individuals do not calculate the full benefit to society of their learning about politics, they will express less than optimal levels of interest in public affairs coverage and generate less than desirable demands for news about government.'').

[3] *See* n. 1 *supra*.

[4] Governmental policies supporting news organizations are not new. In the nineteenth century, newspapers were often distributed through the mail with no charge for postage. Radio and television benefitted from the government's licensing of spectrum without competitive bidding. The Newspaper Preservation Act of 1970 provided ways for newspapers to collaborate on operations costs, exempt from the antitrust laws, while continuing to compete on content. Copyright laws protect original news content, with exceptions for ''fair use.''

The Commission seeks public comment on the questions posed below or any issue raised by this notice. Comments may address the issues raised in these questions or other issues relevant to the topics to be addressed at the workshops. Any interested person may submit written comments. In preparing for the workshop, the Commission will consider comments received by November 6, 2009. Later comments will be accepted as well.

Changes Driven by Technology

- How is the Internet changing the way consumers access news? What further changes are forecast? What are the consequences of those changes for consumers and for news organizations?
- How is the Internet changing advertising expenditures? What further changes are forecast? For which types of advertising will news organizations likely remain preferred venues? What is the likely role of targeted advertising in the future, both by news organizations and other entities?
- How is the Internet changing the way news organizations and others research, write, edit, produce, and distribute news? How could the Internet be useful in reducing those costs? What would be the likely consequences of any changes?
- What innovative forms of journalism have emerged due to the Internet? What types of journalism are produced?
- What are the business models, including the revenue sources, for new models of journalism on the Internet? Are they profitable? What are the prospects for future profitability?
- What new forms of journalism and new business models may become more prevalent in the future? How might new or improved technologies drive the evolution of the news media in the future?

Economic Challenges of News Organizations

- What economic challenges do news organizations face today? What is the source of these challenges?
- What alternative cost-cutting measures have news organizations considered? Which have they adopted? What further measures are under consideration?
- How have cost-cutting measures affected the provision of news to consumers? What types of news are no longer being covered? What types of news receive less coverage than before? What are the long-term consequences of such reduced news coverage for consumers? What are the long-term consequences of such reduced news coverage for ensuring an educated citizenry?
- How might the business models of news organizations evolve in response to these challenges? What would be the effect of new business models on the type, quality, and quantity of journalism available both off and online?
- How are news organizations likely to compete for readers and advertising in the future? What is the value that particular news organizations can offer to persuade advertisers to choose them over different venues for advertising? What is the value that particular news organizations can offer that might persuade consumers to pay for their content? How will those values differ depending on characteristics of the news organizations (*e.g.*, local, regional, or national news; specialized or broad coverage; weekly or monthly news)?

Government Policies

- Are new or changed government policies needed to support optimal amounts and types of journalism, including public affairs coverage? Why or why not? Could new or changed government policies encourage more competition among news organizations?
- Should the tax code be modified to provide special status or tax breaks to all or certain types of news organizations? Why or why not? If yes, in what ways? What would be the likely effects for consumers? For news organizations? What strategic behavior or unintended consequences might special tax treatment engender?
- Do the protections for original news content under current copyright law provide sufficient incentives to create that content? If not, should copyright law be altered? What is the role of the ''fair use'' doctrine in allowing use of original news content by news aggregators and others? Should the ''fair use'' doctrine be modified? What would be the effects of any changes in copyright law or doctrine on consumers and news organizations? What strategic behavior or unintended consequences might changes in copyright law or doctrine engender?
- What joint actions, if any, are news organizations considering to address the financial challenges they face as a result of changes brought about by the Internet? Are there any joint actions for which an antitrust immunity arguably would be required? If so, have joint actions been tried first that do not require antitrust immunity? Under what circumstances, if any, could an antitrust immunity for certain joint conduct be justified? In what ways, if any, would antitrust immunity be preferable to innovation to address new challenges?
- Should the federal government provide additional funding for news organizations? Why or why not? If yes, should only current recipients of federal funding receive increased funding? What methods have other countries used to provide government funding for the news, while retaining journalistic integrity? What would be the costs and potential consequences of increased federal funding for the news? What strategic behavior or unintended consequences might increased federal funding engender?

Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''News Media Workshop Comment, Project No. P091200'' to facilitate the organization of comments. Please note that your comment – including your name and your state – will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as any individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . ,'' as provided in Section 6(f) of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[5]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by

[5]The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

using the following weblink: (*https://public.commentworks.com/ftc/newsmediaworkshop*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (*https://public.commentworks.com/ftc/newsmediaworkshop*). If this document appears at (*http://www.regulations.gov/search/Regs/home.html#home*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Website at (*http://www.ftc.gov*) to read the document and the news release describing it.

A comment filed in paper form should include the ''News Media Workshop Comment, Project No. P091200'' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex F), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Website. More information, including routine uses permitted by the Privacy Act may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E9–24197 Filed 10–6–09; 12:23 pm]

BILLING CODE 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–09–08BG]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Survey of Coal Mine Safety Interventions—NEW—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Since its establishment in 1970 by the Occupational Safety and Health Act, the National Institute for Occupational Safety and Health (NIOSH) has been at the forefront of research and innovation on methods to help eliminate workplace injuries, illnesses and exposures. At Mine Safety and Health Research laboratories in Pittsburgh, Pennsylvania and Spokane, Washington, NIOSH employs engineers and scientists with experience and expertise in mine safety and health issues. These laboratories and their researchers have gained an international reputation for innovative solutions to many mining safety and health problems.

Although the NIOSH Mining Program widely disseminates and publicizes research results, recommendations, techniques and products that emerge from the work of these laboratories, the agency has limited knowledge about the extent to which their innovations in mine safety and health have been implemented by individual mine operators. This is particularly true of methods and practices that are not mandated by formal regulations. The overarching goal of the proposed survey of NIOSH Recommended Safety and Health Practices for Coal Mines is to gather data from working coal mines on the adoption and implementation of NIOSH practices to mitigate safety and occupational hazards (*e.g.,* explosions, falls of ground). The information from this survey will be used by NIOSH to evaluate the implementation of safety and health interventions (including best practices and barriers to implementation) in areas such as respirable coal dust control, explosion prevention, roof support, and emergency response planning and training. Survey results will provide NIOSH with knowledge about which recommended practices, tools and methods have been most widely embraced by the industry, which have not been adopted, and why. The survey results will provide needed insight from the perspective of mine operators on the practical barriers that may prevent wider adoption of NIOSH recommendations and practices designed to safeguard mine workers.

In the spring of 2007, NIOSH conducted a pretest of the survey questionnaire with nine underground coal mine operators. The pretest instrument contained 81 questions, including five questions which measured the respondents' impressions of the clarity, burden level and relevance of the survey. The pretest served several important functions, including gaining feedback on the flow of items and their relevance to the respondents' experience, assessing the effectiveness of the questionnaire instructions, and obtaining recommendations for improving the questions. Data captured in the pretest were used to identify areas for questionnaire improvement and recommendations for maximizing the performance of the full survey.

The proposed survey will be based upon a probability sample of 300 of the approximately 665 underground coal mines in the United States. A stratified random sample of mines will be drawn

to ensure representativeness on important dimensions such as mine size and region of the country. Sampling a large proportion of the underground coal mines will ensure low rates of sampling error and increase confidence in the resulting survey estimates. Over-sampling some types of mines, such as those operating longwall sections, will be necessary to ensure enough cases are available to conduct meaningful analysis of these mine types.

Allowing mine operators to complete the survey using the method they find convenient is expected to enhance the overall response rate. Therefore, both a Web-based and a print version of the questionnaire will be provided to sampled respondents. Using these multiple methods of administration, NIOSH expects to achieve an 80% rate of response to the survey. In order to further reduce the overall burden on respondents, certain types of supplementary information (*e.g.,* the mine's dates of operation, annual coal production) will be gathered from publicly-available data collected by the Mine Safety and Health Administration (MSHA).

Once the study is completed, NIOSH will provide a copy of the final report to each sampled mining operation, and use the survey data to improve the adoption of important safety and health practices throughout the coal mine industry. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of response	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Initial telephone contact with coal mines	300	1	5/60	25
Respondents completing paper survey	144	1	30/60	72
Respondents completing Web survey	96	1	25/60	40
Total				137

Dated: September 30, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–24156 Filed 10–6–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–09–0021]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Coal Workers' Autopsy Study (NCWAS)—Extension—(0920–0021 exp. 1/31/2010) National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention.

Background and Brief Description

Under the Federal Coal Mine Health and Safety Act of 1977, Public Law 91–173 (amended the Federal Coal Mine and Safety Act of 1969), the Public Health Service has developed a nationwide autopsy program (NCWAS) for underground coal miners. The Consent Release and History Form is primarily used to obtain written authorization from the next-of-kin to perform an autopsy on the deceased miner. Because a basic reason for the post-mortem examination is research (both epidemiological and clinical), a minimum of essential information is collected regarding the deceased miners, including occupational history and smoking history. The data collected will be used by the staff at NIOSH for research purposes in defining the diagnostic criteria for coal workers' pneumoconiosis (black lung) and pathologic changes and will be correlated with x-ray findings.

It is estimated that only 5 minutes is required for the pathologist to put a statement on the invoice affirming that no other compensation is received for the autopsy. From past experience, it is estimated that 15 minutes is required for the next-of-kin to complete the Consent Release and History Form. Since an autopsy report is routinely completed by a pathologist, the only additional burden is the specific request of abstract of terminal illness and final diagnosis relating to pneumoconiosis. Therefore, only 5 minutes of additional burden is estimated for the autopsy report.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN

Type of respondent	Type of form	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Pathologist	Pathologist Invoice	50	1	5/60	4
Pathologist	Pathologist Report	50	I	5/60	4
Next-of-Kin	Consent Form	50	1	15/60	13
Total					21

Dated: September 30, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–24155 Filed 10–6–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0430]

Draft Guidance for Industry: Ingredients Declared as Evaporated Cane Juice; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Guidance for Industry: Ingredients Declared as Evaporated Cane Juice.'' The intent of this draft guidance is to advise industry of FDA's view that the common or usual name for the solid or dried form of sugar cane syrup is ''dried cane syrup,'' and that sweeteners derived from sugar cane syrup should not be declared on food labels as ''evaporated cane juice'' because that term falsely suggests that the sweeteners are juice.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on the draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by December 7, 2009.

ADDRESSES: Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written requests for single copies of the draft guidance to Office of Nutrition, Labeling, and Dietary Supplements, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Geraldine June, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1802.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of the draft guidance entitled ''Guidance for Industry: Ingredients Declared as Evaporated Cane Juice.'' The intent of this draft guidance is to advise the regulated industry of FDA's view that the term ''evaporated cane juice'' is not the common or usual name of any type of sweetener, including dried cane syrup. Because cane syrup has a standard of identity defined by regulation in 21 CFR 168.130, the common or usual name for the solid or dried form of cane syrup is ''dried cane syrup.'' This guidance is being issued because the term ''evaporated cane juice'' has appeared on a number of food labels in recent years. FDA's current policy is that sweeteners derived from sugar cane syrup should not be declared as ''evaporated cane juice'' because that term falsely suggests that the sweeteners are juice as defined in 21 CFR 120.1(a).

FDA is issuing this draft guidance as a level 1 draft guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on the use of the terms ''dried cane syrup'' and ''evaporated cane juice'' in food labeling. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at *http://www.fda.gov/FoodGuidances* or *http://www.regulations.gov*.

Dated: September 29, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–24132 Filed 10–6–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences; Special Emphasis Panel ZGMI–MBRS–X–CH.

Date: November 2, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency-Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: John J. Laffan, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18J, Bethesda, MD 20892, 301–594–2773, *Iaffanjo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: September 29, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–24029 Filed 10–6–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel. Behavioral Research Training in Intellectual/Developmental Disabilities.

Date: October 20, 2009.

Time: 12:30 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Carla T. Walls, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892. (301) 435–6898. *wallsc@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 1, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–24206 Filed 10–6–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Screening for Inherited Disorders.

Date: November 3, 2009.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Neelakanta Ravindranath, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6100 Executive Blvd., Room 5B01G, Bethesda, MD 20892–7510, 301–435–6889.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 29, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–24205 Filed 10–6–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting 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 Human Genome Research Institute Special Emphasis Panel; 1000 Genomes Project Dataset Analysis.

Date: October 26, 2009.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: NHGRI Library, 5635 Fishers Lane, Rockville, MD 20852.

Contact Person: Keith McKenney, PhD, Scientific Review Officer, NHGRI, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20814. 301–594–4280. *mckenneyk@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: September 29, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–24204 Filed 10–6–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, November 4, 2009, 8 a.m. to November 5, 2009, 5 p.m., Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852 which was published in the **Federal Register** on August 21, 2009, 74FR42315.

This **Federal Register** Notice is being amended to reflect a change in the name of the committee to ''Application of Emerging Technologies and Biospecimen Science for Cancer Research'' and not as otherwise stated. The meeting is closed to the public.

Dated: October 1, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–24172 Filed 10–6–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Elderly Rodent Colony.

Date: October 27, 2009.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute On Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bita Nakhai, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.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: National Institute on Aging Special Emphasis Panel; NIA Institutional Research Training Grants—T32/T35.

Date: November 12–13, 2009.

Time: November 12, 2009, 8 a.m. to 6 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: Alfonso R. Latoni, PhD, Deputy Chief, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, 301–402–7702, *latonia@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Boston Health Study.

Date: November 16, 2009.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C218, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Alfonso R. Latoni, PhD, Deputy Chief, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, 301–402–7702, *latonia@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 1, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–24169 Filed 10–6–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting 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: Heart, Lung, and Blood Initial Review Group Clinical Trials Review Committee.

Date: October 26, 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: Keary A Cope, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892–7924, 301–435–2222, *copeka@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 1, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–24167 Filed 10–6–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices (ACIP)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

Time and Date: 8 a.m.–5:30 p.m., October 21, 2009; 8 a.m.–4:30 p.m., October 22, 2009.

Place: CDC, Tom Harkin Global Communications Center, 1600 Clifton Road, NE., Building 19, Kent ''Oz'' Nelson Auditorium, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters to be Discussed: The agenda will include discussions on: Human

Papillomavirus (HPV) Vaccines; 2010 Childhood & Adolescent Immunization Schedule; 2010 Adult Immunization Schedule; General Recommendations; Respiratory Syncytial Virus; Meningococcal Vaccines; Yellow Fever Vaccine; Rotavirus Vaccines; 13–Valent Pneumococcal Conjugate Vaccine; and Influenza Vaccines. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Antonette Hill, Immunization Services Division, National Center for Immunization and Respiratory Diseases, CDC, 1600 Clifton Road, NE., (E–05), Atlanta, Georgia 30333, telephone 404/639–8836, fax 404/639–8905.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: September 30, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–24157 Filed 10–6–09; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 16, 2009, 8 a.m. to October 16, 2009, 5 p.m., Grand Hyatt Seattle, 721 Pine Street, Seattle, WA 98101 which was published in the **Federal Register** on September 22, 2009, 74 FR 48269–48273.

The time of the meeting on October 16, 2009 has been changed to 7:30 a.m. to 1:30 p.m. The meeting date and location remain the same. The meeting is closed to the public.

Dated: September 29, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–24032 Filed 10–6–09; 8:45 am]

BILLING CODE 4140–01–M

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; Cardiac Ion Channels.

Date: October 14, 2009.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Rajiv Kumar, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@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; Member Conflict: Immune Mechanisms.

Date: October 28–29, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Jian Wang, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095D, MSC 7812, Bethesda, MD 20892, (301) 435–2778, *wangjia@csr.niligov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business Grant Applications: Non-HIV Microbial Vaccine Development.

Date: October 29–30, 2009.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: State Plaza Hotel, 2117 E Street, NW., Washington, DC 20037.

Contact Person: Stephen M. Nigida, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, 301–435–1222, *nigidas©csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Behavioral Genetics and Epidemiology Member Applications.

Date: October 29–30, 2009.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Suzanne Ryan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, Bethesda, MD 20892, (301) 435–1712, *ryansj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Immunobiology of Microbial Vaccines: Member Conflicts.

Date: October 30, 2009.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: State Plaza Hotel, 2117 E Street, NW., Washington, DC 20037.

Contact Person: Stephen M. Nigida, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, 301–435–1222, *nigidas@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 29, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–24034 Filed 10–6–09; 8:45 am]

BILLING CODE 4140–01–M

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. Musculoskeletal and Oral Biology.

Date: October 20–21, 2009.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Rajiv Kumar, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892. 301–435–1212. *kumarra@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel. EPIC Member Conflict Special Emphasis Panel.

Date: October 20, 2009.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Fungai Chanetsa, MPH, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892. 301–435–1262. *fungai.chanetsa@nih.hhs.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel. EPIC Member Conflict Special Emphasis Panel.

Date: October 21, 2009.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Fungai Chanetsa, MPH, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892. 301–435–1262. *fungai.chanetsa@nih.hhs.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 29, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–24031 Filed 10–6–09; 8:45 am]

BILLING CODE M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0294]

Regulation of Tobacco Products; Extension of Comment Period; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice; extension of comment period that appeared in the **Federal Register** of October 1, 2009 (74 FR 50810). The notice; extension of comment period announced that FDA is extending to December 28, 2009, the comment period for a notice that originally published in the **Federal Register** of July 1, 2009 (74 FR 31457). The notice; extension of comment period published with an inadvertent error in the **DATES** section. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. E9–23607, appearing on page 50810, in the **Federal Register** of Thursday, October 1, 2009, the following correction is made:

1. On page 50810, in the second column, the ''**DATES**'' section is corrected to read ''Submit electronic or written comments by December 28, 2009.''.

Dated: October 1, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–24214 Filed 10–6–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1848–DR; Docket ID FEMA–2008–0018]

Kansas; 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 Kansas (FEMA–1848–DR), dated June 24, 2009, and related determinations.

DATES: *Effective Date:* September 30, 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 Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael R. Scott, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Michael L. Karl as Federal Coordinating Officer for this disaster.

(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. E9–24149 Filed 10–6–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1849–DR; Docket ID FEMA–2008–0018]

Kansas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Kansas (FEMA–1849–DR), dated June 25, 2009, and related determinations.

DATES: *Effective Date:* September 30, 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 Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael R. Scott, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Michael L. Karl as Federal Coordinating Officer for this disaster.

(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. E9–24150 Filed 10–6–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1853–DR; Docket ID FEMA–2008–0018]

Nebraska 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 Nebraska (FEMA–1853–DR), dated July 31, 2009, and related determinations.

DATES: *Effective Date:* September 30, 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 Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Stephen R. Thompson, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Michael L. Karl as Federal Coordinating Officer for this disaster.

(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. E9–24152 Filed 10–6–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1858–DR; Docket ID FEMA–2008–0018]

Georgia; Amendment No. 6 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 Georgia (FEMA–1858–DR), dated September 24, 2009, and related determinations.

DATES: *Effective Date:* September 30, 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 Georgia 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 24, 2009.

Heard and Rockdale Counties for Public Assistance, including direct Federal assistance (already designated for Individual Assistance).

Dawson, Dooly, Houston, Peach, and Taylor Counties for Public Assistance, including direct Federal 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. E9–24151 Filed 10–6–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5323–N–02]

Request for Comments on Ending ''Hold Harmless'' Policy in Calculating Income Limits Under Section 3 of the United States Housing Act of 1937; Correction

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice; correction.

SUMMARY: On September 14, 2009, HUD published a notice requesting public comment on whether HUD should discontinue its ''hold harmless'' policy with respect to Section 8 income limits. In its discussion of the impact discontinuing this policy, HUD included an erroneous statistic regarding the income levels of HUD assisted households. This notice corrects the statistic and extends the public comment period.

DATES: *Comments Due Date:* November 6, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures their timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that website to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Marie L. Lihn or Lynn A. Rodgers, Office of Economic Affairs, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8208, Washington, DC 20410; telephone number 202–708–0590 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On September 14, 2009 (74 FR 47016), HUD published a notice requesting public comment on whether HUD should discontinue its policy of maintaining Section 8 income limits at the previously published level in cases where HUD's estimate of area median family income (MFI) or housing cost adjustment data, or changes in calculation methodology, would lead to a lower income limit than was previously published. Section 8 income limits determine whether a family meets the definition of ''low-income family'' or ''very low-income family,'' which are families whose incomes are below 80 percent and 50 percent, respectively, of the median family income for the area, with adjustments for family size. These income limits are used by a number of other federal programs other than the Section 8 program to determine eligibility for various forms of assistance. In explaining that discontinuation of the ''hold harmless'' policy would not adversely affect families in Section 8 and other HUD assisted housing, HUD included the following statement in the September 14, 2009, notice:

> ''More than 99 percent of HUD assisted households have incomes below the extremely low-income level (30 percent of area median), so modest decreases in the Section 8 income limits resulting from this change would have minimal impact on families residing in assisted housing.''

The statement was incorrect in that the percentage of households in HUD assisted housing that have incomes below the ''extremely low-income'' level is 75 percent, rather than 99 percent, and in any case, HUD believes a more instructive statistic is the percentage of households in HUD assisted housing that have incomes below the ''very low-income'' level, which is 95 percent.

Based on HUD administrative data as of June, 2009, the more complete affordability statistics are as follows:

	Percent of tenant based rental assistance households at 50% or less of area median income (VLI)	Percent of tenant based rental assistance households at 30% or less of area median income (ELI)	Percent of place based rental assistance households at 50% or less of area median income (VLI)	Percent of place based rental assistance households at 30% or less of area median income (ELI)
New Admits	97	76	96	75
All Households	95	75	96	75

Accordingly, HUD is correcting the statement and extending the public comment period.

Correction

In the **Federal Register** of September 14, 2009, on page 47017, in the second column, section ''III. Other Programs,'' correct the fourth sentence to read as follows:

More than 95 percent of HUD assisted households have incomes below the very low income level (50 percent of area median), so modest decreases in the Section 8 income limits resulting from this change would have minimal impact on families residing in assisted housing.

Dated: September 30, 2009.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. E9–24139 Filed 10–6–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

Restoring Native Species to High Elevation Aquatic Ecosystems; Sequoia and Kings Canyon National Parks, Tulare and Fresno Counties, CA; Notice of Intent To Prepare an Environmental Impact Statement

SUMMARY: In accordance with § 102(2)(C) of the National Environmental Policy Act of 1969, as amended (NEPA), the National Park Service is initiating the conservation planning and environmental impact analysis process for a plan to restore high elevation aquatic ecosystems and mountain yellow-legged frogs within their historic range in Sequoia and Kings Canyon National Parks. In addition to satisfying the requirements and intent of the NEPA, the Environmental Impact Statement which will be prepared will comply with the California Environmental Quality Act (CEQA) and thus will result in an integrated Environmental Impact Statement/Environmental Impact Report (EIS/EIR) document.

The purpose of the plan is to provide for restoration of native species in lakes, ponds, and associated streams within Sequoia and Kings Canyon National Parks. There are approximately 560 lakes and ponds within the Parks that contained introduced trout, and removal of these non-native species from up to 14% of these sites will be considered. This proposed plan would create clusters of fishless habitat in headwater basins comprising the historic distribution of the frogs. This project is needed to preserve and restore aquatic ecosystems and populations of mountain yellow-legged frogs and other native animals in high elevation lakes and streams, while also creating new opportunities for visitors to experience the wildlife of pristine wilderness lakes and streams yet maintaining recreational fishing opportunities.

Introduced trout occur in most lakes and ponds in Sequoia and Kings Canyon National Parks. The presence of introduced trout eliminates large aquatic invertebrates and zooplankton, reduces the food available to other wildlife, and compromises reproduction by mountain yellow-legged frogs. The mountain yellow-legged frog is a species that only occurs in the high Sierra Nevada and the mountains of southern California. It is a keystone species whose presence or absence affects the natural ecology of Sierra Nevada lakes and associated shoreline environments. The frog has disappeared from about 94% of its historic sites in the Sierra Nevada and is a candidate for federal listing as ''*endangered*'' under the Endangered Species Act. The frog's existence is threatened by impacts from trout populations that were introduced to naturally fishless habitats, and a new pathogen, chytrid fungus. The mountain yellow-legged frog is declining rapidly and could become extinct within a decade.

Preliminary Range of Alternatives: The EIS/EIR will examine a range of feasible alternatives and evaluate all potential impacts on natural resources, cultural resources, and the human environment. Since 2001, biologists in Sequoia and Kings Canyon National Parks have been removing nonnative trout using gill netting and electroshocking from selected naturally fishless high lakes and streams (limited trial under a plan approved in 2001 following public review of an Environmental Assessment); approximately 23,000 trout have been removed from 11 lakes. Mountain yellow-legged frog tadpole and frog densities measured in 2001 and 2007 in six of the restored lakes showed an average increase of 19-fold and 16-fold, with one lake showing a 60-fold increase in frog populations. The biomass recovery in these lakes has attracted native species such as snakes, birds, and mammals, which have been observed preying on now-abundant frogs, tadpoles, and aquatic invertebrates.

The current methodology of physically removing fish using gill nets and electrofishers takes one crew about five seasons to fully remove trout from three lakes. This works out to an average of less than one lake restored per crew per year. Stream habitat is even slower to restore. While nearly completed, the park staff is on its ninth year of attempting to remove fish from about a mile of stream. To restore more aquatic habitat and improve protection for the mountain yellow-legged frogs, the NPS is proposing to expand the current program, both in number of lakes and streams to be considered, and the types of treatment methods to be utilized.

In addition to a ''no action'' alternative which will provide for a comparative environmental baseline, alternatives that could be considered in the EIS/EIR include: (a) Treating 32 to 80 additional lakes and 18 to 56 miles of stream using current methods (physical treatment only with gill netting and electrofishers); (b) using chemical methods (only use of piscicides); and (c) deploying a combination of these methods. Common to all alternatives would be reintroducing mountain yellow-legged frogs to sites where they have been extirpated using the closest genetic forms available, and continuing to encourage research on the frogs, chytrid fungus and its management, and the ecological functioning of high mountain lakes and streams. Under the new alternatives, some entire headwater basins would be restored to achieve optimal benefit to both aquatic and terrestrial organisms. Piscicides are being considered because the hydrology of entire basins is too complex and extensive to be restored using only gill nets and electrofishers. These basins contain too many miles of stream, marshes, or exceptionally large lakes to effectively accomplish fish removal. Because the effort is directed at restoring entire aquatic ecosystems, long-term protection and restoration of stream and lake invertebrates and other life is as important as restoring the frog populations. Although chytrid fungus could impact these populations, there is some evidence of chytrid resistance emerging in sites that had large frog populations prior to infection.

Scoping Process: Initially public scoping was conducted from January 17 to February 6, 2007, and it was anticipated another Environmental Assessment (EA) might be prepared. During that time, the parks received comments from over 30 different sources, including the High Sierra Hikers Association, Wilderness Watch, California Trout, Californians for Western Wilderness, National Parks and Conservation Association, and Californians for Alternatives to Toxics. In late 2007, a newsletter providing an update on the environmental analysis status was sent to individuals, agencies, interest groups, and tribes on the parks' mailing list including all those who previously provided scoping comments. As a result of the newsletter, four additional comment letters were received between May 2007 and November 2008 (including Western Environmental Law Center and another High Sierra Hikers Association response). In total, 37 different individuals, groups, businesses, or agencies have submitted comments on the proposed plan.

In late 2007 park staff began working on the EA and refining preliminary alternatives—as staff began the environmental analysis and re-examined information provided by the public, it became clear that the project had the potential for significant impacts on the human environment. There was a level of controversy associated with the proposal, potential for uncertainty and both adverse and beneficial

consequences, and unique and unforeseeable environmental impacts. For these reasons, in early 2009 the Superintendent determined that an EIS would be prepared.

All scoping comments received to date are included in the official administrative record; the Scoping Summary Report includes all comments and information obtained to date and is available on-line at *http://parkplanning.nps.gov/seki.* It is not necessary for previous letters to be resubmitted; however if prior respondents have new issues or information they wish to bring forward then new letters should be submitted. For further information contact Nancy Hendricks at (559) 565–3102 or *SEKI_planning@nps.gov* (address as noted below).

DATES: All written comments must be postmarked or transmitted not later than November 21, 2009. Letters may be mailed or hand delivered to Superintendent, Sequoia and Kings Canyon National Park, 47050 Generals Highway, Three Rivers, CA 93271 (Attn: Aquatic Restoration EIS), or may be sent electronically to *http://parkplanning.nps.gov/seki.* 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. As a delegated EIS the official responsible for approval of the High Elevation Aquatic Ecosystems and Native Species Restoration Plan is the Regional Director, Pacific West Region, National Park Service. Subsequently the official responsible for implementing the approved plan would be the Superintendent, Sequoia and Kings Canyon National Parks.

Dated: August 11, 2009.

Jonathan B. Jarvis,

Regional Director, Pacific West Region, National Park Service.

[FR Doc. E9–24148 Filed 10–6–09; 8:45 am]

BILLING CODE 4310–X2–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYD01000–2009–LL13100000–NB0000–LXSI016K0000]

Notice of the Meeting Schedule for the Pinedale Anticline Working Group

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (1976), the Federal Advisory Committee Act (1972), and the Record of Decision (ROD) for the Pinedale Anticline Final Supplemental Environmental Impact Statement (2008), the U.S. Department of the Interior, Bureau of Land Management (BLM) Pinedale Anticline Working Group (PAWG) will meet in Pinedale, Wyoming. Meetings are open to the public and public comment will be taken.

DATES: Beginning at 1 p.m. MST: November 5, 2009; January 28, 2010; February 25, 2010; March 25, 2010; April 22, 2010; May 27, 2010; June 24, 2010; July 22, 2010; August 26, 2010; September 23, 2010; and October 28, 2010.

ADDRESSES: The PAWG meetings will be held at the BLM Pinedale Field Office, 1625 West Pine Street in Pinedale, Wyoming.

FOR FURTHER INFORMATION CONTACT: Ms. Shelley Gregory, PAWG Designated Federal Officer, Bureau of Land Management, Pinedale Field Office, 1625 West Pine Street, P.O. Box 768, Pinedale, WY 82941; 307–367–5328; *shelley_gregory@blm.gov.*

SUPPLEMENTARY INFORMATION: The Pinedale Anticline Working Group (PAWG) was authorized and established with release of the Record of Decision (ROD) for the Final Environmental Impact Statement of the Pinedale Anticline Oil and Gas Exploration and Development Project Area (PAPA) on July 27, 2000 and carried forward with the release of the ROD for the Final Supplemental Environmental Impact Statement (FSEIS) of the PAPA on September 12, 2008. The PAWG advises the BLM on the development and implementation of monitoring plans and adaptive management decisions as PAPA development proceeds. Meeting agendas will include discussions concerning the implementation of the PAPA FSEIS ROD, the development of the Pinedale Anticline Project Office (PAPO), any modifications the PAWG or task groups wish to make to their recommendations, and overall adaptive management implementation as it applies to the PAWG. Additional information about the PAWG can be found at: *http://www.blm.gov/wy/st/en/field_offices/Pinedale/pawg.html.*

Dated: September 28, 2009.

Chuck Otto,

Field Office Manager.

[FR Doc. E9–24216 Filed 10–6–09; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–FHC–2009–N215; 94300–1122–0000–Z2]

Wind Turbine Guidelines Advisory Committee; Announcement of Public Teleconference and Webcast

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public teleconference and Webcast.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), will host a Wind Turbine Guidelines Advisory Committee (Committee) meeting via Webcast and teleconference, on October 14, 2009. This meeting is open to the public but will be limited to 75 public participants. The meeting agenda will include a briefing and discussion of the current draft Recommendations to the Secretary of the Interior. The Service is hosting this meeting with less than 15 days' notice under exceptional circumstances. The Committee will terminate on October 26, 2009, unless it is renewed prior to that date. The Committee will therefore need this meeting to finalize its draft Recommendations in the case that the Committee is not renewed.

DATES: *Meeting:* The meeting will take place on October 14, 2009, from 11 a.m. to 3 p.m. Eastern Time.

Pre-meeting Public Registration: If you are a member of the public wishing to participate in the October 14, 2009, meeting, you must register online by October 13, 2009 (*see* ''Meeting Participation Information'' in **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Rachel London, Division of Habitat and Resource Conservation, U.S. Fish and Wildlife Service, Department of the Interior, (703) 358–2161.

SUPPLEMENTARY INFORMATION:

Background

On October 24, 2007, the Secretary of the Interior (Secretary) established the Committee to provide advice and recommendations to the Secretary on developing effective measures to avoid or minimize impacts to wildlife and their habitats related to land-based wind energy facilities. The Committee is made up of 22 members representing the varied interests associated with wind energy development and its potential impacts to wildlife species and their habitats. All Committee meetings are open to the public.

Meeting Participation Information

This meeting is open to the public and is limited to 75 registrants. Members of the public planning to participate must register at *http://www.fws.gov/habitatconservation/windpower/wind_turbine_advisory_committee.html* by close of business, October 13, 2009. Registrants will be provided with instructions for participation via e-mail. We will give preference to registrants based on date and time of registration.

Dated: October 2, 2009.

Rachel London,

Alternate Designated Federal Officer, Wind Turbine Guidelines Advisory Committee.

[FR Doc. E9–24230 Filed 10–6–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree under the Clean Water Act

Notice is hereby given that on September 29, 2009, a Consent Decree in *United States of America and Commonwealth of Virginia* v. *Hampton Roads Sanitation District,* Civil Action No. 2:09–cv–481, was lodged with the United States District Court for the Eastern District of Virginia, Norfolk Division.

The Commonwealth of Virginia joins the United States as a co-plaintiff in this action and in the consent decree. The proposed consent decree resolves the claims in the Joint Complaint in this action, filed together with this Notice of Lodging, in which the United States and the Commonwealth of Virginia allege that HRSD has violated the Federal Water Pollution Control Act, a/k/a/ the Clean Water Act, 33 U.S.C. 1251 *et seq.* (the ''Act'') and the State Water Control Law, § 62.1–44.2 *et seq.* of the Code of Virginia of 1950. Specifically, Plaintiffs allege that HRSD had over 350 unauthorized discharges of sewage, known as sanitary sewer overflows (''SSOs''), since February, 2003.

The consent decree obligates Hampton Roads Sanitation District (''HRSD''), located in Hampton Roads, Virginia, to implement a number of technical plans to evaluate its sanitary sewer system and sewage treatment plants, and to submit for approval a Regional Wet Weather Management Plan (''RWWMP'') to address potential capacity issues in its sanitary sewers and treatment plants. The consent decree further obligates HRSD to implement expeditiously the projects set forth in the RWWMP for HRSD to perform. HRSD also commits to implement a number of ''priority one'' projects in its Capital Improvement Plan to upgrade its aging sewers; to submit a program to upgrade its maintenance programs; and to identify and fix components that have a high risk of failure. Finally, under the consent decree, HRSD must pay a civil penalty of $900,000 to Plaintiffs

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to this proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, Attention: Nancy Flickinger (EES), and should refer to *United States of America and Commonwealth of Virginia* v. *Hampton Roads Sanitation District,* Civil Action No. 2:09–cv–481 and DOJ # 90–5–1–1–09125.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Eastern District of Virginia, World Trade Center, Suite 8000, 101 W. Main Street, Norfolk, VA. 23510. During the public comment period, the consent decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $ 255.50 (25 cents per page reproduction cost for a full copy) payable to the U.S. Treasury.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–24119 Filed 10–6–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the CJIS Advisory Policy Board

AGENCY: Federal Bureau of Investigation (FBI).

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce the meeting of the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB). The CJIS APB is a Federal advisory committee established pursuant to the Federal Advisory Committee Act (FACA). This meeting announcement is being published as required by section 10 of the FACA.

The CJIS APB is responsible for reviewing policy issues and appropriate technical and operational issues related to the programs administered by the FBI's CJIS Division, and thereafter, making appropriate recommendations to the FBI Director. The programs administered by the CJIS Division are the Integrated Automated Fingerprint Identification System, the Interstate Identification Index, Law Enforcement Online, National Crime Information Center, the National Instant Criminal Background Check System, the National Incident-Based Reporting System, Law Enforcement National Data Exchange, and Uniform Crime Reporting.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement concerning the CJIS Division programs or wishing to address this session should notify Senior CJIS Advisor Roy G. Weise at (304) 625–2730 at least 24 hours prior to the start of the session. The notification should contain the requestor's name, corporate designation, and consumer affiliation or government designation along with a short statement describing the topic to be addressed and the time needed for the presentation. A requestor will ordinarily be allowed no more than 15 minutes to present a topic.

Dates and Times: The APB will meet in open session from 8:30 a.m. until 5 p.m., on December 2–3, 2009.

ADDRESSES: The meeting will take place at the Hyatt Regency Savannah, Two West Bay Street, Savannah, Georgia, (912) 238–1234.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mrs. Barbara J. Ruckser; Management and Program Analyst; Advisory Groups Management Unit, Liaison, Advisory, Training and Statistics Section; FBI CJTS Division; Module C3; 1000 Custer Hollow Road; Clarksburg; West Virginia 26306–0149; telephone (304) 625–2163; facsimile (304) 625–5090.

Dated: September 21, 2009.

Roy G. Weise,

Senior CJTS Advisor, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. E9–24033 Filed 10–6–09; 8:45 am]

BILLING CODE M

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

F.C.S.C. Meeting Notice No. 7–09

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: Friday, October 16, 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. E9–24136 Filed 10–6–09; 8:45 am]

BILLING CODE 4401–BA–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (09–089)]

Review of U.S. Human Space Flight Plans Committee; meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a public teleconference of the Review of U.S. Human Space Flight Plans Committee. The agenda topics for the meeting include:

- Finalization of the scoring of the Human Space Flight options.

DATES: Thursday, October 8, 2009, 1 p.m.–2 p.m. (Eastern).

Teleconference Information:
Toll-free number: 1–888–373–5705.
Toll number: 1–719–457–3840.
Participant Passcode: 190078.

FOR FURTHER INFORMATION CONTACT: Mr. Philip R. McAlister, Office of Program Analysis and Evaluation, National Aeronautics and Space Administration, Washington, DC 20546. *Phone:* 202–358–0712.

SUPPLEMENTARY INFORMATION: The teleconference will be open to the public up to the limit of the teleconference service (300 people). Public callers will be in listen-only mode. It is imperative that the meeting be held on this date in order for the Committee's Final Report to support the timeframes associated with the Federal budget process. For this reason it is not possible to accommodate the full notice period.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E9–24251 Filed 10–6–09; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services; Sunshine Act Meeting of the National Museum and Library Services Board

AGENCY: Institute of Museum and Library Services (IMLS), NFAH.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of the forthcoming meeting of the National Museum and Library Services Board. This notice also describes the function of the Board. Notice of the meeting is required under the Sunshine in Government Act.

DATES: *Time and Date:* Tuesday, October 20, 2009 from 12:30 p.m. to 3:30 p.m.

Agenda: Eighteenth National Museum and Library Services Board Meeting:

I. Welcome
II. Greetings
III. Approval of Minutes
IV. Financial Update
V. Legislative Update
VI. Break
VII. Board Program: Leveraging Today's (and Tomorrow's) Technologies for Federal Government, Museum, and Library Services
VIII. Board Updates
IX. Adjourn

(Open to the Public)

ADDRESSES: *Place:* The meeting will take place in section A of the Serrano Ballroom at the Marlowe Hotel. The Marlowe Hotel is located at 25 Edwin H. Land Blvd., Cambridge, Massachusetts. *Telephone:* (617) 868–8000.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Events and Board Liaison, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036. *Telephone:* (202) 653–4676.

SUPPLEMENTARY INFORMATION: The National Museum and Library Services Board is established under the Museum and Library Services Act, 20 U.S.C. Section 9101 *et seq.* The Board advises the Director of the Institute on general policies with respect to the duties, powers, and authorities related to Institute of Museum and Library Services. If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1800 M Street, NW., 9th Fl., Washington, DC 20036. *Telephone:* (202) 653–4676; TDD (202) 653–4614 at least seven (7) days prior to the meeting date.

Dated: September 30, 2009.

Kate Fernstrom,

Chief of Staff.

[FR Doc. E9–24030 Filed 10–6–09; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

[DOCKET NOS. 52–040 and 52–041; NRC–2009–0337]

Florida Power & Light Company; Acceptance for Docketing of an Application for Combined License for Turkey Point Units 6 & 7 Nuclear Power Plants

By letter dated June 30, 2009, as supplemented by a letter dated August 7, 2009, Florida Power & Light (FPL) submitted an application to the U.S. Nuclear Regulatory Commission (NRC) for a combined license (COL) for two AP1000 pressurized water reactors in accordance with the requirements contained in Title 10 of the *Code of Federal Regulations* (10 CFR) part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' These reactors will be identified as Turkey Point Unit 6 & 7 Power Plants and they are to be located at the existing Turkey Point facility in Miami-Dade County, Florida. A notice of receipt and availability of this application was previously published in the **Federal Register** (74 FR 38477) on August 3, 2009.

The NRC has determined that FPL has submitted information in accordance with 10 CFR part 2, ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders,'' and 10 CFR part 52 that is acceptable for docketing. The docket numbers established are 52–040 and 52–041.

The NRC will perform a detailed technical review of the application. Docketing of the application does not preclude the NRC from requesting additional information from the applicant as the review proceeds, nor does it predict whether the Commission will grant or deny the application. The Commission will conduct a hearing in accordance with 10 CFR part 2 and will receive a report on the COL application from the Advisory Committee on Reactor Safeguards in accordance with 10 CFR 52.87, ''Referral to the Advisory Committee on Reactor Safeguards (ACRS).'' If the Commission finds that the COL application meets the applicable standards of the Atomic Energy Act and the Commission's regulations, the Commission will issue a COL, in the form and containing conditions and limitations that the Commission finds necessary and appropriate.

In accordance with 10 CFR part 51, the Commission will also prepare an environmental impact statement for the proposed action. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the NRC intends to hold a public scoping meeting. Detailed information regarding this meeting will be included in a future **Federal Register** notice.

Finally, the Commission will announce in a future **Federal Register** notice the opportunity to petition for leave to intervene in the hearing required for this application by 10 CFR 2.104 and 52.85.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O–1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and will be accessible electronically through the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room link at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html.* The application is also available at *http://www.nrc.gov/reactors/new-reactors/col.html.* Persons who do not have access to ADAMS or who encounter problems in accessing documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland this 4th day of September 2009.

For the Nuclear Regulatory Commission.

Amy M. Snyder,

Senior Project Manager, AP1000 Projects Branch 1, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E9–24207 Filed 10–6–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0442]

NUREG–1924, ''Electric Raceway Fire Barrier Systems (ERFBS) in Nuclear Power Plants, Draft Report for Comment''

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of availability of NUREG–1924, ''Electric Raceway Fire Barrier Systems (ERFBS) in Nuclear Power Plants, Draft Report for Comment'' and request for public comment.

SUMMARY: The NRC is making the proposed draft, ''NUREG–1924, ''Electric Raceway Fire Barrier Systems (ERFBS) in Nuclear Power Plants, Draft Report for Comment,'' available for public comment.

DATES: Comments on this document should be submitted by Friday, December 4, 2009. Comments received after that date will be considered to the extent practicable. To ensure efficient and complete comment resolution, comments should include section, page, and line numbers of the document to which the comment applies, if possible.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2009–0442 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site *Regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2009–0442. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov*.

Mail comments to: Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at (301) 492–3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not

have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*. The proposed draft NUREG–1924, ''Electric Raceway Fire Barrier Systems (ERFBS) in Nuclear Power Plants,'' is available electronically under ADAMS Accession Number ML092650002.

Federal Rulemaking Web site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2009–0442.

FOR FURTHER INFORMATION CONTACT: Gabriel Taylor, Fire Research Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research, telephone (301) 251–7576, e-mail *gabriel.taylor@nrc.gov*.

SUPPLEMENTARY INFORMATION: In response to the 1975 Browns Ferry fire, the United States Nuclear Regulatory Commission (NRC) issued Appendix R to Title 10 of the *Code of Federal Regulations* part 50 (10 CFR part 50). To support fire protection defense-in-depth one- or three-hour Electric Raceway Fire Barrier Systems (ERFBS) were permitted for use as an acceptable method to protect electrical cables essential to fire protection safe shutdown capability. However, ERFBS were a new approach to fire barrier applications and as the initial installation of the ERFBS began, there was uncertainty regarding the ERFBS performance and definitive test standards for ERFBS qualification. Following review and research efforts, the NRC resolved many concerns with ERFBS, including the fire resistance, ampacity derating, and seismic position retention. This report documents the history of these barriers and how US NPPs use ERFBS for compliance. This report also documents the current state of the use of these barriers and evaluates the effectiveness of these barriers in achieving adequate protection for nuclear power plants.

The NRC is seeking public comment in order to receive feedback from the widest range of interested parties and to ensure that all information relevant to the information contained within this document is correct and accurate. This document is issued for comment only and is not intended for interim use. The NRC will review public comments received on the documents, incorporate suggested changes as necessary, and make the final NUREG-report available to the public.

Dated at Rockville, Maryland, this 1st day of October 2009.

For the Nuclear Regulatory Commission.

Mark H. Salley,

Chief, Fire Research Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research.

[FR Doc. E9–24211 Filed 10–6–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0440; Docket No. 40–8989]

Issuance of Environmental Assessment and Draft Finding of No Significant Impact for Modification of Exemption From Certain U.S. Nuclear Regulatory Commission Licensing Requirements for Special Nuclear Material for EnergySolutions LLC, Clive, UT

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Environmental Assessment and Draft Finding of No Significant Impact.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has prepared an Environmental Assessment for the issuance of an Order pursuant to Section 274f of the Atomic Energy Act that would modify an Order issued to Energy*Solutions,* LLC (Energy*Solutions*) on May 30, 2006. In accordance with 10 CFR 51.33, the NRC has also prepared a draft Finding of No Significant Impact (FONSI) for public review and comment. The current action is in response to a request by Energy*Solutions* dated September 26, 2006. The May 30, 2006 Order was published in the **Federal Register** on June 13, 2006 (71 FR 34165). The May 30, 2006 Order, which modified a previous Order issued to Energy*Solutions* on July 11, 2005, exempted Energy*Solutions* from certain NRC regulations and permitted WCS, under specified conditions, to possess waste containing special nuclear material (SNM), in greater quantities than specified in 10 CFR Part 150, at Energy*S*olutions's facility located in Clive, Utah, without obtaining an NRC license pursuant to 10 CFR Part 70.

DATES: The public comment period on the draft FONSI closes on November 6, 2009. Written comments should be submitted as described in the **ADDRESSES** section of this notice. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before November 6, 2009.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2009–0440 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking website Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Website: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2009–0440. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at (301) 492–3446.

You can access publicly available documents related to this notice using the following methods:

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NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Federal Rulemaking Web site: Public comments and supporting materials related to this notice can be found at

http://www.regulations.gov by searching on Docket ID: NRC–2009–0440.

FOR FURTHER INFORMATION CONTACT: Nishka Devaser, Project Manager, Environmental and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. *Telephone:* (301) 415–5196; *Fax number:* (301) 415–5369; *E-mail:* Nishka.Devaser@nrc.gov

SUPPLEMENTARY INFORMATION:

I. Introduction:

Energy*Solutions* is authorized by license from the State of Utah, an NRC Agreement State, to operate a disposal facility for LLW. Energy*Solutions* is also licensed by Utah to dispose of mixed waste, hazardous waste, and 11(e).2 byproduct material.

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of the fifth amendment to an Order that was initially issued to Envirocare of Utah, Inc. on May 24, 1999 (64 FR 27826), pursuant to Section 274f of the Atomic Energy Act. NRC previously amended the Order in January 2003 (68 FR 7400), December 2003 (68 FR 59645), August 2005 (70 FR 44123), and June 2006 (71 FR 34165). The amended Order would continue to grant Energy*Solutions* (formerly Envirocare of Utah, Inc.) an exemption from the requirements for an NRC license under 10 CFR Part 70. The amendment is required to allow Energy*Solutions* to receive steel piping waste containing residual special nuclear material (SNM). The steel piping waste will be generated by the Department of Energy as it decommissions the K–25 gaseous diffusion uranium enrichment facility in Oak Ridge, Tennessee.

The 1999 Order exempted Envirocare (now Energy*Solutions*) from certain NRC regulations and permitted the company, under specified conditions, to possess waste containing SNM, in greater quantities than specified in 10 CFR Part 150, at the Envirocare low-level waste (LLW) disposal facility located in Clive, Utah, without obtaining an NRC license pursuant to 10 CFR Part 70. The 1999 Order permitted Envirocare to possess SNM below specified concentrations, without regard for mass. The January 2003 amendment to the Order addressed certain waste treatment processes; a change in the homogeneous contiguous mass limit from 145 kg to 600 kg; clarified certain language of the Order; and removed the confirmatory testing requirements for debris waste. The December 2003 amendment to the Order: Amended Condition 1, to include criticality-based concentration limits without magnesium oxide; modified the units of the table in Condition 1 from picocuries of SNM per gram of waste material to gram of SNM per gram of waste material; and (3) revised the language of Condition 5 to be consistent with the revised units in the table in Condition 1. A July 2005 amendment to the Order: modified the table in Condition 1 to include criticality-based limits for uranium-233 and plutonium isotopes in waste containing up to 20 percent of materials listed in Condition 2 (e.g., magnesium oxide); included criticality-based limits in the table in Condition 1 for plutonium isotopes in waste with unlimited materials in Condition 2, and in waste with unlimited quantities of materials in Conditions 2 and 3 (e.g., beryllium); provided criticality-based limits for uranium-235 as a function of enrichment in waste containing up to 20 percent of materials listed in Condition 2 and in waste containing none of the materials listed in Condition 2; and authorized additional mixed waste treatment technologies under the Order. The most recent amendment to the Order, issued in May 2006, was an administrative change to accommodate a change in the name of the company from Envirocare of Utah, Inc. to Energy*Solutions* LLC.

The NRC has prepared an Environmental Assessment (EA) in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate for the proposed action, as modified.

II. Environmental Assessment (EA)

Proposed Action

By letters dated September 26, 2006, December 4, 2006, July 16, 2007, September 13, 2007, and January 15, 2009, Energy*Solutions* requested an amendment to its 2006 Order. Energy*Solutions* requests an amendment of the package mass limits contained in Condition 4 of the Order, and the addition or revision of other conditions, as necessary. As described in its September 2007 nuclear criticality safety evaluation, Energy*Solutions* requests these additional changes to the Order so that it may receive and dispose of Oak Ridge K–25 gaseous diffusion plant piping from the Department of Energy (DOE) in larger containers than would be allowable under the 2006 Order. Energy*Solutions* proposes to receive piping waste from the decommissioning of the K–25 facilities in gondola railcars, each containing up to 3.6 kg (7.9 lbs) of uranium-235 in the form of highly water soluble uranyl fluoride. Energy*Solutions* also proposed that certain additional conditions be added to the Order for the purposes of criticality safety during receipt, on-site storage, movement, emplacement, and disposal of K–25 waste. Upon consideration of Energy*Solutions'* request, the NRC is considering similar conditions to those proposed by Energy*Solutions* that restrict: the areal density of highly water soluble SNM in disposal embankments at the Clive, UT site; and the amount of water which should be present during receipt, on-site storage, movement, emplacement, and disposal of K–25 waste.

Site and Facility Description

The Energy*Solutions* LLW disposal facility at Clive, UT is located 128 kilometers (80 miles) west of Salt Lake City, UT. The site is arid, and receives about 20 centimeters (8 inches) of precipitation annually. A description of the site and its history is available in the Utah Division of Radiation Control safety evaluation report for the Energy*Solutions* license renewal.

All low-level radioactive waste received at the Clive facility must contain radioactive constituents. The low-level radioactive waste embankment is constructed from materials native to the site or available in close proximity to the site. Due to requirements regarding the long-term stability of the embankment, the principal design features of the embankment do not rely upon synthetic materials to provide stability and isolation of the wastes from the environment. The principal construction materials are the naturally low-permeability clay taken from between the ground surface and the unconfined aquifer and the rock riprap and filter material taken from pits located within 16 kilometers (10 miles) of the facility. The vertical minimum separation between the bottom of the disposed LLW and the historic high water table is determined as being 4 meters (13 feet).

After a liner is constructed over a specific area of the Class A LLW disposal embankment, at least 30 centimeters (12 inches) of debris-free soil is placed on top of the liner; followed by another 30 centimeters (12 inches) of waste as a protection to the integrity of the liner. Both of these layers of protective soil are compacted with rubber tired equipment. Thereafter, the area is available for placement of

waste containers and materials. Waste that is removed from the shipping container is typically compacted into 61 centimeter (24 inch) waste lifts. Waste that consists of debris items that do not have a dimension less than 25 centimeters (10 inches) is disposed of using controlled low strength material (CLSM) in a different disposal area.

Need for the Proposed Action

Condition 4 of the 2006 Order limits the mass of highly water soluble SNM that may be contained in individual waste packages. For example, the 2006 Order limits the amount of highly water soluble uranium-235 in each waste package to 350 grams. Relatively small waste packages that contain highly water soluble uranium compounds in which the uranium-235 concentration limits of Condition 1 are met (e.g., 6.2×10^{-4} gram uranium-235 per gram waste), would normally contain small mass quantities of uranium-235 such that the 350 gram package mass limit would not be exceeded. However, in order to cost-effectively receive and process large quantities of K–25 steel piping waste containing highly water soluble uranyl fluoride, Energy*Solutions* proposes to use 100-ton capacity gondola railcars. Therefore, even though the concentration of residual uranyl fluoride in K–25 piping waste is expected to remain a fraction of the concentration limits contained in Condition 1 of the 2006 Order, the amount of uranium-235 in each railcar could exceed the current package mass limits in Condition 4. However, Energy*Solutions* believes that it is not cost-effective to package K–25 waste in sufficiently small quantities to meet Condition 4 of the 2006 Order. For this reason, Energy*Solutions* requests an amendment to Condition 4 of the 2006 Order in order to receive K–25 steel piping waste in large gondola railcars. In addition, Energy*Solutions* proposes additional conditions to ensure criticality safety of large quantities of steel piping waste containing highly water soluble uranyl fluoride during waste receipt, unloading, on-site storage, emplacement and disposal of the waste.

Alternatives to the Proposed Action

The NRC staff considered one alternative to the proposed action. The alternative to the proposed action is denial of the request to amend the 2006 Order (no-action alternative).

Affected Environment

NRC has prepared an environmental impact statement (EIS) (NUREG–1476) for its licensing action at the Energy*Solutions* site to authorize disposal of 11e.(2) byproduct material. The affected environment is discussed in detail in NUREG–1476.

Environmental Impacts of the Alternatives

No Action Alternative

For the no-action alternative, the environmental impacts would be the same as evaluated in the Environmental Assessments that supported the issuance of original Order (64 FR 26463, May 14, 1999) and its amendments (68 FR 3281; January 23, 2003, 68 FR 59645; October 16, 2003, 70 FR 4124; July 18, 2005). In these prior EAs, the staff concluded that the issuance of the Order would have no significant adverse environmental impacts.

Proposed Action

For the proposed action, the environmental impacts would be similar to those described in previous EAs noted above, with the exception of environmental impacts associated with: Receipt and unloading of 100-ton capacity gondola railcars containing K–25 piping waste, each of which contains residual deposits of highly water soluble uranyl fluoride in quantities in excess of the limits in Condition 4 of the 2006 Order (i.e., up to 3.6 kilograms of uranium-235); and placement in disposal embankments of piping waste containing highly water soluble uranyl fluoride at areal densities of up to 1 kilogram uranium-235 per square meter.

The proposed action would not significantly alter land or water usage at the Clive facility, or result in new construction. Facility effluents would remain essentially unchanged, since this action would not alter the types or quantities of waste that EnergySolutions is currently authorized to receive and dispose of. Disposal of Class A LLW is currently authorized by license from the State of Utah, for which no significant changes are anticipated other than incorporation into the radioactive materials license of a revision to Condition 4 to impose an areal density limit for highly water soluble SNM, including requirements to minimize water intrusion into the waste containing highly water soluble forms of uranium during receipt, unloading, onsite storage and waste emplacement operations.

The proposed action, which allows the use of large waste packages, will result in a reduction of the use of waste packaging, and thus generate less packaging waste. Also, fewer transportation consignments would be required to transport waste from Oak Ridge, TN to the Clive, UT disposal facility, reducing transportation-related impacts from what would otherwise occur if smaller packages were required. The proposed action also further reduces the risk of accidental nuclear criticality, and resulting worker and public radiation doses, from the proposed action by imposing an areal density limit on disposal of highly water soluble forms of uranium, which is not currently required by the 2006 Order.

The proposed action would not significantly alter available disposal capacity at the Clive facility, or significantly change the performance of disposed waste. The radiation dose rates from K–25 decommissioning waste, which contains uranium and trace amounts of other radioactive material, are low compared to other forms of Class A waste, which may contain source, byproduct and special nuclear material up to the limits allowed by the State of Utah radioactive materials license. Therefore, the proposed action is not likely to significantly change worker and public doses resulting from waste operations.

Preferred Alternative

The staff has concluded in the March 2009 safety evaluation report for this proposed action that the proposed action provides sufficient protection of public health and safety, and the environment, and is not inimical to common defense and security, and is otherwise in the public interest. Therefore, staff's preferred alternative is to amend the 2006 Order.

Agencies and Persons Consulted

Officials from the State of Utah, Department of Environmental Quality, Division of Radiation Control were consulted about this EA for the proposed action and had no comments. Because the proposed action is not expected to have any impact on threatened or endangered species or historic resources, the Fish and Wildlife Service and State of Utah Historic Preservation Officer were not consulted.

III. Draft Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR Part 51. Based upon the foregoing EA, the NRC finds that the preferred alternative of amending the 2006 Order will not significantly impact the quality of the human environment. The NRC also concludes that the proposed action to grant a modification to EnergySolutions' exemption from the requirements of 10 CFR Part 70 is,

pursuant to 10 CFR 70.17, authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. On this basis of this EA, NRC concludes that there are no significant environmental impacts and the issuance of a modified Order does not warrant the preparation of an Environmental Impact Statement. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

Pursuant to 10 CFR 51.33(e), a final determination to prepare an environmental impact statement or a final FONSI for the proposed action will not be made until the last day of the public comment period has expired on November 6, 2009.

IV. Further Information

Documents related to this action, including the letter requesting the amendment and supporting documentation, will be available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

1. September 29, 2006 authorization request (ML063040029).

2. July 16, 2007 letter response to request for additional information (ML073520212).

3. September 13, 2007 letter response to request for additional information (ML073440260).

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland this 29th day of September 2009.

For the U.S. Nuclear Regulatory Commission.

Patrice M. Bubar,

Deputy Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E9–24208 Filed 10–6–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0443]

Withdrawal of Regulatory Guide 7.1

AGENCY: Nuclear Regulatory Commission.

ACTION: Withdrawal of Regulatory Guide 7.1.

FOR FURTHER INFORMATION CONTACT: Thomas J. Herrity, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–251–7447 or e-mail to *Thomas.Herrity@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is withdrawing Regulatory Guide 7.1 (RG 7.1), ''Administrative Guide for Packaging and Transporting Radioactive Material.'' This guide was published in June 1974 and provided guidance on which packaging and labeling regulations of the Department of Transportation (DOT) apply in a given case and what must be done to comply with those regulations. The NRC is withdrawing this regulatory guide because it is outdated.

Although DOT revised their regulations on packaging and shipment of radioactive material several times after issuance of RG 7.1, neither this RG nor the American National Standards Institute (ANSI) standard referenced in the RG have been revised. In addition, ANSI Subcommittee N14.10 withdrew ANSI Standard ANSI N14.10.1, ''Administrative Guide for Packaging and Transporting Radioactive Materials,'' dated September 14, 1973.

DOT issued generic guidance, ''Radioactive Material Regulations Review,'' on their hazardous materials regulations in December 2008, which includes radioactive material determination and appropriate packaging, labeling and placarding for a given material. Because DOT issued guidance on meeting their hazardous materials regulations, this RG should be withdrawn instead of updated.

II. Further Information

The withdrawal of RG 7.1 does not alter any prior or existing licensing commitments based on its use. The guidance provided in this RG is neither necessary nor current. RGs may be withdrawn when their guidance is superseded by congressional action or no longer provides useful information.

RGs are available for inspection or downloading through the NRC's public Web site under ''Regulatory Guides'' in the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections.* Regulatory guides are not copyrighted and Commission approval is not required to reproduce these documents. RGs are also available for inspection at the NRC's Public Document Room (PDR), Room O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

The PDR's mailing address is US Nuclear Regulatory Commission, Public Document Room, Washington, DC 20555–0001. You can reach the PDR staff by telephone at 301–415–4737 or 800–397–4209, by fax at 301–415–3548, and by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 30th day of September 2009.

For the Nuclear Regulatory Commission.

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E9–24212 Filed 10–6–09; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11893 and #11894]

American Samoa Disaster # AS–00003

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the Territory of American Samoa (FEMA—1859—DR), dated 09/29/2009.

Incident: Earthquake, Tsunami, and Flooding.

Incident Period: 09/29/2009 and continuing.

DATES: *Effective Date:* 09/29/2009.

Physical Loan Application Deadline Date: 11/30/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 6/29/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business

Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/29/2009, 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: The Territory of American Samoa.

The Interest Rates are:

For Physical Damage:

	Percent
Homeowners With Credit Available Elsewhere;	5.500
Homeowners Without Credit Available Elsewhere;	2.750
Businesses With Credit Available Elsewhere;	6.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere;	4.500
Businesses And Non-Profit Organizations Without Credit Available Elsewhere;	4.000

For Economic Injury:

	Percent
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere;	4.000

The number assigned to this disaster for physical damage is 118932 and for economic injury is 118940.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9–24175 Filed 10–6–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11888 and #11889]

Georgia Disaster Number GA–00028

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Georgia (FEMA–1858–DR), dated 09/26/2009.

Incident: Severe storms and flooding.

Incident Period: 09/18/2009 and continuing.

Effective Date: 09/28/2009.

Physical Loan Application Deadline Date: 11/25/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 06/28/2010.

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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Georgia, dated 09/26/2009, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties:

Cherokee, Crawford, Dekalb, Fulton, Newton.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9–24178 Filed 10–6–09; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

SpongeTech Delivery Systems, Inc.; Order of Suspension of Trading

October 5, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of SpongeTech Delivery Systems, Inc. (''SpongeTech'') because questions have arisen regarding the accuracy of assertions in press releases to investors and in periodic reports filed with the Commission concerning, among other things: (1) The amount of sales and customer orders received by the company; (2) the company's investment agreements; and (3) the company's revenues as reported in its financial statements. In addition, SpongeTech has not filed any periodic reports with the Commission since the period ended February 28, 2009.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT, on October 5, 2009 through 11:59 p.m. EDT, on October 16, 2009.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–24257 Filed 10–5–09; 4:15 pm]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60746; File No. SR–CBOE–2009–070]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Related to Preferred Market Makers

September 30, 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 September 28, 2009, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. 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 CBOE is proposing to amend its Preferred Market-Maker program to allow for the preferencing of complex orders entered into the complex order book (''COB'') and the complex order RFR auction (''COA''). In addition, CBOE is proposing to make a clarification regarding the existing operation of the Preferred Market-Maker program for simple orders. The text of the proposed rule change is available on the Exchange's Web site at (*http://www.cboe.org/Legal*), at the Office of the Secretary, CBOE, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Exchange is proposing to adopt a Preferred Market-Maker program for complex orders that is modeled after its existing Preferred Market-Maker program for simple orders, Rule 8.13. Under the proposal, the Exchange may allow, on a class-by-class basis, for the receipt of Preferred Market-Maker complex orders through the COB and/or COA systems, and a qualifying recipient of a Preferred Market-Maker complex order shall be afforded a participation entitlement.

Under the proposal, any Exchange Market-Maker type could be designated as a Preferred Market-Maker (*e.g.,* Lead Market-Maker, Designated Primary Market-Maker, Market-Makers), however, the Hybrid System is programmed so that a recipient of a Preferred Market-Maker complex order would only receive a participation entitlement for such complex order if the following provisions are met: First, whether the participation entitlement is applied to COB and/or COA, the Preferred Market-Maker has an appointment/allocation in the relevant option class. Second, with respect to classes where there is a participation entitlement for COB, the Preferred Market-Maker is quoting in COB at the best net priced bid/offer when the order is received. With respect to classes where there is a participation entitlement for COA, (i) at the beginning of the auction, the Preferred Market-Maker is quoting at either (a) the best bid/offer on the Exchange in at least one of the component series of the complex order or (b) the best net priced bid/offer in COB for the complex order; and (ii) at the conclusion of the auction, the Preferred Market-Maker is quoting at the best net priced bid/offer in COA.[3]

Provided the eligibility requirements have been met, the Preferred Market-Maker participation entitlement would be 40% when there are two or more Market-Makers also quoting at the best net priced bid/offer execution price (which is the price at the time a complex order is received in the case of a COB participation entitlement or the price at the conclusion of the auction in the case of a COA participation entitlement), and 50% when there is only one other Market-Maker quoting at the best net priced bid/offer execution price.[4] In addition, the following would apply: First, the Preferred Market-Maker would not be allocated a total quantity greater than the quantity that the Preferred Market-Maker is quoting at the best net priced bid/offer execution price. Second, the entitlement would be based on the number of contracts remaining after the incoming complex order has traded against equivalent derived net priced orders and quotes in the individual series of the EBook and equivalent net priced public customer complex orders resting in COB that have priority over the Preferred Maker-Maker in accordance with Rule 6.53C, *Complex Orders on the Hybrid System.* Third, if a Preferred Market-Maker receives a participation entitlement for its complex order resting in COB or its response to COA, then no other participation entitlements for complex orders set forth in Exchange Rules (*e.g.,* Rule 8.87, *Participation Entitlement of DPMs and e-DPMs,* and Rule 8.15B, *Participation Entitlement of LMMs*) shall apply to complex orders resting in COB or entered in response to COA.[5]

Lastly, the proposed rule text notes that a Preferred Market-Maker must comply with the quoting obligations applicable to its Market-Maker type under Exchange rules and must provide continuous electronic quotes (as defined in Rule 1.1(ccc)) in at least 90% of the series of each class for which it receives Preferred Market-Maker orders in accordance with the requirements for the preferencing of simple orders (the ''90% quoting obligation'').

In this regard, the Exchange is proposing to revise the existing text of Rule 8.13 regarding the current operation of its preferencing program for simple orders to more specifically reflect the way the Hybrid System operates. Substantively, the requirements of the rule are not changing. The existing rule text indicates that a recipient of a Preferred Market-Maker order will only receive a participation entitlement for such order if the following provisions are met: (i) The Preferred Market-Maker must have an appointment/allocation in the relevant option class; (ii) the Preferred Market-Maker must be quoting at the best bid/offer on the Exchange; and (iii) the Preferred Market-Maker must comply with the quoting obligations applicable to its Market-Maker type under Exchange rules and must provide continuous electronic quotes (as defined in Rule 1.1(ccc)) in at least 90% of the series of each class for which it receives Preferred Market-Maker orders. The Exchange is amending the text to clarify that the Hybrid System is programmed so that the recipient of a Preferred Market-Maker order will only receive a participation entitlement for such order if provisions (i) and (ii) above are met. Separately, a Preferred Market-Maker must also comply with the quoting obligations applicable to its Market-Maker type under Exchange rules and the 90% quoting obligation. The 90% quoting obligation, as with the various other Market-Making quoting obligations, are subject to Exchange market performance, surveillance, and/or disciplinary programs to assess and enforce compliance.

[3] In this regard, CBOE's proposal prohibits an order flow provider from notifying a Preferred Market-Maker regarding its intention to submit a preferenced complex order so that such Preferred Market-Maker could change its quotation to match the NBBO immediately prior to submission of the preferenced order, and then fade its quote. CBOE states that Rule 4.18, *Prevention of the Misuse of Material, Nonpublic Information,* prohibits this sort of misuse of material, non-public information. Further, CBOE represents that it will conduct surveillance for, and enforce against, such violations.

[4] The Exchange notes that, if a Market-Maker is also eligible for an allocation pursuant to the operation of the applicable algorithm in effect for a class (for example, an allocation based on price-time or a pro rata percentage), the Market-Maker would be entitled to receive an allocation (not to exceed the size of the Market-Maker's quote) of the greater of the amount the Market-Maker would be entitled to pursuant to the participation entitlement or the amount it would otherwise receive pursuant to the operation of the algorithm in accordance with Rule 6.45A or 6.45B, as applicable.

[5] The Exchange notes that, to the extent a complex order trades with the equivalent derived net priced orders and quotes in the individual series of the EBook, there may also be a participation entitlement applied to those individual series legs in accordance with Rule 6.45A or 6.45B, as applicable. For example, if a complex order executes against the individual series legs, then the remainder executes against COB resting orders or COA responses, a Preferred Market-Maker entitlement may apply both on the individual series legs execution and on the COB or COA execution. Also, if a complex order automatically exercises against the individual series legs upon receipt or at the conclusion of a COA, a Preferred Market-Maker entitlement may apply to the individual series legs. Similarly, if a resting complex order becomes marketable against the individual series legs, a Preferred Market-Maker entitlement may apply to the individual series legs.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act [6] in general and furthers the objectives of Section 6(b)(5) of the Act [7] in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The proposed rule change will help generate greater complex order flow for the Exchange and provide additional incentives for Market-Makers to trade with that order flow, which in turn adds depth and liquidity to CBOE's markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose 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 solicited or received with respect to the proposed rule change.

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–CBOE–2009–070 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–CBOE–2009–070. 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 the CBOE. 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–CBOE–2009–070 and should be submitted on or before October 28, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–24078 Filed 10–6–09; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60756; File No. SR–NYSE–2009–100]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending the Operation of Its New Market Model Pilot and Supplemental Liquidity Providers Pilot, Until the Earlier of Securities and Exchange Commission Approval to Make Such Pilots Permanent or November 30, 2009

October 1, 2009.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on September 30, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II 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 proposes to extend the operation of its New Market Model Pilot and Supplemental Liquidity Providers Pilot, until the earlier of Securities and Exchange Commission approval to make such pilots permanent or November 30, 2009. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

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 those 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 parts of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the operation of its New Market Model Pilot[4] (''NMM Pilot'') and Supplemental Liquidity Providers Pilot[5] (''SLP Pilot'') approved by the Securities and Exchange Commission (''SEC'' or ''Commission'') to operate until October 1, 2009, until the earlier of Securities and Exchange Commission approval to make such pilots permanent or November 30, 2009.

The Exchange notes that parallel changes are proposed to be made to the rules of the NYSE Amex LLC.[6]

Background[7]

In October 2008, the NYSE implemented significant changes to its market rules, execution technology and the rights and obligations of its market participants all of which were designed to improve execution quality on the Exchange. These changes are all elements of the Exchange's enhanced market model. These changes were implemented through pilots.

As part of the NMM Pilot, NYSE eliminated the function of specialists on the Exchange creating a new category of market participant, the Designated Market Maker or DMM.[8] The DMMs, like specialists, have affirmative obligations to make an orderly market, including continuous quoting requirements and obligations to re-enter the market when reaching across to execute against trading interest. Unlike specialists, DMMs have a minimum quoting requirement[9] in their assigned securities and no longer have a negative obligation. DMMs are also no longer agents for public customer orders.[10]

In addition, the Exchange implemented a system change that allowed DMMs to create a schedule of additional non-displayed liquidity at various price points where the DMM is willing to interact with interest and provide price improvement to orders in the Exchange's system. This schedule is known as the DMM Capital Commitment Schedule (''CCS'').[11] CCS provides the Display Book ®[12] with the amount of shares that the DMM is willing to trade at price points outside, at and inside the Exchange BBO. CCS interest is separate and distinct from other DMM interest in that it serves as the interest of last resort.

The NMM Pilot further modified the logic for allocating executed shares among market participants having trading interest at a price point upon execution of incoming orders. The modified logic rewards displayed orders that establish the Exchange's best bid or Exchange's best offer. During the operation of the NMM Pilot orders or portions thereof that establish priority[13] retain that priority until the portion of the order that established priority is exhausted. Where no one order has established priority, shares are distributed among all market participants on parity.

Separately, the NYSE established a pilot of SLPs. Through the operation of the SLP Pilot, NYSE also established SLPs as a new class of market participants to supplement the liquidity provided by DMMs.[14] Unlike DMMs, SLPs do not have affirmative obligations; may only enter orders electronically from off the Floor of the Exchange, and may only enter such orders directly into Exchange systems and facilities designated for this purpose. Similar to DMMs, SLPs have quoting requirements,[15] may only enter orders for their proprietary account of the SLP member organization and may not handle orders from public customers or otherwise act on an agency basis in their capacity as an SLP.

A member organization that acts as an SLP is not permitted to act as a DMM on the Floor of the Exchange in the same security. Thus, a member organization that acts as a DMM on the Floor may not also act as an SLP in those securities registered to the DMM unit.

The NMM Pilot and the SLP Pilot are scheduled to end operation on October 1, 2009 or such earlier time as the Commission may determine to make the rules permanent. The Exchange is currently preparing a rule filing seeking permission to make the above described changes permanent but does not expect that filing to be completed and approved by the Commission before October 1, 2009.

Proposal To Extend the Operation of the NMM Pilot and SLP Pilot

The NYSE established both the NMM Pilot and the SLP Pilot to provide incentives for quoting, to enhance competition among the existing group of liquidity providers and add new competitive market participants. The Exchange believes that both the NMM Pilot and the SLP Pilot allow the Exchange to provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. As such, the Exchange believes that the rules governing the NMM Pilot and the SLP Pilot should be made permanent. Through this filing the Exchange seeks to extend the current operation of the NMM Pilot and the SLP Pilot until November 30, 2009, in order to allow the Exchange to formally submit a filing to the Commission to convert the pilot rules to permanent rules.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (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, 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. The Exchange believes that the instant filing is consistent with these principles because the NMM Pilot and the SLP Pilot provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. Moreover, the instant filing requesting an extension of each individual Pilot will permit adequate time for: (i) The Exchange to prepare and submit a filing to make the rules governing the NMM Pilot and the SLP Pilot permanent; (ii) public notice and comment; and (iii)

[4] *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46).

[5] *See* Securities Exchange Act Release No. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR–NYSE–2008–108) (establishing the SLP Pilot). *See also* Securities Exchange Act Release No. 59869 (May 6, 2009), 74 FR 22796 (May 14, 2009) (SR–NYSE–2009–46) (extending the operation of the SLP Pilot to October 1, 2009).

[6] *See* SR–NYSE Amex-2009–65.

[7] The information contained herein is a summary of the NMM Pilot and the SLP Pilot, for a fuller description of those pilots *see supra* notes 4 and 5.

[8] *See* NYSE Rule 103.

[9] *See* NYSE Rules 104.

[10] *See* NYSE Rule 60; *see also* NYSE Rules 104 and 1000.

[11] *See* NYSE Rule 1000.

[12] The Display Book® system is an order management and execution facility. The Display Book system receives and displays orders to the DMMs, contains the order information, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

[13] *See* NYSE Rule 72(a)(ii).

[14] *See* NYSE Rule 107B.

[15] *See* NYSE Rule 107B Section (f) and NYSE Rule 107B Section (i)(1)(C)(iii).

completion of the 19b–4 approval process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[18]

A proposed rule change filed under Rule 19b–4(f)(6)[19] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[20] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that because the pilot programs will expire on October 1, 2009, waiver of the operative delay is necessary so that no interruption of the pilot programs will occur. In addition, the Commission notes that the Exchange has requested extensions of the pilots to allow the Exchange time to formally request permanent approval for the pilots. Therefore, the Commission designates the proposal operative upon filing.[21]

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:

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–NYSE–2009–100 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–NYSE–2009–100. 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 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 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–NYSE–2009–100 and should be submitted on or before October 28, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–24083 Filed 10–6–09; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission 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 of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60751; File No. SR–NYSEAmex–2009–67]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period To Receive Inbound Routes of Orders from Archipelago Securities LLC

September 30, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'') and Rule 19b–4 thereunder,[2] notice is hereby given that, on September 30, 2009, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II, 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 proposes to extend the pilot period of the Exchange's prior approvals to receive inbound routes of orders from Archipelago Securities LLC

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(''Arca Securities''), an NYSE Amex affiliated member. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office 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 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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Arca Securities is the approved outbound order routing facility of the Exchange.[3] Arca Securities is also the approved outbound order routing facility of the New York Stock Exchange (''NYSE'') and NYSE Arca, Inc (''NYSE Arca'').[4] The Exchange has also been previously approved to receive inbound routes of orders by Arca Securities in its capacity as an order routing facility of NYSE Arca and the NYSE.[5] The Exchange's authority to receive inbound routes of orders by Arca Securities was subject to a pilot period ending September 29, 2009. The Exchange hereby seeks to extend the previously approved pilot period (with the attendant obligations and conditions) for an additional 3 months, through December 31, 2009.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[6] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5)[7] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of equities orders from Arca Securities acting in its capacity as a facility of the NYSE and NYSE Arca, in a manner consistent with prior approvals and established protections. The Exchange believes that extending the previously approved pilot period for three months is of sufficient length to permit both the Exchange and the Commission to assess the impact of the Exchange's authority to receive direct inbound routes of equities orders via Arca Securities (including the attendant obligations and conditions).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange notes that the proposal will allow the Exchange to continue receiving inbound routes of equities orders from Arca Securities, in a manner consistent with prior approvals and established protections, while also permitting the Exchange and the Commission to assess the impact of the pilot.[12] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot period to be extended without interruption through December 31, 2009. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[13]

At any time within 60 days of the filing of such 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:

[3] *See* Securities Exchange Act Release No. 59009 (November 24, 2008), 73 FR 73363 (December 2, 2008) (order approving SR–NYSEALTR–2008–07); *see also,* Securities and Exchange Act Release No. 34–59473 (February 27, 2009) 74 FR 9853 (March 6, 2009) (order approving SR–NYSEALTR–2009–18).

[4] *See* Securities Exchange Act Release No. 34–55590 (April 5, 2007), 72 FR 18707 (April 13, 2007) (notice of immediate effectiveness of SR–NYSE–2007–29); *see also,* Securities and Exchange Act Release No. 34–58680 (September 29, 2008), 73 FR 58283 (October 6, 2008) (order approving SR–NYSE–2008–76). *See* Securities Exchange Act Release No. 34–53238 (July 28, 2006), 71 FR 44758 (August 7, 2006) (order approving SR–NYSEArca–2006–13); *see also,* Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (SR–PCX–2005–90); *see also,* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25); *see also,* Securities Exchange Act Release No. 58681 (September 29, 2008), 73 FR 58285 (October 6, 2008) (order approving NYSEArca–2008–90).

[5] *See* Securities Exchange Act Release No. 34–58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (order approving SR–Amex–2008–62). *See also,* Securities Exchange Act Release No. 34–58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (order approving SR–AMEX–2008–63).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission 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 of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] *Id.*

[12] *See* SR–NYSEAmex–2009–67, Item 7.

[13] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–NYSEAmex–2009–67 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–NYSEAmex–2009–67. 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 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 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–NYSEAmex–2009–67 and should be submitted on or before October 28, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–24080 Filed 10–6–09; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60749; File No. SR–CBOE–2009–068]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change To Amend the $1 Strike Program To Allow Low-Strike LEAPS

September 30, 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 September 16, 2009, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''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 the $1 Strike Program. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Office of the Secretary, CBOE and at the Commission.

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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to expand the $1 Strike Program (''Program'') in a limited fashion to allow CBOE to list new series in $1 intervals up to $5 in long-term option series (''LEAPS'') in up to 200 option classes on individual stocks.[3] Currently, under the Program, CBOE may not list LEAPS at $1 strike price intervals for any class selected for the Program. CBOE also is restricted from listing any series that would result in strike prices being $0.50 apart, unless the series are part of the $.50 Strike Program.[4] (*See* CBOE Rule 5.5.01.)

CBOE believes that this proposal is appropriate and will allow investors to establish option positions that are better tailored to meet their investment objectives, vis-à-vis credit risk, using deep out-of-the-money put options. Deep out-of-the money put options are viewed as a viable, liquid alternative to OTC-traded credit default swaps (''CDS''). These options do not possess the negative characteristics associated with CDS, namely, lack of transparency, insufficient collateral requirements, and inefficient trade processing. Moreover, deep out-of-the money put options and CDS are functionally similar, as there is a high correlation between low-strike put prices and CDS spreads.[5]

CBOE notes that its proposal is limited in scope, as $1 strikes in LEAPS may only be listed up to $5 and in only up to 200 option classes. As is currently the case, CBOE would not list series with $1.00 intervals within $0.50 of an existing $2.50 strike price in the same series. As a result, CBOE does not believe that this proposal will cause a significant increase in quote traffic.

Moreover, as the SEC is aware, CBOE has adopted various quote mitigation strategies in an effort to lessen the growth rate of quotations. When it expanded the Program several months ago, CBOE included a delisting policy that would be applicable with regard to this proposed expansion.[6] CBOE and the other options exchanges amended the Options Listing Procedures Plan (''OLPP'') in 2008 to impose a minimum volume threshold of 1,000 contracts national average daily volume per underlying class to qualify for an additional year of LEAP series.[7] Most recently, CBOE, along with the other options exchanges, amended the OLPP

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Under CBOE Rule 5.8, LEAPS expire from 12–39 months from the time they are listed.

[4] On September 15, 2009, CBOE filed SR–CBOE–2009–069 for immediate effectiveness, which filing establishes a $.50 Strike Program.

[5] More information is available on this trading strategy at CBOE's Web site at *http://www.cboe.com/Institutional/DOOM.aspx.*

[6] The delisting policy includes a provision that states CBOE may grant member requests to add strikes and/or maintain strikes in series of options classes traded pursuant to the Program that are eligible for delisting.

[7] *See* SEC Release No. 34–58630 (September 24, 2008), approving Amendment No. 2 to the OLPP.

to adopt objective, exercise price range limitations applicable to equity option classes, options on ETFs and options on trust issued receipts.[8] CBOE believes that these price range limitations will have a meaningful quote mitigation impact. CBOE also notes that it recently delisted 216 option classes as part of its mandatory class delisting policy.[9]

The margin requirements set forth in Chapter XII of the Exchange's rules and the position and exercise requirements set forth in Rule 4.11 and Rule 4.12 will continue to apply to these new series, and no changes are being proposed to those requirements by this rule change.

With regard to the impact on system capacity, CBOE has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of an expanded number of series as proposed by this filing.

2. Statutory Basis

The Exchange believes the rule proposal is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act[11] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. The Exchange believes that the listing of the $1 strike price in LEAPS series will benefit investors by giving them more flexibility to closely tailor their investment decisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[8] *See* SEC Release No. 34–60531 (August 19, 2009), approving Amendment No. 3 to the OLPP. CBOE's proposal to list $1 strikes in LEAPs to $5 would not be subject to the exercise price range limitations contained in new paragraph (3)(g)(ii) of the OLPP.

[9] *See* CBOE Information Circular IC09–172.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

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 self-regulatory organization 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 No. SR–CBOE–2009–068 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 No. SR–CBOE–2009–068. 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 changes 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 CBOE. 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 No. SR–CBOE–2009–068 and should be submitted on or before October 28, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–24079 Filed 10–6–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60753; File No. SR–CHX–2009–14]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Fees and Rebates in Various Trading Sessions

September 30, 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 September 22, 2009, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. CHX has filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit

[12] 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).

[4] 17 CFR 240.19b–4(f)(2).

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 CHX proposes to amend its Schedule of Participant Fees and Assessments (the ''Fee Schedule''), effective September 28, 2009, to provide for separate trading activity fees for its new Early and Late Trading Sessions. The text of this proposed rule change is available on the Exchange's Web site at *http://www.chx.com/rules/proposed_rules.htm* and in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549.

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 CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX 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 Changes

1. Purpose

In a separate filing, the Exchange has created a new Early Trading Session beginning at 6 a.m. CT on days the Exchange is open for trading and a Late Trading Session from 3 p.m. to 3:15 p.m. CT.[5] We plan to implement these two new sessions on September 28, 2009.

In furtherance of this initiative, the Exchange proposes to amend its Schedule of Participant Fees and Assessments. We propose to charge a trading activity fee for single-sided orders of $0.003 per share for liquidity taken in Tape A, B and C securities priced at or above $1 per share in the new early and late trading sessions. A corresponding rebate of $0.0022 per share for liquidity provided in such securities would also be added to the Fee Schedule. Fees and rebates will be assessed based upon the session in which the underlying transactions were executed. We believe that these fees and charges are appropriate to meet the Exchange's objective of attracting sufficient trading activity in these sessions on a profitable basis. The increased differential reflects, in part, our expectation of a lower amount of market data revenue for trades executed in the Early and Late Trading Sessions, and a corresponding reliance on trading activity fee revenue to support the operational costs associated with these two sessions.

The Exchange acknowledges that these charges differ from the fees and rebates for such securities in the Regular Trading Session. Trading activity fees and rebates, however, are often not uniform at a given exchange depending on the circumstances. For example, Nasdaq and NYSE Arca have different Tiers for take/provide fees for a member depending on the average number of shares transacted and liquidity provided to their exchanges. Trading activity fees and rebates frequently vary depending on whether the security is reported as Tape A, B or C. Provide rebates may vary depending on the nature of the order, *e.g.,* if the order was not displayed (Nasdaq) or was a Market-on-Close/Limit-on-Close order (NYSE Arca). Finally, a number of exchanges, including the CHX, have different take/provide rates for securities trading under $1. Our charges for trading activity are and will continue to be disclosed in the Fee Schedule posted on our public Web site and in a Legal Notice to our Participants.

The current fee and rebate structure for stocks trading under $1 would be extended to the Early and Late Trading Sessions. All other current trading-related fees and charges would extend equally to the Early and Late Trading Sessions. Fees and charges relating to cross transactions executed in the Late Crossing Session would remain unchanged.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(4) of the Act[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members. Among other things, the change to the fee schedule would provide a reasonable amount of expected revenue to the Exchange to offset the expenses of operating these new trading sessions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will 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 Regarding the Proposed Rule Changes Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(B)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder[9] because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of such 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 purpose 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 No. SR–CHX–2009–14 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–CHX–2009–14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

[5] SR–CHX–2009–13 (Sept. 1, 2009).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

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 changes 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 will also be available for inspection and copying at the principal office of the CHX. 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 No. SR–CHX–2009–14 and should be submitted on or before October 28, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–24082 Filed 10–6–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60750; File No. SR–NYSEArca–2009–87]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period to Receive Inbound Routes of Orders From Archipelago Securities LLC

September 30, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'') and Rule 19b–4 thereunder,[2] notice is hereby given that, on September 30, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II, 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 proposes to extend the pilot period of the Exchange's prior approvals to receive inbound routes of equities orders from Archipelago Securities LLC (''Arca Securities''), an NYSE Arca affiliated ETP Holder. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office 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 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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Arca Securities is the approved outbound order routing facility of the Exchange.[3] Arca Securities is also the approved outbound order routing facility of the New York Stock Exchange (''NYSE'') and NYSE Amex LLC (''NYSE Amex'').[4] The Exchange, through its wholly-owned subsidiary, NYSE Arca Equities, Inc., has also been previously approved to receive inbound routes of equities orders by Arca Securities in its capacity as an order routing facility of NYSE Amex and the NYSE.[5] The Exchange's authority to receive inbound routes of equities orders by Arca Securities was subject to a pilot period ending September 29, 2009. The Exchange hereby seeks to extend the previously approved pilot period (with the attendant obligations and conditions) for an additional 3 months, through December 31, 2009.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[6] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5)[7] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of equities orders from Arca Securities acting in its capacity as a facility of the NYSE and NYSE Amex, in a manner consistent with prior approvals and established protections. The Exchange believes that extending the previously approved pilot period for three months is of sufficient length to permit both the Exchange and the Commission to assess the impact of the Exchange's authority to receive direct inbound routes of equities orders via Arca Securities (including the attendant obligations and conditions).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–53238 (July 28, 2006), 71 FR 44758 (August 7, 2006) (order approving SR–NYSEArca–2006–13); *see also,* Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (SR–PCX–2005–90); *see also,* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25); *see also,* Securities Exchange Act Release No. 58681 (September 29, 2008), 73 FR 58285 (October 6, 2008) (order approving NYSEArca–2008–90).

[4] *See* Securities Exchange Act Release No. 34–55590 (April 5, 2007), 72 FR 18707 (April 13, 2007) (notice of immediate effectiveness of SR–NYSE–2007–29); *see also,* Securities and Exchange Act Release No. 34–58680 (September 29, 2008), 73 FR 58283 (October 6, 2008) (order approving SR–NYSE–2008–76). *See* Securities Exchange Act Release No. 59009 (November 24, 2008), 73 FR 73363 (December 2, 2008) (order approving SR–NYSEALTR–2008–07); *see also,* Securities and Exchange Act Release No. 34–59473 (February 27, 2009) 74 FR 9853 (March 6, 2009) (order approving SR–NYSEALTR–2009–18).

[5] *See* Securities Exchange Act Release No. 58681 (September 29, 2008), 73 FR 58285 (October 6, 2008) (order approving NYSEArca–2008–90); *see also,* Securities and Exchange Act Release No. 34–59010 (November 24, 2008), 73 FR 73373 (December 2, 2008) (order approving SR–NYSEArca–2008–130).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

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 solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange notes that the proposal will allow the Exchange to continue receiving inbound routes of equities orders from Arca Securities, in a manner consistent with prior approvals and established protections, while also permitting the Exchange and the Commission to assess the impact of the pilot.[12] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot period to be extended without interruption through December 31, 2009. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[13]

At any time within 60 days of the filing of such 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:

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–NYSEArca–2009–87 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–NYSEArca–2009–87. 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 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 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–NYSEArca–2009–87 and should be submitted on or before October 28, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

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BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission 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 of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] *Id.*

[12] *See* SR–NYSEArca–2009–87, Item 7.

[13] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60755; File No. SR–NYSE–2009–99]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending NYSE Rule 103B to: (1) Codify the Exchange's Existing Practice That Renders Designated Market Marker Units Ineligible To Interview for Securities That Are Directly Related to the Performance or Credit of Any of the DMM's Affiliated Entities; (2) Define ''Related Security'' for Purposes of NYSE Rule 103B; (3) Provide That all Related Securities Listed Under Section 703.19 of the Exchange's Listed Company Manual Will Be Automatically Assigned to the Designated Market Maker Unit; (4) Define Repackaged Security for Purposes of NYSE Rule 103B, and Provide That Repackaged Securities are Allocated Through the Allocation Process Pursuant to NYSE Rule 103B

September 30, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 25, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II 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.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 103B (''Security Allocation and Reallocation'') to: (1) Codify the Exchange's existing practice that renders Designated Market Marker (''DMM'') units ineligible to interview for securities that are directly related to the performance or credit of any of the DMM's affiliated entities; (2) define ''related security'' (''Related Security'') for purposes of NYSE Rule 103B; (3) provide that all Related Securities listed under Section 703.19 of the Exchange's Listed Company Manual will be automatically assigned to the Designated Market Maker unit (''DMM unit'') that is assigned the related equity security unless the issuer affirmatively requests the Related Security be allocated pursuant to NYSE Rule 103B, Section III; (4) define repackaged security (''Repackaged Security''), for purposes of NYSE Rule 103B, and provide that Repackaged Securities are allocated through the allocation process pursuant to NYSE Rule 103B, Section III; and (5) include inadvertently omitted rule text as well as make conforming changes to the rule text. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The New York Stock Exchange LLC (''NYSE'' or ''Exchange'') proposes to amend NYSE Rule 103B (''Security Allocation and Reallocation'') to: (1) Codify the Exchange's existing practice that renders Designated Market Maker (''DMM'') units ineligible to interview for securities that are directly related to the performance or credit of any of its affiliated entities; (2) define ''Related Security'' for purposes of NYSE Rule 103B; (3) provide that all Related Securities listed under Section 703.19 of the Exchange's Listed Company Manual (''Manual'') will be automatically assigned to the DMM unit that is assigned the related equity security unless the issuer affirmatively requests the Related Security be allocated pursuant to NYSE Rule 103B, Section III; (4) define ''Repackaged Security,'' for purposes of NYSE Rule 103B, and provide that Repackaged Securities are allocated through the allocation process pursuant to NYSE Rule 103B, Section III; and (5) include inadvertently omitted rule text as well as make conforming changes to the rule text.

I. Background

A. Listing of ''Other Securities''

Section 703.19 of the Manual (''Other Securities'') is the listing standard pursuant to which the NYSE lists any securities that do not qualify for listing under any of the standards specific to securities of a particular class. The general categories of securities that are currently listed under Section 703.19 are: (1) Capital securities; (2) retail debt securities; (3) mandatory convertible securities; and (4) Repackaged Securities. These securities may be issued by listed companies and their affiliated entities as well as qualified non-listed companies and their affiliated entities.

Capital securities are hybrid securities with characteristics of both debt and preferred stock. Generally, these securities pay regular dividend or interest payments and have very long maturities or are perpetual in nature. Capital securities may be issued directly by the listed company or a subsidiary thereof, or by a trust which holds debt of the company or its subsidiary, such as trust preferred securities.

Mandatory convertible securities are hybrid securities that entitle the holder to periodic payments on the amount invested until a specified conversion date, at which time the security converts into shares of the listed company according to a disclosed formula. Mandatory convertibles typically mature in 3–5 years.

Retail debt securities are corporate debt securities that are assigned to a DMM unit for trading (as opposed to trading on NYSE Bonds), typically with face amounts of $50, $25 or $10. Retail debt securities pay a fixed rate of interest and typically have long maturity dates of 30+ years.

Repackaged Securities are issued by a special purpose entity which is established for the purpose of issuing such securities and using the proceeds to purchase debt or preferred equity securities. Repackaged Securities represent an undivided beneficial interest in the debt or preferred equity securities held by the special purpose entity. These securities also pay interest (either fixed or floating) and typically have long maturity dates of 30+ years.

B. Assignment of ''Other Securities'' to DMM Units

NYSE Rule 103B governs the allocation of securities to a qualified DMM unit when: (1) A security is to be initially listed on the Exchange; and (2) a security previously assigned to a DMM member organization must be re-assigned.[4]

The allocation of securities that are related to initially listed securities is governed by NYSE Rule 103B, Section VI, entitled ''Policy Notes.'' Pursuant to the provisions of the rule, the issuer may choose whether to have its related security[5] assigned to the DMM unit responsible for trading its listed equity security or referred for allocation through the formal allocation process and then must advise the Exchange of that decision.

In contrast, warrants on the Exchange are automatically assigned to the DMM unit trading the underlying security unless the listed company specifically requests the warrant be referred for allocation through the formal allocation process.[6]

Regardless of the method of allocation, current NYSE practice restricts DMM units from interviewing to be the assigned DMM unit or being allocated a security that is directly related to the performance or credit of any of its affiliated entities. DMMs units are not, however, restricted from interviewing to be the assigned DMM unit or being allocated a Repackaged Security issued by an affiliated entity because such products have no direct relation to the performance or credit of the issuing entity. However, if that Repackaged Security is based on an underlying debt security of an affiliated entity of the DMM unit, the DMM unit will be precluded from interviewing to be the assigned DMM unit or being allocated the Repackaged Security based on the underlying debt security of the affiliated entity of such DMM unit. Neither practice is currently codified in NYSE Rules.

[4] *See* NYSE Rule 103B, Section III.

[5] NYSE Rule 103B, Section VI, currently does not provide a definition of the term ''related security.''

[6] *See* NYSE Rule 103B, Section VI(A)(2).

II. Proposed Amendments

The Exchange proposes to clarify and streamline the allocation process for securities listed under Section 703.19 of the Manual. Specifically, the Exchange seeks to include a definition of ''Related Security'' in proposed NYSE Rule 103B, Section VI(A)(2) and to set forth allocation procedures for Related Securities. For purposes of this rule, the term ''Related Security'' shall be defined as: (i) Any security listed on the Exchange issued by a company whose common equity securities are listed on the Exchange, other than such common equity securities; and (ii) any security listed on the Exchange by any issuer affiliated with a company whose common equity securities are listed on the Exchange. Related Securities of either a listed company whose common equity securities are listed on the Exchange or of an affiliated entity of such listed company include, but are not limited to, securities listed under NYSE Listed Company Manual Section 703.19 (except for Repackaged Securities).

The Exchange further proposes to amend Section VI of NYSE Rule 103B to have Related Securities allocated in the same manner as warrants listed on the Exchange. Pursuant to proposed Section VI(A)(6) of NYSE Rule 103B, the Exchange will automatically assign the Related Security to the DMM unit that trades the related equity security unless the issuer or affiliated entity affirmatively requests to have the Related Security assigned to a DMM unit through the formal allocation process as set forth in NYSE Rule 103B, Section III. The current rule which requires issuers to make a determination in this regard, places an unnecessary burden on issuers of Related Securities because an issuer may create and list multiple Related Securities throughout the year. The need for the issuer to advise the Exchange of its determination creates potential time delay in the allocation and trading of Related Securities on the Exchange. The Exchange believes that the proposed process will alleviate this burden and time delay.

Further, pursuant to proposed Section VI(A)(7) of NYSE Rule 103B, if an issuer or any affiliated entity does not have an equity security listed on the Exchange, but does have a security listed on the Exchange that was approved for original listing under Section 703.19 of the Manual (except for a Repackaged Security), the Exchange will automatically assign any security subsequently listed under Section 703.19 (except for a Repackaged Security) of that issuer or affiliated entity to the DMM unit trading the previously listed security, unless the issuer or affiliated entity affirmatively requests to have any such subsequently listed security assigned to a DMM unit through the formal allocation process as set forth in NYSE Rule 103B, Section III.

To further alleviate burdens on the issuer related to the allocation of Related Securities, the Exchange proposes to amend Section VI(A)(4) of NYSE Rule 103B to provide that DMM units that are ineligible to receive a new allocation due to their failure to meet the requirements of Rule 103B, Section II(D) and (E) will remain eligible to receive the securities of a spin-off company and of Related Securities and Repackaged Securities where the DMM unit trades the related common equity security. The Exchange believes that this is appropriate because re-assigning the Related Securities of an equity security currently being traded by the DMM unit is disadvantageous and burdensome to the issuer that has already established a relationship with the DMM unit. The Exchange believes that most issuers prefer to have one point of contact to obtain information about the trading activity in the issuer's securities. Assignment of a Related Security to another DMM unit increases the administrative burdens on the issuer in obtaining trading information related to its securities. If the issuer chooses, it still may request to have the Related Security assigned to a DMM unit through the formal allocation process as set forth in NYSE Rule 103B, Section III.

Additionally, the Exchange proposes to codify in Section II (''Eligibility for Allocation'') of NYSE Rule 103B, subparagraph (K), its existing practice of prohibiting a DMM unit from interviewing to be the assigned DMM unit or being allocated a security that is directly related to the performance or credit of any of its affiliated entities. The Exchange will not, however, prohibit a DMM unit from acting as the DMM unit for Repackaged Securities issued by an affiliated entity that bear no direct relation to the performance or credit of the issuing entity or any other affiliate of the DMM unit.

Example #1: Bank A is the parent company of DMM unit Y.

Bank A creates a Repackaged Security representing interests in an underlying debt security of XYZ Company that is not related to Bank A or DMM unit Y. DMM unit Y will not be precluded from interviewing to be the assigned DMM unit or being allocated the Repackaged Security based on the underlying debt security of XYZ Company.

Example #2: However, assuming the same scenario above, Bank N, which is not affiliated with Bank A or DMM unit Y, creates a Repackaged Security based on an underlying debt security of Bank A. DMM unit Y will be precluded from interviewing to be the assigned DMM unit or being allocated the Repackaged Security created by Bank N based on the underlying debt security of Bank A.

In Example #1, DMM unit Y will not be precluded from interviewing to be the assigned DMM unit or being allocated the Repackaged Security based on the underlying debt security of XYZ Company because that Repackaged Security bears no direct relation to the performance or credit of Bank A. The Exchange notes that the Repackaged Security will be fully funded at the time of creation and the issuer of the Repackaged Security is not reliant on the continued solvency of Bank A to be able to comply with all of its obligations to the holders of the Repackaged Securities.

In Example #2, DMM unit Y will be precluded from interviewing to be the assigned DMM unit or being allocated to trade the Repackaged Security because that Repackaged Security was created based on an underlying debt security of Bank A and therefore has a direct relation to the credit and performance of Bank A.

The Exchange also seeks to amend NYSE Rule 103B to include inadvertently omitted rule text. Specifically, Section VI(A) governs spin-offs, listing of related companies and listing of related securities. However, the words ''related security'' are inadvertently omitted from the actual text of the rule. Through this filing, the Exchange seeks to correct this oversight and include the words ''related security'' in the body of NYSE Rule 103B, Section VI(A). Finally, the Exchange seeks to amend NYSE Rule 103B, Section VI(2) regarding allocation of warrants. In order to keep the language consistent through this section, the Exchange proposes to replace the word ''traded' with the word ''listed.''

III. Conclusion

The Exchange submits that the amendments proposed herein are reasonable and necessary to clarify the operation of NYSE Rule 103B and streamline the allocation process.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5),[7] which requires

[7] 15 U.S.C. 78f(b)(5).

that an exchange have rules that are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. The Exchange believes that the proposed amendments are consistent with these objectives because the changes will alleviate impediments in the administrative process of assigning Related Securities to DMM units which ultimately facilitates the fair and orderly trading in those securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)[8] of the Act and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6) under the Act[10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay[12] is consistent with the protection of investors and the public interest because such waiver will permit the Exchange to avoid any continuing confusion regarding the application of NYSE Rule 103B, as well as immediately allow a Related Security to be assigned to the DMM unit that is assigned the related equity security, unless the issuer affirmatively requests the Related Security to be allocated pursuant to NYSE Rule 103B.

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:

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–NYSE–2009–99 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–NYSE–2009–99. 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 Section, 100 F Street, NE., Washington, DC 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *http://www.nyse.com*. 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–NYSE–2009–99 and should be submitted on or before October 28, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–24085 Filed 10–6–09; 8:45 am]

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[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19–b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] *Id.*

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60758; File No. SR–NYSEAmex–2009–65]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Extending the Operation of Its New Market Model Pilot Until the Earlier of Securities and Exchange Commission Approval To Make Such Pilot Permanent or November 30, 2009

October 1, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 30, 2009, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 proposes to extend the operation of its New Market Model Pilot until the earlier of Securities and Exchange Commission approval to make such pilots [*sic*] permanent or November 30, 2009. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the operation of its New Market Model Pilot (''NMM Pilot'') that was adopted pursuant to its merger with the New York Stock Exchange LLC.[4] The NMM Pilot was approved by the Securities and Exchange Commission (''SEC'' or ''Commission'') to operate until October 1, 2009. The Exchange seeks to extend the operation of the NMM Pilot from October 1, 2009, until the earlier of Securities and Exchange Commission approval to make such pilot permanent or November 30, 2009.

The Exchange notes that parallel changes are proposed to be made to the rules of New York Stock Exchange LLC.[5]

Background [6]

In December 2008, NYSE Amex implemented significant changes to its market rules, execution technology and the rights and obligations of its market participants all of which were designed to improve execution quality on the Exchange. These changes are all elements of the Exchange's enhanced market model that it implemented through the NMM Pilot.

As part of the NMM Pilot, NYSE Amex eliminated the function of specialists on the Exchange creating a new category of market participant, the Designated Market Maker or DMM.[7] The DMMs, like specialists, have affirmative obligations to make an orderly market, including continuous quoting requirements and obligations to re-enter the market when reaching across to execute against trading interest. Unlike specialists, DMMs have a minimum quoting requirement [8] in their assigned securities and no longer have a negative obligation. DMMs are also no longer agents for public customer orders.[9]

In addition, the Exchange implemented a system change that allowed DMMs to create a schedule of additional non-displayed liquidity at various price points where the DMM is willing to interact with interest and provide price improvement to orders in the Exchange's system. This schedule is known as the DMM Capital Commitment Schedule (''CCS'').[10] CCS provides the Display Book® [11] with the amount of shares that the DMM is willing to trade at price points outside, at and inside the Exchange BBO. CCS interest is separate and distinct from other DMM interest in that it serves as the interest of last resort.

The NMM Pilot further modified the logic for allocating executed shares among market participants having trading interest at a price point upon execution of incoming orders. The modified logic rewards displayed orders that establish the Exchange's best bid or Exchange's best offer. During the operation of the NMM Pilot orders or portions thereof that establish priority [12] retain that priority until the portion of the order that established priority is exhausted. Where no one order has established priority, shares are distributed among all market participants on parity.

The NMM Pilot is scheduled to end operation on October 1, 2009, or such earlier time as the Commission may determine to make the rules permanent. The Exchange is currently preparing a rule filing seeking permission to make the above described changes permanent but does not expect that filing to be completed and approved by the Commission before October 1, 2009.

Proposal To Extend the Operation of the NMM Pilot

NYSE Amex established the NMM Pilot to provide incentives for quoting, to enhance competition among the existing group of liquidity providers and add a new competitive market participant. The Exchange believes that the NMM Pilot allows the Exchange to provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. As such, the Exchange believes that rules governing the NMM Pilot should be made permanent. Through this filing the Exchange seeks to extend the current operation of the NMM Pilot until November 30, 2009, in order to allow the Exchange to formally submit a filing to the Commission to convert the pilot rules to permanent rules.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (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, to remove impediments to and perfect the

[4] NYSE Euronext acquired The Amex Membership Corporation (''AMC'') pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the ''Merger''). In connection with the Merger, the Exchange's predecessor, the American Stock Exchange LLC (''Amex''), a subsidiary of AMC, became a subsidiary of NYSE Euronext called NYSE Alternext US LLC. Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–NYSE–2008–60 and SR–Amex–2008–62) (approving the Merger). Subsequently NYSE Alternext US LLC was renamed NYSE Amex LLC and continues to operate as a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the ''Act''). NYSE Alternext US LLC was subsequently renamed NYSE Amex LLC. *See* Securities Exchange Act Release No. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR–NYSEALTR–2009–24).

[5] *See* SR–NYSE–2009–100.

[6] The information contained herein is a summary of the NMM Pilot. For a fuller description of the pilot *see* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46).

[7] *See* NYSE Amex Equities Rule 103.

[8] *See* NYSE Amex Equities Rule 104.

[9] *See* NYSE Amex Equities Rule 60; *See also* 104 and 1000.

[10] *See* NYSE Amex Equities Rule 1000.

[11] The Display Book ® system is an order management and execution facility. The Display Book system receives and displays orders to the DMMs, contains the order information, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

[12] *See* NYSE Amex Equities Rule 72(a)(ii).

mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the instant filing is consistent with these principles because the NMM Pilot provides its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. Moreover, the instant filing requesting an extension of the NMM Pilot will permit adequate time for: (i) The Exchange to prepare and submit a filing to make the rules governing the NMM Pilot permanent rules; (ii) public notice and comment; and (iii) completion of the 19b–4 approval process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6)[16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that because the pilot program will expire on October 1, 2009, waiver of the operative delay is necessary so that no interruption of the pilot program will occur. In addition, the Commission notes that the Exchange has requested extensions of the pilot to allow the Exchange time to formally request permanent approval for the pilot. Therefore, the Commission designates the proposal operative upon filing.[18]

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:

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–NYSEAmex–2009–65 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–NYSEAmex–2009–65. 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 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 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–NYSEAmex–2009–65 and should be submitted on or before October 28, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–24084 Filed 10–6–09; 8:45 am]

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[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission 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 of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60752; File No. SR–NYSE–2009–101]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period To Receive Inbound Routes of Orders From Archipelago Securities LLC

September 30, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the

[1] 15 U.S.C. 78s(b)(1).

''Act'') and Rule 19b–4 thereunder,[2] notice is hereby given that, on September 30, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II, 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 proposes to extend the pilot period of the Exchange's prior approvals to receive inbound routes of certain equities orders from Archipelago Securities LLC (''Arca Securities''), an NYSE affiliated member. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Arca Securities is the approved outbound order routing facility of the Exchange.[3] Arca Securities is also the approved outbound order routing facility of NYSE Arca and NYSE Amex LLC (''NYSE Amex'').[4] The Exchange has also been previously approved to receive inbound routes of equities orders by Arca Securities in its capacity as an order routing facility of NYSE Arca and NYSE Amex.[5] The Exchange's authority to receive inbound routes of equities orders by Arca Securities was subject to a pilot period ending September 29, 2009. The Exchange hereby seeks to extend the previously approved pilot period (with the attendant obligations and conditions) for an additional 3 months, through December 31, 2009.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[6] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5)[7] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of equities orders from Arca Securities acting in its capacity as a facility of the NYSE Arca and NYSE Amex, in a manner consistent with prior approvals and established protections. The Exchange believes that extending the previously approved pilot period for three months is of sufficient length to permit both the Exchange and the Commission to assess the impact of the Exchange's authority to receive direct inbound routes of equities orders via Arca Securities (including the attendant obligations and conditions).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange notes that the proposal will allow the Exchange to continue receiving inbound routes of equities orders from Arca Securities, in a manner consistent with prior approvals and established protections, while also permitting the Exchange and the Commission to assess the impact of the pilot.[12] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot period to be extended without interruption through December 31, 2009. For this reason, the Commission

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–55590 (April 5, 2007), 72 FR 18707 (April 13, 2007) (notice of immediate effectiveness of SR–NYSE–2007–29); *see also,* Securities and Exchange Act Release No. 34–58680 (September 29, 2008), 73 FR 58283 (October 6, 2008) (order approving SR–NYSE–2008–76).

[4] *See* Securities Exchange Act Release No. 34–53238 (July 28, 2006), 71 FR 44758 (August 7, 2006) (order approving SR–NYSEArca–2006–13); *see also,* Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (SR–PCX–2005–90); *see also,* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25); *see also,* Securities Exchange Act Release No. 58681 (September 29, 2008), 73 FR 58285 (October 6, 2008) (order approving NYSEArca–2008–90). *See* Securities Exchange Act Release No. 59009 (November 24, 2008), 73 FR 73363 (December 2, 2008) (order approving SR–NYSEALTR–2008–07); *see also,* Securities and Exchange Act Release No. 34–59473 (February 27, 2009), 74 FR 9853 (March 6, 2009) (order approving SR–NYSEALTR–2009–18).

[5] *See* Securities and Exchange Act Release No. 34–58680 (September 29, 2008), 73 FR 58283 (October 6, 2008) (order approving SR–NYSE–2008–76); *see* Securities Exchange Act Release No. 59011 (November 24, 2008), 73 FR 73360 (December 2, 2008) (order approving SR–NYSE–2008–122); *see also* Securities and Exchange Act Release No. 60255 (July 7, 2009), 74 FR 34065 (July 14, 2009) (order approving SR–NYSE–2009–58).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission 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 of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] *Id.*

[12] *See* SR–NYSE–2009–101, Item 7.

designates the proposed rule change to be operative upon filing with the Commission.[13]

At any time within 60 days of the filing of such 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:

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–NYSE–2009–101 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–NYSE–2009–101. 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 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 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–NYSE–2009–101 and should be submitted on or before October 28, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–24081 Filed 10–6–09; 8:45 am]

BILLING CODE 8011–01–P

[13] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2009–0310; Notice No. 09–05]

Advisory Guidance; Transportation of Batteries and Battery-Powered Devices

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Safety advisory.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Federal Aviation Administration (FAA) are alerting shippers and carriers to the importance of transporting lithium batteries safely. PHMSA and FAA are concerned that many persons who ship lithium batteries do not recognize the hazards posed by these batteries during transportation. We are issuing this advisory guidance to (1) Inform persons of recent aviation incidents involving fires aboard both passenger and cargo aircraft and the potential hazards that shipments of lithium batteries may present while in transportation, (2) provide information concerning the current requirements for the transportation of lithium batteries and (3) inform persons of the actions we have taken to date and plan to take in the future to address the hazards of these batteries.

SUPPLEMENTARY INFORMATION:

I. Background

Lithium batteries are considered hazardous materials in transportation because they present both chemical (*e.g.,* flammable electrolytes) and electrical hazards. If not safely packaged and handled when transported, lithium batteries can become dangerous. Defective batteries or batteries that are misused, mishandled, improperly packaged, improperly stored, improperly manufactured, or overcharged can overheat and ignite and, once ignited, fires can be especially difficult to extinguish. Overheating has the potential to create a thermal runaway, a chain reaction leading to self-heating and release of the battery's stored energy. Fires in aircraft can result in catastrophic events presenting unique challenges not encountered in other transport modes.

II. Recent Transportation Incidents

Since 1991, we have identified over 40 air transport-related incidents involving lithium batteries and devices powered by lithium batteries. A list of these incidents can be found on the FAA Web site at: *http://www.faa.gov/about/office_org/headquarters_offices/ash/ash_programs/hazmat/aircarrier_info/media/Battery_incident_chart.pdf.* These incidents occurred aboard passenger aircraft and cargo aircraft, prior to loading batteries aboard an aircraft, and after batteries were transported by air. Many of the incidents were directly related to a lack of awareness of the required safety measures applicable to shipments of lithium batteries or because passengers failed to follow preventative measures to protect batteries from short circuit or damage.

- On September 9, 2009 a passenger flight declared an emergency after a passenger attempted to hand the flight attendant a carrier-provided personal electronic device (PED). The PED was dropped and upon impact with the cabin floor the battery pack sparked and began smoking. Two flight attendants extinguished the fire with water.
- On August 25, 2009 DOT received information related to a smoking and burning package that was discovered at a Medford, Massachusetts sorting facility. Upon inspection, the consignment was discovered to contain 30 individual batteries grouped together in six or seven battery packs. The package contained lithium batteries that were shipped as general cargo. There were no markings or labels on the outer package indicating the material was a hazardous material.
- On August 15, 2009 a package containing lithium ion batteries was found smoldering, and emitting smoke in a unit load device (ULD) in an aircraft loading facility in Taipei, Taiwan. The ULD had been carried from the Island of Macau. Personnel in the Taiwan facility responded quickly to extinguish the

smoldering fire before any open flames were seen. The packages were unmarked and the contents were noted on the invoice as ''electrical adapters.''

• On August 14, 2009 after landing the aircraft, the flight crew received a warning indicating smoke in the forward cargo compartment. Initial indications are that a fire originated with a shipment of approximately 1,000 e-cigarettes, each containing a lithium metal battery. There were no markings or labels indicating the materials posed a specific hazard or contained lithium batteries.

• On July 15, 2009 one of several related packages transported from Romulus, Michigan was discovered emitting smoke and smoldering upon arrival in Santo Domingo, Dominican Republic. Upon inspection, the package was found to contain numerous loose lithium-ion cell phone batteries haphazardly packed with no apparent measures to protect against short-circuits or overheating. Package documentation indicated, ''used batteries—non haz.''

III. Current Regulatory Requirements

The Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) include requirements for packaging, hazard communication and handling lithium batteries. For transportation by all modes, lithium batteries of all types and sizes must pass a series of tests outlined in the UN Manual of Tests and Criteria. These tests are designed to ensure the battery can withstand the conditions typically encountered in transportation. In addition, all batteries must be packaged to prevent short circuits, including movement that could lead to short circuits and damage to the batteries (*See* § 172.102(c) SP 188, 189 and § 173.185). The HMR also impose additional restrictions on the transport of lithium batteries in the air mode, including a limited prohibition on the transport of lithium metal batteries as cargo on board passenger aircraft (*See* § 172.102(c) SP A100). Additionally, damaged, defective or recalled lithium batteries (including those being returned to the manufacturer as part of a safety recall) should not be transported aboard aircraft. Recommended practices for preparing recalled batteries for ground transportation are set forth in ''DOT Guidance for the Safe Transportation of Recalled Lithium Batteries,'' available for download at *http://safetravel.dot.gov/downloads.html.*

While certain small lithium batteries and cells are afforded exceptions from some regulatory requirements, the cells and batteries must be separated or packaged in a manner to prevent short circuits (*See* § 172.102(c) SP 188 and 189). When a package contains multiple lithium cells or batteries, the package must be:

• Marked to indicate that it contains lithium batteries and that special procedures should be followed in the event the package is damaged;

• Accompanied by a document indicating that the package contains lithium batteries and special procedures should be followed in the event that the package is damaged;

• Capable of withstanding a 1.2 meter drop test in any orientation without damage to cells or batteries contained in the package, without shifting of the contents that would allow short circuits and without release of package contents; and

• Not more than 30 kg (66 pounds) gross mass.

In addition all electrical devices that are likely to create sparks or generate a dangerous quantity of heat are forbidden for transportation unless packaged in a manner that precludes such an occurrence (See § 173.21).

IV. Current and Future Efforts

To enhance understanding and compliance with the HMR, we initiated several public outreach efforts designed to connect with both the travelling public and the larger shipping community. Since 2007 we have published numerous safety advisories, created the SafeTravel Web site dedicated to providing information to the air travelling public on the safe transport of a variety of materials including lithium batteries and partnered with airlines, battery manufacturers and others to spread our safety message. Additionally, the PHMSA Hazardous Materials Safety Assistance Team initiated an outreach campaign. As part of this campaign, team members visited retailers and others involved in the production, distribution and sale of lithium batteries. During their visits, team members provided kits on how to provide information on the safe shipment of lithium batteries and encouraged those persons the team visited to include the SafeTravel link on their Web sites. In March 2009, DOT published ''Shipping Batteries Safely by Air; What You Need to Know,'' targeting infrequent shippers who may be unfamiliar with appropriate packing methods. This guide explains the regulations covering the classification, packaging and hazard communication requirements for the transportation of batteries shipped by aircraft in terms easy to understand.

Despite these outreach efforts, aviation incidents involving lithium batteries continue to occur. For example, the July 15, 2009 incident involved a shipment containing several thousand lithium ion cell phone batteries loosely placed into fiberboard packages, with no protection from short circuits and no package markings indicating the presence of lithium batteries. One of the packages was discovered emitting smoke after landing at its destination. These and similar incidents are the cause of significant concern by PHMSA and FAA. Documents included with the shipment indicated the packages contained non-hazardous used batteries.

Non-compliance with the transportation requirements for lithium batteries poses serious safety consequences. Therefore, we are again increasing our efforts to reduce this risk by stepping up our already aggressive enforcement of the safety standards and reenergizing our awareness and outreach efforts. Accordingly, we are publishing this safety advisory to further promote awareness of the ongoing safety concern and ensure that shippers and carriers are aware of the risks associated with the transportation of lithium batteries, the current regulatory requirements applicable to such transportation, and that regulatory violations will be prosecuted to the maximum extent permitted under the law. We are particularly concerned with undeclared shipments of lithium batteries and we will be focusing on discovering these shipments and those persons responsible for offering them in transportation. We encourage anyone with information on those engaged in this practice to bring them to our attention through our online complaints Web site at: *http://www.phmsa.dot.gov/phmsa-ext/feedback/hazmatComplaintsRegsViolationsForm.jsp* or by calling the Hazardous Materials Information Center at: 1–800–467–4922.

Persons who violate the HMR may be subject to significant civil penalties and/or criminal fines and imprisonment. In determining the amount of a civil penalty the following factors will be determined: (1) The nature, circumstances, extent, and gravity of the violation; (2) with respect to the violator, the degree of culpability, and history of prior violations, the ability to pay, and any effect on the ability to continue to do business; and (3) other matters that justice requires. Maximum civil penalties may be imposed of up to $50,000 per violation or $100,000 per violation if a death, serious illness, or severe injury occurs to a person or substantial destruction of property.

Potential criminal penalties include fines of up to $500,000 and/or ten years in jail. In a recent enforcement case, PHMSA assessed a total civil penalty of $360,000 for multiple violations of the HMR relating to the improper shipment of used batteries for recycling or disposal. To date, FAA has closed over 75 investigations concerning battery violations observed in air transport and has collected over $1,000,000 in civil penalties.

More detailed information on the requirements in the HMR governing the shipment of batteries and additional guidance are available on DOT's Hazmat Safety Web site: *http://www.phmsa.dot.gov/hazmat.* The HMR are also accessible through our Web site, and answers to specific questions may be obtained from the Hazardous Materials Information Center at 1–800–467–4922 (in Washington, DC, call 202–366–4488).

Issued in Washington, DC, on September 29, 2009.

Theodore L. Willke,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. E9–24184 Filed 10–6–09; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on United States Highway 281 in Texas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, United States Highway 281 (US 281), beginning at Redland Road and heading north to north of Marshall Road in Bexar County in the State of Texas. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before April 5, 2010. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Salvador Deocampo, District Engineer, Federal Highway Administration, 300 E. 8th Street, Rm. 826, Austin, Texas 78701; telephone: (512) 536–5950; e-mail: *salvador.deocampo@fhwa.dot.gov*. The FHWA Texas Division Office's normal business hours are 7:45 a.m. to 4:15 p.m. You may also contact Ms. Dianna Noble, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701; *telephone:* (512) 416–2734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Texas: US 281, beginning at Redland Road and heading north to north of Marshall Road in Bexar County in the State of Texas. The project will be approximately 3.1 miles long and will construct ''Super Street'' intersections (also known as restricted crossing U-turn (RCUT) intersections) at the intersections of US 281 and Encino Rio (modified RCUT), Evans Road, Stone Oak Parkway and Marshall Road. The ''Super Street'' intersection prohibits cross-street traffic from going straight through or turning left at the divided highway intersection. Cross-street traffic must turn right and then access a U-turn to proceed in the desired direction. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Categorical Exclusion (CE) for the project, dated September 2009, and in other documents in the FHWA project records. The CE and other documents in the FHWA project records file are available by contacting the FHWA or the Texas Department of Transportation at the addresses provided above. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. Air: Clean Air Act, 42 U.S.C. 7401–7671(q).

3. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) et seq.]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)].

6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. Wetlands and Water Resources: Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319).

8. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: September 30, 2009.

Salvador Deocampo,

District Engineer, Austin, Texas.

[FR Doc. E9–24154 Filed 10–6–09; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Funding Availability and Solicitation of Applications for Grants Under the Railroad Rehabilitation and Repair Grant Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of funding availability; solicitation of applications.

SUMMARY: Under this Notice, the FRA encourages interested State departments of transportation to submit applications for grants to repair and rehabilitate Class II and Class III railroad infrastructure damaged by hurricanes, floods, and other natural disasters in areas for which the President declared a major disaster after January 1, 2008, under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974.

DATES: FRA will begin accepting grant applications 10 days after publication of this Notice of Funding Availability in

the **Federal Register**. Applications may be submitted until close of business December 20, 2009.

ADDRESSES: Applications for grants under this Program must be submitted electronically to ''Grants.gov'' at *http://www.grants.gov.* Grants.Gov allows organizations to find and apply electronically for competitive grant opportunities from all Federal grant-making agencies. Any State wishing to submit an application pursuant to this notice should immediately initiate the process of registering with Grants.Gov. Please confirm all Grants.gov submissions by sending an e-mail to *freightrail@dot.gov.*

For application materials that an applicant is unable to submit via Grants.Gov (such as oversized engineering drawings), applicants may submit an original and two (2) copies to the Federal Railroad Administration at the following address: Federal Railroad Administration, Attention: Alice Alexander, Office of Railroad Development, 1200 New Jersey Avenue, SE., Mail Stop 20, Washington, DC 20590, by close of business December 20, 2009.

Due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, applicants are encouraged to use other means to assure timely receipt of materials.

FOR FURTHER INFORMATION CONTACT: Alice Alexander, Office of Railroad Development, Federal Railroad Administration, 1200 New Jersey Avenue, SE., W36–410, Washington, DC 20590; *Phone:* (202) 493–6363; *Fax:* (202) 493–6333.

SUPPLEMENTARY INFORMATION: The collection of information associated with the Railroad Rehabilitation and Repair grant program was approved previously by the Office of Management and Budget under OMB No. 2130–0580. The FRA is seeking renewed approval from OMB for this collection of information, which currently expires on October 31, 2009.

There is approximately $5,000,000 remaining in the Railroad Rehabilitation and Repair Grant Program (Catalog of Federal Domestic Assistance (CFDA) Program Number 20.314) which was originally supported with up to $20,000,000 of Federal funds provided to FRA as part of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110–329, September 30, 2008.) Following the November 6, 2008, Notice of Funding Availability (NOFA), applications were received and evaluated according to criteria described in the notice. On May 27, 2009, the FRA selected 12 projects totaling approximately $15 million under this program. FRA will start accepting applications after publishing this NOFA in the **Federal Register** for the approximately $5,000,000 remaining.

Funds provided under this Program may constitute no more than 80 percent of the total cost of a selected project, with the remaining cost funded from other non-Federal sources. FRA anticipates awarding grants to multiple eligible participants. Eligible projects include repairs and rehabilitation to Class II and Class III railroad infrastructure damaged by hurricanes, floods, and natural disasters that are located in counties that have been identified in a Disaster Declaration for Public Assistance issued by the President between January 1, 2008 and October 7, 2009. (*http://www.fema.gov/news/disasters.fema#sev1*).

Class II and Class III railroad infrastructure eligible for repair and rehabilitation consists of railroad rights-of-way, bridges, signals and other infrastructure which are part of the general railroad system of transportation and primarily used by railroads to move freight traffic. Section 24312 (Labor Standards) of Title 49, United States Code, applies to grantees assisted under this Program. The grantees must exhaust all other Federal and State resources prior to seeking assistance under this Program. FRA anticipates that no further public notification will be made with respect to soliciting grant applications and selecting grantees under this Program.

Purpose: Since 2008, the President has made 113 major disaster declarations related to hurricanes, floods, and other natural disasters. Funds provided under this Program will assist Class II and Class III railroads rebound from these disasters declared in 2008 and October 7, 2009.

Authority: The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110–329, September 30, 2008).

Funding: The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (the Act) provided $20,000,000, to remain available until expended. The Act directs the Secretary of Transportation to competitively award grants covering up to 80 percent of project costs, with the remaining project costs provided in non-Federal cash, equipment, or supplies. Further, the Act allows the Secretary to retain up to one-half of 1 percent of the funds to fund the oversight by FRA of the design and implementation of projects funded by these grants. The funding provided for these grants will be made available to the grantee(s) on a reimbursable basis. It is anticipated that the available funding could support projects proposed by multiple applicants. FRA may choose to award a grant or grants in any amount within the limit of the available funds.

Following the November 6, 2008, NOFA, applications were received and evaluated according to criteria described in the notice. On May 27, 2009, the FRA selected 12 projects totaling approximately $15 million under this program. FRA will start accepting applications after publishing this NOFA in the **Federal Register** for the approximately $5 million remaining in this program.

Schedule for Rehabilitation and Repair Grant Program: FRA will begin accepting grant applications within ten days after the publication of the NOFA in the **Federal Register**. All applications must be received by the close of business December 20, 2009 deadline.

Eligible Participants: The department of transportation of any eligible State may apply for funding under this notice, provided that the applicant State has an eligible project and has exhausted all other Federal and State resources prior to seeking assistance under this Program.

Eligible Projects: To be eligible for funding under this Program, a project must include the rehabilitation and repair of Class II or Class III railroad infrastructure damaged by hurricanes, floods, and other natural disasters in counties for which the President declared a major disaster under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistant Act of 1974 between January 1, 2008, and October 7, 2009. Rehabilitation or repairs must be made to rights-of-way, bridges, signals, and other infrastructure which are part of the general railroad system of transportation. In addition, the railroad infrastructure replaced or rehabilitated must be primarily used to move freight traffic.

Funding Period: Funds will be available under this program only for the reimbursement of costs incurred after a major disaster declaration in calendar year 2008 and 2009 until the publication of this NOFA in the counties covered by such a declaration.

Selection Criteria: FRA will consider the following selection factors in evaluating applications for grants under this Program:

1. The inability of the Class II or Class III railroad to fund the project without Federal grant funding.

2. The effects on rail operations, specifically the movement of freight, of the proposed rehabilitation or repair.

3. The likelihood of continued railroad operations on the track that is proposed to be repaired or rehabilitated for more than three years after project work is complete.

Requirements for Grant Applications: The following points describe the minimum content which will be required in grant applications. These requirements may be satisfied through a narrative statement submitted by the applicant and supported by spreadsheet documents, tables, drawings, and other materials, as appropriate. Each grant application must:

1. Designate a point of contact for the applicant and provide his or her name, title, and contact information, including phone number, mailing address and e-mail address. The point of contact must be an employee of the applicant.

2. Include an explanation of why the project is an eligible project and a thorough discussion of how the project meets all of the selection criteria, as listed below:

a. The inability of the Class II or Class III railroad to fund the project without Federal grant funding.

b. The effects on rail operations, specifically the movement of freight, of the proposed rehabilitation or repair.

c. The likelihood of continued railroad operations on the track that is proposed to be repaired or rehabilitated for more than three years after project work is complete.

3. Identify all funds (including amounts) received from other Federal and/or State disaster relief programs that directly benefited the project(s) for which funds are being sought under this Program, or demonstrate that all such efforts at procuring such funding have failed or been exhausted. This demonstration should include a recitation of specific Federal and State disaster relief programs investigated by the applicant. Among the Federal programs which the applicant might investigate are those administered by the Federal Emergency Management Administration, the Small Business Administration, the Federal Highway Administration, and the U.S. Department of Agriculture.

4. Include the completed forms:

(a) Standard Form 424, ''Application for Federal Assistance,'' Standard Form 424C, ''Budget Information for Construction Programs,'' Standard Form 424D, ''Assurances—Construction Programs.''

(b) The relevant sections of the most recent audit performed in compliance with OMB Circular A–133, if available. Information on Circular A–133 can be found at *http://www.whitehouse.gov/omb/circulars/a133/a133.html.*

(c) Signed copies of FRA's Additional Assurances and certifications, available at *http://www.fra.dot.gov/downloads/admin/assurancesandcertifications.pdf.*

5. Include a detailed description of the scope of work, budget and schedule and ensure that they are consistent. Describe the proposed project's physical location, mile-post limits, and include any drawings, plans, or schematics that have been prepared relating to the proposed project.

If funding requested under this Program is only going to support a portion of the overall rehabilitation and repair of the applicant's project, describe the complete project, and specify in detail which portion will involve Federal funding. In addition, FRA strongly encourages applicants to estimate complete project costs and explain how the Class II and Class III railroad on whose property the project is located will finance the complete project.

6. The budget for the cost of the project should, to the extent possible, be separated into the following categories: (1) Administrative; (2) Engineering fees; (3) Demolition and removal; (4) Construction labor, supervision, and management; (5) Equipment; (6) Materials, by type (*e.g.* ties, rail, ballast, signals, and switches); (7) Contingencies; and (8) Inspection fees. Costs may be reimbursed as long as expenditures were incurred after the date of the natural disaster.

7. Describe the source and amount of non-Federal funds, broken down by cash, equipment, or supplies.

8. Describe proposed project implementation and include an overview of project management arrangements.

9. For the railroad(s) operating on the infrastructure proposed to be rehabilitated or repaired, describe the frequency of service, axle-load limits, and estimated railroad gross ton miles for the first full year after completion of the project.

10. Provide an overview of all work done to date to rehabilitate and repair damage caused by the natural disaster.

11. Describe the status or progress toward completing any environmental documentation or clearance for the proposed project under the National Environmental Policy Act, the National Historic Preservation Act, section 4(f) of the DOT Act, or other applicable Federal or State environmental impact assessment laws. FRA's Procedures for Considering Environmental Impacts (64 FR 28545, May 26, 1999) describes FRA's process for the assessment of environmental impacts and the preparation and processing of appropriate documents. That document is available online at *http://www.fra.dot.gov/us/content/166.* For projects that may be categorically excluded from detailed environmental review, as discussed in FRA's Procedures Section 4(c), categorical exclusion worksheets are available at: *http://www.fra.dot.gov/us/content/1606.* Applicants are encouraged to contact FRA as early as possible to discuss the environmental review process.

Format: Excluding spreadsheets, drawings, and tables, the narrative statement for grant applications may not exceed ten pages in length. With the exclusion of oversized engineering drawings (which may be submitted in hard copy to the FRA at the address indicated above), all application materials should be submitted as attachments through Grants.Gov. Spreadsheets consisting of budget or financial information should be submitted via Grants.Gov as Microsoft Excel (or compatible) documents.

Issued in Washington, DC, on September 30, 2009.

Mark E. Yachmetz,

Associate Administrator for Railroad Development.

[FR Doc. E9–24182 Filed 10–6–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Tacoma Narrows Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Request to Release Airport Property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Tacoma Narrows Airport under the provisions of section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before November 13, 2009.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Ms. Carol Suomi, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Seattle Airports District Office, 1601 Lind Ave SW., Suite 250, Renton, WA 98057.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Michael D. Esher, Airports/Ferry Administrator, Department of Public Works and Utilities, 9850 64th Street West, University Place, WA 98467.

FOR FURTHER INFORMATION CONTACT: Mr. Roman Piñon, Project Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Seattle Airports District Office, 1601 Lind Ave SW., Suite 250, Renton, WA 98057.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Tacoma Narrows Airport under the provisions of the AIR 21.

On July 6, 2009, the FAA determined that the request to release property at the Tacoma Narrows Airport submitted by Peninsula Metropolitan Park District (PenMet Parks) met the procedural requirements of the Federal Aviation Regulations, part 155. The FAA may approve the request, in whole or in part, no later than November 13, 2009.

The following is a brief overview of the request: The Tacoma Narrows Airport requests the release of 79.00 acres of non-aeronautical airport property to PenMet Parks, Gig Harbor/Pierce County, Washington. The purpose of this release is to allow PenMet Parks to own, manage and operate the Madrona Golf Course for the benefit of the public. The property will remain subject to the restrictions associated with the aviation reserve designation and will therefore; have no consequence to the airport.

Any person may inspect the request by appointment at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, inspect the application, notice and other documents germane to the application in person at the Tacoma Narrows Airport, 1202 26th Ave NW., Gig Harbor, WA 98335.

Issued in Renton, Washington on September 28, 2009.

Karen Miles,

Acting Manager, Seattle Airports District Office.

[FR Doc. E9–24225 Filed 10–6–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

TIME AND DATE: November 12, 2009, 12 noon to 3 p.m., Eastern Daylight Time.

PLACE: This meeting will take place telephonically. Any interested person may call Mr. Avelino Gutierrez at (505) 827–4565 to receive the toll free number and pass code needed to participate in these meetings by telephone.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Issued on: October 1, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–24303 Filed 10–5–09; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration (FAA)

[Docket No. FAA–2008–0221]

Operating Limitations at Newark Liberty International Airport

ACTION: Notice of order extending and modifying the limitations on scheduled operations at Newark Liberty International Airport.

SUMMARY: The FAA is amending the May 15, 2008, order limiting the number of scheduled aircraft operations at Newark Liberty International Airport (EWR) during peak operating hours (May 2008 order).[1] The amendment extends the May 2008 order by approximately two years, through October 29, 2011. In addition, because the amendment extends the May 2008 order's duration, the amendment clarifies that the FAA will not allocate new or returned capacity under the order via the auction procedure that the order originally described.

If you wish to review the background documents or comments received in this proceeding, you may go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the electronic docket. You may also go to the U.S. Department of Transportation's Docket Operations in Room W12–140 on the ground floor of the West Building at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

DATES: These amendments to the May 2008 order are effective immediately upon publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: James W. Tegtmeier, Associate Chief Counsel for the Air Traffic Organization; telephone—(202) 267–8323; e-mail—*james.tegtmeier@faa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 5, 2009, the FAA published a notice that invited comments on its proposal to extend the May 2008 order limiting scheduled operations at EWR.[2] At the time, the May 2008 order was scheduled to expire on October 24, 2009. For the reasons described in the notice, it was unrealistic to expect a long-term rule to take effect and control the significant congestion-related delays that the FAA anticipated would occur at EWR if the May 2008 order were to expire as originally scheduled. Given the uncertainty over when a final rule would take effect and the impending expiration of the May 2008 order, the FAA proposed to extend the May 2008 order for approximately one year.

The FAA expected the one-year extension of the May 2008 order to serve as at least a partial bridge to the implementation of a long-term measure to control congestion and related delays at EWR. The FAA received written submissions on the proposal from seven commenters. The commenters include four scheduled carriers, two industry organizations, and the airport operator.

II. Summary and Analysis of the Comments

A. Amended Duration

Five of the seven commenters express support for an extension of the May 2008 order to prevent a return of the congestion-related delays that passengers previously experienced at EWR. Although the FAA proposed an

[1] Order Limiting Scheduled Operations at Newark Liberty International Airport, 73 FR 29,550 (May 21, 2008).

[2] 74 FR 27,060.

extension of about one year, two of the commenters state that an extension of longer than one year is appropriate. These commenters assert that one year is not sufficient time to finalize and to implement a new rule to manage congestion at the airport.

The FAA proposed a one-year extension of the May 2008 order because the FAA never intended the order to serve as a long-term solution to congestion at EWR. From this perspective, using the minimum number of short-term extensions would offer the benefit of regular and public status reports on where the FAA stands in establishing a longer-term solution to overscheduling at EWR. As the commenters note, however, such short-term extensions may not best facilitate the long-term planning of some carriers that conduct, or hope to conduct, service at the airport. Accordingly, while the FAA does not agree that an indefinite extension is appropriate, the FAA will increase the duration of the present extension to about two years to accommodate carriers' longer term planning. The May 2008 order will now expire on October 29, 2011. The reporting deadlines for carriers to return Operating Authorizations for all or part of a scheduling season in paragraph 9.b.i. are also amended to reflect the longer duration of the order.

B. Buy and Sell Authority

In light of the increased duration of the May 2008 order, four commenters question the ban on the purchase, sale, or long-term lease of the Operating Authorizations held by virtue of the original order. The commenters reason that the FAA included the ban as a result of the May 2008 order's short duration. The commenters perceive that extending the order increases the importance of a market mechanism that permits the sale and purchase of operating authority, which would facilitate competition and new entry, as well as leases for such authority that extend beyond the order's expiration date.

The FAA included in the May 2008 order the ability of carriers to trade or to lease Operating Authorizations to other carriers; however, the duration of the trade or lease could not exceed the duration of the order.[3] The commenters claim that relying on short-term trades and leases alone may become limiting as the May 2008 order remains effective over a significantly longer term. The proposed extension of the May 2008 order, however, specifically limited the comments to the proposed extension.[4] The FAA intends to address long-term transfers of Operating Authorizations at some point in the future.

C. New Entrant and Limited Incumbent Opportunities

One carrier, Virgin America, Inc., observes that the May 2008 order originally provided limited opportunities for new entrant and limited incumbent carriers to initiate or to augment their scheduled operations at EWR. Virgin America offers that any extension of the order should include enhancements that could increase service at the airport from new entrant and limited incumbent carriers.

Virgin America is correct in noting that the extension of the May 2008 order merits a revisitation of the opportunities that are available at EWR for new entrant and limited incumbent carriers.[5] There are currently several avenues for carriers to conduct scheduled service, to acquire Operating Authorizations, or to adjust the timing of their Operating Authorizations at EWR. First, the May 2008 order is effective daily from 6 a.m. until 10:59 p.m., local time, and carriers can schedule additional operations during the hours that the May 2008 order is not in effect. Second, subject to FAA written approval, a carrier can request a new Operating Authorization or a shift of an existing Operating Authorization in any half hour that the order is in effect. Third, all carriers have the opportunity to lease or trade Operating Authorizations for any period not exceeding the duration of the May 2008 order. Fourth, in the event that there is new capacity at EWR while the May 2008 order remains in effect, the order provides a mechanism under which carriers can bid on a leasehold interest in the new operations.

After the May 2008 order took effect, Congress enacted the Omnibus Appropriations Act of 2009. In part, this statute precluded the use of appropriated funds to take any action involving the scheduling of airline operations if the action also involves the auctioning of permission to conduct airline operations at an airport.[6] Because this language could be construed to preclude the FAA from eliciting bids from carriers to acquire a leasehold interest in newly available capacity, which is listed as the fourth alternative in the preceding paragraph, the FAA is withdrawing that provision, effective immediately.

Accordingly, the ordering paragraphs of the May 2008 order are hereby amended as follows:

1. This Order assigns operating authority to conduct an arrival or a departure at EWR during the affected hours to the U.S. air carrier or foreign air carrier identified in the appendix to this Order. The FAA will not assign operating authority under this Order to any person or entity other than a certificated U.S. or foreign air carrier with appropriate economic authority and FAA operating authority under 14 CFR part 121, 129, or 135. This Order applies to the following:

a. All U.S. air carriers and foreign air carriers conducting scheduled operations at EWR as of the date of this Order, any U.S. air carrier or foreign air carrier that operates under the same designator code as such a carrier, and any air carrier or foreign-flag carrier that has or enters into a codeshare agreement with such a carrier.

b. All U.S. air carriers or foreign air carriers initiating scheduled or regularly conducted commercial service to EWR while this Order is in effect.

c. The Chief Counsel of the FAA, in consultation with the Vice President, System Operations Services, is the final decisionmaker for determinations under this Order.

2. This Order governs scheduled arrivals and departures at EWR from 6 a.m. through 10:59 p.m., Eastern Time, Sunday through Saturday.

3. This Order takes effect at 6 a.m., Eastern Time, on June 20, 2008, and expires at 11:59 p.m., Eastern Time, on October 29, 2011.

4. Under the authority provided to the Secretary of Transportation and the FAA Administrator by 49 U.S.C. 40101, 40103 and 40113, we hereby order that:

a. No U.S. air carrier or foreign air carrier initiating or conducting scheduled or regularly conducted commercial service at EWR may conduct such operations without an Operating Authorization assigned by the FAA.

b. Except as provided in the appendix to this Order, scheduled U.S. air carrier and foreign air carrier arrivals and departures will not exceed 81 per hour from 6 a.m. through 10:59 p.m., Eastern Time.

c. The Administrator may change the limits if he determines that capacity exists to accommodate additional operations without a significant increase in delays.

5. For administrative tracking purposes only, the FAA will assign an

[3] 73 FR at 29,554 (ordering paragraphs seven and eight).

[4] 74 FR at 27,061 (''any submission to the current docket should be limited to the proposed extension of the May 2008 order'').

[5] 73 FR at 29,551, 29,553–54.

[6] Omnibus Appropriations Act, 2009, Pub. L. 111–8, section 5, div. I, tit. I, section 115, 123 Stat. 524, 921–22.

identification number to each Operating Authorization.

6. A carrier holding an Operating Authorization may request the Administrator's approval to move any arrival or departure scheduled from 6 a.m. through 10:59 p.m. to another half hour within that period. Except as provided in paragraph seven, the carrier must receive the written approval of the Administrator, or his delegate, prior to conducting any scheduled arrival or departure that is not listed in the appendix to this Order. All requests to move an allocated Operating Authorization must be submitted to the FAA Slot Administration Office, facsimile (202) 267–7277 or e-mail *7–AWA–Slotadmin@faa.gov*, and must come from a designated representative of the carrier. If the FAA cannot approve a carrier's request to move a scheduled arrival or departure, the carrier may then apply for a trade in accordance with paragraph seven.

7. For the duration of this order, a carrier may enter into a lease or trade of an Operating Authorization to another carrier for any consideration. Notice of a trade or lease under this paragraph must be submitted in writing to the FAA Slot Administration Office, facsimile (202) 267–7277 or e-mail *7–AWA–Slotadmin@faa.gov*, and must come from a designated representative of each carrier. The FAA must confirm and approve these transactions in writing prior to the effective date of the transaction. The FAA will approve transfers between carriers under the same marketing control up to five business days after the actual operation, but only to accommodate operational disruptions that occur on the same day of the scheduled operation. The FAA's approval of a trade or lease does not constitute a commitment by the FAA to grant the associated historical rights to any operator in the event that slot controls continue at EWR after this order expires.

8. A carrier may not buy, sell, trade, or transfer an Operating Authorization, except as described in paragraph seven.

9. Historical rights to Operating Authorizations and withdrawal of those rights due to insufficient usage will be determined on a seasonal basis and in accordance with the schedule approved by the FAA prior to the commencement of the applicable season.

a. For each day of the week that the FAA has approved an operating schedule, any Operating Authorization not used at least 80% of the time over the period authorized by the FAA under this paragraph will be withdrawn by the FAA for the next applicable season except:

i. The FAA will treat as used any Operating Authorization held by a carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Saturday in January.

ii. The Administrator of the FAA may waive the 80% usage requirement in the event of a highly unusual and unpredictable condition which is beyond the control of the carrier and which affects carrier operations for a period of five consecutive days or more.

b. Each carrier holding an Operating Authorization must forward in writing to the FAA Slot Administration Office a list of all Operating Authorizations held by the carrier and for each Operating Authorization, along with a listing of the Operating Authorizations and:

i. The dates within each applicable season on which it intends to commence and to cease scheduled operations.

A. For each winter scheduling season, the report must be received by the FAA no later than August 15 during the preceding summer.

B. For each summer scheduling season, the report must be received by the FAA no later than January 15 during the preceding winter.

ii. The completed operations for each day of the applicable scheduling season:

A. No later than September 1 for the summer scheduling season.

B. No later than January 15 for the winter scheduling season.

iii. A final report of the completed operations for each day of the scheduling season within 30 days after the last day of the applicable scheduling season.

10. In the event that a carrier surrenders to the FAA any Operating Authorization assigned to it under this Order or if there are unallocated Operating Authorizations, the FAA will determine whether the Operating Authorizations should be reallocated. The FAA may temporarily allocate an Operating Authorization at its discretion. Such temporary allocations will not be entitled to historical status for the next applicable scheduling season under paragraph 9.

11. If the FAA determines that an involuntary reduction in the number of allocated Operating Authorizations is required to meet operational needs, such as reduced airport capacity, the FAA will conduct a weighted lottery to withdraw Operating Authorizations to meet a reduced hourly or half-hourly limit for scheduled operations. The FAA will provide at least 45 days' notice unless otherwise required by operational needs. Any Operating Authorization that is withdrawn or temporarily suspended will, if reallocated, be reallocated to the carrier from which it was taken, provided that the carrier continues to operate scheduled service at EWR.

12. The FAA will enforce this Order through an enforcement action seeking a civil penalty under 49 U.S.C. 46301(a). A carrier that is not a small business as defined in the Small Business Act, 15 U.S.C. 632, will be liable for a civil penalty of up to $25,000 for every day that it violates the limits set forth in this Order. A carrier that is a small business as defined in the Small Business Act will be liable for a civil penalty of up to $10,000 for every day that it violates the limits set forth in this Order. The FAA also could file a civil action in U.S. District Court, under 49 U.S.C. 46106, 46107, seeking to enjoin any air carrier from violating the terms of this Order.

13. The FAA may modify or withdraw any provision in this Order on its own or on application by any carrier for good cause shown.

Issued in Washington, DC, on October 1, 2009.

J. Randolph Babbitt,

Administrator, Federal Aviation Administration.

[FR Doc. E9–24118 Filed 10–2–09; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2007–29320]

Operating Limitations at John F. Kennedy International Airport

ACTION: Notice of order extending and modifying the limitations on scheduled operations at John F. Kennedy International Airport.

SUMMARY: The FAA is amending the January 15, 2008, order limiting the number of scheduled aircraft operations at John F. Kennedy International Airport (JFK) during peak operating hours, as amended (January 2008 order).[1] The amendment extends the January 2008 order by approximately two years, through October 29, 2011. In addition, because the amendment extends the January 2008 order's duration, the amendment clarifies that the FAA will not allocate new or returned capacity under the order via the auction

[1] Order Limiting Scheduled Operations at John F. Kennedy International Airport, 73 FR 3,510 (Jan. 18, 2008); 73 FR 8,737 (Feb. 14, 2008)(amendment to order).

procedure that the order originally described.

If you wish to review the background documents or comments received in this proceeding, you may go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the electronic docket. You may also go to the U.S. Department of Transportation's Docket Operations in Room W12–140 on the ground floor of the West Building at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

DATES: These amendments to the January 2008 order are effective immediately upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: James W. Tegtmeier, Associate Chief Counsel for the Air Traffic Organization; telephone—(202) 267–8323; e-mail—*james.tegtmeier@faa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 5, 2009, the FAA published a notice that invited comments on its proposal to extend the January 2008 order limiting scheduled operations at JFK.[2] At the time, the January 2008 order was scheduled to expire on October 24, 2009. For the reasons described in the notice, it was unrealistic to expect a long-term rule to take effect and control the significant congestion-related delays that the FAA anticipated would occur at JFK if the January 2008 order were to expire as originally scheduled. Given the uncertainty over when a final rule would take effect and the impending expiration of the January 2008 order, the FAA proposed to extend the January 2008 order for approximately one year.

The FAA expected the one-year extension of the January 2008 order to serve as at least a partial bridge to the implementation of a long-term measure to control congestion and related delays at JFK. The FAA received written submissions on the proposal from nine commenters. The commenters include six scheduled carriers, two industry organizations, and the airport operator.

II. Summary and Analysis of the Comments

A. Amended Duration

Seven of the nine commenters express support for an extension of the January 2008 order to prevent a return of the congestion-related delays that passengers previously experienced at JFK. Although the FAA proposed an extension of about one year, three carriers and one organizational commenter state that an extension of longer than one year is appropriate. While the specific observations and opinions of these four commenters differ, they variously assert that one year is not sufficient time either to create enough capacity at JFK to meet the demand or to finalize and implement a new rule to manage congestion at the airport.

The FAA proposed a one-year extension of the January 2008 order because the FAA never intended the order to serve as a long-term solution to congestion at JFK. From this perspective, using the minimum number of short-term extensions would offer the benefit of regular and public status reports on where the FAA stands in establishing a longer-term solution to overscheduling at JFK. As the commenters note, however, such short-term extensions may not best facilitate the long-term planning of some carriers that conduct, or hope to conduct, service at the airport. Accordingly, while the FAA does not agree that an indefinite extension is appropriate, the FAA will increase the duration of the present extension to about two years to accommodate carriers' longer term planning. The January 2008 order, as amended, will now expire on October 29, 2011. The reporting deadlines for carriers to return Operating Authorizations for all or part of a scheduling season in paragraph 9.b.i. are amended to reflect the longer duration of the order. These deadlines are also advanced by approximately two weeks to coincide with the deadlines in the International Air Transport Association's Worldwide Scheduling Guidelines.

B. Buy and Sell Authority

In light of the increased duration of the January 2008 order, five commenters question the ban on the purchase, sale, or long-term lease of the Operating Authorizations held by virtue of the original order. The commenters reason that the FAA included the ban as a result of the January 2008 order's short duration. The commenters perceive that extending the order increases the importance of a market mechanism that permits the sale and purchase of operating authority, which would facilitate competition and new entry, as well as leases for such authority that extend beyond the order's expiration date.

The FAA included in the January 2008 order the ability of carriers to trade or to lease Operating Authorizations to other carriers; however, the duration of the trade or lease could not exceed the duration of the order.[3] The commenters claim that relying on short-term trades and leases alone may become limiting as the January 2008 order remains effective over a significantly longer term. The proposed extension of the January 2008 order, however, specifically limited the comments to the proposed extension.[4] The FAA intends to address long-term transfers of Operating Authorizations at some point in the future.

C. New Entrant and Limited Incumbent Opportunities

One carrier, Virgin America, Inc., observes that the January 2008 order originally provided limited opportunities for new entrant and limited incumbent carriers to initiate or to augment their scheduled operations at JFK. Virgin America offers that any extension of the order should include enhancements that could increase service at the airport from new entrant and limited incumbent carriers.

Virgin America is correct in noting that the extension of the January 2008 order merits a revisitation of the opportunities that are available at JFK for new entrant and limited incumbent carriers.[5] There are currently several avenues for carriers to conduct scheduled service, to acquire Operating Authorizations, or to adjust the timing of their Operating Authorizations at JFK. First, the January 2008 order is effective daily from 6 a.m. until 10:59 p.m., local time, and carriers can schedule additional operations during the hours that the January 2008 order is not in effect. Second, subject to FAA written approval, a carrier can request a new Operating Authorization or a shift of an existing Operating Authorization in any half hour that the order is in effect. Third, all carriers have the opportunity to lease or trade Operating Authorizations for any period not exceeding the duration of the January 2008 order. Fourth, in the event that there is new capacity at JFK while the January 2008 order remains in effect, the order provides a mechanism under which carriers can bid on a leasehold interest in the new operations.

After the January 2008 order took effect, Congress enacted the Omnibus Appropriations Act of 2009. In part, this statute precluded the use of appropriated funds to take any action involving the scheduling of airline operations if the action also involves the

[2] 74 FR 27,059.

[3] 73 FR at 3,516 (ordering paragraphs seven and eight)

[4] 74 FR at 27,060 (''any submission to the current docket should be limited to the proposed extension of the January 2008 order'').

[5] 73 FR at 3,514.

auctioning of permission to conduct airline operations at an airport.[6] Because this language could be construed to preclude the FAA from eliciting bids from carriers to acquire a leasehold interest in newly available capacity, which is listed as the fourth alternative in the preceding paragraph, the FAA is withdrawing that provision, effective immediately.

Accordingly, the ordering paragraphs of the January 2008 order are hereby amended as follows:

1. This Order assigns operating authority to conduct an arrival or a departure at JFK during the affected hours to the U.S. air carrier or foreign air carrier identified in the appendix to this Order. The FAA will not assign operating authority under this Order to any person or entity other than a certificated U.S. or foreign air carrier with appropriate economic authority and FAA operating authority under 14 CFR part 121, 129, or 135. This Order applies to the following:

a. All U.S. air carriers and foreign air carriers conducting scheduled operations at JFK as of the date of this Order, any U.S. air carrier or foreign air carrier that operates under the same designator code as such a carrier, and any air carrier or foreign-flag carrier that has or enters into a codeshare agreement with such a carrier.

b. All U.S. air carriers or foreign air carriers initiating scheduled or regularly conducted commercial service to JFK while this Order is in effect.

c. The Chief Counsel of the FAA, in consultation with the Vice President, System Operations Services, is the final decisionmaker for determinations under this Order.

2. This Order governs scheduled arrivals and departures at JFK from 6 a.m. through 10:59 p.m., Eastern Time, Sunday through Saturday.

3. This Order takes effect on March 30, 2008, and expires at 11:59 p.m., Eastern Time, on October 29, 2011.

4. Under the authority provided to the Secretary of Transportation and the FAA Administrator by 49 U.S.C. 40101, 40103 and 40113, we hereby order that:

a. No U.S. air carrier or foreign air carrier initiating or conducting scheduled or regularly conducted commercial service at JFK may conduct such operations without an Operating Authorization assigned by the FAA.

b. Except as provided in the appendix to this Order, scheduled U.S. air carrier and foreign air carrier arrivals and departures will not exceed 81 per hour from 6 a.m. through 10:59 p.m., Eastern Time.

c. The Administrator may change the limits if he determines that capacity exists to accommodate additional operations without a significant increase in delays.

5. For administrative tracking purposes only, the FAA will assign an identification number to each Operating Authorization.

6. A carrier holding an Operating Authorization may request the Administrator's approval to move any arrival or departure scheduled from 6 a.m. through 10:59 p.m. to another half hour within that period. Except as provided in paragraph seven, the carrier must receive the written approval of the Administrator, or his delegate, prior to conducting any scheduled arrival or departure that is not listed in the appendix to this Order. All requests to move an allocated Operating Authorization must be submitted to the FAA Slot Administration Office, facsimile (202) 267–7277 or e-mail *7-AWA-Slotadmin@faa.gov*, and must come from a designated representative of the carrier. If the FAA cannot approve a carrier's request to move a scheduled arrival or departure, the carrier may then apply for a trade in accordance with paragraph seven.

7. For the duration of this order, a carrier may enter into a lease or trade of an Operating Authorization to another carrier for any consideration. Notice of a trade or lease under this paragraph must be submitted in writing to the FAA Slot Administration Office, facsimile (202) 267–7277 or e-mail *7-AWA-Slotadmin@faa.gov*, and must come from a designated representative of each carrier. The FAA must confirm and approve these transactions in writing prior to the effective date of the transaction. The FAA will approve transfers between carriers under the same marketing control up to five business days after the actual operation, but only to accommodate operational disruptions that occur on the same day of the scheduled operation. The FAA's approval of a trade or lease does not constitute a commitment by the FAA to grant the associated historical rights to any operator in the event that slot controls continue at JFK after this order expires.

8. A carrier may not buy, sell, trade, or transfer an Operating Authorization, except as described in paragraph seven.

9. Historical rights to Operating Authorizations and withdrawal of those rights due to insufficient usage will be determined on a seasonal basis and in accordance with the schedule approved by the FAA prior to the commencement of the applicable season.

a. For each day of the week that the FAA has approved an operating schedule, any Operating Authorization not used at least 80% of the time over the time-frame authorized by the FAA under this paragraph will be withdrawn by the FAA for the next applicable season except:

i. The FAA will treat as used any Operating Authorization held by a carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Saturday in January.

ii. The Administrator of the FAA may waive the 80% usage requirement in the event of a highly unusual and unpredictable condition which is beyond the control of the carrier and which affects carrier operations for a period of five consecutive days or more.

b. Each carrier holding an Operating Authorization must forward in writing to the FAA Slot Administration Office a list of all Operating Authorizations held by the carrier along with a listing of the Operating Authorizations and:

i. The dates within each applicable season it intends to commence and complete operations.

A. For each winter scheduling season, the report must be received by the FAA no later than August 15 during the preceding summer.

B. For each summer scheduling season, the report must be received by the FAA no later than January 15 during the preceding winter.

ii. The completed operations for each day of the applicable scheduling season:

A. No later than September 1 for the summer scheduling season.

B. No later than January 15 for the winter scheduling season.

iii. The completed operations for each day of the scheduling season within 30 days after the last day of the applicable scheduling season.

10. In the event that a carrier surrenders to the FAA any Operating Authorization assigned to it under this Order or if there are unallocated Operating Authorizations, the FAA will determine whether the Operating Authorizations should be reallocated. The FAA may temporarily allocate an Operating Authorization at its discretion. Such temporary allocations will not be entitled to historical status for the next applicable scheduling season under paragraph 9.

11. If the FAA determines that an involuntary reduction in the number of allocated Operating Authorizations is required to meet operational needs, such as reduced airport capacity, the FAA will conduct a weighted lottery to

[6] Omnibus Appropriations Act, 2009, Public Law 111–8, § 5, div. I, tit. I, § 115, 123 Stat. 524, 921–22.

withdraw Operating Authorizations to meet a reduced hourly or half-hourly limit for scheduled operations. The FAA will provide at least 45 days' notice unless otherwise required by operational needs. Any Operating Authorization that is withdrawn or temporarily suspended will, if reallocated, be reallocated to the carrier from which it was taken, provided that the carrier continues to operate scheduled service at JFK.

12. The FAA will enforce this Order through an enforcement action seeking a civil penalty under 49 U.S.C. 46301(a). A carrier that is not a small business as defined in the Small Business Act, 15 U.S.C. 632, will be liable for a civil penalty of up to $25,000 for every day that it violates the limits set forth in this Order. A carrier that is a small business as defined in the Small Business Act will be liable for a civil penalty of up to $10,000 for every day that it violates the limits set forth in this Order. The FAA also could file a civil action in U.S. District Court, under 49 U.S.C. 46106, 46107, seeking to enjoin any air carrier from violating the terms of this Order.

13. The FAA may modify or withdraw any provision in this Order on its own or on application by any carrier for good cause shown.

Issued in Washington, DC, on October 1, 2009.

J. Randolph Babbitt,

Administrator, Federal Aviation Administration.

[FR Doc. E9–24121 Filed 10–2–09; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2006–25755]

Operating Limitations at LaGuardia Airport

ACTION: Notice of Order Extending the Limitations on Operations at LaGuardia Airport.

SUMMARY: The FAA is amending the December 13, 2006, order limiting the number of operations at LaGuardia Airport (LGA) during peak operating hours, as amended (December 2006 order).[1] The current amendment extends the December 2006 order by approximately two years, through October 29, 2011.

If you wish to review the background documents or comments received in this proceeding, you may go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the electronic docket. You may also go to the U.S. Department of Transportation's Docket Operations in Room W12–140 on the ground floor of the West Building at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

DATES: These amendments to the December 2006 order are effective immediately upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: James W. Tegtmeier, Associate Chief Counsel for the Air Traffic Organization; telephone—(202) 267–8323; e-mail—*james.tegtmeier@faa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 17, 2009, the FAA published a notice that invited comments on its proposal to extend the December 2006 order limiting operations at LGA.[2] At the time, the December 2006 order was scheduled to expire on October 24, 2009. For the reasons described in the notice, it was unrealistic to expect a long-term rule to take effect and control the significant congestion-related delays that the FAA anticipated would occur at LGA if the December 2006 order were to expire as originally scheduled. Given the current uncertainty over when a final rule would take effect and the impending expiration of the December 2006 order, the FAA proposed to extend the December 2006 order for approximately one year.

The FAA expected the one-year extension to serve as at least a partial bridge to the implementation of a long-term measure to control congestion and related delays at LGA. The FAA received written submissions on the proposal from five commenters. The commenters include two scheduled carriers, two industry organizations, and the airport operator.

II. Summary and Analysis of the Comments

A. Amended Duration

Four of the five commenters express support for an extension of the December 2006 order to prevent a return of the congestion-related delays that passengers previously experienced at LGA. Although the FAA proposed an extension of about one year, two of the commenters state that an extension of longer than one year is appropriate. These commenters assert that one year is not sufficient time to finalize and to implement a new rule to manage congestion at the airport.

The FAA proposed a one-year extension of the December 2006 order because the FAA never intended the order to serve as a long-term solution to congestion at LGA. From this perspective, using the minimum number of short-term extensions would offer the benefit of regular and public status reports on where the FAA stands in establishing a longer-term solution to overscheduling at LGA. As the commenters note, however, such short-term extensions may not best facilitate the long-term planning of some carriers that conduct, or hope to conduct, service at the airport. Accordingly, while the FAA does not agree that an indefinite extension is appropriate, the FAA will increase the duration of the present extension to about two years to accommodate carriers' longer term planning. The December 2006 order will now expire on October 29, 2011.

B. Buy and Sell Authority

In light of the increased duration of the December 2006 order, three commenters question the ban on the purchase, sale, or long-term lease of the Operating Authorizations held by virtue of the original order. The commenters reason that the FAA included the ban as a result of the December 2006 order's intended short duration. The commenters perceive that extending the order increases the importance of a market mechanism that permits the sale and purchase of operating authority, which would facilitate competition and new entry, as well as leases for such authority that extend beyond the order's expiration date.

The FAA included in the December 2006 order the ability of carriers to trade or to lease Operating Authorizations to other carriers; however, the duration of the trade or lease could not exceed the duration of the order.[3] The commenters claim that relying on short-term trades and leases alone may become limiting as the December 2006 order remains effective over a significantly longer term. The proposed extension of the December 2006 order, however, specifically limited the comments to the proposed extension.[4] The FAA intends

[1] Operating Limitations at New York LaGuardia Airport, 71 FR 77,854 (Dec. 27, 2006); 72 FR 63,224 (Nov. 8, 2007) (transfer, minimum usage, and withdrawal amendments); 72 FR 48,428 (Aug. 19, 2008) (reducing the reservations available for unscheduled operations); 74 FR 845 (Jan. 8, 2009) (extending the expiration date of the December 2006 order until October 24, 2009); 74 FR 2,646 (Jan. 15, 2009) (reducing the peak-hour cap on scheduled operations to 71).

[2] 74 FR 28,772.

[3] 72 FR at 63,227 (ordering paragraph five).

[4] 74 FR at 28,774 (''any submission to the current docket should be limited to the proposed extension of the December 2006 order'').

to address long-term transfers of Operating Authorizations at some point in the future.

Accordingly, the ordering paragraphs of the December 2006 order are hereby amended as follows:

A. Scheduled Operations

With respect to scheduled operations at LaGuardia:

1. The final Order governs scheduled arrivals and departures, except helicopters, at LaGuardia from 6 a.m. through 9:59 p.m., Eastern Time, Monday through Friday, and from 12 noon through 9:59 p.m., Eastern Time, Sunday. Seventy-one (71) Operating Authorizations are available per hour and will be assigned by the FAA on a 30-minute basis. The FAA will permit additional, existing operations above this threshold; however, the FAA will retire Operating Authorizations that are surrendered to the FAA, withdrawn for non-use, or unassigned during each affected hour until the number of Operating Authorizations in that hour reaches seventy-one (71).

2. The final Order takes effect on January 1, 2007, and will expire on October 29, 2011.

3. The FAA will assign operating authority to conduct an arrival or a departure at LaGuardia during the affected hours to the air carrier that holds equivalent slot or slot exemption authority under the High Density Rule or FAA slot exemption rules as of January 1, 2007; to the primary marketing air carrier in the case of AIR–21 small hub/nonhub airport slot exemptions; or to the air carrier operating the flights as of January 1, 2007, in the case of a slot held by a non-carrier. The FAA will not assign operating authority under the final Order to any person or entity other than a certificated U.S. or foreign air carrier with appropriate economic authority under 14 CFR part 121, 129, or 135. The Chief Counsel of the FAA will be the final decisionmaker regarding the initial assignment of Operating Authorizations.

4. For administrative tracking purposes only, the FAA will assign an identification number to each Operating Authorization.

5. For the duration of this order, an air carrier may enter into a lease or trade of an Operating Authorization to another carrier for any consideration. Notice of a trade or lease under this paragraph must be submitted in writing to the FAA Slot Administration Office, facsimile (202) 267–7277 or e-mail *7–AWA–Slotadmin@faa.gov,* and must come from a designated representative of each carrier. The FAA must confirm and approve these transactions in writing prior to the effective date of the transaction. However, the FAA will approve transfers between carriers under the same marketing control up to five business days after the actual operation. This post-transfer approval is limited to accommodate operational disruptions that occur on the same day of the scheduled operation. The FAA's approval of a trade or lease does not constitute a commitment by the FAA to grant the associated historical rights to any operator in the event that slot controls continue at LGA after the order expires.

6. Each air carrier holding an Operating Authorization must forward in writing to the FAA Slot Administration Office a list of all Operating Authorizations held by the carrier along with a listing of the Operating Authorizations actually operated for each day of the two-month reporting period within 14 days after the last day of the two-month reporting period beginning January 1 and every two months thereafter. Any Operating Authorization not used at least 80 percent of the time over a two-month period will be withdrawn by the FAA except:

a. The FAA will treat as used any Operating Authorization held by an air carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Saturday in January.

b. The FAA will treat as used any Operating Authorization obtained by an air carrier through a lottery under paragraph seven for the first 120 days after allocation in the lottery.

c. The Administrator of the FAA may waive the 80 percent usage requirement in the event of a highly unusual and unpredictable condition which is beyond the control of the air carrier and which affects carrier operations for a period of five consecutive days or more.

7. In the event that Operating Authorizations are withdrawn for nonuse, surrendered to the FAA, or are unassigned, the FAA will determine whether any of the available Operating Authorizations should be reallocated. If so, the FAA will conduct a lottery using the provisions specified under 14 CFR 93.225. The FAA may retime an Operating Authorization prior to reallocation in order to address operational needs. When the final Order expires, any Operating Authorizations reassigned under this paragraph, except those assigned to new entrants or limited incumbents, will revert to the FAA for reallocation according to the reallocation mechanism prescribed in the final rule that succeeds the final Order.

8. If the FAA determines that an involuntary reduction in the number of allocated Operating Authorizations is required to meet operational needs, such as reduced airport capacity, the FAA will conduct a weighted lottery to withdraw Operating Authorizations to meet a reduced hourly or half-hourly limit for scheduled operations. The FAA will provide at least 45 days' notice unless otherwise required by operational needs. Any Operating Authorization that is withdrawn or temporarily suspended will, if reallocated, be reallocated to the air carrier from which it was taken, provided that the air carrier continues to operate scheduled service at LaGuardia.

9. The FAA will enforce the final Order through an enforcement action seeking a civil penalty under 49 U.S.C. 46301(a). An air carrier that is not a small business as defined in the Small Business Act, 15 U.S.C. 632, would be liable for a civil penalty of up to $25,000 for every day that it violates the limits set forth in the final Order. An air carrier that is a small business as defined in the Small Business Act would be liable for a civil penalty of up to $10,000 for every day that it violates the limits set forth in the final Order. The FAA also could file a civil action in U.S. District Court, under 49 U.S.C. 46106, 46107, seeking to enjoin any air carrier from violating the terms of the final Order.

B. Unscheduled Operations [5]

With respect to unscheduled flight operations at LaGuardia, the FAA adopts the following:

1. The final Order applies to all operators of unscheduled flights, except helicopter operations, at LaGuardia from 6 a.m. through 9:59 p.m., Eastern Time, Monday through Friday and from 12 noon through 9:59 p.m., Eastern Time, Sunday.

2. The final Order takes effect on January 1, 2007, and will expire on October 29, 2011.

3. No person may operate an aircraft other than a helicopter to or from LaGuardia unless the operator has received, for that unscheduled operation, a reservation that is assigned

[5] Unscheduled operations are operations other than those regularly conducted by an air carrier between LaGuardia and another service point. Unscheduled operations include general aviation, public aircraft, military, charter, ferry, and positioning flights. Helicopter operations are excluded from the reservation requirement. Reservations for unscheduled flights operating under visual flight rules (VFR) are granted when the aircraft receives clearance from air traffic control to land at or depart LaGuardia. Reservations for unscheduled VFR flights are not included in the limits for unscheduled operators.

by the David J. Hurley Air Traffic Control System Command Center's Airport Reservation Office (ARO). Additional information on procedures for obtaining a reservation will be available via the Internet at *http://www.fly.faa.gov/ecvrs.*

4. Three (3) reservations are available per hour for unscheduled operations at LaGuardia. The ARO will assign reservations on a 30-minute basis.

5. The ARO receives and processes all reservation requests. Reservations are assigned on a ''first-come, first-served'' basis, determined as of the time that the ARO receives the request. A cancellation of any reservation that will not be used as assigned is required.

6. Filing a request for a reservation does not constitute the filing of an instrument flight rules (IFR) flight plan, as separately required by regulation. After the reservation is obtained, an IFR flight plan can be filed. The IFR flight plan must include the reservation number in the ''remarks'' section.

7. Air Traffic Control will accommodate declared emergencies without regard to reservations. Nonemergency flights in direct support of national security, law enforcement, military aircraft operations, or public use aircraft operations will be accommodated above the reservation limits with the prior approval of the Vice President, System Operations Services, Air Traffic Organization. Procedures for obtaining the appropriate reservation for such flights are available via the Internet at *http://www.fly.faa.gov/ecvrs.*

8. Notwithstanding the limits in paragraph four, if the Air Traffic Organization determines that air traffic control, weather, and capacity conditions are favorable and significant delay is not likely, the FAA can accommodate additional reservations over a specified period. Unused Operating Authorizations can also be temporarily made available for unscheduled operations. Reservations for additional operations are obtained through the ARO.

9. Reservations cannot be bought, sold, or leased.

Issued in Washington, DC, on October 1, 2009.

J. Randolph Babbitt,

Administrator, Federal Aviation Administration.

[FR Doc. E9–24120 Filed 10–2–09; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Vessel Self-Designations

AGENCY: U.S. Department of Transportation, Maritime Administration.

ACTION: Notice.

SUMMARY: On September 4, 2009, the United States Department of Agriculture (USDA), the United States Department of Transportation's Maritime Administration (MARAD), and the United States Agency for International Development (USAID) entered into a Memorandum of Understanding (MOU) regarding the proper implementation of the Cargo Preference Act (CPA). That MOU, inter alia, establishes procedures and standards by which owners and operators of oceangoing cargo ships may seek to designate each of their vessels as either a dry bulk carrier or a dry cargo liner, according to specified service-based criteria. This Notice both announces that MARAD has received such self-designation applications for particular vessels from their owners and operators, and invites comments thereon from interested parties. MARAD will thereafter consider all the information submitted in support of a requested self-designation and other evidence in the record in reaching its own decision on the appropriate vessel classification.

DATES: Comments are due on October 19, 2009.

Background

The CPA requires that federal agencies take ''necessary and practicable'' steps to ensure that privately-owned U.S.-flag vessels transport at least 50 percent of the gross tonnage of cargo sponsored under Federal programs ''(computed separately for dry bulk carriers, dry cargo liners, and tankers) * * * to the extent such vessels are available at fair and reasonable rates for commercial vessels of the United States, in a manner that will ensure a fair and reasonable participation of commercial vessels of the United States in those cargoes by geographic areas.'' 46 U.S.C. 55305(b). An additional 25 percent of gross tonnage of certain food assistance programs is to be transported in accordance with the requirements of 46 U.S.C. 55314.

The MOU referenced above, as well as an accompanying explanatory notice, were published by MARAD in the **Federal Register** on September 15, 2009. The MOU adopts standards and procedures to be used to classify the vessels transporting preference cargo. This Notice marks the first use of those standards and procedures. Owners and operators of the vessels listed below have submitted applications to self-designate their ships as either dry bulk vessels or as dry cargo liners. Each vessel has been assigned a separate docket containing the materials submitted. Interested persons are invited to submit comments regarding these vessels to the appropriate docket no later than 5 p.m. EDT on October 19, 2009. Commentators are advised to address their comments to the service-based criteria listed in the September 15 **Federal Register** notice that will determine the ultimate classification of each vessel.

APPLICATIONS TO SELF-DESIGNATE

Docket	Owner/Operator	Vessel
MARAD–2009–0093	U.S. United Ocean Serv.	M/VSheila McDevitt.
MARAD–2009–0097	U.S. United Ocean Serv.	M/VMary Ann Hudson.
MARAD–2009–0094	Liberty Maritime Corp	M/VLiberty Eagle.
MARAD–2009–0095	Liberty Maritime Corp	M/VLiberty Glory.
MARAD–2009–0096	Liberty Maritime Corp	M/VLiberty Grace.
MARAD–2009–0098	APL Maritime Limited	APL Ireland.
MARAD–2009–0099	APL Maritime Limited	APL New York.
MARAD–2009–0100	APL Maritime Limited	APL Arabia.
MARAD–2009–0101	APL Maritime Limited	APL Virginia.
MARAD–2009–0102	APL Maritime Limited	APL Egypt.
MARAD–2009–0103	APL Maritime Limited	APL Jade.
MARAD–2009–0104	APL Maritime Limited	APL Japan.
MARAD–2009–0105	APL Maritime Limited	APL Pearl.
MARAD–2009–0106	APL Maritime Limited	APL Cyprine.

APPLICATIONS TO SELF-DESIGNATE—Continued

Docket	Owner/Operator	Vessel
MARAD–2009–0107	APL Maritime Limited	APL Agate.
MARAD–2009–0108	APL Maritime Limited	APL Agaman.
MARAD–2009–0109	APL Maritime Limited	APL Amazonite.
MARAD–2009–0110	APL Maritime Limited	APL Alexandrite.
MARAD–2009–0111	APL Maritime Limited	APL Germany.
MARAD–2009–0112	APL Maritime Limited	APL Hong Kong.
MARAD–2009–0113	APL Maritime Limited	APL Vietnam.
MARAD–2009–0114	APL Maritime Limited	APL Malaysia.
MARAD–2009–0115	APL Maritime Limited	APL Denmark.
MARAD–2009–0116	APL Maritime Limited	APL Sardonyx.
MARAD–2009–0117	APL Maritime Limited	APL Canada.
MARAD–2009–0118	APL Maritime Limited	APL Holland.
MARAD–2009–0119	APL Maritime Limited	APL Belgium.
MARAD–2009–0120	APL Maritime Limited	APL Spain.
MARAD–2009–0121	APL Maritime Limited	APL Garnet.
MARAD–2009–0122	APL Maritime Limited	APL Sweden.
MARAD–2009–0123	APL Maritime Limited	APL India.
MARAD–2009–0124	APL Maritime Limited	APL Australia.
MARAD–2009–0125	APL Maritime Limited	APL Amman.
MARAD–2009–0126	APL Maritime Limited	APL Italy.
MARAD–2009–0127	APL Maritime Limited	APL Atlanta.
MARAD–2009–0128	Hapag Lloyd USA LLC	FF Dubai Express.
MARAD–2009–0129	Hapag Lloyd USA LLC	FF Lahore Express.
MARAD–2009–0130	Hapag Lloyd USA LLC	FF New Delhi Express.
MARAD–2009–0131	Hapag Lloyd USA LLC	US Charleston Express.
MARAD–2009–0132	Hapag Lloyd USA LLC	US Philadelphia Express.
MARAD–2009–0133	Hapag Lloyd USA LLC	US St. Louis Express.
MARAD–2009–0134	Hapag Lloyd USA LLC	US Washington Express.
MARAD–2009–0135	Hapag Lloyd USA LLC	US Yorktown Express.

The self-designations sought by vessel owners and operators will remain effective unless MARAD reaches a different determination. MARAD will issue such determinations no later than 15 calendar days from the close of the comment period, that is, no later than November 3, 2009. Vessel owners and operators who object to MARAD's designation may appeal to the MARAD Administrator within 10 calendar days, or no later than 5 p.m. EDT on November 13, 2009. MARAD will issue its final determination in such cases within 30 calendar days, or no later than December 14, 2009, after consultation with USAID, USDA, and the U.S. Department of State.

Pursuant to the terms of the MOU, vessels for which no applications for self-designation are submitted will retain the classification found on the existing vessel list maintained by MARAD unless and until MARAD makes a contrary designation. The MARAD list may be found at: *http://marad.dot.gov/documents/MAR730_Master VesselList forCargo Preference.pdf.*

ADDRESSES: All comments should prominently refer to the docket assigned to the vessel to which they pertain. Interested persons are strongly encouraged to submit their comments electronically via the Internet at *http://www.regulations.gov.* Enter the docket number provided above that pertains to the relevant vessel and follow instructions for submitting comments. Comments may also be submitted via Fax or by hand or express delivery. Fax: (202) 493–2251. Hand or express delivery: Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jean E. McKeever, Associate Administrator for Business and Workforce Development, Maritime Administration, 1200 New Jersey Ave., SE., Washington, DC 20590; *phone:* (202) 366–5737; *fax:* (202) 366–6988; or *e-mail: jean.mckeever@dot.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individuals during business hours. The FIRS is available twenty-four hours a day, seven days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

By Order of the Acting Maritime Administrator.

Dated: October 2, 2009.

Julie P. Agarwal,

Acting Secretary, Maritime Administration.

[FR Doc. E9–24165 Filed 10–6–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Open Meeting of the President's Advisory Council on Financial Literacy

AGENCY: Office of Financial Education, Treasury.

ACTION: Notice of meeting.

SUMMARY: The President's Advisory Council on Financial Literacy will convene a meeting which will be open to the public. The purpose of this meeting is to discuss the Council's priorities and how it can best advise the President and the Secretary of the Treasury. Treasury would also provide an update about the status of the recommendations made by the Council in January 2008.

DATES: The meeting will be held on November 3, 2009 at 10 a.m. Eastern Time at the Department of the Treasury in Media Room 4121.

Submission of Written Comments: The public is invited to submit written statements to the President's Advisory Council on Financial Literacy by any one of the following methods:

Electronic Statements

E-mail *FinancialLiteracyCouncil@do.treas.gov;* or

Paper Statements

Send paper statements in triplicate to President's Advisory Council on Financial Literacy, Office of Financial Education, Room 1413, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, the Department will post all statements on its Web site (*http://www.treasury.gov/offices/domestic-finance/financial-institution/fin-education/council/index.shtml*) in their original format, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers. The Department will make such statements available for public inspection and photocopying in the Department's library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. You can make an appointment to inspect statements by calling (202) 622–0990. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Dubis Correal, Office of Financial Education, Department of the Treasury, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 622–5770 or *dubis.correal@do.treas.gov.*

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 and the regulations thereunder, Dubis Correal, Designated Federal Officer of the Advisory Council, has ordered publication of this notice that the President's Advisory Council on Financial Literacy will convene a meeting on November 3, 2009 in Media Room 4121 at the Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC, beginning at 10 a.m. Eastern Time. The meeting will be open to the public. To be admitted into the Main Department Building, attendees must RSVP with their name as shown on a government-issued ID, organization represented (if any), phone number, date of birth, Social Security number and country of citizenship. To register, contact the Office of Financial Education at (202) 622–5770 or visit *http://www.treasury.gov/ofe,* click on the ''President's Advisory Council on Financial Literacy'' and then click on ''Event Summary and Registration.'' Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting must register by 5 p.m. Eastern Time on October 27, 2009. For admittance to the Treasury building on the day of the meeting, attendees must present a government-issued ID, such as a driver's license or passport, which includes a photo and date of birth. The primary purpose of this meeting is for the President's Advisory Council on Financial Literacy to discuss its priorities and how it can best advise the President and the Secretary of the Treasury. Treasury would also provide an update about the status of the recommendations made by the President's Advisory Council on Financial Literacy in January 2008.

Dated: September 29, 2009.

Andrew Mayock,

Executive Secretary, U.S. Department of the Treasury.

[FR Doc. E9–24134 Filed 10–6–09; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

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 Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Regulations Governing Book-Entry Treasury Bonds, Notes and Bills.

DATES: Written comments should be received on or before December 1, 2009, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Judi Owens, 200 Third Street, A4–A, Parkersburg, WV 26106–1328, or *Judi.Owens@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Judi Owens, Bureau of the Public Debt, 200 Third Street, A4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing Book-Entry Treasury Bonds, Notes and Bills.

OMB Number: 1535–0068.

Abstract: The regulations govern book-entry Treasury bonds, notes and bills.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals, Businesses or other for-profit, and State or local governments.

Estimated Total Annual Burden Hours: 1.

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 30, 2009.

Judi Owens,

Manager, Information Management.

[FR Doc. E9–24146 Filed 10–6–09; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, November 17, 2009.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, November 17, 2009 at 1 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: October 1, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–24098 Filed 10–6–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 7 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, November 18, 2009.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 7 Taxpayer Advocacy Panel will be held Wednesday, November 18, 2009, at 2 p.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: October 1, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–24095 Filed 10–6–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Arizona, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 6 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, November 3, 2009.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Tuesday, November 3, 2009, at 1 p.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: October 1, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–24096 Filed 10–6–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and the Territory of Puerto Rico)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, November 9, 2009.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227 or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 3 Taxpayer Advocacy Panel will be held Monday, November 9, 2009, at 12:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Sallie Chavez. For more information please contact Ms. Chavez at 1–888–912–1227 or 954–423–7979, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: October 1, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–24099 Filed 10–6–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, November 18, 2009.

FOR FURTHER INFORMATION CONTACT: Marianne Ayala at 1–888–912–1227 or 954–423–7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Wednesday, November 18, 2009, at 2:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Ayala. For more information please contact Mrs. Ayala at 1–888–912–1227 or 954–423–7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: October 1, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–24100 Filed 10–6–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, November 17, 2009.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, November 17, 2009, at 10 a.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Audrey Y. Jenkins. For more information please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: October 1, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–24101 Filed 10–6–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, November 4, 2009.

FOR FURTHER INFORMATION CONTACT: Marianne Ayala at 1–888–912–1227 or 954–423–7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Issue Committee will be held Wednesday, November 4, 2009, at Noon, Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Ayala. For more information please contact Ms. Ayala at 1–888–912–1227 or 954–423–7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: October 1, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–24102 Filed 10–6–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Issue Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, November 10, 2009.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Issue Committee will be held Tuesday, November 10, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marisa Knispel. For more information please

contact Ms. Knispel at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS Issues.

Dated: October 1, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–24103 Filed 10–6–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Multi-Lingual Initiatives Issue Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Multi-Lingual Initiatives Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, November 12, 2009.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Multi-Lingual Initiatives Issue Committee will be held Thursday, November 12, 2009, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marisa Knispel. For more information please contact Ms. Knispel at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS Issues.

Dated: October 1, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–24104 Filed 10–6–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, November 19, 2009.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Issue Committee will be held Thursday, November 19, 2009, at 8:30 a.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: October 1, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–24105 Filed 10–6–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, November 24, 2009.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee will be held Tuesday, November 24, 2009, at 1 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: October 1, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–24106 Filed 10–6–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, November 25, 2009.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at 1–888–912–1227 or (515) 564–6638.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988)

that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Wednesday, November 25, 2009, at 3 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Susan Gilbert. For more information please contact Ms. Gilbert at 1–888–912–1227 or (515) 564–6638 or write: TAP Office, 210 Walnut Street, Stop 5115, Des Moines, IA 50309 or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: October 1, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–24107 Filed 10–6–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be Thursday, November 12, 2009.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Thursday, November 12, 2009, at 1 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Audrey Y. Jenkins. For more information please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: October 1, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–24108 Filed 10–6–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Taxpayer Advocacy Panel Notice Improvement Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Notice Improvement Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, November 12, 2009.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10 (a) (2) of the FederalAdvisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Notice Improvement Issue Committee will be held Thursday, November 12, 2009, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Sallie Chavez. For more information please contact Ms. Chavez at 1–888–912–1227 or 954–423–7979, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: October 1, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–24110 Filed 10–6–09; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
October 7, 2009

Part II

Department of the Treasury
Internal Revenue Service
26 CFR Part 54

Department of Labor
Employee Benefits Security Administration
29 CFR Part 2590

Department of Health and Human Services
Centers for Medicare & Medicaid Services
45 CFR Parts 144, 146, and 148
Office of the Secretary
45 CFR Parts 160 and 164

Prohibiting Discrimination Based on Genetic Information; Interim Final Rules; HIPAA Administrative Simplification; Genetic Information Nondiscrimination Act; Proposed Rules

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[TD 9464]

RIN 1545–BI03

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210–AB27

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

45 CFR Parts 144, 146, and 148

RIN 0938–AP37

Interim Final Rules Prohibiting Discrimination Based on Genetic Information in Health Insurance Coverage and Group Health Plans

AGENCY: Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Interim final rules with request for comments.

SUMMARY: This document contains interim final rules implementing sections 101 through 103 of the Genetic Information Nondiscrimination Act of 2008. These provisions prohibit discrimination based on genetic information in health insurance coverage and group health plans.

DATES: *Effective Date:* These interim final regulations are effective on December 7, 2009.

Comment Date. Comments are due on or before January 5, 2010.

Applicability Dates: Group market rules. These interim final regulations for the group market apply to group health plans and group health insurance issuers for plan years beginning on or after December 7, 2009.

Individual market rules. These interim final regulations for the individual market apply with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after December 7, 2009.

ADDRESSES: Written comments may be submitted to any of the addresses specified below. Any comment that is submitted to any Department will be shared with the other Departments. Please do not submit duplicates.

Department of Labor. Comments to the Department of Labor, identified by RIN 1210–AB27, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: E-OHPSCA.EBSA@dol.gov*.
- *Mail or Hand Delivery:* Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, Room N–5653, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, *Attention:* RIN 1210–AB27.

Comments received by the Department of Labor will be posted without change to *http://www.regulations.gov* and *http://www.dol.gov/ebsa*, and available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210, including any personal information provided.

Department of Health and Human Services (HHS). Comments to HHS, identified by CMS–4137–IFC, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–4137–IFC, P.O. Box 8017, Baltimore, MD 21244–8010.
- *Hand or courier delivery.* Comments may be delivered to either 7500 Security Boulevard, Baltimore, MD 21244–1850 or Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. For delivery to Baltimore, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members. For delivery to Washington, because access to the interior of the HHH 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 proof of filing by stamping in and retaining an extra copy of the comments being filed.

All submissions submitted to HHS will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, at the headquarters for the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 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 (410) 786–7195.

Internal Revenue Service. Comments to the IRS, identified by REG–123829–08, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* CC:PA:LPD:PR (REG–123829–08), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.
- *Hand or courier delivery:* Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–123829–08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington DC 20224.

All submissions to the IRS will be open to public inspection and copying in room 1621, 1111 Constitution Avenue, NW., Washington, DC from 9 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Amy Turner, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335. Russ Weinheimer, Internal Revenue Service, Department of the Treasury, at (202) 622–6080. Adam Shaw, Centers for Medicare & Medicaid Services, Department of Health and Human Services, at (877) 267–2323, extension 61091.

Customer Service Information: Individuals interested in obtaining information from the Department of Labor concerning employment-based health coverage laws, including the nondiscrimination protections, may call the EBSA Toll-Free Hotline at 1–866–444–EBSA (3272) or visit the Department of Labor's Web site (*http://www.dol.gov/ebsa*). In addition, individuals may request a copy of CMS's publication entitled ''Protecting Your Health Insurance Coverage'' by calling 1–800–633–4227.

SUPPLEMENTARY INFORMATION:

I. Background

The Genetic Information Nondiscrimination Act of 2008 (GINA), Public Law 110–233, was enacted on May 21, 2008. Title I of GINA amended the Employee Retirement Income Security Act of 1974 (ERISA), the Public Health Service Act (PHS Act), the Internal Revenue Code of 1986 (Code), and the Social Security Act (SSA) to prohibit discrimination in health coverage based on genetic information. GINA builds on existing protections

added by titles I and IV of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).[1] Specifically, the HIPAA portability provisions already prohibit a group health plan or group health insurance issuer from imposing a preexisting condition exclusion based solely on genetic information. *See* the 2004 final HIPAA portability regulations, published in the **Federal Register** on December 30, 2004 (69 FR 78720). In addition, the HIPAA nondiscrimination provisions already prohibit a group health plan or group health insurance issuer from discriminating against an individual in eligibility, benefits, or premiums based on genetic information (and other health factors) of the individual or a dependent of the individual. *See* the 2006 final HIPAA nondiscrimination regulations, published in the **Federal Register** on December 13, 2006 (71 FR 75014).

Sections 101 through 104 of Title I of GINA prohibit group health plans, health insurance issuers in the group and individual markets,[2] and issuers of Medicare supplemental (Medigap) policies from discriminating based on genetic information, and from collecting such information.[3] Section 105 of Title I adds section 1180 of the SSA to require HHS to revise the HIPAA privacy regulations to clarify that genetic information is health information under the rule and to prohibit the use or disclosure of genetic information for underwriting purposes.[4] Title II of GINA prohibits discrimination in employment based on genetic information, and limits the acquisition and disclosure by employers and other entities covered by GINA Title II of such information.[5] These interim final regulations only interpret Sections 101 through 103 of Title I of GINA, which added provisions to Subtitle K of the Code, Part 7 of Subtitle B of Title I of ERISA, and Title XXVII of the PHS Act.[6] References to GINA in the remainder of this preamble refer to the group market provisions of sections 101 through 103 of GINA, unless the context clearly indicates otherwise.

On October 10, 2008, the Departments published in the **Federal Register** (73 FR 60208) a request for information (RFI) soliciting comments on the requirements of sections 101 through 104 of GINA. In addition, the Departments consulted with and obtained technical guidance from the scientific community, including the National Human Genome Research Institute within the National Institutes of Health and the Office for Human Research Protections, both within HHS. The Departments also coordinated with the Equal Employment Opportunity Commission (EEOC), which has responsibility for Title II of GINA, and the Office for Civil Rights within HHS, which has responsibility for section 105 of GINA.

After consideration of the comments received in response to the RFI and based on the consultations with other government agencies, the Departments are publishing these interim final regulations. For the group market, these regulations become applicable to plans and issuers on the first day of the plan year beginning on or after December 7, 2009. For the individual market, these regulations become applicable with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after December 7, 2009.

II. Overview of the Regulations

A. Group Market

While GINA does not mandate any specific benefits for health care services related to genetic tests, diseases, conditions, or genetic services, GINA establishes rules that generally prohibit a group health plan and a health insurance issuer in the group market from:

- Increasing the group premium or contribution amounts based on genetic information;
- Requesting or requiring an individual or family member to undergo a genetic test; and
- Requesting, requiring or purchasing genetic information prior to or in connection with enrollment, or at any time for underwriting purposes.

These three general prohibitions are subject to rules of construction or exceptions included in the statute which are discussed in further detail later in this preamble.

1. Conforming Changes to Existing Regulations

Sections 9801 and 9802 of the Code, 701 and 702 of ERISA, and 2701 and 2702 of the PHS Act, as originally added by HIPAA, included requirements pertaining to genetic information but did not define the term. The 2004 final HIPAA portability regulations included a definition of genetic information.

GINA contains a statutory definition of genetic information that differs from the definition in the 2004 final HIPAA portability regulations. These interim final regulations revise the existing regulations' definition of genetic information at 26 CFR 54.9801–2, 29 CFR 2590.701–2, and 45 CFR 144.103, to conform to the new statutory definition.

Sections 9802 of the Code, 702 of ERISA, and 2702 of the PHS Act, and the 2006 final HIPAA nondiscrimination regulations prohibit discrimination based on a health factor. GINA retained the prohibition against increasing an individual's premium or contribution amounts based on genetic information, and added a new provision to prevent plans and issuers from adjusting premium or contribution rates at the group level based on genetic information of one or more individuals in the group. Therefore, these interim final regulations amend the 2006 regulations to add clarifying cross-references. *See* 26 CFR 54.9802–1(c)(2)(i) and (iii), 29 CFR 2590.702(c)(2)(i) and (iii), and 45 CFR 146.121(c)(2)(i) and (iii).

2. Definitions

Paragraph (a) of these interim final regulations[7] provides most of the definitions used in GINA.[8] Some of these definitions repeat the statutory language, while others include regulatory clarifications.

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[1] These HIPAA provisions generally apply to group health plans and health insurance coverage in the group and individual markets.

[2] Rules on GINA's application in the individual market are solely within the jurisdiction of the Centers for Medicare & Medicaid Services at the Department of Health and Human Services and are discussed later in this preamble.

[3] This regulation does not address the application of GINA to Medigap issuers, which are subject to provisions in section 1882 of the SSA that are implemented by the Centers for Medicare & Medicaid Services (CMS), and incorporate by reference certain provisions in a model regulation of the National Association of Insurance Commissioners (NAIC). The model regulation adopted by the NAIC on September 24, 2008 was published by CMS in the **Federal Register** on April 24, 2009 at 74 FR 18808. This regulation also does not address the additional enforcement authority given to the Secretaries of Labor and HHS, relating to the use of genetic information, which will be addressed in future regulatory guidance.

[4] The HIPAA privacy provisions are administered by the Office for Civil Rights within HHS, and will be the subject of a separate rulemaking.

[5] Title II of GINA is under the jurisdiction of the Equal Employment Opportunity Commission, which issued a notice of proposed rulemaking on March 2, 2009, 74 FR 9056.

[6] Compliance with GINA sections 101 through 103 is not determinative of compliance with any other provision of GINA or any other State or Federal law, including the Americans with Disabilities Act.

[7] Because substantively similar regulation text is published separately by the three Departments, and the section numbers will all be different, the preamble refers only to the paragraph designations within those sections.

[8] The same definitions apply to the individual market regulations under GINA, which are discussed later in this preamble, to the extent that they are not inconsistent with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market.

a. Collect

The interim final regulations add the defined term ''collect.'' While ''collect'' was not defined in the statute, this term was added to paraphrase the longer phrase ''request, require or purchase.'' Thus, under the interim final regulations, ''collect'' means, with respect to information, to request, require, or purchase such information.

b. Family Member

GINA adds a definition of family member to sections 9832 of the Code, 733 of ERISA, and 2791 of the PHS Act. The definition of family member determines the application of GINA in two ways. First, the definition of genetic information for an individual includes information about the manifestation of a disease or disorder in family members of the individual. Also, a plan or issuer generally may not request or require an individual or family member of the individual to undergo a genetic test.

The statute defines a family member with respect to any individual as a dependent of such individual (as such term is used for purposes of sections 9801(f)(2) of the Code, 701(f)(2) of ERISA, and 2701(f)(2) of the PHS Act (the dependent special enrollment rules)),[9] and any other individual that is a first-, second-, third-, or fourth-degree relative of the individual or of the dependent of the individual. The legislative history suggests that the term ''family member'' be broadly construed: ''In general, it is intended that the term 'family member' be interpreted broadly so as to provide the maximum protection against discrimination.'' House Report 110–28, Part 2 at 27.

Sections 9801(f)(2) of the Code, 701(f)(2) of ERISA, and 2701(f)(2) of the PHS Act provide special enrollment rights to certain dependents that are eligible for coverage under a group health plan due to such family events as birth, adoption, or marriage. The statutory provisions of neither HIPAA nor GINA define dependent, but the term is defined in the 2004 final HIPAA portability regulations as any individual who is or may become eligible for coverage under the terms of a group health plan because of a relationship to a participant. This makes clear that it is necessary to consult the plan document and other applicable law to determine dependent status for purposes of GINA.

In determining who is a first-, second-, third-, or fourth-degree relation of an individual, the interim final regulations treat relatives by affinity (such as by marriage or adoption) the same as relatives by consanguinity (relatives who share a common biological ancestor, or blood relatives). The definition also treats relatives who are not full blood relatives (such as half siblings) the same as full blood relatives. In addition, the interim final regulations provide non-exhaustive lists of individuals who are first-, second-, third-, or fourth-degree relatives. The Departments invite public comments on this definition.

c. Genetic Information

The interim final regulations contain a definition of genetic information that restates and reorganizes the statutory provisions. Genetic information is defined, with respect to an individual, as information about the individual's genetic tests or the genetic tests of family members, the manifestation of a disease or disorder in family members of such individual (that is, family medical history), or any request of or receipt by the individual or family members of genetic services. The definition further clarifies that genetic information does not include information about the sex or age of any individual. It also clarifies how GINA applies to genetic information about a fetus or embryo. As previously noted, this definition is a change from the definition of genetic information that applied under the 2004 final HIPAA portability regulations.

d. Genetic Services

An individual's genetic information includes any request for or receipt of genetic services by such individual, or a family member. These interim final regulations follow the statutory definition. ''Genetic services'' means a genetic test, genetic counseling, or genetic education.

e. Genetic Test

GINA adds a definition of genetic test to sections 9832 of the Code, 733 of ERISA, and 2791 of the PHS Act.[10] These interim final regulations repeat the statutory language, which provides that a genetic test means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, if it detects genotypes, mutations, or chromosomal changes.

The interim final regulations also follow the statutory language providing that a genetic test does not include an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes, or an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could be reasonably detected by a health care professional with appropriate training and expertise in the field of medicine involved.

The interim final regulations include examples of certain tests that currently are regarded as genetic or non-genetic tests, as the case may be, based on research including consultations with representatives from the scientific community. However, due to rapidly evolving scientific knowledge, it is not an exhaustive list.

f. Manifestation or Manifested

The concept of manifestation of a disease arises in three contexts. First, a plan or issuer may increase the premium or contribution amount for a group health plan based on the manifestation of a disease or disorder of an individual who is enrolled in the plan. Second, the definition of genetic information for an individual includes information about the manifestation of a disease or disorder in family members of such individual. Finally, the definition of genetic test excludes an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could be reasonably detected by a health care professional with appropriate training and expertise in the field of medicine involved.

The interim final regulations add a definition of manifestation or manifested. A disease, disorder, or pathological condition is manifested when an individual has been or could reasonably be diagnosed by a health care professional with appropriate training and expertise in the field of medicine involved. However, the definition further provides that a disease, disorder, or pathological condition is not manifested if a diagnosis is based principally on genetic information.

g. Underwriting Purposes

GINA includes a definition of underwriting purposes. This term is discussed later in this preamble, in connection with the discussion of the prohibition on collecting genetic information.

3. Prohibition on Adjusting Group Rates

GINA and these interim final regulations expand the HIPAA prohibitions against discrimination

[9] This definition of the term ''dependent'' is solely for purposes of interpreting sections 101 through 103 of GINA, and is not relevant to interpreting the term under Title II of GINA, which is under the jurisdiction of the EEOC.

[10] This definition of the term ''genetic test'' is solely for purposes of interpreting Title I of GINA, and is not relevant to interpreting the term under Title II of GINA, which has a different statutory definition.

based on health factors, by prohibiting group health plans and health insurance issuers offering health coverage in connection with a group health plan from adjusting premium or contribution amounts for a group health plan or group of similarly situated individuals on the basis of genetic information. This is a change from prior law, which allowed plans and issuers to adjust premium or contribution amounts for the group health plan or a group of similarly situated individuals (but not for individuals within the group) based on genetic information, as well as other health factors. This prohibition against discrimination is distinct from the prohibition on requesting or requiring an individual to undergo a genetic test and the prohibition on collecting genetic information. Therefore, even when a plan or issuer has lawfully obtained genetic test results or other genetic information (for example, an acquisition that took place prior to GINA's effective date), the plan or issuer is still prohibited—under GINA and paragraph (b) of these interim final regulations—from using that information to discriminate.

GINA and these interim final regulations also provide that the prohibition on adjusting premiums or contributions based on genetic information does not limit the ability of a plan or issuer to increase the premium or contribution amount for a group health plan based on the manifestation of a disease or disorder of an individual enrolled in the plan. However, a plan or issuer may not use the manifested disease or disorder of one individual as genetic information about other group members to further increase the premium or contribution amount. Moreover, the prohibitions on adjusting premium or contribution amounts based on genetic information do not prohibit a plan or issuer from including costs associated with providing benefits for covered genetic tests or genetic services within the costs of providing other benefits in determining premiums or contribution amounts. In particular, a plan or issuer is not required to reduce the aggregate costs of providing health benefits for the year by those costs relating to benefits for genetic tests and services when adjusting group rates. These interim final regulations also make conforming changes to the existing HIPAA nondiscrimination regulations regarding the ability to adjust premium or contribution amounts based on a health factor.

4. Limitation on Requesting or Requiring Genetic Testing

GINA generally prohibits plans and issuers from requesting or requiring individuals or their family members to undergo a genetic test. There are three exceptions to this prohibition, for certain health care professionals, for determinations regarding payment, and for research.

The first exception allows a health care professional who is providing health care services to an individual to request that the individual undergo a genetic test. The health care professional must actually be providing health care services to the individual for the exception to apply. Thus, for example, the performance of claims review by a health care professional would never be considered providing health care services to an individual. The term ''health care professional'' is not limited to physicians.

The second exception allows a plan or issuer to obtain and use the results of a genetic test to make a determination regarding payment. For this purpose, payment is defined by reference to 45 CFR 164.501 of the HIPAA privacy regulations. However, plans and issuers are only permitted to request the minimum amount of information necessary to make this determination. These interim final regulations incorporate the standard set forth at 45 CFR 164.502(b) of the HIPAA privacy regulations to determine the minimum amount of information necessary.

In some cases, the appropriateness of certain courses of treatment for a patient depends on the patient's genetic makeup. A plan or issuer is permitted to condition payment for an item or service based on medical appropriateness that depends on an individual's genetic makeup. Under these narrow circumstances, a plan or issuer may condition payment on the outcome of a genetic test, and may refuse payment for the item or service if the individual does not undergo the genetic test. Any information received by the plan to make a determination regarding payment, including the results of a genetic test, must be used in accordance with these interim final regulations and the 2006 final HIPAA nondiscrimination regulations.

Under the third exception relating to the limitation on requesting or requiring genetic testing, a group health plan or group health insurance issuer is permitted to request, but not require, that a participant or beneficiary undergo a genetic test [11] if all of the following conditions of the research exception are satisfied:

- The request must be made pursuant to research that complies with 45 CFR Part 46 (or equivalent Federal regulations) and any applicable State or local law or regulations for the protection of human subjects in research. Moreover, to comply with the informed consent requirements of 45 CFR 46.116(a)(8), an investigator seeking the informed consent of a human subject must provide the subject with a statement that participation in the research is voluntary, refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is entitled, except in limited circumstances in which an institutional review board has approved a waiver or alteration of this requirement under the requirements of 45 CFR 46.116(c) or (d). For research in which the investigator provides subjects with the statement required under 45 CFR 46.116(a)(8) when seeking their informed consent, no additional disclosures are required for purposes of the GINA research exception.
- The plan or issuer must make the request in writing and must clearly indicate to each participant or beneficiary (or in the case of a minor child, to the legal guardian of such beneficiary) to whom the request is made that compliance with the request is voluntary and noncompliance will have no effect on eligibility for benefits or premium or contribution amounts.
- None of the genetic information collected or acquired as a result of the research may be used for underwriting purposes.
- The plan or issuer must complete a copy of the ''Notice of Research Exception under the Genetic Information Nondiscrimination Act'' (the Notice) and provide it to the address specified in its instructions. The Notice and instructions are available on the Department of Labor's Web site (*http://www.dol.gov/ebsa*).

5. Prohibition on Collection of Genetic Information

Paragraph (d) of these interim final regulations describes the statutory prohibitions against plans or issuers collecting genetic information, either for underwriting purposes or prior to or in connection with enrollment; sets forth the statutory definition of underwriting purposes; and clarifies that, if an

[11] Comments indicated that at least one issuer is engaging in a long-term research study involving genetic testing. Others may be planning similar research.

individual seeks a benefit under a plan or coverage, the plan or coverage may limit or exclude the benefit based on whether the benefit is medically appropriate (and a determination of whether the benefit is medically appropriate is not within the meaning of underwriting purposes).

Underwriting purposes is defined under GINA and in these interim final regulations as including, with respect to group health plan coverage, rules for and determinations of eligibility (including enrollment and continued eligibility), computation of premium or contribution amounts, and application of preexisting condition exclusions. Under GINA, the definition of underwriting is broader than merely activities relating to rating and pricing a group policy. These interim final regulations clarify that underwriting purposes includes changing deductibles or other cost-sharing mechanisms, or providing discounts, rebates, payments in kind, or other premium differential mechanisms in return for activities such as completing a health risk assessment (HRA) or participating in a wellness program.

GINA and paragraph (d) of the interim final regulations provide that plans and issuers are only prohibited from collecting genetic information for underwriting purposes or prior to or in connection with enrollment. Where an individual seeks a benefit under the plan, requesting family medical history or other genetic information to make a determination whether the benefit is medically appropriate for purposes of payment is neither for underwriting purposes nor prior to or in connection with enrollment. Therefore, although the statutory payment exception only applies to requests for individuals to undergo genetic tests, these interim final regulations provide it is permissible for a plan or issuer to request the minimum amount of genetic information necessary to make determinations regarding payment. Specifically, these interim final regulations provide that, if an individual seeks a benefit under a plan or coverage, the plan or coverage may limit or exclude the benefit based on whether the benefit is medically appropriate, and the determination of whether the benefit is medically appropriate is not within the meaning of underwriting purposes. However, a plan or issuer is permitted to request only the minimum amount of information necessary to determine medical appropriateness.

These interim final regulations provide clarifications of the statutory prohibition against a plan or issuer collecting genetic information prior to or in connection with enrollment. Under the interim final regulations, a collection of genetic information with respect to an individual is considered prior to enrollment if it is before the individual's effective date of coverage under the plan or health insurance coverage. The determination of whether a plan or issuer is collecting information before the individual's effective date of coverage is made at the time of collection. Providing that the determination is made at the time of collection means that if a plan or issuer collects genetic information with respect to an individual in circumstances that otherwise would not render the collection impermissible and at that time it is not being collected in connection with a future enrollment, the fact that a future enrollment may occur does not mean, for purposes of this rule, that the genetic information was collected before the enrollment. Thus, for example, if a plan collected genetic information with respect to an individual after initial enrollment (and not for underwriting purposes), and the individual later dropped coverage but then still later reenrolled in the plan, the collection of genetic information after the initial enrollment would not be considered prior to the reenrollment.

Similarly, if a plan affirmatively requires individuals to reenroll on an annual basis or allows individuals to change their enrollment, a collection of genetic information made after a current enrollment will not be considered made prior to a subsequent enrollment unless the collection of information is or will be used to affect that subsequent enrollment. Moreover, if genetic information is collected permissibly under one plan, the information is transferred to a second plan in connection with a merger or acquisition after this collection, and individuals covered under the first plan are enrolling for the first time in the second plan, the transfer of information to the second plan will not be considered a collection prior to the effective date of coverage under the second plan if the collection of information does not affect the enrollment status of individuals enrolling in the second plan.

These interim final regulations include the statutory exception (to the prohibition against collections of genetic information prior to or in connection with enrollment) for genetic information that is collected incidental to the collection of other information and is not used for underwriting purposes. Some commenters suggested that some questions that are typically included in some HRAs and similar documents could easily result in an individual providing genetic information, even if the question does not mention genetic tests or family medical history explicitly. An example given was, ''Have you had any laboratory tests in the past 2 years?'' These commenters suggested plans and issuers should be required to inform individuals that they should not reveal genetic information.

The interim final regulations clarify that if it is reasonable to anticipate that health information will be received as part of the collection of information, the incidental collection exception does not apply unless the collection explicitly states that genetic information should not be provided. If, in connection with a collection of information, it is reasonable to anticipate that health information will be received and the collection explicitly states that genetic information should not be provided, any genetic information provided will be considered within the incidental exception, as long as it is not used for underwriting purposes.

In response to the RFI, a number of comments were received concerning the application of the prohibition on requesting genetic information for underwriting purposes to plans and issuers that reward individuals for completing HRAs. Of particular concern are wellness programs including HRAs that request information about an individual's family medical history. Another concern is the application of the prohibition on requesting genetic information for underwriting purposes to screening processes for disease management programs that use genetic tests or family medical histories to identify individuals that can benefit from the program.

GINA prohibits collecting genetic information for underwriting purposes. As described earlier, underwriting purposes is defined broadly to include rules for eligibility for benefits and the computation of premium or contributions amounts, and not merely activities relating to rating and pricing a group policy. Moreover, GINA defines genetic information as including family medical history. Consequently, wellness programs that provide rewards for completing HRAs that request genetic information, including family medical history, violate the prohibition against requesting genetic information for underwriting purposes. This is the result even if rewards are not based on the outcome of the assessment, which otherwise would not violate the 2006 final HIPAA nondiscrimination rules regarding wellness programs.

Some comments received in response to the RFI urged strongly that a

regulatory exception should allow wellness programs to provide rewards for completing HRAs that request such information, notwithstanding the statutory prohibition on collecting genetic information.[12] Other comments suggested equally strongly that the regulations clarify that wellness programs may not collect such information as a condition for rewards. These interim final regulations do not provide an exception from underwriting for rewards provided by wellness programs, regardless of the amount of the reward. Examples generally illustrate that any reward given for the completion of an HRA that solicits information about the individual's family medical history violates the requirements of paragraph (d).

However, plans and issuers can collect genetic information through HRAs under GINA in certain circumstances. A plan or issuer can collect genetic information through an HRA as long as no rewards are provided (and if the request is not made prior to or in connection with enrollment). A plan or issuer can also provide rewards for completing an HRA as long as the HRA does not collect genetic information. Several examples are provided in these interim final regulations to illustrate these points. In one example, a plan administers two distinct HRAs, one that does not request genetic information and one that does. A reward is provided for completing the HRA that does not solicit genetic information; the instructions for the other HRA make clear that completion of the HRA is wholly voluntary and will not affect the reward given for completion of the first HRA. The example concludes that neither HRA violates the rules against collecting information for underwriting purposes or prior to or in connection with enrollment. Finally, another example illustrates the application of the exception for information obtained incidentally in the context of the acquisition of one issuer by another. The Departments invite comment on ways in which participation in HRAs can be encouraged while complying with the statutory prohibition on using genetic information for underwriting purposes.

[12] Earlier bills (for example, S.358, 110th Cong. (as reported by S. Comm. on Health, Education, Labor, and Pensions) March 29, 2007; H.R. 493, 110th Cong. (as reported by H. Comm. on Energy and Commerce) March 29, 2007) included exceptions for wellness programs in both the Title I health coverage provisions and the Title II employment provisions. As enacted, GINA only includes an exception for wellness programs in the Title II employment provisions.

6. Medical Appropriateness

Paragraph (e) of these interim final regulations provides examples illustrating how medical appropriateness is determined, in connection with both the payment exception under paragraph (c) and the prohibition against collecting genetic information for underwriting purposes under paragraph (d). Examples illustrate the minimum amount of genetic information necessary to determine payment, the restriction of benefits to medically appropriate treatment, and the application of the medical appropriateness rules to the use of genetic information to determine eligibility for a disease management program.

7. Special Rules Related to Very Small Group Health Plans

Generally, the provisions of HIPAA titles I and IV, as amended, do not apply to a group health plan for a plan year if the plan is a very small group health plan; that is, on the first day of the plan year, the group health plan has fewer than 2 participants who are current employees. GINA and these interim final regulations provide that this exception for very small group health plans is not available for the genetic information provisions in Subtitle K of the Code, Part 7 of Subtitle B of Title I of ERISA, and Title XXVII of the PHS Act.

8. Treatment of Non-Federal Governmental Plans

Section 2721(b)(2) of the PHS Act permits the sponsor of a self-funded non-Federal governmental plan as defined in 45 CFR 144.103 to elect to exempt the plan from most of the requirements of Title XXVII of the PHS Act. This is referred to herein as the ''opt-out election.'' However, section 2721(b)(2)(C)(ii) states that no opt-out election is available with respect to the requirements for certification and disclosure of creditable coverage. The PHS Act regulations at 45 CFR 146.180 implement the foregoing opt-out rules under section 2721.

Section 102(c) of GINA added a second limitation on the opt-out rights of a self-funded non-Federal governmental plan sponsor. Section 2721(b)(2)(D) of the PHS Act precludes any exemption election by a self-funded non-Federal governmental plan sponsor from GINA's requirements. The Centers for Medicare & Medicaid Services (CMS) amended 45 CFR 146.180(h) accordingly.

CMS made certain additional conforming changes to other provisions of 45 CFR 146.180. In particular, CMS deleted the reference in 45 CFR 146.180(h) to CMS enforcement under 45 CFR 146.180(k) because paragraph (k) makes clear that CMS enforces all requirements of part 146 that apply to non-Federal governmental plans. CMS also revised the last sentence of 45 CFR 146.180(k), which refers to the imposition of a civil money penalty, by replacing ''under § 150.305'' with ''under subpart C of part 150'' because subpart C includes multiple sections that govern imposition of a civil money penalty, while 45 CFR 150.305 only applies to a determination of which entity is liable for a civil money penalty.

B. Individual Market

The regulations at 45 CFR Part 148 implement the individual market requirements of Title XXVII of the PHS Act. Section 102(b) of GINA added a new section 2753 (42 U.S.C. 300gg–53) to Title XXVII to prohibit discrimination on the basis of genetic information in the individual health insurance market. Section 2753 of the PHS Act generally parallels the group market genetic nondiscrimination provisions GINA added to the Code, ERISA and the PHS Act. Section 2753 and the interim final regulations prohibit issuers in the individual market from collecting genetic information prior to or in connection with such enrollment, and at any time for underwriting purposes. Section 2753 and the interim final regulations also prohibit issuers from requesting or requiring genetic tests. The exceptions and rules of construction that apply to the foregoing requirements in the group market (for example, the rule for incidental collections of genetic information and the research exception to the rule against requiring genetic tests) also apply in the individual market.

Since individual market issuers were not subject to the Federal HIPAA nondiscrimination requirements applicable to issuers in the group market, it was necessary for GINA to amend the PHS Act in order to have similar protections against genetic discrimination applicable in both markets. Thus, new section 2753 of the PHS Act prohibits issuers of individual health insurance policies from using genetic information as a basis for making eligibility or premium determinations, or for imposing preexisting condition exclusions. Issuers in the individual market may continue to establish rules for eligibility, increase premiums, and impose preexisting condition exclusions based on the manifestation of a disease or disorder in an individual, or in a family

member covered under the policy that covers the individual. However, they cannot use a manifestation of a disease or disorder in one individual as genetic information about family members covered under the same policy or another policy in order to further increase premiums.

These interim final regulations add a new § 148.180 to subpart C of part 148 to implement section 2753 of the PHS Act. To the extent that the provisions of section 2753 parallel the GINA amendments to section 2702 of the PHS Act which govern the group market, § 148.180 restates the corresponding group market provisions (with conforming changes and technical corrections appropriate to the individual market) rather than incorporating the group market provisions by reference.

As discussed above, GINA amended the Social Security Act to include genetic nondiscrimination provisions that apply to issuers of Medigap policies. The PHS Act regulations at 45 CFR 148.220 state that Medigap policies are excepted benefits. Nevertheless, because Medigap policies are subject to GINA under the Social Security Act and NAIC model regulation, CMS made clarifying changes to § 148.220 to emphasize the foregoing.

III. Interim Final Regulations and Request for Comments

Section 9833 of the Code, section 734 of ERISA, and section 2792 of the PHS Act authorize the Secretaries of the Treasury, Labor, and HHS to promulgate any interim final rules that they determine are appropriate to carry out the provisions of Chapter 100 of Subtitle K of the Code, Part 7 of Subtitle B of Title I of ERISA, and Part A of Title XXVII of the PHS Act, which include the provisions of GINA.

Under Section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) a general notice of proposed rulemaking is not required when an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest.

These rules are being adopted on an interim final basis because the Secretaries have determined that without prompt guidance some members of the regulated community may not know what steps to take to comply with the requirements of GINA, which may result in an adverse impact on participants and beneficiaries with regard to their health benefits under group health plans and the protections provided under GINA. Moreover, GINA's requirements will affect the regulated community in the immediate future.

The requirements of sections 101 through 103 of GINA are effective for all group health plans and for health insurance issuers offering coverage in connection with such plans for plan years beginning after May 21, 2009. Plan administrators and sponsors, issuers, and participants and beneficiaries will need guidance on how to comply with the new statutory provisions. As noted earlier, these interim rules take into account comments received by the Departments in response to the request for information on GINA published in the **Federal Register** on October 10, 2008 (73 FR 60208). For the foregoing reasons, the Departments find that the publication of a proposed regulation, for the purpose of notice and public comment thereon, would be impracticable, unnecessary, and contrary to the public interest.

IV. Economic Impact and Paperwork Burden

A. Summary—Department of Labor and Department of Health and Human Services

As discussed above, Title I of GINA generally prohibits group health plans and health insurance issuers in both the group and individual markets from discriminating based on genetic information, requesting or requiring an individual to undergo a genetic test, and collecting genetic information prior to or in connection with enrollment or for underwriting purposes. The Departments have crafted these interim final regulations to secure the protections from discrimination intended by Congress in as economically efficient a manner as possible. Although the Departments are unable to quantify the regulations' economic benefits, they have quantified their costs and have provided a qualitative discussion of some of the benefits that may stem from this rule.

One potential benefit associated with GINA and these interim final regulations is that genetic testing and research may expand when discrimination based on genetic information and the collection of such information is prohibited, if these protections allay individuals' fears of adverse health coverage-related consequences from undergoing genetic testing and participating in research studies examining genetic information. An increase in genetic testing and research, in turn, could provide greater knowledge regarding the genetic basis of disease, which could facilitate the early diagnosis and treatment of individuals with a genetic predisposition toward developing certain diseases and disorders and may allow scientists to develop new medicines, treatments, and therapies that could enhance the health and welfare of Americans.

B. Statement of Need for Regulatory Action

Congress directed the Departments to issue regulations implementing the GINA provisions not later than 12 months after the date of enactment. In response to this Congressional directive, these interim final regulations clarify and interpret the GINA nondiscrimination provisions under section 702 of ERISA, sections 2702 and 2753 of the PHS Act, and section 9802 of the Code. These regulations are needed to secure and implement GINA's nondiscrimination provisions and ensure that the rights provided to participants, beneficiaries, and other individuals under GINA are fully realized. The Departments' assessment of the expected economic effects of these interim final regulations is discussed in detail below.

C. Executive Order 12866—Department of Labor and Department of Health and Human Services

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Departments must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, the Departments have determined that this action raises novel policy issues arising out of legal mandates. Therefore, the interim final regulations are ''significant'' and subject

to OMB review under Section 3(f)(4) of the Executive Order. Accordingly, the Departments have undertaken, as described below, an assessment of the costs and benefits of the regulation. Over the 10-year period of 2010 to 2019, the present value of the costs, using a discount rate of 7 percent, is estimated to be $294.8 million in 2009 Dollars, as is shown in Table 1.

All other numbers included in the text are not discounted.

TABLE 1—TOTAL DISCOUNTED COSTS OF RULE

[In millions of 2009 dollars]

Year	Wellness plan review	Individual market review	Medical record review	Research disclosure	Total costs—discounted at 7%
	(B)	(C)	(D)	(E)	B + C + D + E
2010	$2.0	$5.3	$38.3	$0	$45.5
2011			35.8		35.8
2012			33.4		33.4
2013			31.2		31.2
2014			29.2		29.2
2015			27.3		27.3
2016			25.5		25.5
2017			23.8		23.8
2018			22.3		22.3
2019			20.8		20.8
Total with 7% Discounting					294.8
Total with 3% Discounting					356.8

Note: The displayed numbers are rounded and therefore may not add up to the totals. They are discounted using a 7 percent discount rate unless otherwise noted.

The Departments performed a comprehensive, unified analysis to estimate the costs and, to the extent feasible, provide a qualitative assessment of benefits attributable to the statute and regulations for purposes of compliance with Executive Order 12866, the Regulatory Flexibility Act, and the Paperwork Reduction Act. The Departments' assessment and underlying analysis is set forth below.

1. Affected Entities and Other Assumptions

The Departments estimate that 137.1 million participants and beneficiaries [13] are covered by nearly 2.5 million private sector group health plans and 31.7 million individuals are covered by individual health insurance policies.[14] The Departments also estimate that approximately 630 insurers will be are affected by GINA, consisting of approximately 460 insurers offering coverage in connection with insured group health plans and approximately 490 health insurance issuers offering policies in the individual health insurance market.[15]

2. Benefits

One potential benefit associated with GINA and these interim final regulations is that genetic testing and research may increase if the protections provided under GINA allay the public's concerns that health plans and insurers will use genetic information to discriminate based on the collection and disclosure of such information. Comments received in response to the RFI indicate that genetic testing and research currently are being underutilized. A major reason cited for the lack of genetic testing is the public's fear of adverse employment-related or health coverage-related consequences associated with having genetic testing or participating in research studies that examine genetic information. Removing barriers that impede the growth of genetic testing and research has the potential to improve health and save lives by providing patients and physicians with critical knowledge to facilitate early intervention often before disease symptoms are manifested. It also could expand the development of scientific research, which could result in the development of new medicines, therapies, and treatments for diseases and disorders.

Additional economic benefits may derive directly from the improved clarity provided by the interim final regulations, which will reduce uncertainty and help group health plan sponsors and health insurers comply with GINA's requirements in a cost effective manner. Moreover, the prohibitions enacted in GINA and these interim final regulations should provide a benefit to individuals with genetic predispositions for diseases by decreasing the number of individuals that are denied coverage under a group health plan or priced out of the individual health insurance market.[16]

Currently, the Departments are unable to quantify these benefits, because relatively few genetic tests and research studies are performed in the private sector [17] and a limited number of genetic tests are available. As stated above, the Departments expect the number of genetic tests and research studies to increase in the near future. The Departments, however, lack sufficient information to project the trajectory of this increase.

3. Costs

a. Health Risk Assessments

As discussed above, GINA and these interim final regulations prohibit group health plans and health insurance issuers offering coverage in the group and individual health insurance markets from collecting genetic information in

[13] Departments' estimates based on the March 2007 Current Population Survey.

[14] Departments' estimates based on the March 2008 Current Population Survey.

[15] Estimates are from 2007 NAIC financial statements data and the California Department of Managed Healthcare (*http://wpso.dmhc.ca.gov/hpsearch/viewall.aspx*).

[16] When scoring the GINA bill the Congressional Budget Office estimated that the bill would increase health insurance coverage by about 600 people a year with most being in the individual market. Congressional Budget Office Cost Estimate, H.R. 493 Genetic Information Nondiscrimination Act of 2007, April 12, 2007.

[17] Pollitz, Karen, *et. al.* ''Genetic Discrimination in Health Insurance: Current Legal Protections and Industry Practices.'' *Inquiry* 44:350–368 (Fall 2007).

connection with or prior to enrollment and for underwriting purposes. Comments received in response to the RFI indicate that the immediate impact of GINA and these interim final regulations on group health plans and health insurance issuers providing group health coverage should be minimal. Plans and issuers commented that they do not collect or use genetic information for underwriting purposes because pre-GINA laws and regulations prohibit them from discriminating against individuals based on any health status-related factors, including genetic information.[18]

Currently, many group health plans request family medical history information to be provided in response to questions on HRAs that are completed by new employees before enrollment in the plan and as part of open enrollment for current employees. HRAs are used in connection with wellness and disease management programs to identify individuals at risk for certain conditions and provide an opportunity for preventive treatment service referrals, disease management, and other behavioral change initiatives that are focused on creating higher quality medical outcomes. Some group health plans provide rewards and incentives to employees who complete HRAs, such as premium reductions, lower deductibles, and cash bonus payments.

The Departments expect that most of the cost of complying with GINA and these interim final regulations will be concentrated among the approximately 30,000 group health plans [19] that are associated with wellness and disease management programs that provide rewards and incentives to employees that complete HRAs. These plans will have to conduct a compliance review to ensure that their HRAs and any associated policies and procedures comply with GINA's prohibition on using genetic information prior to or in connection with enrollment or for underwriting purposes and to make any necessary changes to their HRAs and policies and procedures.

The Departments assume that insured plans will rely on the health insurance issuer providing coverage to ensure compliance and that self-insured plans will rely on wellness vendors and other service providers to ensure compliance. These interim final regulations provide several examples illustrating the application of the regulations to HRAs, which are intended to reduce the compliance burden. Moreover, the per plan compliance cost is expected to be low, because vendors and insurers will be able to spread these costs across multiple client plans.[20]

The Departments assume that the average burden per plan will be one-half hour of a legal professional's time at an hourly labor rate of $116,[21] and one-half hour of a clerical staff's time at an hourly labor rate of $26 to conduct the compliance review and make the needed changes to the HRAs. This results in a total cost of $2.1 million ($1.7 for legal services, and $0.4 million for clerical services) in the first year. The Departments invite public comments on this estimate.

To the extent that GINA and these interim final regulations prohibit group health plans and issuers from incentivizing employees to complete HRAs requesting genetic information, including family medical history, and response rates for HRAs drop as a consequence, a cost may be incurred that is associated with the forgone benefits of identifying disease risks early and preventing their onset. The Departments do not have adequate data to determine whether these forgone benefits would materialize, and, if so, what their extent may be. However, the Departments invite public comments on this issue, including evidence-based estimates of what the extent of these forgone benefits may be, if any, and ways in which these public health benefits may be realized while complying with the statutory prohibition on using genetic information for underwriting purposes.

b. GINA's Impact on the Individual Health Insurance Market

The Department of Health and Human Services expects that the individual health insurance market will incur higher costs of complying with these interim final regulations than group health plans. The Departments assume that health insurance issuers in the individual market will have to review their applications and underwriting policies and procedures to ensure that genetic information is not collected or used for underwriting purposes. Issuers also will need to train underwriters to avoid using genetic information in underwriting. The Departments estimate that the approximately 490 issuers in the individual health insurance market will spend approximately 100 hours in-house each conducting a compliance review, modifying their applications and policies and procedures, and drafting training materials and providing training sessions for underwriters to ensure compliance with GINA and these interim final regulations at a labor rate of $116. This results in a total cost of about $5.6 million. The Departments invite public comments on this estimate.

One comment received in response to the RFI indicated that underwriters in the individual health insurance market request medical records from medical service providers for approximately 20 percent of applicants.[22] It is likely that most of these medical records contain information relating to family medical history. In a survey, 16 of 23 senior medical underwriters reported that while investigating an applicant's medical history, they had encountered genetic information about an applicant at least once in the applicant's history.[23] As explained earlier, these interim final regulations would require health insurance issuers in the individual market to explicitly state that genetic information—including family medical history—should not be provided when an issuer requests medical records from medical services providers for underwriting purposes. In turn, issuers may request that medical services providers redact any family medical history information regarding an applicant that is contained in medical records requested by an issuer to ensure that the provisions of GINA and these interim final regulations are not violated. However, as explained earlier under the discussion of the incidental collection exception, if medical services providers do not comply with the issuers' requests to redact such information, the collection of genetic information would count as an ''incidental collection'' of genetic information on the part of issuers, and these interim final regulations would

[18] *See e.g.,* Comments from BlueCross BlueShield Association, pg. 3 (*http://www.dol.gov/ebsa/pdf/cmt-12190808.pdf*) and Society for Human Resource Management, pg. 2 (*http://www.dol.gov/ebsa/pdf/cmt-12190813.pdf*).

[19] This estimate is based on the Kaiser Family Foundation Survey, Employer Health Benefits 2008 Annual Survey: Wellness Programs and Employer Opinions, section 12, which estimates that 10% of plans have health risk assessment and 12% of those offer a financial incentive to employees that complete HRAs (2.5 million group health plans × 10% of plans have health risk assessments × 12% of those plans that offer financial rewards and incentives = 30,000 plans).

[20] There are about 30,000 plans with health risk assessments and about 460 insurers in the group market; this is an average of 65 plans per insurer.

[21] EBSA estimates based on the National Occupational Employment Survey (May 2007, Bureau of Labor Statistics) and the Employment Cost Index June 2008, Bureau of Labor Statistics).

[22] This comment may be accessed at the following URL: *http://www.dol.gov/ebsa/regs/cmt-geneticinfoND.html.*

[23] Pollitz, Karen, *et al.,* ''Genetic Discrimination in Health Insurance: Current Legal Protections and Industry Practices.'' Inquiry, 44: 350–368 (Fall 2007).

not be violated so long as the issuers do not use the genetic information for underwriting purposes.

The Departments assume that medical service providers will be responsible for redacting genetic information from medical records before submitting the records to insurers, and that trained medical staff will be used for this purpose. The Departments estimate that, on average, health insurance issuers will request 3 million medical records per year, and that medical records staff will spend one-half hour per request redacting genetic information from requested medical records, at a labor rate of $26 per hour. This results in a total annual cost of nearly $41 million. The Departments invite public comments on this estimate.

c. Research Exception

As discussed above, GINA and these interim final regulations provide an exception to the limitations on requesting or requiring genetic testing, which allows a group health plan or group health insurance issuer to request, but not require, a participant or beneficiary to undergo a genetic test [24] if all of the following conditions of the research exception are satisfied:

• The request must be made pursuant to research that complies with 45 CFR Part 46 (or equivalent Federal regulations) and any applicable State or local law or regulations for the protection of human subjects in research. To comply with the informed consent requirements of 45 CFR 46.116(a)(8), participants in the research must receive a disclosure that participation in the research is voluntary, refusal to participate cannot involve any penalty or loss of benefits to which the subject is otherwise entitled, and participation may be discontinued at any time without penalty or loss of benefits to which the subject is entitled when the participant's informed consent is sought (the participant disclosure).[25] These interim final regulations provide that when participants receive the participant disclosure required under 45 CFR 46.116(a)(8) when their informed consent is sought, no additional disclosures are required for purposes of the GINA research exception.

• The plan or issuer must make the request in writing and must clearly indicate to each participant or beneficiary (or in the case of a minor child, to the legal guardian of such beneficiary) to whom the request is made that compliance with the request is voluntary and noncompliance will have no effect on eligibility for benefits or premium or contribution amounts.

• None of the genetic information collected or acquired as a result of the research may be used for underwriting purposes.

• The plan or issuer must complete a copy of the ''Notice of Research Exception under the Genetic Information Nondiscrimination Act'' (the Notice) and provide it to the address specified in its instructions. The Notice and instructions are available on the Department of Labor's Web site (*http://www.dol.gov/ebsa*).

The Departments estimate that up to five entities (consisting of group health plans and health insurance issuers in the group and individual markets) will use the genetic research exception and assume that the requirements of 45 CFR Part 46 will be satisfied. Based on the foregoing, the Departments assume that all group health plans and group health insurance issuers using the exemption will not have to send a disclosure to participants in the genetic research, because they will comply with the requirements of 45 CFR Part 46.116(a)(8). Therefore, the only incremental cost imposed by these interim final regulations will be for the group health plans and group health issuers to send the Notice to the appropriate Department.[26] Because this cost is de minimis, it has not been included in this Regulatory Impact Analysis.

4. Uncertainty

a. Adverse Selection

GINA's prohibition on the use and collection of genetic information could increase the potential for adverse selection in the individual health insurance market. Adverse selection arises when individuals seeking coverage have information about their health risks that issuers do not know.[27]

Such information asymmetry can prevent the insurer from assessing the individual's risk accurately enough to determine the appropriate premium to charge. On average, if issuers do not accurately assess the risks they assume, they will pay more in claims than they receive in premiums. To eliminate this shortfall, issuers may be forced to raise premiums for all insureds. If issuers raise premiums for all insureds, those with a perceived low risk of needing medical care might drop their coverage. This outcome in serious cases may lead to a continued cycle of across-the-board premium increases.

The Departments are not able to measure the extent to which GINA might lead to adverse selection and thereby raise premiums in the individual health insurance market, or whether GINA protections of genetic information will increase the total number of persons insured under individual health insurance policies relative to the number that might leave the market due to increased premiums. Currently, with few tests being performed, the Departments expect the impact to be minimal; however, as the number of tests increases, the effects of adverse selection on the individual health insurance market also could increase and the impact of adverse selection could grow.

b. Impact of GINA on Health Care Expenditures

Another uncertainty associated with GINA and these interim final regulations is whether total health care expenditures will increase or decrease. Whether expenditures will increase or decrease is dependent on a number of factors such as the following: The cost and predictive power of tests, how widely the tests are performed among the population, whether detected gene abnormalities are based on a single gene

[24] Comments indicated that at least one issuer is engaging in a long-term research study involving genetic testing. Others may be planning similar research.

[25] The regulations at 45 CFR 46.116(c) and (d) provide for the waiver or alteration of the requirements for obtaining informed consent in certain cases. However, given the second condition established for this research exception under GINA, it is unlikely that a waiver of informed consent could be granted under 45 CFR 46.116(c) or (d). According to 45 CFR 46.116(c) and (d), one of the conditions that must be met in order for a waiver to be granted is that the research could not practicably be carried out without the waiver. The second condition of this research exception under GINA states that a plan or issuer may request, but not require, that a participant or beneficiary undergo genetic testing for research purposes only if the plan or issuer makes the request in writing and clearly indicates that compliance with the request is voluntary. Since it is difficult to envision a circumstance where it would be the case that research could not be practicably carried out without a waiver of informed consent under 45 CFR 46.116(c) or (d), and yet be able to satisfy the second condition of this research exception under GINA, we expect that for research studies conducted under the research exception under GINA, it is unlikely that informed consent could be waived under 45 CFR 46.116(c) or (d).

[26] The instructions to the Notice will specify the appropriate Department to which the Notice should be submitted.

[27] For example, individuals who obtain results from genetic tests indicating the risk of contracting a serious medical condition could benefit financially by ''choosing the timing of purchases, and the type and level of benefits purchased. This biased selection would have a direct impact on premium rates, ultimately raising the cost of insurance to everyone.'' American Academy of Actuaries, ''Genetic Information and Medical Expense Insurance,'' June 2000.

or also involve environmental and other confounding factors which lower the predictive value of the test and treatment, and whether treatments for detected gene abnormalities are less costly than treatments for the manifested disease.

Genetic testing typically is not covered under individual health insurance policies; group health plans are far more likely to cover both the tests and associated treatments.[28] As the number of genetic tests performed increases, the Departments expect group health care premiums will rise to offset the increased costs to insurers, and any increase or decrease in overall expenditures is expected to result in increased or decreased premiums for the group market.

D. Regulatory Flexibility Act—Department of Labor and Department of Health and Human Services

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Because these rules are being issued as interim final regulations, the RFA does not apply and the Departments are not required to either certify that the rule would not have a significant economic impact on a substantial number of small entities or conduct a regulatory flexibility analysis.

Nevertheless, the Departments carefully considered the likely impact of the rule on small entities in connection with their assessment under Executive Order 12866. The Departments expect the rules to reduce the compliance burden imposed on plans and insurers by clarifying definitions and terms contained in the statute and providing examples of acceptable methods to comply with specific provisions. Based on the foregoing, and as further discussed below, the Departments hereby certify that the rule will not have a significant economic impact on a substantial number of small entities.[29]

The Departments expect most of the cost of complying with GINA and the rules to be concentrated among group health plans associated with wellness and disease management programs providing rewards and incentives to employees who complete Health Risk Assessments (HRAs). The Departments estimate that approximately 15,000 (out of 2.4 million) small plans (or 0.00625 of all group health plans) will need to review their HRAs to ensure that genetic information is not used prior to or in connection with enrollment or for underwriting purposes and to make any necessary changes to forms and policies and procedures. This process is estimated to require one-half hour of a legal professional's time at an hourly labor rate of $116 and one-half hour of a clerical staff member's time at an hourly labor rate of $26 resulting in an average cost to the plans of $71 ($58 + $13).

Health insurers in both the group and individual health insurance markets will have to ensure compliance with the GINA and the rules. For this purpose, using the Small Business Administration's definition of a small business as a business with less than $7 million in revenues, premiums earned as a measure of revenue, and data obtained from the National Association of Insurance Commissioners, the Departments estimate that approximately 75 out of 630 insurers had revenues of less that $7 million, and, of these, about 25 had revenues of less than $1 million.

The Departments estimate that each insurer on average would spend 100 hours of professional time at an hourly labor rate of $116 to revise policies and procedures and train underwriters about GINA. This would result in an estimated one time average cost of $11,600 per insurer. For the approximately 25 insurers with revenues of less than $1 million, this burden could be more than one percent of premiums. However, the estimated costs are an average cost for plans of all sizes, and the Departments expect small insurers to have lower implementation costs, because they have fewer underwriters and other staff members to train.

The Departments invite public comments on this certification.

E. Special Analyses—Department of the Treasury

Notwithstanding the determinations of the Department of Labor and Department of Health and Human Services, for purposes of the Department of the Treasury, it has been determined that this Treasury decision is not a significant regulatory action for purposes of 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 these regulations. For the applicability of the RFA, refer to the Special Analyses section in the preamble to the cross-referencing notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these interim final regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

F. Paperwork Reduction Act

1. Department of Labor and Department of the Treasury

As part of their continuing efforts to reduce paperwork and respondent burden, the Departments conduct a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

As discussed above, GINA and these interim final regulations provide an exception to the limitations on requesting or requiring genetic testing that allow a group health plan or group health insurance issuer to request, but not require, a participant or beneficiary to undergo a genetic test[30] if all of the following conditions of the research exception set forth in 29 CFR 2590.702–1(c)(5) are satisfied:

- The request must be made pursuant to research that complies with 45 CFR Part 46 (or equivalent Federal regulations) and any applicable State or local law or regulations for the protection of human subjects in research. To comply with the informed consent requirements of 45 CFR 46.116(a)(8), a participant must receive a disclosure that participation in the research is voluntary, refusal to participate cannot involve any penalty

[28] American Academy of Actuaries, *Genetic Information and Medical Expense Insurance.* June 2000.

[29] For purposes of this certification, the Departments continue to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans which cover fewer than 100 participants. The Departments consulted with the Small Business Administration in making this determination as required by 5 U.S.C. 601(3) and 13 CFR 121.903(c).

[30] Comments indicated that at least one issuer is engaging in a long-term research study involving genetic testing. Others may be planning similar research.

or loss of benefits to which the subject is otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is entitled (the participant disclosure).[31] These interim final regulations provide that when the participant disclosure is received by participants when their informed consent is sought, no additional disclosures are required for purposes of the GINA research exception.

- The plan or issuer must make the request in writing and must clearly indicate to each participant or beneficiary (or in the case of a minor child, to the legal guardian of such beneficiary) to whom the request is made that compliance with the request is voluntary and noncompliance will have no effect on eligibility for benefits or premium or contribution amounts.
- None of the genetic information collected or acquired as a result of the research may be used for underwriting purposes.
- The plan or issuer must complete a copy of the ''Notice of Research Exception under the Genetic Information Nondiscrimination Act'' (the Notice) and provide it to the address specified in its instructions. The Notice and instructions are available on the Department of Labor's Web site (*http://www.dol.gov/ebsa*).

Two information collection requests (ICRs) are associated with the genetic research exception—the participant disclosure and the Notice. The Departments estimate that up to three entities will take advantage of the research exception, and that all of the entities will comply with the requirements of 45 CFR Part 46, including providing the participant disclosure.

The Departments are not soliciting comments concerning an ICR pertaining to the participant disclosure, because these interim final regulations provide that group health plans and group health insurance issuers meeting the requirements of 45 CFR Part 46 are not required to provide additional disclosures, and the Departments have assumed that all entities using the research exemption will meet these requirements. The costs and burdens associated with complying with the participant disclosure requirement already are accounted for in the information collection request for the informed consent requirements contained in 45 CFR Part 46 approved under the Department of Health and Human Services' OMB Control Number (0990–0260).

Currently, the Departments are soliciting comments concerning the Notice. The Departments have submitted a copy of these interim final regulations to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Departments and OMB are particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, by permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Employee Benefits Security Administration either by fax to (202) 395–7285 or by e-mail to *oira_submission@omb.eop.gov*. Although comments may be submitted through December 7, 2009, OMB requests that comments be received within 30 days of publication of these interim final regulations to ensure their consideration. A copy of the ICR may be obtained by contacting the PRA addressee: G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers. *E-mail: ebsa.opr@dol.gov*. ICRs submitted to OMB also are available at reginfo.gov (*http://www.reginfo.gov/public/do/PRAMain*).

The Departments estimate that completing and mailing the Notice will require 15 minutes of clerical time at an hourly rate of $26 per hour. Therefore, the total hour burden associated with completing the Notice is estimated to be 0.75 hours of clerical time. The cost burden consists of material and mailing cost to mail the two-page Notice and is estimated to total $20. Although the Departments share the burden for this ICR, the Departments have agreed to allocate the hour and cost burden associated with the rule entirely to the Department of Labor, because it is so minimal. The Departments note that persons are not required to respond to, and generally are not subject to any penalty for failing to comply with, an ICR unless the ICR has a valid OMB control number.[32]

These paperwork burden estimates are summarized as follows:

Type of Review: New collection.

Agencies: Employee Benefits Security Administration, Department of Labor; Internal Revenue Service, Department of the Treasury.

Title: Notice of Research Exception under the Genetic Information Nondiscrimination Act.

OMB Number: 1210–NEW.

Affected Public: Business or other for-profit; not-for-profit institutions.

Respondents: 3.

Responses: 3.

Frequency of Response: Occasionally.

Estimated Total Annual Burden Hours: 0.75 hours.

Estimated Total Annual Burden Cost: $20.

2. Department of Health and Human Services

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

[31] While 45 CFR 46.116(c) and (d) permit a waiver of the disclosure otherwise required under 45 CFR 46.116(a)(8), it is unlikely that such a waiver could be granted for research studies conducted under the research exception under GINA. *See* footnote 25.

[32] 5 CFR 1320.1 through 1320.18.

a. ICRs Regarding Additional Requirements Prohibiting Discrimination Based on Genetic Information (§ 146.122)

As stated in the interim final regulations at 45 CFR 146.122(c), there are limitations on requesting or requiring genetic testing. The interim final regulations at 45 CFR 146.122(c)(1) state that a group health plan, and a health insurance issuer offering health insurance coverage in connection with a group health plan, must not request or require an individual or a family member of the individual to undergo a genetic test. Section 146.122(c)(5) explains the research exception with respect to the limitations on requesting or requiring genetic testing as defined in 45 CFR 146.122(c)(1). Specifically, 45 CFR 146.122(c)(5) states that a plan or issuer may request, but not require, that a participant or beneficiary undergo a genetic test if all of the following conditions are met:

- The request must be made pursuant to research that complies with 45 CFR Part 46 (or equivalent Federal regulations) and any applicable State or local law or regulations for the protection of human subjects in research. To comply with the informed consent requirements of 45 CFR 46.116(a)(8), a participant must receive a disclosure that participation in the research is voluntary, refusal to participate cannot involve any penalty or loss of benefits to which the subject is otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is entitled (the participant disclosure).[33] These interim final regulations provide that when the participant disclosure is received by participants when their informed consent is sought, no additional disclosures are required for purposes of the GINA research exception.
- The plan or issuer must make the request in writing and must clearly indicate to each participant or beneficiary (or in the case of a minor child, to the legal guardian of such beneficiary) to whom the request is made that compliance with the request is voluntary and noncompliance will have no effect on eligibility for benefits or premium or contribution amounts.
- None of the genetic information collected or acquired as a result of the research may be used for underwriting purposes.
- The plan or issuer must complete a copy of the ''Notice of Research Exception under the Genetic Information Nondiscrimination Act'' (the Notice) and provide it to the address specified in its instructions. The Notice and instructions are available on the Department of Labor's Web site (*http://www.dol.gov/ebsa*).

There are two information collection requirements associated with obtaining a GINA research exception. The first is the informed consent requirement as described above. To comply with the informed consent requirements of 45 CFR 46.116(a)(8), a participant must receive a disclosure that participation in the research is voluntary, refusal to participate cannot involve any penalty or loss of benefits to which the subject is otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is entitled (the participant disclosure).[34] These interim final regulations provide that when the participant disclosure is received by participants when their informed consent is sought, no additional disclosures are required for purposes of the GINA research exception.

The burden associated with this requirement is the time and effort necessary to develop, draft, and disseminate the information consent notice to patients. While this requirement is subject to the PRA, the associated burden is already approved under OMB control number 0990–0260. We are not soliciting comments on this requirement at this time.

The second information collection requirement associated with obtaining a GINA research exception is the Notice of Research Exception under the Genetic Information Nondiscrimination Act (the Notice). The burden associated with this requirement is the time and effort necessary for a plan or issuer to complete a copy of the Notice and submit it to CMS. CMS also estimates that completing and mailing the Notice will require 15 minutes of clerical time at an hourly rate of $26 per hour. Therefore, the total hour burden associated with completing the Notice is estimated to be 0.5 hours of clerical time. The cost burden consists of material and mailing cost to mail the two-page Notice and is estimated to total $13.

b. ICRs Regarding Prohibition of Discrimination Based on Genetic Information (§ 148.180)

The information collection requirements affecting the individual health insurance market as stated in 45 CFR 148.180 mirror the information collection requirements affecting the group health insurance market as stated in 45 CFR 146.122. The burden is discussed in detail in section IV.F.2.A. of this preamble. As stated in section IV.F.2.A., we expect no more than a combined total of 2 entities between the group health insurance market and the individual health insurance market to be subject to the information collection requirements contained in this interim final rule.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

OMB control No.	Regulation section(s)	Respondents	Responses	Burden per response (hours)	Total annual burden (hours)
0938–New	45 CFR 146.122	2	2	.25	.50
	45 CFR 148.180				

We have submitted a copy of this interim final rule to OMB for its review and approval of the aforementioned information collection requirements. These requirements are not effective until approved by OMB. Although comments may be submitted through December 7, 2009, OMB requests that comments be received within 30 days of publication of these interim final regulations to ensure their consideration.

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the

[33] While 45 CFR 46.116(c) and (d) permit a waiver of the disclosure otherwise required under 45 CFR 46.116(a)(8), it is unlikely that such a waiver could be granted for research studies conducted under the research exception under GINA. *See* footnote 25.

[34] While 45 CFR 46.116(c) and (d) permit a waiver of the disclosure otherwise required under 45 CFR 46.116(a)(8), it is unlikely that such a waiver could be granted for research studies conducted under the research exception under GINA. *See* footnote 25.

ADDRESSES section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget,

Attention: CMS Desk Officer, CMS–4137–IFC;

Fax: (202) 395–7285; or

E-mail: *OIRA_submission@omb.eop.gov.*

Please reference ''ICRs Regarding Prohibition of Discrimination Based on Genetic Information (§ 148.180)'' when submitting your comments.

G. Congressional Review Act

These interim final regulations are subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and have been transmitted to Congress and the Comptroller General for review.

H. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, these interim final regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, nor do they include mandates which may impose an annual burden of $100 million or more (as adjusted for inflation) on the private sector.

I. Federalism Statement—Department of Labor and Department of Health and Human Services

Executive Order 13132 outlines fundamental principles of federalism, and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have ''substantial direct effects'' on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have these federalism implications must consult with State and local officials, and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to the regulation.

In the Departments' view, these interim final regulations have federalism implications, because they have direct effects on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among various levels of government. However, in the Departments' view, the federalism implications of these regulations are substantially mitigated because, with respect to health insurance issuers, the Departments expect that the majority of States will enact laws or take other appropriate action resulting in their meeting or exceeding the Federal GINA standards prohibiting discrimination based on genetic information.

In general, through section 514, ERISA supersedes State laws to the extent that they relate to any covered employee benefit plan, and preserves State laws that regulate insurance, banking, or securities. While ERISA prohibits States from regulating a plan as an insurance or investment company or bank, HIPAA added a new preemption provision to ERISA (as well as to the PHS Act) narrowly preempting State requirements for group health insurance coverage. This amendment applies to the GINA nondiscrimination provisions. With respect to these provisions, States may continue to apply State law requirements except to the extent that such requirements prevent the application of the portability, access, and renewability requirements of HIPAA, which include GINA's nondiscrimination requirements that are the subject of this rulemaking. State insurance laws that are more stringent than the Federal requirements are unlikely to ''prevent the application of'' GINA, and be preempted. Accordingly, States have significant latitude to impose requirements on health insurance issuers that are more restrictive than the Federal law.

GINA provides the Secretary of Labor with the express authority to impose a penalty against any health insurance issuer offering health insurance to a group health plan covered by ERISA for any failure by the issuer to meet the GINA requirements. The States may enforce the provisions of GINA as they pertain to issuers, but the Secretary of HHS is required to enforce any provisions that a State fails to substantially enforce. This relates to HHS' responsibility to enforce the HIPAA nondiscrimination provisions. In exercising its responsibility, HHS works cooperatively with the State for the purpose of addressing the State's concerns and avoiding conflicts with the exercise of State authority. HHS has developed procedures to implement its enforcement responsibilities, and to afford the States the maximum opportunity to enforce HIPAA's requirements in the first instance. HHS' procedures address the handling of reports that States may not be enforcing HIPAA's requirements, and the mechanism for allocating enforcement responsibility between the States and HHS. In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have federalism implications or limit the policy making discretion of the States, the Department of Labor and HHS have engaged in numerous efforts to consult with and work cooperatively with affected State and local officials. It is expected that the Departments will act in a similar fashion in enforcing the GINA requirements.

In addition, the Departments specifically consulted with the National Association of Insurance Commissioners (NAIC) in developing these interim final regulations. Through the NAIC, the Departments sought and received the input of State insurance departments regarding certain insurance rating practices. The Departments have also cooperated with the States in several ongoing outreach initiatives, through which information on GINA is shared among Federal regulators, State regulators, and the regulated community.

Throughout the process of developing these interim final regulations, to the extent feasible within the specific preemption provisions of HIPAA as it applies to GINA, the Departments have attempted to balance the States' interests in regulating health insurance issuers, and Congress's intent to provide uniform minimum protections to consumers in every State. By doing so, it is the Departments' view that they have complied with the requirements of Executive Order 13132.

Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, and by the signatures affixed to these regulations, the Departments certify that the Employee Benefits Security Administration and the Centers for Medicare & Medicaid Services have complied with the requirements of Executive Order 13132 for the attached interim final regulations in a meaningful and timely manner.

V. Statutory Authority

The Department of the Treasury temporary and final regulations are adopted pursuant to the authority contained in sections 7805 and 9833 of the Code.

The Department of Labor interim final regulations are adopted pursuant to the authority contained in 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c; sec.101(g), Public Law 104–191, 110 Stat. 1936; sec. 401(b), Public Law 105–200, 112 Stat. 645 (42 U.S.C. 651 note);

sec. 101(f), Public Law 110–233, 122 Stat. 881; Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003).

The Department of Health and Human Services interim final regulations are adopted pursuant to the authority contained in sections 2701 through 2763, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as added by Public Law 104–191, and amended by Public Law 104–204, Public Law 105–277, and Public Law 110–233.

List of Subjects

26 CFR Part 54

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2590

Continuation coverage, Disclosure, Employee benefit plans, Group health plans, Health care, Health insurance, Medical child support, Reporting and recordkeeping requirements.

45 CFR Parts 144, 146, and 148

Health care, Health insurance, Reporting and recordkeeping requirements, and State regulation of health insurance.

Amendments to the Regulations

Internal Revenue Service

26 CFR Chapter 1

■ Accordingly, 26 CFR Part 54 is amended as follows:

PART 54—PENSION EXCISE TAXES

■ **Paragraph 1.** The authority citation for part 54 is amended by adding an entry for § 54.9802–3T in numerical order to read in part as follows:

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

Section 54.9802–3T also issued under 26 U.S.C. 9833. * * *

■ **Par. 2.** Section 54.9801–1 is amended by revising paragraph (a) and adding paragraph (b)(6) to read as follows:

§ 54.9801–1 Basis and scope.

(a) *Statutory basis.* This section and sections 54.9801–2 through 54.9801–6, 54.9802–1, 54.9802–2, 54.9802–3T, 54.9811–1, 54.9812–1T, 54.9831–1, and 54.9833–1 (portability sections) implement Chapter 100 of Subtitle K of the Internal Revenue Code of 1986.

(b) * * *

(6) Additional requirements prohibiting discrimination based on genetic information.

* * * * *

■ **Par 3.** Section 54.9801–2 is amended by revising the introductory text and revising the definition of Genetic information to read as follows:

§ 54.9801–2 Definitions.

Unless otherwise provided, the definitions in this section govern in applying the provisions of § 54.9801–1, this section, §§ 54.9801–3 through 54.9801–6, 54.9802–1, 54.9802–2, 54.9802–3T, 54.9811–1, 54.9812–1T, 54.9831–1, and 54.9833–1.

* * * * *

Genetic information has the meaning given the term in § 54.9802–3T(a)(3).

* * * * *

■ **Par 4.** Section 54.9802–1 is amended by revising paragraphs (a)(1)(vi), (c)(2)(i), the introductory text of paragraph (c)(2)(iii), and paragraph (c)(2)(iii) *Example 1* to read as follows:

§ 54.9802–1 Prohibiting discrimination against participants and beneficiaries based on a health factor.

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

(vi) Genetic information, as defined in § 54.9802–3T.

* * * * *

(c) * * *

(2) *Rules relating to premium rates*—

(i) *Group rating based on health factors not restricted under this section.* Nothing in this section restricts the aggregate amount that an employer may be charged for coverage under a group health plan. But *see* § 54.9802–3T(b), which prohibits adjustments in group premium or contribution rates based on genetic information.

* * * * *

(iii) *Examples.* The rules of this paragraph (c)(2) are illustrated by the following examples:

Example 1. (i) *Facts.* An employer sponsors a group health plan and purchases coverage from a health insurance issuer. In order to determine the premium rate for the upcoming plan year, the issuer reviews the claims experience of individuals covered under the plan. The issuer finds that Individual F had significantly higher claims experience than similarly situated individuals in the plan. The issuer quotes the plan a higher per-participant rate because of F's claims experience.

(ii) *Conclusion. See Example 1* in 29 CFR 2590.702(c)(2) and 45 CFR 146.121(c)(2) for a conclusion that the issuer does not violate the provisions of 29 CFR 2590.702(c)(2) and 45 CFR 146.121(c)(2) similar to the provisions of this paragraph (c)(2) because the issuer blends the rate so that the employer is not quoted a higher rate for F than for a similarly situated individual based on F's claims experience. (However, those examples conclude that if the issuer used genetic information in computing the group rate, it would violate 29 CFR 2590.702–1(b) or 45 CFR 146.122(b).)

* * * * *

■ **Par. 5.** Section 54.9831–1 is amended by revising paragraph (b) to read as follows:

§ 54.9831–1 Special rules relating to group health plans.

* * * * *

(b) *General exception for certain small group health plans.* (1) Subject to paragraph (b)(2) of this section, the requirements of §§ 54.9801–1 through 54.9801–6, 54.9802–1, 54.9802–2, 54.9811–1, 54.9812–1T, and 54.9833–1 do not apply to any group health plan for any plan year if, on the first day of the plan year, the plan has fewer than two participants who are current employees.

(2) The exception of paragraph (b)(1) of this section does not apply with respect to the following requirements:

(i) Section 54.9801–3(b)(6).

(ii) Section 54.9802–1(b), as such paragraph applies with respect to genetic information as a health factor.

(iii) Section 54.9802–1(c), as such paragraph applies with respect to genetic information as a health factor.

(iv) Section 54.9802–1(e), as such paragraph applies with respect to genetic information as a health factor.

(v) Section 54.9802–3T(b).

(vi) Section 54.9802–3T(c).

(vii) Section 54.9802–3T(d).

(viii) Section 54.9802–3T(e).

* * * * *

■ **Par. 6.** Section 54.9802–3T is added to read as follows:

§ 54.9802–3T Additional requirements prohibiting discrimination based on genetic information (temporary).

(a) *Definitions.* Unless otherwise provided, the definitions in this paragraph (a) govern in applying the provisions of this section.

(1) *Collect* means, with respect to information, to request, require, or purchase such information.

(2) *Family member* means, with respect to an individual —

(i) A dependent (as defined for purposes of § 54.9801–2) of the individual; or

(ii) Any other person who is a first-degree, second-degree, third-degree, or fourth-degree relative of the individual or of a dependent of the individual. Relatives by affinity (such as by marriage or adoption) are treated the same as relatives by consanguinity (that is, relatives who share a common biological ancestor). In determining the degree of the relationship, relatives by less than full consanguinity (such as half-siblings, who share only one parent) are treated the same as relatives by full consanguinity (such as siblings who share both parents).

(A) First-degree relatives include parents, spouses, siblings, and children.

(B) Second-degree relatives include grandparents, grandchildren, aunts, uncles, nephews, and nieces.

(C) Third-degree relatives include great-grandparents, great-grandchildren, great aunts, great uncles, and first cousins.

(D) Fourth-degree relatives include great-great grandparents, great-great grandchildren, and children of first cousins.

(3) *Genetic information* means—

(i) Subject to paragraphs (a)(3)(ii) and (a)(3)(iii) of this section, with respect to an individual, information about—

(A) The individual's genetic tests (as defined in paragraph (a)(5) of this section);

(B) The genetic tests of family members of the individual;

(C) The manifestation (as defined in paragraph (a)(6) of this section) of a disease or disorder in family members of the individual; or

(D) Any request for, or receipt of, genetic services (as defined in paragraph (a)(4) of this section), or participation in clinical research which includes genetic services, by the individual or any family member of the individual.

(ii) The term *genetic information* does not include information about the sex or age of any individual.

(iii) The term *genetic information* includes—

(A) With respect to a pregnant woman (or a family member of the pregnant woman), genetic information of any fetus carried by the pregnant woman; and

(B) With respect to an individual (or a family member of the individual) who is utilizing an assisted reproductive technology, genetic information of any embryo legally held by the individual or family member.

(4) *Genetic services* means—

(i) A genetic test, as defined in paragraph (a)(5) of this section;

(ii) Genetic counseling (including obtaining, interpreting, or assessing genetic information); or

(iii) Genetic education.

(5)(i) *Genetic test* means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, if the analysis detects genotypes, mutations, or chromosomal changes. However, a genetic test does not include an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition. Accordingly, a test to determine whether an individual has a BRCA1 or BRCA2 variant is a genetic test. Similarly, a test to determine whether an individual has a genetic variant associated with hereditary nonpolyposis colorectal cancer is a genetic test. However, an HIV test, complete blood count, cholesterol test, liver function test, or test for the presence of alcohol or drugs is not a genetic test.

(ii) The rules of this paragraph (a)(5) are illustrated by the following example:

Example. (i) *Facts.* Individual A is a newborn covered under a group health plan. A undergoes a phenylketonuria (PKU) screening, which measures the concentration of a metabolite, phenylalanine, in A's blood. In PKU, a mutation occurs in the phenylalanine hydroxylase (PAH) gene which contains instructions for making the enzyme needed to break down the amino acid phenylalanine. Individuals with the mutation, who have a deficiency in the enzyme to break down phenylalanine, have high concentrations of phenylalanine.

(ii) *Conclusion.* In this *Example,* the PKU screening is a genetic test with respect to A because the screening is an analysis of metabolites that detects a genetic mutation.

(6)(i) *Manifestation* or *manifested* means, with respect to a disease, disorder, or pathological condition, that an individual has been or could reasonably be diagnosed with the disease, disorder, or pathological condition by a health care professional with appropriate training and expertise in the field of medicine involved. For purposes of this section, a disease, disorder, or pathological condition is not manifested if a diagnosis is based principally on genetic information.

(ii) The rules of this paragraph (a)(6) are illustrated by the following examples:

Example 1. (i) *Facts.* Individual A has a family medical history of diabetes. A begins to experience excessive sweating, thirst, and fatigue. A's physician examines A and orders blood glucose testing (which is not a genetic test). Based on the physician's examination, A's symptoms, and test results that show elevated levels of blood glucose, A's physician diagnoses A as having adult onset diabetes mellitus (Type 2 diabetes).

(ii) *Conclusion.* In this *Example 1,* A has been diagnosed by a health care professional with appropriate training and expertise in the field of medicine involved. The diagnosis is not based principally on genetic information. Thus, Type 2 diabetes is manifested with respect to A.

Example 2. (i) *Facts.* Individual B has several family members with colon cancer. One of them underwent genetic testing which detected a mutation in the MSH2 gene associated with hereditary nonpolyposis colorectal cancer (HNPCC). B's physician, a health care professional with appropriate training and expertise in the field of medicine involved, recommends that B undergo a targeted genetic test to look for the specific mutation found in B's relative to determine if B has an elevated risk for cancer. The genetic test with respect to B showed that B also carries the mutation and is at increased risk to develop colorectal and other cancers associated with HNPCC. B has a colonoscopy which indicates no signs of disease, and B has no symptoms.

(ii) *Conclusion.* In this *Example 2,* because B has no signs or symptoms of colorectal cancer, B has not been and could not reasonably be diagnosed with HNPCC. Thus, HNPCC is not manifested with respect to B.

Example 3. (i) *Facts.* Same facts as *Example 2,* except that B's colonoscopy and subsequent tests indicate the presence of HNPCC. Based on the colonoscopy and subsequent test results, B's physician makes a diagnosis of HNPCC.

(ii) Conclusion. In this *Example 3,* HNPCC is manifested with respect to B because a health care professional with appropriate training and expertise in the field of medicine involved has made a diagnosis that is not based principally on genetic information.

Example 4. (i) *Facts.* Individual C has a family member that has been diagnosed with Huntington's Disease. A genetic test indicates that C has the Huntington's Disease gene variant. At age 42, C begins suffering from occasional moodiness and disorientation, symptoms which are associated with Huntington's Disease. C is examined by a neurologist (a physician with appropriate training and expertise for diagnosing Huntington's Disease). The examination includes a clinical neurological exam. The results of the examination do not support a diagnosis of Huntington's Disease.

(ii) *Conclusion.* In this *Example 4,* C is not and could not reasonably be diagnosed with Huntington's Disease by a health care professional with appropriate training and expertise. Therefore, Huntington's Disease is not manifested with respect to C.

Example 5. (i) *Facts.* Same facts as *Example 4,* except that C exhibits additional neurological and behavioral symptoms, and the results of the examination support a diagnosis of Huntington's Disease with respect to C.

(ii) *Conclusion.* In this *Example 5,* C could reasonably be diagnosed with Huntington's Disease by a health care professional with appropriate training and expertise. Therefore, Huntington's Disease is manifested with respect to C.

(7) *Underwriting purposes* has the meaning given in paragraph (d)(1) of this section.

(b) *No group-based discrimination based on genetic information*—(1) *In general.* For purposes of this section, a group health plan must not adjust premium or contribution amounts for any employer, or any group of similarly situated individuals under the plan, on the basis of genetic information. For this purpose, ''similarly situated individuals'' are those described in § 54.9802–1(d).

(2) *Rule of construction.* Nothing in paragraph (b)(1) of this section (or in paragraph (d)(1) or (d)(2) of this section) limits the ability of a group health plan to increase the premium for an

employer or for a group of similarly situated individuals under the plan based on the manifestation of a disease or disorder of an individual who is enrolled in the plan. In such a case, however, the manifestation of a disease or disorder in one individual cannot also be used as genetic information about other group members to further increase the premium for an employer or a group of similarly situated individuals under the plan.

(3) *Examples.* The rules of this paragraph (b) are illustrated by the following examples:

Example 1. (i) *Facts.* An employer sponsors a group health plan that provides coverage through a health insurance issuer. In order to determine the premium rate for the upcoming plan year, the issuer reviews the claims experience of individuals covered under the plan and other health status information of the individuals, including genetic information. The issuer finds that three individuals covered under the plan had unusually high claims experience. In addition, the issuer finds that the genetic information of two other individuals indicates the individuals have a higher probability of developing certain illnesses although the illnesses are not manifested at this time. The issuer quotes the plan a higher per-participant rate because of both the genetic information and the higher claims experience.

(ii) *Conclusion. See Example 1* in 29 CFR 2590.702–1(b)(3) or 45 CFR 146.122(b)(3) for a conclusion that the issuer violates the provisions of 29 CFR 2590.702–1(b) or 45 CFR 146.122(b) similar to the requirements of this paragraph (b) because the issuer adjusts the premium based on genetic information. However, if the adjustment related solely to claims experience, the adjustment would not violate the requirements of 29 CFR 2590.702–1 or 45 CFR 146.122 similar to the requirements of this section (nor would it violate the requirements of paragraph (c) of 29 CFR 2590.702 or 45 CFR 146.121 similar to the requirements of paragraph (c) of § 54.9802–1, which prohibits discrimination in individual premiums or contributions based on a health factor but permits increases in the group rate based on a health factor).

Example 2. (i) *Facts.* An employer sponsors a group health plan that provides coverage through a health insurance issuer. In order to determine the premium rate for the upcoming plan year, the issuer reviews the claims experience of individuals covered under the plan and other health status information of the individuals, including genetic information. The issuer finds that Employee A has made claims for treatment of polycystic kidney disease. A also has two dependent children covered under the plan. The issuer quotes the plan a higher per-participant rate because of both A's claims experience and the family medical history of A's children (that is, the fact that A has the disease).

(ii) *Conclusion. See Example 2* in 29 CFR 2590.702–1(b)(3) or 45 CFR 146.122(b)(3) for a conclusion that the issuer violates the provisions of 29 CFR 2590.702–1(b) or 45 CFR 146.122(b) similar to the requirements of this paragraph (b) because, by taking the likelihood that A's children may develop polycystic kidney disease into account in computing the rate for the plan, the issuer adjusts the premium based on genetic information relating to a condition that has not been manifested in A's children. However, the issuer does not violate the requirements of 29 CFR 2590.702–1(b) or 45 CFR 146.122(b) similar to the requirements of this paragraph (b) by increasing the premium based on A's claims experience.

(c) *Limitation on requesting or requiring genetic testing*—(1) *General rule.* Except as otherwise provided in this paragraph (c), a group health plan must not request or require an individual or a family member of the individual to undergo a genetic test.

(2) *Health care professional may recommend a genetic test.* Nothing in paragraph (c)(1) of this section limits the authority of a health care professional who is providing health care services to an individual to request that the individual undergo a genetic test.

(3) *Examples.* The rules of paragraphs (c)(1) and (c)(2) of this section are illustrated by the following examples:

Example 1. (i) *Facts.* Individual A goes to a physician for a routine physical examination. The physician reviews A's family medical history and A informs the physician that A's mother has been diagnosed with Huntington's Disease. The physician advises A that Huntington's Disease is hereditary and recommends that A undergo a genetic test.

(ii) *Conclusion.* In this *Example 1,* the physician is a health care professional who is providing health care services to A. Therefore, the physician's recommendation that A undergo the genetic test does not violate this paragraph (c).

Example 2. (i) *Facts.* Individual B is covered by a health maintenance organization (HMO). *B* is a child being treated for leukemia. B's physician, who is employed by the HMO, is considering a treatment plan that includes six-mercaptopurine, a drug for treating leukemia in most children. However, the drug could be fatal if taken by a small percentage of children with a particular gene variant. B's physician recommends that B undergo a genetic test to detect this variant before proceeding with this course of treatment.

(ii) *Conclusion.* In this *Example 2,* even though the physician is employed by the HMO, the physician is nonetheless a health care professional who is providing health care services to B. Therefore, the physician's recommendation that B undergo the genetic test does not violate this paragraph (c).

(4) *Determination regarding payment*—(i) *In general.* As provided in this paragraph (c)(4), nothing in paragraph (c)(1) of this section precludes a plan from obtaining and using the results of a genetic test in making a determination regarding payment. For this purpose, ''payment'' has the meaning given such term in 45 CFR 164.501 of the privacy regulations issued under the Health Insurance Portability and Accountability Act. Thus, if a plan conditions payment for an item or service based on its medical appropriateness and the medical appropriateness of the item or service depends on the genetic makeup of a patient, then the plan is permitted to condition payment for the item or service on the outcome of a genetic test. The plan may also refuse payment if the patient does not undergo the genetic test.

(ii) *Limitation.* A plan is permitted to request only the minimum amount of information necessary to make a determination regarding payment. The minimum amount of information necessary is determined in accordance with the minimum necessary standard in 45 CFR 164.502(b) of the privacy regulations issued under the Health Insurance Portability and Accountability Act.

(iii) *Examples. See* paragraph (e) of this section for examples illustrating the rules of this paragraph (c)(4), as well as other provisions of this section.

(5) *Research exception.* Notwithstanding paragraph (c)(1) of this section, a plan may request, but not require, that a participant or beneficiary undergo a genetic test if all of the conditions of this paragraph (c)(5) are met:

(i) *Research in accordance with Federal regulations and applicable State or local law or regulations.* The plan makes the request pursuant to research, as defined in 45 CFR 46.102(d), that complies with 45 CFR Part 46 or equivalent Federal regulations, and any applicable State or local law or regulations for the protection of human subjects in research.

(ii) *Written request for participation in research.* The plan makes the request in writing, and the request clearly indicates to each participant or beneficiary (or, in the case of a minor child, to the legal guardian of the beneficiary) that—

(A) Compliance with the request is voluntary; and

(B) Noncompliance will have no effect on eligibility for benefits (as described in § 54.9802–1(b)(1)) or premium or contribution amounts.

(iii) *Prohibition on underwriting.* No genetic information collected or acquired under this paragraph (c)(5) can be used for underwriting purposes (as described in paragraph (d)(1) of this section).

(iv) *Notice to Federal agencies.* The plan completes a copy of the ''Notice of Research Exception under the Genetic Information Nondiscrimination Act'' authorized by the Secretary and provides the notice to the address specified in the instructions thereto.

(d) *Prohibitions on collection of genetic information*—(1) *For underwriting purposes*—(i) *General rule.* A group health plan must not collect (as defined in paragraph (a)(1) of this section) genetic information for underwriting purposes. *See* paragraph (e) of this section for examples illustrating the rules of this paragraph (d)(1), as well as other provisions of this section.

(ii) *Underwriting purposes defined.* Subject to paragraph (d)(1)(iii) of this section, *underwriting purposes* means, with respect to any group health plan, or health insurance coverage offered in connection with a group health plan—

(A) Rules for, or determination of, eligibility (including enrollment and continued eligibility) for benefits under the plan or coverage as described in § 54.9802–1(b)(1)(ii) (including changes in deductibles or other cost-sharing mechanisms in return for activities such as completing a health risk assessment or participating in a wellness program);

(B) The computation of premium or contribution amounts under the plan or coverage (including discounts, rebates, payments in kind, or other premium differential mechanisms in return for activities such as completing a health risk assessment or participating in a wellness program);

(C) The application of any preexisting condition exclusion under the plan or coverage; and

(D) Other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

(iii) *Medical appropriateness.* If an individual seeks a benefit under a group health plan, the plan may limit or exclude the benefit based on whether the benefit is medically appropriate, and the determination of whether the benefit is medically appropriate is not within the meaning of underwriting purposes. Accordingly, if an individual seeks a benefit under the plan and the plan conditions the benefit based on its medical appropriateness and the medical appropriateness of the benefit depends on genetic information of the individual, then the plan is permitted to condition the benefit on the genetic information. A plan is permitted to request only the minimum amount of genetic information necessary to determine medical appropriateness. The plan may deny the benefit if the patient does not provide the genetic information required to determine medical appropriateness. If an individual is not seeking a benefit, the medical appropriateness exception of this paragraph (d)(1)(iii) to the definition of underwriting purposes does not apply. *See* paragraph (e) of this section for examples illustrating the medical appropriateness provisions of this paragraph (d)(1)(iii), as well as other provisions of this section.

(2) *Prior to or in connection with enrollment*—(i) *In general.* A group health plan must not collect genetic information with respect to any individual prior to that individual's effective date of coverage under that plan, nor in connection with the rules for eligibility (as defined in § 54.9802–1(b)(1)(ii)) that apply to that individual. Whether or not an individual's information is collected prior to that individual's effective date of coverage is determined at the time of collection.

(ii) *Incidental collection exception*—(A) *In general.* If a group health plan obtains genetic information incidental to the collection of other information concerning any individual, the collection is not a violation of this paragraph (d)(2), as long as the collection is not for underwriting purposes in violation of paragraph (d)(1) of this section.

(B) *Limitation.* The incidental collection exception of this paragraph (d)(2)(ii) does not apply in connection with any collection where it is reasonable to anticipate that health information will be received, unless the collection explicitly states that genetic information should not be provided.

(3) *Examples.* The rules of this paragraph (d) are illustrated by the following examples:

Example 1. (i) *Facts.* A group health plan provides a premium reduction to enrollees who complete a health risk assessment. The health risk assessment is requested to be completed after enrollment. Whether or not it is completed or what responses are given on it has no effect on an individual's enrollment status, or on the enrollment status of members of the individual's family. The health risk assessment includes questions about the individual's family medical history.

(ii) *Conclusion.* In this *Example 1,* the health risk assessment includes a request for genetic information (that is, the individual's family medical history). Because completing the health risk assessment results in a premium reduction, the request for genetic information is for underwriting purposes. Consequently, the request violates the prohibition on the collection of genetic information in paragraph (d)(1) of this section.

Example 2. (i) *Facts.* The same facts as *Example 1,* except there is no premium reduction or any other reward for completing the health risk assessment.

(ii) *Conclusion.* In this *Example 2,* the request is not for underwriting purposes, nor is it prior to or in connection with enrollment. Therefore, it does not violate the prohibition on the collection of genetic information in this paragraph (d).

Example 3. (i) *Facts.* A group health plan requests that enrollees complete a health risk assessment prior to enrollment, and includes questions about the individual's family medical history. There is no reward or penalty for completing the health risk assessment.

(ii) *Conclusion.* In this *Example 3,* because the health risk assessment includes a request for genetic information (that is, the individual's family medical history), and requests the information prior to enrollment, the request violates the prohibition on the collection of genetic information in paragraph (d)(2) of this section. Moreover, because it is a request for genetic information, it is not an incidental collection under paragraph (d)(2)(ii) of this section.

Example 4. (i) *Facts.* The facts are the same as in *Example 1,* except there is no premium reduction or any other reward given for completion of the health risk assessment. However, certain people completing the health risk assessment may become eligible for additional benefits under the plan by being enrolled in a disease management program based on their answers to questions about family medical history. Other people may become eligible for the disease management program based solely on their answers to questions about their individual medical history.

(ii) *Conclusion.* In this *Example 4,* the request for information about an individual's family medical history could result in the individual being eligible for benefits for which the individual would not otherwise be eligible. Therefore, the questions about family medical history on the health risk assessment are a request for genetic information for underwriting purposes and are prohibited under this paragraph (d). Although the plan conditions eligibility for the disease management program based on determinations of medical appropriateness, the exception for determinations of medical appropriateness does not apply because the individual is not seeking benefits.

Example 5. (i) *Facts.* A group health plan requests enrollees to complete two distinct health risk assessments (HRAs) after and unrelated to enrollment. The first HRA instructs the individual to answer only for the individual and not for the individual's family. The first HRA does not ask about any genetic tests the individual has undergone or any genetic services the individual has received. The plan offers a reward for completing the first HRA. The second HRA asks about family medical history and the results of genetic tests the individual has undergone. The plan offers no reward for completing the second HRA and the instructions make clear that completion of the second HRA is wholly voluntary and will not affect the reward given for completion of the first HRA.

(ii) *Conclusion.* In this *Example 5,* no genetic information is collected in

connection with the first HRA, which offers a reward, and no benefits or other rewards are conditioned on the request for genetic information in the second HRA. Consequently, the request for genetic information in the second HRA is not for underwriting purposes, and the two HRAs do not violate the prohibition on the collection of genetic information in this paragraph (d).

Example 6. (i) *Facts.* A group health plan waives its annual deductible for enrollees who complete an HRA. The HRA is requested to be completed after enrollment. Whether or not the HRA is completed or what responses are given on it has no effect on an individual's enrollment status, or on the enrollment status of members of the individual's family. The HRA does not include any direct questions about the individual's genetic information (including family medical history). However, the last question reads, ''Is there anything else relevant to your health that you would like us to know or discuss with you?''

(ii) *Conclusion.* In this *Example 6,* the plan's request for medical information does not explicitly state that genetic information should not be provided. Therefore, any genetic information collected in response to the question is not within the incidental collection exception and is prohibited under this paragraph (d).

Example 7. (i) *Facts.* Same facts as *Example 6,* except that the last question goes on to state, ''In answering this question, you should not include any genetic information. That is, please do not include any family medical history or any information related to genetic testing, genetic services, genetic counseling, or genetic diseases for which you believe you may be at risk.''

(ii) *Conclusion.* In this *Example 7,* the plan's request for medical information explicitly states that genetic information should not be provided. Therefore, any genetic information collected in response to the question is within the incidental collection exception. However, the plan may not use any genetic information it obtains incidentally for underwriting purposes.

Example 8. (i) *Facts.* Issuer M acquires Issuer N. M requests N's records, stating that N should not provide genetic information and should review the records to excise any genetic information. N assembles the data requested by M and, although N reviews it to delete genetic information, the data from a specific region included some individuals' family medical history. Consequently, M receives genetic information about some of N's covered individuals.

(ii) *Conclusion.* In this *Example 8,* M's request for health information explicitly stated that genetic information should not be provided. *See Example 8* in 29 CFR 2590.702–1(d)(3) or 45 CFR 146.122(d)(3) for a conclusion that the collection of genetic information was within the incidental collection exception of 29 CFR 2590.702–1(d)(2)(ii) or 45 CFR 146.122(d)(ii) similar to the incidental exception of paragraph (d)(2)(ii) of this section. *See Example 8* in 29 CFR 2590.702–1(d)(3) or 45 CFR 146.122(d)(3) also for a caveat that M may not use the genetic information it obtained incidentally for underwriting purposes.

(e) *Examples regarding determinations of medical appropriateness.* The application of the rules of paragraphs (c) and (d) of this section to plan determinations of medical appropriateness is illustrated by the following examples:

Example 1. (i) *Facts.* Individual A's group health plan covers genetic testing for celiac disease for individuals who have family members with this condition. After A's son is diagnosed with celiac disease, A undergoes a genetic test and promptly submits a claim for the test to A's issuer for reimbursement. The issuer asks A to provide the results of the genetic test before the claim is paid.

(ii) *Conclusion. See Example 1* in 29 CFR 2590.702–1(e) or 45 CFR 146.122(e) for a conclusion under the rules of paragraph (c)(4) of 29 CFR 2590.702–1 or 45 CFR 146.122 similar to the rules of paragraph (c)(4) of this section that the issuer is permitted to request only the minimum amount of information necessary to make a decision regarding payment. Because the results of the test are not necessary for the issuer to make a decision regarding the payment of A's claim, the conclusion in *Example 1* in 29 CFR 2590.702–1(e) or 45 CFR 146.122(e) concludes that the issuer's request for the results of the genetic test violates paragraph (c) of 29 CFR 2590.702–1 or 45 CFR 146.122 similar to paragraph (c) of this section.

Example 2. (i) *Facts.* Individual B's group health plan covers a yearly mammogram for participants and beneficiaries starting at age 40, or at age 30 for those with increased risk for breast cancer, including individuals with BRCA1 or BRCA2 gene mutations. B is 33 years old and has the BRCA2 mutation. B undergoes a mammogram and promptly submits a claim to B's plan for reimbursement. Following an established policy, the plan asks B for evidence of increased risk of breast cancer, such as the results of a genetic test or a family history of breast cancer, before the claim for the mammogram is paid. This policy is applied uniformly to all similarly situated individuals and is not directed at individuals based on any genetic information.

(ii) *Conclusion.* In this *Example 2,* the plan does not violate paragraphs (c) or (d) of this section. Under paragraph (c), the plan is permitted to request and use the results of a genetic test to make a determination regarding payment, provided the plan requests only the minimum amount of information necessary. Because the medical appropriateness of the mammogram depends on the genetic makeup of the patient, the minimum amount of information necessary includes the results of the genetic test. Similarly, the plan does not violate paragraph (d) of this section because the plan is permitted to request genetic information in making a determination regarding the medical appropriateness of a claim if the genetic information is necessary to make the determination (and if the genetic information is not used for underwriting purposes).

Example 3. (i) *Facts.* Individual C was previously diagnosed with and treated for breast cancer, which is currently in remission. In accordance with the recommendation of C's physician, C has been taking a regular dose of tamoxifen to help prevent a recurrence. C's group health plan adopts a new policy requiring patients taking tamoxifen to undergo a genetic test to ensure that tamoxifen is medically appropriate for their genetic makeup. In accordance with, at the time, the latest scientific research, tamoxifen is not helpful in up to 7 percent of breast cancer patients, those with certain variations of the gene for making the CYP_2D6 enzyme. If a patient has a gene variant making tamoxifen not medically appropriate, the plan does not pay for the tamoxifen prescription.

(ii) *Conclusion.* In this *Example 3,* the plan does not violate paragraph (c) of this section if it conditions future payments for the tamoxifen prescription on C's undergoing a genetic test to determine what genetic markers C has for making the CYP_2D6 enzyme. Nor does the plan violate paragraph (c) of this section if the plan refuses future payment if the results of the genetic test indicate that tamoxifen is not medically appropriate for C.

Example 4. (i) *Facts.* A group health plan offers a diabetes disease management program to all similarly situated individuals for whom it is medically appropriate based on whether the individuals have or are at risk for diabetes. The program provides enhanced benefits related only to diabetes for individuals who qualify for the program. The plan sends out a notice to all participants that describes the diabetes disease management program and explains the terms for eligibility. Individuals interested in enrolling in the program are advised to contact the plan to demonstrate that they have diabetes or that they are at risk for diabetes. For individuals who do not currently have diabetes, genetic information may be used to demonstrate that an individual is at risk.

(ii) *Conclusion.* In this *Example 4,* the plan may condition benefits under the disease management program upon a showing by an individual that the individual is at risk for diabetes, even if such showing may involve genetic information, provided that the plan requests genetic information only when necessary to make a determination regarding whether the disease management program is medically appropriate for the individual and only requests the minimum amount of information necessary to make that determination.

Example 5. (i) *Facts.* Same facts as *Example 4,* except that the plan includes a questionnaire that asks about the occurrence of diabetes in members of the individual's family as part of the notice describing the disease management program.

(ii) *Conclusion.* In this *Example 5,* the plan violates the requirements of paragraph (d)(1) of this section because the requests for genetic information are not limited to those situations in which it is necessary to make a determination regarding whether the disease management program is medically appropriate for the individuals.

Example 6. (i) *Facts.* Same facts as *Example 4,* except the disease management program provides an enhanced benefit in the

form of a lower annual deductible to individuals under the program; the lower deductible applies with respect to all medical expenses incurred by the individual. Thus, whether or not a claim relates to diabetes, the individual is provided with a lower deductible based on the individual providing the plan with genetic information.

(ii) *Conclusion.* In this *Example 6,* because the enhanced benefits include benefits not related to the determination of medical appropriateness, making available the enhanced benefits is within the meaning of underwriting purposes. Accordingly, the plan may not request or require genetic information (including family history information) in determining eligibility for enhanced benefits under the program because such a request would be for underwriting purposes and would violate paragraph (d)(1) of this section.

(f) *Effective/applicability date.* This section applies for plan years beginning on or after December 7, 2009.

(g) *Expiration date.* This section expires on or before October 1, 2012.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement, Internal Revenue Service.

Approved: September 11, 2009.

Michael Mundaca,

Acting Assistant Secretary of the Treasury (Tax Policy).

Employee Benefits Security Administration

29 CFR Chapter XXV

■ For the reasons stated in the preamble, 29 CFR Part 2590 is amended as follows:

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

■ 1. The authority citation for Part 2590 is amended to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Public Law 104–191, 110 Stat. 1936; sec. 401(b), Public Law 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 101(f), Public Law 110–233, 122 Stat. 881; Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003).

■ 2. Section 2590.701–1 is amended by revising paragraph (b)(6) and adding paragraph (b)(7) to read as follows:

§ 2590.701–1 Basis and scope.

* * * * *

(b) * * *

(6) Additional requirements prohibiting discrimination based on genetic information.

(7) Use of an affiliation period by an HMO as an alternative to a preexisting condition exclusion.

* * * * *

■ 3. Section 2590.701–2 is amended by revising the definition of genetic information to read as follows:

§ 2590.701–2 Definitions.

* * * * *

Genetic information has the meaning given the term in § 2590.702–1(a)(3) of this Part.

* * * * *

■ 4. Section 2590.702 is amended by revising paragraphs (a)(1)(vi), (c)(2)(i), and (c)(2)(iii) to read as follows:

§ 2590.702 Prohibiting discrimination against participants and beneficiaries based on a health factor.

(a) * * *

(1) * * *

(vi) Genetic information, as defined in § 2590.702–1(a)(3) of this Part.

* * * * *

(c) * * *

(2) * * * (i) *Group rating based on health factors not restricted under this section.* Nothing in this section restricts the aggregate amount that an employer may be charged for coverage under a group health plan. But *see* § 2590.702–1(b) of this Part, which prohibits adjustments in group premium or contribution rates based on genetic information.

* * * * *

(iii) *Examples.* The rules of this paragraph (c)(2) are illustrated by the following examples:

Example 1. (i) *Facts.* An employer sponsors a group health plan and purchases coverage from a health insurance issuer. In order to determine the premium rate for the upcoming plan year, the issuer reviews the claims experience of individuals covered under the plan. The issuer finds that Individual *F* had significantly higher claims experience than similarly situated individuals in the plan. The issuer quotes the plan a higher per-participant rate because of *F*'s claims experience.

(ii) *Conclusion.* In this *Example 1,* the issuer does not violate the provisions of this paragraph (c)(2) because the issuer blends the rate so that the employer is not quoted a higher rate for *F* than for a similarly situated individual based on *F*'s claims experience. (However, if the issuer used genetic information in computing the group rate, it would violate § 2590.702–1(b) of this Part.)

* * * * *

■ 5. Add § 2590.702–1 to read as follows:

§ 2590.702–1 Additional requirements prohibiting discrimination based on genetic information.

(a) *Definitions.* Unless otherwise provided, the definitions in this paragraph (a) govern in applying the provisions of this section.

(1) *Collect* means, with respect to information, to request, require, or purchase such information.

(2) *Family member* means, with respect to an individual—

(i) A dependent (as defined for purposes of § 2590.701–2 of this Part) of the individual; or

(ii) Any other person who is a first-degree, second-degree, third-degree, or fourth-degree relative of the individual or of a dependent of the individual. Relatives by affinity (such as by marriage or adoption) are treated the same as relatives by consanguinity (that is, relatives who share a common biological ancestor). In determining the degree of the relationship, relatives by less than full consanguinity (such as half-siblings, who share only one parent) are treated the same as relatives by full consanguinity (such as siblings who share both parents).

(A) First-degree relatives include parents, spouses, siblings, and children.

(B) Second-degree relatives include grandparents, grandchildren, aunts, uncles, nephews, and nieces.

(C) Third-degree relatives include great-grandparents, great-grandchildren, great aunts, great uncles, and first cousins.

(D) Fourth-degree relatives include great-great grandparents, great-great grandchildren, and children of first cousins.

(3) *Genetic information* means—(i) Subject to paragraphs (a)(3)(ii) and (a)(3)(iii) of this section, with respect to an individual, information about—

(A) The individual's genetic tests (as defined in paragraph (a)(5) of this section);

(B) The genetic tests of family members of the individual;

(C) The manifestation (as defined in paragraph (a)(6) of this section) of a disease or disorder in family members of the individual; or

(D) Any request for, or receipt of, genetic services (as defined in paragraph (a)(4) of this section), or participation in clinical research which includes genetic services, by the individual or any family member of the individual.

(ii) The term *genetic information* does not include information about the sex or age of any individual.

(iii) The term *genetic information* includes—

(A) With respect to a pregnant woman (or a family member of the pregnant woman), genetic information of any fetus carried by the pregnant woman; and

(B) With respect to an individual (or a family member of the individual) who is utilizing an assisted reproductive technology, genetic information of any

embryo legally held by the individual or family member.

(4) *Genetic services* means—

(i) A genetic test, as defined in paragraph (a)(5) of this section;

(ii) Genetic counseling (including obtaining, interpreting, or assessing genetic information); or

(iii) Genetic education.

(5)(i) *Genetic test* means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, if the analysis detects genotypes, mutations, or chromosomal changes. However, a genetic test does not include an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition. Accordingly, a test to determine whether an individual has a BRCA1 or BRCA2 variant is a genetic test. Similarly, a test to determine whether an individual has a genetic variant associated with hereditary nonpolyposis colorectal cancer is a genetic test. However, an HIV test, complete blood count, cholesterol test, liver function test, or test for the presence of alcohol or drugs is not a genetic test.

(ii) The rules of this paragraph (a)(5) are illustrated by the following example:

Example. (i) *Facts.* Individual *A* is a newborn covered under a group health plan. *A* undergoes a phenylketonuria (PKU) screening, which measures the concentration of a metabolite, phenylalanine, in *A's* blood. In PKU, a mutation occurs in the phenylalanine hydroxylase (PAH) gene which contains instructions for making the enzyme needed to break down the amino acid phenylalanine. Individuals with the mutation, who have a deficiency in the enzyme to break down phenylalanine, have high concentrations of phenylalanine.

(ii) *Conclusion.* In this *Example,* the PKU screening is a genetic test with respect to *A* because the screening is an analysis of metabolites that detects a genetic mutation.

(6)(i) *Manifestation* or *manifested* means, with respect to a disease, disorder, or pathological condition, that an individual has been or could reasonably be diagnosed with the disease, disorder, or pathological condition by a health care professional with appropriate training and expertise in the field of medicine involved. For purposes of this section, a disease, disorder, or pathological condition is not manifested if a diagnosis is based principally on genetic information.

(ii) The rules of this paragraph (a)(6) are illustrated by the following examples:

Example 1. (i) *Facts.* Individual *A* has a family medical history of diabetes. *A* begins to experience excessive sweating, thirst, and fatigue. *A's* physician examines *A* and orders blood glucose testing (which is not a genetic test). Based on the physician's examination, *A's* symptoms, and test results that show elevated levels of blood glucose, *A's* physician diagnoses *A* as having adult onset diabetes mellitus (Type 2 diabetes).

(ii) *Conclusion.* In this *Example 1, A* has been diagnosed by a health care professional with appropriate training and expertise in the field of medicine involved. The diagnosis is not based principally on genetic information. Thus, Type 2 diabetes is manifested with respect to *A.*

Example 2. (i) *Facts.* Individual *B* has several family members with colon cancer. One of them underwent genetic testing which detected a mutation in the MSH2 gene associated with hereditary nonpolyposis colorectal cancer (HNPCC). *B's* physician, a health care professional with appropriate training and expertise in the field of medicine involved, recommends that *B* undergo a targeted genetic test to look for the specific mutation found in *B's* relative to determine if *B* has an elevated risk for cancer. The genetic test with respect to *B* showed that *B* also carries the mutation and is at increased risk to develop colorectal and other cancers associated with HNPCC. *B* has a colonoscopy which indicates no signs of disease, and *B* has no symptoms.

(ii) *Conclusion.* In this *Example 2,* because *B* has no signs or symptoms of colorectal cancer, *B* has not been and could not reasonably be diagnosed with HNPCC. Thus, HNPCC is not manifested with respect to *B.*

Example 3. (i) *Facts.* Same facts as *Example 2,* except that *B's* colonoscopy and subsequent tests indicate the presence of HNPCC. Based on the colonoscopy and subsequent test results, *B's* physician makes a diagnosis of HNPCC.

(ii) Conclusion. In this *Example 3,* HNPCC is manifested with respect to *B* because a health care professional with appropriate training and expertise in the field of medicine involved has made a diagnosis that is not based principally on genetic information.

Example 4. (i) *Facts.* Individual *C* has a family member that has been diagnosed with Huntington's Disease. A genetic test indicates that *C* has the Huntington's Disease gene variant. At age 42, *C* begins suffering from occasional moodiness and disorientation, symptoms which are associated with Huntington's Disease. *C* is examined by a neurologist (a physician with appropriate training and expertise for diagnosing Huntington's Disease). The examination includes a clinical neurological exam. The results of the examination do not support a diagnosis of Huntington's Disease.

(ii) *Conclusion.* In this *Example 4, C* is not and could not reasonably be diagnosed with Huntington's Disease by a health care professional with appropriate training and expertise. Therefore, Huntington's Disease is not manifested with respect to *C.*

Example 5. (i) *Facts.* Same facts as *Example 4,* except that *C* exhibits additional neurological and behavioral symptoms, and the results of the examination support a diagnosis of Huntington's Disease with respect to *C.*

(ii) *Conclusion.* In this *Example 5, C* could reasonably be diagnosed with Huntington's Disease by a health care professional with appropriate training and expertise. Therefore, Huntington's Disease is manifested with respect to *C.*

(7) *Underwriting purposes* has the meaning given in paragraph (d)(1) of this section.

(b) *No group-based discrimination based on genetic information*—(1) *In general.* For purposes of this section, a group health plan, and a health insurance issuer offering health insurance coverage in connection with a group health plan, must not adjust premium or contribution amounts for the plan, or any group of similarly situated individuals under the plan, on the basis of genetic information. For this purpose, ''similarly situated individuals'' are those described in § 2590.702(d) of this Part.

(2) *Rule of construction.* Nothing in paragraph (b)(1) of this section (or in paragraph (d)(1) or (d)(2) of this section) limits the ability of a health insurance issuer offering health insurance coverage in connection with a group health plan to increase the premium for a group health plan or a group of similarly situated individuals under the plan based on the manifestation of a disease or disorder of an individual who is enrolled in the plan. In such a case, however, the manifestation of a disease or disorder in one individual cannot also be used as genetic information about other group members to further increase the premium for a group health plan or a group of similarly situated individuals under the plan.

(3) *Examples.* The rules of this paragraph (b) are illustrated by the following examples:

Example 1. (i) *Facts.* An employer sponsors a group health plan that provides coverage through a health insurance issuer. In order to determine the premium rate for the upcoming plan year, the issuer reviews the claims experience of individuals covered under the plan and other health status information of the individuals, including genetic information. The issuer finds that three individuals covered under the plan had unusually high claims experience. In addition, the issuer finds that the genetic information of two other individuals indicates the individuals have a higher probability of developing certain illnesses although the illnesses are not manifested at this time. The issuer quotes the plan a higher per-participant rate because of both the genetic information and the higher claims experience.

(ii) *Conclusion.* In this *Example 1,* the issuer violates the provisions of this paragraph (b) because the issuer adjusts the premium based on genetic information. However, if the adjustment related solely to claims experience, the adjustment would not violate the requirements of this section (nor would it violate the requirements of paragraph (c) of § 2590.702 of this Part,

which prohibits discrimination in individual premiums or contributions based on a health factor but permits increases in the group rate based on a health factor).

Example 2. (i) *Facts.* An employer sponsors a group health plan that provides coverage through a health insurance issuer. In order to determine the premium rate for the upcoming plan year, the issuer reviews the claims experience of individuals covered under the plan and other health status information of the individuals, including genetic information. The issuer finds that Employee *A* has made claims for treatment of polycystic kidney disease. *A* also has two dependent children covered under the plan. The issuer quotes the plan a higher per-participant rate because of both *A*'s claims experience and the family medical history of *A*'s children (that is, the fact that *A* has the disease).

(ii) *Conclusion.* In this *Example 2,* the issuer violates the provisions of this paragraph (b) because, by taking the likelihood that *A*'s children may develop polycystic kidney disease into account in computing the rate for the plan, the issuer adjusts the premium based on genetic information relating to a condition that has not been manifested in *A*'s children. However, it is permissible for the issuer to increase the premium based on *A*'s claims experience.

(c) *Limitation on requesting or requiring genetic testing*—(1) *General rule.* Except as otherwise provided in this paragraph (c), a group health plan, and a health insurance issuer offering health insurance coverage in connection with a group health plan, must not request or require an individual or a family member of the individual to undergo a genetic test.

(2) *Health care professional may recommend a genetic test.* Nothing in paragraph (c)(1) of this section limits the authority of a health care professional who is providing health care services to an individual to request that the individual undergo a genetic test.

(3) *Examples.* The rules of paragraphs (c)(1) and (2) of this section are illustrated by the following examples:

Example 1. (i) *Facts.* Individual *A* goes to a physician for a routine physical examination. The physician reviews *A*'s family medical history and *A* informs the physician that *A*'s mother has been diagnosed with Huntington's Disease. The physician advises *A* that Huntington's Disease is hereditary and recommends that *A* undergo a genetic test.

(ii) *Conclusion.* In this *Example 1,* the physician is a health care professional who is providing health care services to *A.* Therefore, the physician's recommendation that *A* undergo the genetic test does not violate this paragraph (c).

Example 2. (i) *Facts.* Individual *B* is covered by a health maintenance organization (HMO). *B* is a child being treated for leukemia. *B*'s physician, who is employed by the HMO, is considering a treatment plan that includes six-mercaptopurine, a drug for treating leukemia in most children. However, the drug could be fatal if taken by a small percentage of children with a particular gene variant. *B*'s physician recommends that *B* undergo a genetic test to detect this variant before proceeding with this course of treatment.

(ii) *Conclusion.* In this *Example 2,* even though the physician is employed by the HMO, the physician is nonetheless a health care professional who is providing health care services to *B.* Therefore, the physician's recommendation that *B* undergo the genetic test does not violate this paragraph (c).

(4) *Determination regarding payment.* (i) *In general.* As provided in this paragraph (c)(4), nothing in paragraph (c)(1) of this section precludes a plan or issuer from obtaining and using the results of a genetic test in making a determination regarding payment. For this purpose, ''payment'' has the meaning given such term in 45 CFR 164.501 of the privacy regulations issued under the Health Insurance Portability and Accountability Act. Thus, if a plan or issuer conditions payment for an item or service based on its medical appropriateness and the medical appropriateness of the item or service depends on the genetic makeup of a patient, then the plan or issuer is permitted to condition payment for the item or service on the outcome of a genetic test. The plan or issuer may also refuse payment if the patient does not undergo the genetic test.

(ii) *Limitation.* A plan or issuer is permitted to request only the minimum amount of information necessary to make a determination regarding payment. The minimum amount of information necessary is determined in accordance with the minimum necessary standard in 45 CFR 164.502(b) of the privacy regulations issued under the Health Insurance Portability and Accountability Act.

(iii) *Examples. See* paragraph (e) of this section for examples illustrating the rules of this paragraph (c)(4), as well as other provisions of this section.

(5) *Research exception.* Notwithstanding paragraph (c)(1) of this section, a plan or issuer may request, but not require, that a participant or beneficiary undergo a genetic test if all of the conditions of this paragraph (c)(5) are met:

(i) *Research in accordance with Federal regulations and applicable State or local law or regulations.* The plan or issuer makes the request pursuant to research, as defined in 45 CFR 46.102(d), that complies with 45 CFR Part 46 or equivalent Federal regulations, and any applicable State or local law or regulations for the protection of human subjects in research.

(ii) *Written request for participation in research.* The plan or issuer makes the request in writing, and the request clearly indicates to each participant or beneficiary (or, in the case of a minor child, to the legal guardian of the beneficiary) that—

(A) Compliance with the request is voluntary; and

(B) Noncompliance will have no effect on eligibility for benefits (as described in § 2590.702(b)(1) of this Part) or premium or contribution amounts.

(iii) *Prohibition on underwriting.* No genetic information collected or acquired under this paragraph (c)(5) can be used for underwriting purposes (as described in paragraph (d)(1) of this section).

(iv) *Notice to Federal agencies.* The plan or issuer completes a copy of the ''Notice of Research Exception under the Genetic Information Nondiscrimination Act'' authorized by the Secretary and provides the notice to the address specified in the instructions thereto.

(d) *Prohibitions on collection of genetic information*—(1) *For underwriting purposes*—(i) *General rule.* A group health plan, and a health insurance issuer offering health insurance coverage in connection with a group health plan, must not collect (as defined in paragraph (a)(1) of this section) genetic information for underwriting purposes. *See* paragraph (e) of this section for examples illustrating the rules of this paragraph (d)(1), as well as other provisions of this section.

(ii) *Underwriting purposes defined.* Subject to paragraph (d)(1)(iii) of this section, *underwriting purposes* means, with respect to any group health plan, or health insurance coverage offered in connection with a group health plan—

(A) Rules for, or determination of, eligibility (including enrollment and continued eligibility) for benefits under the plan or coverage as described in § 2590.702(b)(1)(ii) of this Part (including changes in deductibles or other cost-sharing mechanisms in return for activities such as completing a health risk assessment or participating in a wellness program);

(B) The computation of premium or contribution amounts under the plan or coverage (including discounts, rebates, payments in kind, or other premium differential mechanisms in return for activities such as completing a health risk assessment or participating in a wellness program);

(C) The application of any preexisting condition exclusion under the plan or coverage; and

(D) Other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

(iii) *Medical appropriateness.* If an individual seeks a benefit under a group health plan or health insurance coverage, the plan or coverage may limit or exclude the benefit based on whether the benefit is medically appropriate, and the determination of whether the benefit is medically appropriate is not within the meaning of underwriting purposes. Accordingly, if an individual seeks a benefit under the plan and the plan or issuer conditions the benefit based on its medical appropriateness and the medical appropriateness of the benefit depends on genetic information of the individual, then the plan or issuer is permitted to condition the benefit on the genetic information. A plan or issuer is permitted to request only the minimum amount of genetic information necessary to determine medical appropriateness. The plan or issuer may deny the benefit if the patient does not provide the genetic information required to determine medical appropriateness. If an individual is not seeking a benefit, the medical appropriateness exception of this paragraph (d)(1)(iii) to the definition of underwriting purposes does not apply. *See* paragraph (e) of this section for examples illustrating the medical appropriateness provisions of this paragraph (d)(1)(iii), as well as other provisions of this section.

(2) *Prior to or in connection with enrollment.* (i) *In general.* A group health plan, and a health insurance issuer offering health insurance coverage in connection with a group health plan, must not collect genetic information with respect to any individual prior to that individual's effective date of coverage under that plan or coverage, nor in connection with the rules for eligibility (as defined in § 2590.702(b)(1)(ii) of this Part) that apply to that individual. Whether or not an individual's information is collected prior to that individual's effective date of coverage is determined at the time of collection.

(ii) *Incidental collection exception.*—(A) *In general.* If a group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, obtains genetic information incidental to the collection of other information concerning any individual, the collection is not a violation of this paragraph (d)(2), as long as the collection is not for underwriting purposes in violation of paragraph (d)(1) of this section.

(B) *Limitation.* The incidental collection exception of this paragraph (d)(2)(ii) does not apply in connection with any collection where it is reasonable to anticipate that health information will be received, unless the collection explicitly states that genetic information should not be provided.

(3) *Examples.* The rules of this paragraph (d) are illustrated by the following examples:

Example 1. (i) *Facts.* A group health plan provides a premium reduction to enrollees who complete a health risk assessment. The health risk assessment is requested to be completed after enrollment. Whether or not it is completed or what responses are given on it has no effect on an individual's enrollment status, or on the enrollment status of members of the individual's family. The health risk assessment includes questions about the individual's family medical history.

(ii) *Conclusion.* In this *Example 1,* the health risk assessment includes a request for genetic information (that is, the individual's family medical history). Because completing the health risk assessment results in a premium reduction, the request for genetic information is for underwriting purposes. Consequently, the request violates the prohibition on the collection of genetic information in paragraph (d)(1) of this section.

Example 2. (i) *Facts.* The same facts as *Example 1,* except there is no premium reduction or any other reward for completing the health risk assessment.

(ii) *Conclusion.* In this *Example 2,* the request is not for underwriting purposes, nor is it prior to or in connection with enrollment. Therefore, it does not violate the prohibition on the collection of genetic information in this paragraph (d).

Example 3. (i) *Facts.* A group health plan requests that enrollees complete a health risk assessment prior to enrollment, and includes questions about the individual's family medical history. There is no reward or penalty for completing the health risk assessment.

(ii) *Conclusion.* In this *Example 3,* because the health risk assessment includes a request for genetic information (that is, the individual's family medical history), and requests the information prior to enrollment, the request violates the prohibition on the collection of genetic information in paragraph (d)(2) of this section. Moreover, because it is a request for genetic information, it is not an incidental collection under paragraph (d)(2)(ii) of this section.

Example 4. (i) *Facts.* The facts are the same as in *Example 1,* except there is no premium reduction or any other reward given for completion of the health risk assessment. However, certain people completing the health risk assessment may become eligible for additional benefits under the plan by being enrolled in a disease management program based on their answers to questions about family medical history. Other people may become eligible for the disease management program based solely on their answers to questions about their individual medical history.

(ii) *Conclusion.* In this *Example 4,* the request for information about an individual's family medical history could result in the individual being eligible for benefits for which the individual would not otherwise be eligible. Therefore, the questions about family medical history on the health risk assessment are a request for genetic information for underwriting purposes and are prohibited under this paragraph (d). Although the plan conditions eligibility for the disease management program based on determinations of medical appropriateness, the exception for determinations of medical appropriateness does not apply because the individual is not seeking benefits.

Example 5. (i) *Facts.* A group health plan requests enrollees to complete two distinct health risk assessments (HRAs) after and unrelated to enrollment. The first HRA instructs the individual to answer only for the individual and not for the individual's family. The first HRA does not ask about any genetic tests the individual has undergone or any genetic services the individual has received. The plan offers a reward for completing the first HRA. The second HRA asks about family medical history and the results of genetic tests the individual has undergone. The plan offers no reward for completing the second HRA and the instructions make clear that completion of the second HRA is wholly voluntary and will not affect the reward given for completion of the first HRA.

(ii) *Conclusion.* In this *Example 5,* no genetic information is collected in connection with the first HRA, which offers a reward, and no benefits or other rewards are conditioned on the request for genetic information in the second HRA. Consequently, the request for genetic information in the second HRA is not for underwriting purposes, and the two HRAs do not violate the prohibition on the collection of genetic information in this paragraph (d).

Example 6. (i) *Facts.* A group health plan waives its annual deductible for enrollees who complete an HRA. The HRA is requested to be completed after enrollment. Whether or not the HRA is completed or what responses are given on it has no effect on an individual's enrollment status, or on the enrollment status of members of the individual's family. The HRA does not include any direct questions about the individual's genetic information (including family medical history). However, the last question reads, ''Is there anything else relevant to your health that you would like us to know or discuss with you?''

(ii) *Conclusion.* In this *Example 6,* the plan's request for medical information does not explicitly state that genetic information should not be provided. Therefore, any genetic information collected in response to the question is not within the incidental collection exception and is prohibited under this paragraph (d).

Example 7. (i) *Facts.* Same facts as *Example 6,* except that the last question goes on to state, ''In answering this question, you

should not include any genetic information. That is, please do not include any family medical history or any information related to genetic testing, genetic services, genetic counseling, or genetic diseases for which you believe you may be at risk.''

(ii) *Conclusion.* In this *Example 7,* the plan's request for medical information explicitly states that genetic information should not be provided. Therefore, any genetic information collected in response to the question is within the incidental collection exception. However, the plan may not use any genetic information it obtains incidentally for underwriting purposes.

Example 8. (i) *Facts.* Issuer *M* acquires Issuer *N*. *M* requests *N*'s records, stating that *N* should not provide genetic information and should review the records to excise any genetic information. *N* assembles the data requested by *M* and, although *N* reviews it to delete genetic information, the data from a specific region included some individuals' family medical history. Consequently, *M* receives genetic information about some of *N*'s covered individuals.

(ii) *Conclusion.* In this *Example 8, M*'s request for health information explicitly stated that genetic information should not be provided. Therefore, the collection of genetic information was within the incidental collection exception. However, *M* may not use the genetic information it obtained incidentally for underwriting purposes.

(e) *Examples regarding determinations of medical appropriateness.* The application of the rules of paragraphs (c) and (d) of this section to plan or issuer determinations of medical appropriateness is illustrated by the following examples:

Example 1. (i) *Facts.* Individual *A*'s group health plan covers genetic testing for celiac disease for individuals who have family members with this condition. After *A*'s son is diagnosed with celiac disease, *A* undergoes a genetic test and promptly submits a claim for the test to *A*'s issuer for reimbursement. The issuer asks *A* to provide the results of the genetic test before the claim is paid.

(ii) *Conclusion.* In this *Example 1,* under the rules of paragraph (c)(4) of this section the issuer is permitted to request only the minimum amount of information necessary to make a decision regarding payment. Because the results of the test are not necessary for the issuer to make a decision regarding the payment of *A*'s claim, the issuer's request for the results of the genetic test violates paragraph (c) of this section.

Example 2. (i) *Facts.* Individual *B*'s group health plan covers a yearly mammogram for participants and beneficiaries starting at age 40, or at age 30 for those with increased risk for breast cancer, including individuals with BRCA1 or BRCA2 gene mutations. *B* is 33 years old and has the BRCA2 mutation. *B* undergoes a mammogram and promptly submits a claim to *B*'s plan for reimbursement. Following an established policy, the plan asks *B* for evidence of increased risk of breast cancer, such as the results of a genetic test or a family history of breast cancer, before the claim for the mammogram is paid. This policy is applied uniformly to all similarly situated individuals and is not directed at individuals based on any genetic information.

(ii) *Conclusion.* In this *Example 2,* the plan does not violate paragraphs (c) or (d) of this section. Under paragraph (c), the plan is permitted to request and use the results of a genetic test to make a determination regarding payment, provided the plan requests only the minimum amount of information necessary. Because the medical appropriateness of the mammogram depends on the genetic makeup of the patient, the minimum amount of information necessary includes the results of the genetic test. Similarly, the plan does not violate paragraph (d) of this section because the plan is permitted to request genetic information in making a determination regarding the medical appropriateness of a claim if the genetic information is necessary to make the determination (and if the genetic information is not used for underwriting purposes).

Example 3. (i) *Facts.* Individual *C* was previously diagnosed with and treated for breast cancer, which is currently in remission. In accordance with the recommendation of *C*'s physician, *C* has been taking a regular dose of tamoxifen to help prevent a recurrence. *C*'s group health plan adopts a new policy requiring patients taking tamoxifen to undergo a genetic test to ensure that tamoxifen is medically appropriate for their genetic makeup. In accordance with, at the time, the latest scientific research, tamoxifen is not helpful in up to 7 percent of breast cancer patients, those with certain variations of the gene for making the CYP_2D6 enzyme. If a patient has a gene variant making tamoxifen not medically appropriate, the plan does not pay for the tamoxifen prescription.

(ii) *Conclusion.* In this *Example 3,* the plan does not violate paragraph (c) of this section if it conditions future payments for the tamoxifen prescription on *C*'s undergoing a genetic test to determine what genetic markers *C* has for making the CYP_2D6 enzyme. Nor does the plan violate paragraph (c) of this section if the plan refuses future payment if the results of the genetic test indicate that tamoxifen is not medically appropriate for *C.*

Example 4. (i) *Facts.* A group health plan offers a diabetes disease management program to all similarly situated individuals for whom it is medically appropriate based on whether the individuals have or are at risk for diabetes. The program provides enhanced benefits related only to diabetes for individuals who qualify for the program. The plan sends out a notice to all participants that describes the diabetes disease management program and explains the terms for eligibility. Individuals interested in enrolling in the program are advised to contact the plan to demonstrate that they have diabetes or that they are at risk for diabetes. For individuals who do not currently have diabetes, genetic information may be used to demonstrate that an individual is at risk.

(ii) *Conclusion.* In this *Example 4,* the plan may condition benefits under the disease management program upon a showing by an individual that the individual is at risk for diabetes, even if such showing may involve genetic information, provided that the plan requests genetic information only when necessary to make a determination regarding whether the disease management program is medically appropriate for the individual and only requests the minimum amount of information necessary to make that determination.

Example 5. (i) *Facts.* Same facts as *Example 4,* except that the plan includes a questionnaire that asks about the occurrence of diabetes in members of the individual's family as part of the notice describing the disease management program.

(ii) *Conclusion.* In this *Example 5,* the plan violates the requirements of paragraph (d)(1) of this section because the requests for genetic information are not limited to those situations in which it is necessary to make a determination regarding whether the disease management program is medically appropriate for the individuals.

Example 6. (i) *Facts.* Same facts as *Example 4,* except the disease management program provides an enhanced benefit in the form of a lower annual deductible to individuals under the program; the lower deductible applies with respect to all medical expenses incurred by the individual. Thus, whether or not a claim relates to diabetes, the individual is provided with a lower deductible based on the individual providing the plan with genetic information.

(ii) *Conclusion.* In this *Example 6,* because the enhanced benefits include benefits not related to the determination of medical appropriateness, making available the enhanced benefits is within the meaning of underwriting purposes. Accordingly, the plan may not request or require genetic information (including family history information) in determining eligibility for enhanced benefits under the program because such a request would be for underwriting purposes and would violate paragraph (d)(1) of this section.

(f) *Applicability date.* This section applies for plan years beginning on or after December 7, 2009.

■ 6. Section 2590.732 is amended to revise paragraph (b) as follows:

§ 2590.732 Special rules relating to group health plans.

* * * * *

(b) *General exception for certain small group health plans*—(1) Subject to paragraph (b)(2) of this section, the requirements of this part do not apply to any group health plan (and group health insurance coverage) for any plan year, if on the first day of the plan year, the plan has fewer than two participants who are current employees.

(2) The following requirements apply without regard to paragraph (b)(1) of this section:

(i) Section 2590.701–3(b)(6) of this Part.

(ii) Section 2590.702(b) of this Part, as such section applies with respect to genetic information as a health factor.

(iii) Section 2590.702(c) of this Part, as such section applies with respect to genetic information as a health factor.

(iv) Section 2590.702(e) of this Part, as such section applies with respect to genetic information as a health factor.

(v) Section 2590.702–1(b) of this Part.

(vi) Section 2590.702–1(c) of this Part.

(vii) Section 2590.702–1(d) of this Part.

(viii) Section 2590.702–1(e) of this Part.

(ix) Section 2590.711 of this Part.

* * * * *

Signed at Washington, DC, this 21st day of August 2009.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

Department of Health and Human Services

45 CFR Subtitle A

■ For the reasons set forth in the preamble, the Department of Health and Human Services is amending 45 CFR Subtitle A, Subchapter B as set forth below:

PART 144—REQUIREMENTS RELATING TO HEALTH INSURANCE COVERAGE

■ 1. The authority citation for part 144 is revised to read as follows:

Authority: Secs. 2701 through 2763, 2791, and 2792 of the Public Health Service Act, 42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92.

§ 144.101 Basis and purpose.

■ 2. Section 144.101 is amended by revising paragraph (a) to read as follows:

(a) Part 146 of this subchapter implements sections 2701 through 2723, 2791 and 2792 of the Public Health Service Act (PHS Act, 42 U.S.C. 300gg through 42 U.S.C. 300gg–23, 300gg–91, and 300gg–92.).

* * * * *

■ 3. Section 144.103 is amended by revising the definition of ''genetic information'' to read as follows:

§ 144.103 Definitions.

* * * * *

Genetic information has the meaning specified in § 146.122(a) of this subchapter.

* * * * *

PART 146—REQUIREMENTS FOR THE GROUP HEALTH INSURANCE MARKET

■ 4. The authority citation for part 146 is revised to read as follows:

Authority: Secs. 2702 through 2705, 2711 through 2723, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg–1 through 300gg–5, 300gg–11 through 300gg–23, 300gg–91, and 300gg–92).

■ 5. Section 146.101 is amended by—

■ A. Revising the first sentence of paragraph (a).

■ B. Adding a new paragraph (b)(1)(vii).

The revision and addition read as follows:

§ 146.101 Basis and scope.

(a) * * *. This part implements sections 2701 through 2723, 2791, and 2792 of the PHS Act. * * *

(b) * * *

(1) * * *

(vii) Additional requirements prohibiting discrimination against participants and beneficiaries based on genetic information.

* * * * *

■ 6. Section 146.121 is amended by—

■ A. Revising paragraph (a)(1)(vii).

■ B. Revising paragraph (c)(2)(i).

■ C. Republishing paragraph (c)(2)(iii) (Example 1) (i).

■ D. Revising paragraph (c)(2)(iii) (Example 1) (ii).

The revisions and republication read as follows:

§ 146.121 Prohibiting discrimination against participants and beneficiaries based on a health factor.

(a) * * *

(1) * * *

(vi) Genetic information, as defined in § 146.122(a) of this subchapter;

* * * * *

(c) * * *

(2) * * *

(i) *Group rating based on health factors not restricted under this section.* Nothing in this section restricts the aggregate amount that an employer may be charged for coverage under a group health plan. But *see* § 146.122(b) of this part, which prohibits adjustments in group premium or contribution rates based on genetic information.

* * * * *

(iii) * * *

Example 1. (i) *Facts.* An employer sponsors a group health plan and purchases coverage from a health insurance issuer. In order to determine the premium rate for the upcoming plan year, the issuer reviews the claims experience of individuals covered under the plan. The issuer finds that Individual *F* had significantly higher claims experience than similarly situated individuals in the plan. The issuer quotes the plan a higher per-participant rate because of *F*'s claims experience.

(ii) *Conclusion.* In this *Example 1*, the issuer does not violate the provisions of this paragraph (c)(2) because the issuer blends the rate so that the employer is not quoted a higher rate for *F* than for a similarly situated individual based on *F*'s claims experience. (However, if the issuer used genetic information in computing the group rate, it would violate § 146.122(b) of this part.)

* * * * *

■ 7. Add a new § 146.122 to read as follows:

§ 146.122 Additional requirements prohibiting discrimination based on genetic information.

(a) *Definitions.* Unless otherwise provided, the definitions in this paragraph (a) govern in applying the provisions of this section.

(1) *Collect* means, with respect to information, to request, require, or purchase such information.

(2) *Family member* means, with respect to an individual—

(i) A dependent (as defined in § 144.103 of this part) of the individual; or

(ii) Any other person who is a first-degree, second-degree, third-degree, or fourth-degree relative of the individual or of a dependent of the individual. Relatives by affinity (such as by marriage or adoption) are treated the same as relatives by consanguinity (that is, relatives who share a common biological ancestor). In determining the degree of the relationship, relatives by less than full consanguinity (such as half-siblings, who share only one parent) are treated the same as relatives by full consanguinity (such as siblings who share both parents).

(A) First-degree relatives include parents, spouses, siblings, and children.

(B) Second-degree relatives include grandparents, grandchildren, aunts, uncles, nephews, and nieces.

(C) Third-degree relatives include great-grandparents, great-grandchildren, great aunts, great uncles, and first cousins.

(D) Fourth-degree relatives include great-great grandparents, great-great grandchildren, and children of first cousins.

(3) *Genetic information* means—

(i) Subject to paragraphs (a)(3)(ii) and (iii) of this section, with respect to an individual, information about—

(A) The individual's genetic tests (as defined in paragraph (a)(5) of this section);

(B) The genetic tests of family members of the individual;

(C) The manifestation (as defined in paragraph (a)(6) of this section) of a disease or disorder in family members of the individual; or

(D) Any request for, or receipt of, genetic services (as defined in paragraph (a)(4) of this section), or participation in clinical research which includes genetic

services, by the individual or any family member of the individual.

(ii) The term *genetic information* does not include information about the sex or age of any individual.

(iii) The term *genetic information* includes—

(A) With respect to a pregnant woman (or a family member of the pregnant woman), genetic information of any fetus carried by the pregnant woman; and

(B) With respect to an individual (or a family member of the individual) who is utilizing an assisted reproductive technology, genetic information of any embryo legally held by the individual or family member.

(4) *Genetic services* means —

(i) A genetic test, as defined in paragraph (a)(5) of this section;

(ii) Genetic counseling (including obtaining, interpreting, or assessing genetic information); or

(iii) Genetic education.

(5)(i) *Genetic test* means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, if the analysis detects genotypes, mutations, or chromosomal changes. However, a genetic test does not include an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition. Accordingly, a test to determine whether an individual has a BRCA1 or BRCA2 variant is a genetic test. Similarly, a test to determine whether an individual has a genetic variant associated with hereditary nonpolyposis colorectal cancer is a genetic test. However, an HIV test, complete blood count, cholesterol test, liver function test, or test for the presence of alcohol or drugs is not a genetic test.

(ii) The rules of this paragraph (a)(5) are illustrated by the following example:

Example. (i) *Facts.* Individual *A* is a newborn covered under a group health plan. *A* undergoes a phenylketonuria (PKU) screening, which measures the concentration of a metabolite, phenylalanine, in *A's* blood. In PKU, a mutation occurs in the phenylalanine hydroxylase (PAH) gene which contains instructions for making the enzyme needed to break down the amino acid phenylalanine. Individuals with the mutation, who have a deficiency in the enzyme to break down phenylalanine, have high concentrations of phenylalanine.

(ii) *Conclusion.* In this *Example*, the PKU screening is a genetic test with respect to *A* because the screening is an analysis of metabolites that detects a genetic mutation.

(6)(i) *Manifestation* or *manifested* means, with respect to a disease, disorder, or pathological condition, that an individual has been or could reasonably be diagnosed with the disease, disorder, or pathological condition by a health care professional with appropriate training and expertise in the field of medicine involved. For purposes of this section, a disease, disorder, or pathological condition is not manifested if a diagnosis is based principally on genetic information.

(ii) The rules of this paragraph (a)(6) are illustrated by the following examples:

Example 1. (i) *Facts.* Individual *A* has a family medical history of diabetes. *A* begins to experience excessive sweating, thirst, and fatigue. *A's* physician examines *A* and orders blood glucose testing (which is not a genetic test). Based on the physician's examination, *A's* symptoms, and test results that show elevated levels of blood glucose, *A's* physician diagnoses *A* as having adult onset diabetes mellitus (Type 2 diabetes).

(ii) *Conclusion.* In this *Example 1, A* has been diagnosed by a health care professional with appropriate training and expertise in the field of medicine involved. The diagnosis is not based principally on genetic information. Thus, Type 2 diabetes is manifested with respect to *A.*

Example 2. (i) *Facts.* Individual *B* has several family members with colon cancer. One of them underwent genetic testing which detected a mutation in the MSH2 gene associated with hereditary nonpolyposis colorectal cancer (HNPCC). *B's* physician, a health care professional with appropriate training and expertise in the field of medicine involved, recommends that *B* undergo a targeted genetic test to look for the specific mutation found in *B* 's relative to determine if *B* has an elevated risk for cancer. The genetic test with respect to *B* showed that *B* also carries the mutation and is at increased risk to develop colorectal and other cancers associated with HNPCC. *B* has a colonoscopy which indicates no signs of disease, and *B* has no symptoms.

(ii) *Conclusion.* In this *Example 2,* because *B* has no signs or symptoms of colorectal cancer, *B* has not been and could not reasonably be diagnosed with HNPCC. Thus, HNPCC is not manifested with respect to *B.*

Example 3. (i) *Facts.* Same facts as *Example 2*, except that *B's* colonoscopy and subsequent tests indicate the presence of HNPCC. Based on the colonoscopy and subsequent test results, *B's* physician makes a diagnosis of HNPCC.

(ii) *Conclusion.* In this *Example 3*, HNPCC is manifested with respect to *B* because a health care professional with appropriate training and expertise in the field of medicine involved has made a diagnosis that is not based principally on genetic information.

Example 4. (i) *Facts.* Individual *C* has a family member that has been diagnosed with Huntington's Disease. A genetic test indicates that *C* has the Huntington's Disease gene variant. At age 42, *C* begins suffering from occasional moodiness and disorientation, symptoms which are associated with Huntington's Disease. *C* is examined by a neurologist (a physician with appropriate training and expertise for diagnosing Huntington's Disease). The examination includes a clinical neurological exam. The results of the examination do not support a diagnosis of Huntington's Disease.

(ii) *Conclusion.* In this *Example 4, C* is not and could not reasonably be diagnosed with Huntington's Disease by a health care professional with appropriate training and expertise. Therefore, Huntington's Disease is not manifested with respect to *C.*

Example 5. (i) *Facts.* Same facts as *Example 4*, except that *C* exhibits additional neurological and behavioral symptoms, and the results of the examination support a diagnosis of Huntington's Disease with respect to *C.*

(ii) *Conclusion.* In this *Example 5, C* could reasonably be diagnosed with Huntington's Disease by a health care professional with appropriate training and expertise. Therefore, Huntington's Disease is manifested with respect to *C.*

(7) *Underwriting purposes* has the meaning given in paragraph (d)(1) of this section.

(b) *No group-based discrimination based on genetic information*—(1) *In general.* For purposes of this section, a group health plan, and a health insurance issuer offering health insurance coverage in connection with a group health plan, must not adjust premium or contribution amounts for the plan, or any group of similarly situated individuals under the plan, on the basis of genetic information. For this purpose, ''similarly situated individuals'' are those described in § 146.121(d) of this part.

(2) *Rule of construction.* Nothing in paragraph (b)(1) of this section (or in paragraph (d)(1) or (d)(2) of this section) limits the ability of a health insurance issuer offering health insurance coverage in connection with a group health plan to increase the premium for a group health plan or a group of similarly situated individuals under the plan based on the manifestation of a disease or disorder of an individual who is enrolled in the plan. In such a case, however, the manifestation of a disease or disorder in one individual cannot also be used as genetic information about other group members to further increase the premium for a group health plan or a group of similarly situated individuals under the plan.

(3) *Examples.* The rules of this paragraph (b) are illustrated by the following examples:

Example 1. (i) *Facts.* An employer sponsors a group health plan that provides coverage through a health insurance issuer. In order to determine the premium rate for the upcoming plan year, the issuer reviews the claims experience of individuals covered under the plan and other health status information of the individuals, including genetic information. The issuer finds that three individuals covered under the plan had unusually high claims experience. In addition, the issuer finds that the genetic

information of two other individuals indicates the individuals have a higher probability of developing certain illnesses although the illnesses are not manifested at this time. The issuer quotes the plan a higher per-participant rate because of both the genetic information and the higher claims experience.

(ii) *Conclusion.* In this *Example 1*, the issuer violates the provisions of this paragraph (b) because the issuer adjusts the premium based on genetic information. However, if the adjustment related solely to claims experience, the adjustment would not violate the requirements of this section (nor would it violate the requirements of paragraph (c) of § 146.121 of this part, which prohibits discrimination in individual premiums or contributions based on a health factor but permits increases in the group rate based on a health factor).

Example 2. (i) *Facts.* An employer sponsors a group health plan that provides coverage through a health insurance issuer. In order to determine the premium rate for the upcoming plan year, the issuer reviews the claims experience of individuals covered under the plan and other health status information of the individuals, including genetic information. The issuer finds that Employee *A* has made claims for treatment of polycystic kidney disease. *A* also has two dependent children covered under the plan. The issuer quotes the plan a higher per-participant rate because of both *A's* claims experience and the family medical history of *A's* children (that is, the fact that *A* has the disease).

(ii) *Conclusion.* In this *Example 2*, the issuer violates the provisions of this paragraph (b) because, by taking the likelihood that *A's* children may develop polycystic kidney disease into account in computing the rate for the plan, the issuer adjusts the premium based on genetic information relating to a condition that has not been manifested in *A's* children. However, it is permissible for the issuer to increase the premium based on *A's* claims experience.

(c) *Limitation on requesting or requiring genetic testing*—(1) *General rule.* Except as otherwise provided in this paragraph (c), a group health plan, and a health insurance issuer offering health insurance coverage in connection with a group health plan, must not request or require an individual or a family member of the individual to undergo a genetic test.

(2) *Health care professional may recommend a genetic test.* Nothing in paragraph (c)(1) of this section limits the authority of a health care professional who is providing health care services to an individual to request that the individual undergo a genetic test.

(3) *Examples.* The rules of paragraphs (c)(1) and (2) of this section are illustrated by the following examples:

Example 1. (i) *Facts.* Individual *A* goes to a physician for a routine physical examination. The physician reviews *A's* family medical history and *A* informs the physician that *A's* mother has been diagnosed with Huntington's Disease. The physician advises *A* that Huntington's Disease is hereditary and recommends that *A* undergo a genetic test.

(ii) *Conclusion.* In this *Example 1*, the physician is a health care professional who is providing health care services to *A.* Therefore, the physician's recommendation that *A* undergo the genetic test does not violate this paragraph (c).

Example 2. (i) *Facts.* Individual *B* is covered by a health maintenance organization (HMO). *B* is a child being treated for leukemia. *B's* physician, who is employed by the HMO, is considering a treatment plan that includes six-mercaptopurine, a drug for treating leukemia in most children. However, the drug could be fatal if taken by a small percentage of children with a particular gene variant. *B's* physician recommends that *B* undergo a genetic test to detect this variant before proceeding with this course of treatment.

(ii) *Conclusion.* In this *Example 2,* even though the physician is employed by the HMO, the physician is nonetheless a health care professional who is providing health care services to *B.* Therefore, the physician's recommendation that *B* undergo the genetic test does not violate this paragraph (c).

(4) *Determination regarding payment.*

(i) *In general.* As provided in this paragraph (c)(4), nothing in paragraph (c)(1) of this section precludes a plan or issuer from obtaining and using the results of a genetic test in making a determination regarding payment. For this purpose, ''payment'' has the meaning given such term in § 164.501 of the privacy regulations issued under the Health Insurance Portability and Accountability Act. Thus, if a plan or issuer conditions payment for an item or service based on its medical appropriateness and the medical appropriateness of the item or service depends on the genetic makeup of a patient, then the plan or issuer is permitted to condition payment for the item or service on the outcome of a genetic test. The plan or issuer may also refuse payment if the patient does not undergo the genetic test.

(ii) *Limitation.* A plan or issuer is permitted to request only the minimum amount of information necessary to make a determination regarding payment. The minimum amount of information necessary is determined in accordance with the minimum necessary standard in § 164.502(b) of the privacy regulations issued under the Health Insurance Portability and Accountability Act.

(iii) *Examples. See* paragraph (e) of this section for examples illustrating the rules of this paragraph (c)(4), as well as other provisions of this section.

(5) *Research exception.* Notwithstanding paragraph (c)(1) of this section, a plan or issuer may request, but not require, that a participant or beneficiary undergo a genetic test if all of the conditions of this paragraph (c)(5) are met:

(i) *Research in accordance with Federal regulations and applicable State or local law or regulations.* The plan or issuer makes the request pursuant to research, as defined in § 46.102(d) of this subtitle, that complies with part 46 of this subtitle or equivalent Federal regulations, and any applicable State or local law or regulations for the protection of human subjects in research.

(ii) *Written request for participation in research.* The plan or issuer makes the request in writing, and the request clearly indicates to each participant or beneficiary (or, in the case of a minor child, to the legal guardian of the beneficiary) that –

(A) Compliance with the request is voluntary; and

(B) Noncompliance will have no effect on eligibility for benefits (as described in § 146.121(b)(1) of this part) or premium or contribution amounts.

(iii) *Prohibition on underwriting.* No genetic information collected or acquired under this paragraph (c)(5) can be used for underwriting purposes (as described in paragraph (d)(1) of this section).

(iv) *Notice to Federal agencies.* The plan or issuer completes a copy of the ''Notice of Research Exception under the Genetic Information Nondiscrimination Act'' authorized by the Secretary and provides the notice to the address specified in the instructions thereto.

(d) *Prohibitions on collection of genetic information.*

(1) *For underwriting purposes.*

(i) *General rule.* A group health plan, and a health insurance issuer offering health insurance coverage in connection with a group health plan, must not collect (as defined in paragraph (a)(1) of this section) genetic information for underwriting purposes. *See* paragraph (e) of this section for examples illustrating the rules of this paragraph (d)(1), as well as other provisions of this section.

(ii) *Underwriting purposes defined.* Subject to paragraph (d)(1)(iii) of this section, *underwriting purposes* means, with respect to any group health plan, or health insurance coverage offered in connection with a group health plan—

(A) Rules for, or determination of, eligibility (including enrollment and continued eligibility) for benefits under the plan or coverage as described in § 146.121(b)(1)(ii) of this part (including changes in deductibles or other cost-

sharing mechanisms in return for activities such as completing a health risk assessment or participating in a wellness program);

(B) The computation of premium or contribution amounts under the plan or coverage (including discounts, rebates, payments in kind, or other premium differential mechanisms in return for activities such as completing a health risk assessment or participating in a wellness program);

(C) The application of any preexisting condition exclusion under the plan or coverage; and

(D) Other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

(iii) *Medical appropriateness.* If an individual seeks a benefit under a group health plan or health insurance coverage, the plan or coverage may limit or exclude the benefit based on whether the benefit is medically appropriate, and the determination of whether the benefit is medically appropriate is not within the meaning of underwriting purposes. Accordingly, if an individual seeks a benefit under the plan and the plan or issuer conditions the benefit based on its medical appropriateness and the medical appropriateness of the benefit depends on genetic information of the individual, then the plan or issuer is permitted to condition the benefit on the genetic information. A plan or issuer is permitted to request only the minimum amount of genetic information necessary to determine medical appropriateness. The plan or issuer may deny the benefit if the patient does not provide the genetic information required to determine medical appropriateness. If an individual is not seeking a benefit, the medical appropriateness exception of this paragraph (d)(1)(iii) to the definition of underwriting purposes does not apply. *See* paragraph (e) of this section for examples illustrating the medical appropriateness provisions of this paragraph (d)(1)(iii), as well as other provisions of this section.

(2) *Prior to or in connection with enrollment.* (i) *In general.* A group health plan, and a health insurance issuer offering health insurance coverage in connection with a group health plan, must not collect genetic information with respect to any individual prior to that individual's effective date of coverage under that plan or coverage, nor in connection with the rules for eligibility (as defined in § 146.121(b)(1)(ii) of this part) that apply to that individual. Whether or not an individual's information is collected prior to that individual's effective date of coverage is determined at the time of collection.

(ii) *Incidental collection exception.*

(A) *In general.* If a group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, obtains genetic information incidental to the collection of other information concerning any individual, the collection is not a violation of this paragraph (d)(2), as long as the collection is not for underwriting purposes in violation of paragraph (d)(1) of this section.

(B) *Limitation.* The incidental collection exception of this paragraph (d)(2)(ii) does not apply in connection with any collection where it is reasonable to anticipate that health information will be received, unless the collection explicitly states that genetic information should not be provided.

(3) *Examples.* The rules of this paragraph (d) are illustrated by the following examples:

Example 1. (i) *Facts.* A group health plan provides a premium reduction to enrollees who complete a health risk assessment. The health risk assessment is requested to be completed after enrollment. Whether or not it is completed or what responses are given on it has no effect on an individual's enrollment status, or on the enrollment status of members of the individual's family. The health risk assessment includes questions about the individual's family medical history.

(ii) *Conclusion.* In this *Example 1*, the health risk assessment includes a request for genetic information (that is, the individual's family medical history). Because completing the health risk assessment results in a premium reduction, the request for genetic information is for underwriting purposes. Consequently, the request violates the prohibition on the collection of genetic information in paragraph (d)(1) of this section.

Example 2. (i) *Facts.* The same facts as *Example 1*, except there is no premium reduction or any other reward for completing the health risk assessment.

(ii) *Conclusion.* In this *Example 2*, the request is not for underwriting purposes, nor is it prior to or in connection with enrollment. Therefore, it does not violate the prohibition on the collection of genetic information in this paragraph (d).

Example 3. (i) *Facts.* A group health plan requests that enrollees complete a health risk assessment prior to enrollment, and includes questions about the individual's family medical history. There is no reward or penalty for completing the health risk assessment.

(ii) *Conclusion.* In this *Example 3*, because the health risk assessment includes a request for genetic information (that is, the individual's family medical history), and requests the information prior to enrollment, the request violates the prohibition on the collection of genetic information in paragraph (d)(2) of this section. Moreover, because it is a request for genetic information, it is not an incidental collection under paragraph (d)(2)(ii) of this section.

Example 4. (i) *Facts.* The facts are the same as in *Example 1*, except there is no premium reduction or any other reward given for completion of the health risk assessment. However, certain people completing the health risk assessment may become eligible for additional benefits under the plan by being enrolled in a disease management program based on their answers to questions about family medical history. Other people may become eligible for the disease management program based solely on their answers to questions about their individual medical history.

(ii) *Conclusion.* In this *Example 4,* the request for information about an individual's family medical history could result in the individual being eligible for benefits for which the individual would not otherwise be eligible. Therefore, the questions about family medical history on the health risk assessment are a request for genetic information for underwriting purposes and are prohibited under this paragraph (d). Although the plan conditions eligibility for the disease management program based on determinations of medical appropriateness, the exception for determinations of medical appropriateness does not apply because the individual is not seeking benefits.

Example 5. (i) *Facts.* A group health plan requests enrollees to complete two distinct health risk assessments (HRAs) after and unrelated to enrollment. The first HRA instructs the individual to answer only for the individual and not for the individual's family. The first HRA does not ask about any genetic tests the individual has undergone or any genetic services the individual has received. The plan offers a reward for completing the first HRA. The second HRA asks about family medical history and the results of genetic tests the individual has undergone. The plan offers no reward for completing the second HRA and the instructions make clear that completion of the second HRA is wholly voluntary and will not affect the reward given for completion of the first HRA.

(ii) *Conclusion.* In this *Example 5*, no genetic information is collected in connection with the first HRA, which offers a reward, and no benefits or other rewards are conditioned on the request for genetic information in the second HRA. Consequently, the request for genetic information in the second HRA is not for underwriting purposes, and the two HRAs do not violate the prohibition on the collection of genetic information in this paragraph (d).

Example 6. (i) *Facts.* A group health plan waives its annual deductible for enrollees who complete an HRA. The HRA is requested to be completed after enrollment. Whether or not the HRA is completed or what responses are given on it has no effect on an individual's enrollment status, or on the enrollment status of members of the individual's family. The HRA does not include any direct questions about the individual's genetic information (including family medical history). However, the last

question reads, ''Is there anything else relevant to your health that you would like us to know or discuss with you?''

(ii) *Conclusion.* In this *Example 6*, the plan's request for medical information does not explicitly state that genetic information should not be provided. Therefore, any genetic information collected in response to the question is not within the incidental collection exception and is prohibited under this paragraph (d).

Example 7. (i) *Facts.* Same facts as *Example 6*, except that the last question goes on to state, ''In answering this question, you should not include any genetic information. That is, please do not include any family medical history or any information related to genetic testing, genetic services, genetic counseling, or genetic diseases for which you believe you may be at risk.''

(ii) *Conclusion.* In this *Example 7*, the plan's request for medical information explicitly states that genetic information should not be provided. Therefore, any genetic information collected in response to the question is within the incidental collection exception. However, the plan may not use any genetic information it obtains incidentally for underwriting purposes.

Example 8. (i) *Facts.* Issuer *M* acquires Issuer *N*. *M* requests *N*'s records, stating that *N* should not provide genetic information and should review the records to excise any genetic information. *N* assembles the data requested by *M* and, although *N* reviews it to delete genetic information, the data from a specific region included some individuals' family medical history. Consequently, *M* receives genetic information about some of *N*'s covered individuals.

(ii) *Conclusion.* In this *Example 8, M*'s request for health information explicitly stated that genetic information should not be provided. Therefore, the collection of genetic information was within the incidental collection exception. However, *M* may not use the genetic information it obtained incidentally for underwriting purposes.

(e) *Examples regarding determinations of medical appropriateness.* The application of the rules of paragraphs (c) and (d) of this section to plan or issuer determinations of medical appropriateness is illustrated by the following examples:

Example 1. (i) *Facts.* Individual *A* group health plan covers genetic testing for celiac disease for individuals who have family members with this condition. After *A*'s son is diagnosed with celiac disease, *A* undergoes a genetic test and promptly submits a claim for the test to *A*'s issuer for reimbursement. The issuer asks *A* to provide the results of the genetic test before the claim is paid.

(ii) *Conclusion.* In this *Example 1*, under the rules of paragraph (c)(4) of this section the issuer is permitted to request only the minimum amount of information necessary to make a decision regarding payment. Because the results of the test are not necessary for the issuer to make a decision regarding the payment of *A*'s claim, the issuer's request for the results of the genetic test violates paragraph (c) of this section.

Example 2. (i) *Facts.* Individual *B*'s group health plan covers a yearly mammogram for participants and beneficiaries starting at age 40, or at age 30 for those with increased risk for breast cancer, including individuals with BRCA1 or BRCA2 gene mutations. *B* is 33 years old and has the BRCA2 mutation. *B* undergoes a mammogram and promptly submits a claim to *B*'s plan for reimbursement. Following an established policy, the plan asks *B* for evidence of increased risk of breast cancer, such as the results of a genetic test or a family history of breast cancer, before the claim for the mammogram is paid. This policy is applied uniformly to all similarly situated individuals and is not directed at individuals based on any genetic information.

(ii) *Conclusion.* In this *Example 2*, the plan does not violate paragraphs (c) or (d) of this section. Under paragraph (c), the plan is permitted to request and use the results of a genetic test to make a determination regarding payment, provided the plan requests only the minimum amount of information necessary. Because the medical appropriateness of the mammogram depends on the genetic makeup of the patient, the minimum amount of information necessary includes the results of the genetic test. Similarly, the plan does not violate paragraph (d) of this section because the plan is permitted to request genetic information in making a determination regarding the medical appropriateness of a claim if the genetic information is necessary to make the determination (and if the genetic information is not used for underwriting purposes).

Example 3. (i) *Facts.* Individual *C* was previously diagnosed with and treated for breast cancer, which is currently in remission. In accordance with the recommendation of *C*'s physician, *C* has been taking a regular dose of tamoxifen to help prevent a recurrence. *C*'s group health plan adopts a new policy requiring patients taking tamoxifen to undergo a genetic test to ensure that tamoxifen is medically appropriate for their genetic makeup. In accordance with, at the time, the latest scientific research, tamoxifen is not helpful in up to 7 percent of breast cancer patients, those with certain variations of the gene for making the CYP_2D6 enzyme. If a patient has a gene variant making tamoxifen not medically appropriate, the plan does not pay for the tamoxifen prescription.

(ii) *Conclusion.* In this *Example 3*, the plan does not violate paragraph (c) of this section if it conditions future payments for the tamoxifen prescription on *C*'s undergoing a genetic test to determine what genetic markers *C* has for making the CYP_2D6 enzyme. Nor does the plan violate paragraph (c) of this section if the plan refuses future payment if the results of the genetic test indicate that tamoxifen is not medically appropriate for *C*.

Example 4. (i) *Facts.* A group health plan offers a diabetes disease management program to all similarly situated individuals for whom it is medically appropriate based on whether the individuals have or are at risk for diabetes. The program provides enhanced benefits related only to diabetes for individuals who qualify for the program. The plan sends out a notice to all participants that describes the diabetes disease management program and explains the terms for eligibility. Individuals interested in enrolling in the program are advised to contact the plan to demonstrate that they have diabetes or that they are at risk for diabetes. For individuals who do not currently have diabetes, genetic information may be used to demonstrate that an individual is at risk.

(ii) *Conclusion.* In this *Example 4*, the plan may condition benefits under the disease management program upon a showing by an individual that the individual is at risk for diabetes, even if such showing may involve genetic information, provided that the plan requests genetic information only when necessary to make a determination regarding whether the disease management program is medically appropriate for the individual and only requests the minimum amount of information necessary to make that determination.

Example 5. (i) *Facts.* Same facts as *Example 4*, except that the plan includes a questionnaire that asks about the occurrence of diabetes in members of the individual's family as part of the notice describing the disease management program.

(ii) *Conclusion.* In this *Example 5*, the plan violates the requirements of paragraph (d)(1) of this section because the requests for genetic information are not limited to those situations in which it is necessary to make a determination regarding whether the disease management program is medically appropriate for the individuals.

Example 6. (i) *Facts.* Same facts as *Example 4*, except the disease management program provides an enhanced benefit in the form of a lower annual deductible to individuals under the program; the lower deductible applies with respect to all medical expenses incurred by the individual. Thus, whether or not a claim relates to diabetes, the individual is provided with a lower deductible based on the individual providing the plan with genetic information.

(ii) *Conclusion.* In this *Example 6*, because the enhanced benefits include benefits not related to the determination of medical appropriateness, making available the enhanced benefits is within the meaning of underwriting purposes. Accordingly, the plan may not request or require genetic information (including family history information) in determining eligibility for enhanced benefits under the program because such a request would be for underwriting purposes and would violate paragraph (d)(1) of this section.

(f) *Applicability date.* This section applies for plan years beginning on or after December 7, 2009.

■ 8. Section 146.145 is amended by revising paragraph (b) as follows:

§ 146.145 Special rules relating to group health plans.

* * * * *

(b) *General exception for certain small group health plans.* The requirements of this part, other than § 146.130 and the provisions with respect to genetic

nondiscrimination (found in § 146.111(b)(6), § 146.121(b), § 146.121(c), § 146.121(e), § 146.122(b), § 146.122(c), § 146.122(d), and § 146.122(e)) do not apply to any group health plan (and group health insurance coverage) for any plan year, if on the first day of the plan year, the plan has fewer than two participants who are current employees.

* * * * *

■ 9. Section 146.180 is amended by—

■ A. Revising paragraph (a)(1)(iii).

■ B. Revising paragraph (h).

■ C. In paragraph (i), removing the reference ''(h)'' and added the reference ''(h)(1)'' in its place each time it appears.

■ D. Revising the last sentence of paragraph (k).

The revisions read as follows:

§ 146.180 Treatment of non-Federal governmental plans.

(a) * * *

(1) * * *

(iii) Prohibitions against discriminating against individual participants and beneficiaries based on health status described in § 146.121, except that the sponsor of a self-funded non-Federal governmental plan cannot elect to exempt its plan from the requirements in § 146.121(a)(1)(vi) and § 146.122 that prohibit discrimination with respect to genetic information.

* * * * *

(h) *Requirements not subject to exemption.*

(1) *Certification and disclosure of creditable coverage.* Without regard to an election under this section, a non-Federal governmental plan must provide for certification and disclosure of creditable coverage under the plan with respect to participants and their dependents as specified under § 146.115 of this part.

(2) *Genetic information.* Without regard to an election under this section that exempts a non-Federal governmental plan from any or all of the provisions of § 146.111 and § 146.121 of this part, the exemption election must not be construed to exempt the plan from any provisions of this part 146 that pertain to genetic information.

(3) *Enforcement.* CMS enforces these requirements as provided under paragraph (k) of this section.

(4) *Examples.*

(i)

Example 1. (A) Individual *A* is hired by a county that has elected to exempt its self-funded group health plan from certain requirements of paragraph (a)(1) of this section, including prohibitions against enrollment discrimination based on health status-related factors. Individual *A* applies for enrollment in the county's group health plan. Applicants must pass medical underwriting before being allowed to enroll in the plan. The plan requires an applicant to complete a medical history form and to authorize the plan to contact physicians regarding any medical treatments the applicant has received in the past 5 years. Individual *A* has Type 2 diabetes. He submits the required form, which reflects that condition. The plan also receives information from Individual *A*'s physicians. While the plan's request to Individual *A's* physicians did not include a request for genetic information, the plan received information from a physician in response to its request for health information about Individual *A,* that one of Individual *A*'s parents has Huntington's Disease. The Plan denies enrollment to Individual *A.*

(B) Individual *A* files a complaint with CMS that he has been denied enrollment in the plan because of genetic information the plan received. CMS investigates the complaint and determines that the plan uniformly denies enrollment to anyone who has Type II diabetes. CMS resolves the complaint in favor of the plan on the basis that the plan permissibly denied enrollment to Individual *A* under its exemption election because of the existence of a medical condition that uniformly disqualifies individuals from participating in the plan.

(ii)

Example 2. (A) Same facts as in *Example 1,* except Individual *A* does not have diabetes or any other preexisting medical condition; that is, there is no manifestation of a disease or disorder with respect to Individual *A* at the time of his application for enrollment in the county's group health plan.

(B) In these circumstances, CMS resolves the complaint in favor of Individual *A* because CMS determines that the plan impermissibly denied enrollment to Individual *A* on the basis of genetic information. CMS instructs the plan to permit Individual *A* to enroll in the plan retroactive to the earliest date coverage would be effective under the terms of the plan based on the date of Individual *A*'s enrollment application or hire, as applicable. CMS may impose a civil money penalty, as determined under subpart C of part 150.

* * * * *

(k) * * *. This may include imposing a civil money penalty against the plan or plan sponsor, as determined under subpart C of part 150.

* * * * *

PART 148—REQUIREMENTS FOR THE INDIVIDUAL HEALTH INSURANCE MARKET

■ 10. The authority citation for part 148 continues to read as follows:

Authority: Secs. 2741 through 2763, 2791, and 2792 of the Public Health Service Act, 42 U.S.C. 300gg–41 through 300gg–63, 300gg–91, and 300gg–92.

■ 11. Section 148.101 is amended by revising the last sentence to read as follows:

§ 148.101 Basis and purpose.

* * *. It also provides certain protections for mothers and newborns with respect to coverage for hospital stays in connection with childbirth and protects all individuals and family members who have, or seek, individual health insurance coverage from discrimination based on genetic information.

■ 12. Section 148.102 is amended by revising the last sentence of paragraph (a)(2) and paragraph (b) to read as follows:

§ 148.102 Scope, applicability, and effective dates.

(a) * * *

(2) * * *. The requirements that pertain to guaranteed renewability for all individuals, to protections for mothers and newborns with respect to hospital stays in connection with childbirth, and to protections against discrimination based on genetic information apply to all issuers of individual health insurance coverage in the State, regardless of whether a State implements an alternative mechanism under § 148.128 of this part.

(b) *Effective date.* Except as provided in § 148.124 (certificate of creditable coverage), § 148.128 (alternative State mechanisms), § 148.170 (standards relating to benefits for mothers and newborns), and § 148.180 (prohibition of health discrimination based on genetic information) of this part, the requirements of this part apply to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market after June 30, 1997, regardless of when a period of creditable coverage occurs.

§ 148.120 [Amended]

■ 13. Section 148.120 is amended by—

■ A. In paragraphs (c)(5)(ii), (d)(2), and (e)(2) removing the cross-reference ''§ 148.200'' and adding in its place the cross-reference ''part 150'' each time it appears.

■ B. In paragraph (f)(1) removing the term ''If'' and adding in its place the phrase ''Except as prohibited by § 148.180, if''.

■ C. In paragraph (g)(4) removing the term ''This'' and adding in its place the phrase ''Except as prohibited by § 148.180, this''.

■ 14. A new § 148.180 is added to subpart C to read as follows:

§ 148.180 Prohibition of discrimination based on genetic information.

(a) *Definitions.* For purposes of this section, the following definitions as set forth in § 146.122 of this subchapter pertain to health insurance issuers in the individual market to the extent that those definitions are not inconsistent with respect to health insurance coverage offered, sold, issued, renewed, in effect or operated in the individual market:

Collect has the meaning set forth at § 146.122(a).

Family member has the meaning set forth at § 146.122(a).

Genetic information has the meaning set forth at § 146.122(a).

Genetic services has the meaning set forth at § 146.122(a).

Genetic test has the meaning set forth at § 146.122(a).

Manifestation or manifested has the meaning set forth at § 146.122(a).

Preexisting condition exclusion has the meaning set forth at § 144.103.

Underwriting purposes has the meaning set forth at § 148.180(f)(1).

(b) *Prohibition on genetic information as a condition of eligibility.*

(1) *In general.* An issuer offering health insurance coverage in the individual market may not establish rules for the eligibility (including continued eligibility) of any individual to enroll in individual health insurance coverage based on genetic information.

(2) *Rule of construction.* Nothing in paragraph (b)(1) of this section precludes an issuer from establishing rules for eligibility for an individual to enroll in individual health insurance coverage based on the manifestation of a disease or disorder in that individual, or in a family member of that individual when the family member is covered under the policy that covers the individual.

(3) *Examples.* The rules of this paragraph (b) are illustrated by the following examples:

Example 1. (i) *Facts.* A State implements the HIPAA guaranteed availability requirement in the individual health insurance market in accordance with § 148.120. Individual *A* and his spouse *S* are not ''eligible individuals'' as that term is defined at § 148.103 and, therefore, they are not entitled to obtain individual health insurance coverage on a guaranteed available basis. They apply for individual coverage with Issuer *M.* As part of the application for coverage, *M* receives health information about *A* and *S.* Although *A* has no known medical conditions, *S* has high blood pressure. *M* declines to offer coverage to *S.*

(ii) *Conclusion.* In this *Example 1, M* permissibly may decline to offer coverage to *S* because *S* has a manifested disorder (high blood pressure) that makes her ineligible for coverage under the policy's rules for eligibility.

Example 2. (i) *Facts.* Same facts as *Example 1,* except that *S* does not have high blood pressure or any other known medical condition. The only health information relevant to *S* that *M* receives in the application indicates that both of *S*'s parents are overweight and have high blood pressure. *M* declines to offer coverage to *S.*

(ii) *Conclusion.* In this *Example 2, M* cannot decline to offer coverage to *S* because *S* does not have a manifested disease or disorder. The only health information *M* has that relates to her pertains to a manifested disease or disorder of family members, which as family medical history constitutes genetic information with respect to *S.* If *M* denies eligibility to *S* based on genetic information, the denial will violate this paragraph (b).

(c) *Prohibition on genetic information in setting premium rates.*

(1) *In general.* An issuer offering health insurance coverage in the individual market must not adjust premium amounts for an individual on the basis of genetic information regarding the individual or a family member of the individual.

(2) *Rule of construction.* (i) Nothing in paragraph (c)(1) of this section precludes an issuer from adjusting premium amounts for an individual on the basis of a manifestation of a disease or disorder in that individual, or on the basis of a manifestation of a disease or disorder in a family member of that individual when the family member is covered under the policy that covers the individual.

(ii) The manifestation of a disease or disorder in one individual cannot also be used as genetic information about other individuals covered under the policy issued to that individual and to further increase premium amounts.

(3) *Examples.* The rules of this paragraph (c) are illustrated by the following examples:

Example 1. (i) *Facts.* Individual *B* is covered under an individual health insurance policy through Issuer *N.* Every other policy year, before renewal, *N* requires policyholders to submit updated health information before the policy renewal date for purposes of determining an appropriate premium, in excess of any increases due to inflation, based on the policyholders' health status. *B* complies with that requirement. During the past year, *B*'s blood glucose levels have increased significantly. *N* increases its premium for renewing *B*'s policy to account for *N*'s increased risk associated with *B*'s elevated blood glucose levels.

(ii) *Conclusion.* In this *Example 1, N* is permitted to increase the premium for *B*'s policy on the basis of a manifested disorder (elevated blood glucose) in *B.*

Example 2. (i) *Facts.* Same facts as *Example 1,* except that *B*'s blood glucose levels have not increased and are well within the normal range. In providing updated health information to *N, B* indicates that both his mother and sister are being treated for adult onset diabetes mellitus (Type 2 diabetes). *B* provides this information voluntarily and not in response to a specific request for family medical history or other genetic information. *N* increases *B*'s premium to account for *B*'s genetic predisposition to develop Type 2 diabetes in the future.

(ii) *Conclusion.* In this *Example 2, N* cannot increase *B*'s premium on the basis of *B*'s family medical history of Type 2 diabetes, which is genetic information with respect to *B.* Since there is no manifestation of the disease in *B* at this point in time, *N* cannot increase *B*'s premium.

(d) *Prohibition on genetic information as preexisting condition.*

(1) *In general.* An issuer offering health insurance coverage in the individual market may not, on the basis of genetic information, impose any preexisting condition exclusion with respect to that coverage.

(2) *Rule of construction.* Nothing in paragraph (d)(1) of this section precludes an issuer from imposing any preexisting condition exclusion for an individual with respect to health insurance coverage on the basis of a manifestation of a disease or disorder in that individual.

(3) *Examples:* The rules of this paragraph (d) are illustrated by the following examples:

Example 1. (i) *Facts.* Individual *C* has encountered delays in receiving payment from the issuer of his individual health insurance policy for covered services. He decides to switch carriers and applies for an individual health insurance policy through Issuer *O. C* is generally in good health, but has arthritis for which he has received medical treatment. *O* offers *C* an individual policy that excludes coverage for a 12-month period for any services related to *C*'s arthritis.

(ii) *Conclusion.* In this *Example 1, O* is permitted to impose a preexisting condition exclusion with respect to *C* because *C* has a manifested disease (arthritis).

Example 2. (i) *Facts.* Individual *D* applies for individual health insurance coverage through Issuer *P. D* has no known medical conditions. However, in response to *P*'s request for medical information about *D, P* receives information from *D*'s physician that indicates that both of *D*'s parents have adult onset diabetes mellitus (Type 2 diabetes). *P* offers *D* an individual policy with a rider that permanently excludes coverage for any treatment related to diabetes that *D* may receive while covered by the policy, based on the fact that both of *D*'s parents have the disease.

(ii) *Conclusion.* In this *Example 2,* the rider violates this paragraph (d) because the preexisting condition exclusion is based on genetic information with respect to *D* (family medical history of Type 2 diabetes).

(e) *Limitation on requesting or requiring genetic testing.*

(1) *General rule.* Except as otherwise provided in this paragraph (e), an issuer

offering health insurance coverage in the individual market must not request or require an individual or a family member of the individual to undergo a genetic test.

(2) *Health care professional may recommend a genetic test.* Nothing in paragraph (e)(1) of this section limits the authority of a health care professional who is providing health care services to an individual to request that the individual undergo a genetic test.

(3) *Examples.* The rules of paragraphs (e)(1) and (e)(2) of this section are illustrated by the following examples:

Example 1. (i) *Facts.* Individual *E* goes to a physician for a routine physical examination. The physician reviews *E*'s family medical history, and *E* informs the physician that *E*'s mother has been diagnosed with Huntington's Disease. The physician advises *E* that Huntington's Disease is hereditary, and recommends that E undergo a genetic test.

(ii) *Conclusion.* In this *Example 1,* the physician is a health care professional who is providing health care services to *E.* Therefore, the physician's recommendation that *E* undergo the genetic test does not violate this paragraph (e).

Example 2. (i) *Facts.* Individual *F* is covered by a health maintenance organization (HMO). *F* is a child being treated for leukemia. *F*'s physician, who is employed by the HMO, is considering a treatment plan that includes six-mercaptopurine, a drug for treating leukemia in most children. However, the drug could be fatal if taken by a small percentage of children with a particular gene variant. *F*'s physician recommends that *F* undergo a genetic test to detect this variant before proceeding with this course of treatment.

(ii) *Conclusion.* In this *Example 2,* even though the physician is employed by the HMO, the physician is nonetheless a health care professional who is providing health care services to *F.* Therefore, the physician's recommendation that *F* undergo the genetic test does not violate this paragraph (e).

(4) *Determination regarding payment.* (i) *In general.* As provided in this paragraph (e)(4), nothing in paragraph (e)(1) of this section precludes an issuer offering health insurance in the individual market from obtaining and using the results of a genetic test in making a determination regarding payment. For this purpose, ''payment'' has the meaning given such term in § 164.501 of this subtitle of the privacy regulations issued under the Health Insurance Portability and Accountability Act. Thus, if an issuer conditions payment for an item or service based on its medical appropriateness and the medical appropriateness of the item or service depends on a covered individual's genetic makeup, the issuer is permitted to condition payment on the outcome of a genetic test, and may refuse payment if the covered individual does not undergo the genetic test.

(ii) *Limitation.* An issuer in the individual market is permitted to request only the minimum amount of information necessary to make a determination regarding payment. The minimum amount of information necessary is determined in accordance with the minimum necessary standard in § 164.502(b) of this subtitle of the privacy regulations issued under the Health Insurance Portability and Accountability Act.

(iii) *Examples. See* paragraph (g) of this section for examples illustrating the rules of this paragraph (e)(4), as well as other provisions of this section.

(5) *Research exception.* Notwithstanding paragraph (e)(1) of this section, an issuer may request, but not require, that an individual or family member covered under the same policy undergo a genetic test if all of the conditions of this paragraph (e)(5) are met:

(i) *Research in accordance with Federal regulations and applicable State or local law or regulations.* The issuer makes the request pursuant to research, as defined in § 46.102(d) of this subtitle, that complies with Part 46 of this subtitle or equivalent Federal regulations, and any applicable State or local law or regulations for the protection of human subjects in research.

(ii) *Written request for participation in research.* The issuer makes the request in writing, and the request clearly indicates to each individual (or, in the case of a minor child, to the child's legal guardian) that—

(A) Compliance with the request is voluntary; and

(B) Noncompliance will have no effect on eligibility for benefits (as described in paragraph (b) of this section) or premium amounts (as described in paragraph (c) of this section).

(iii) *Prohibition on underwriting.* No genetic information collected or acquired under this paragraph (e)(5) can be used for underwriting purposes (as described in paragraph (f)(1) of this section).

(iv) *Notice to Federal agencies.* The issuer completes a copy of the ''Notice of Research Exception under the Genetic Information Nondiscrimination Act'' authorized by the Secretary and provides the notice to the address specified in the instructions thereto.

(f) *Prohibitions on collection of genetic information.*

(1) *For underwriting purposes.*

(i) *General rule.* An issuer offering health insurance coverage in the individual market must not collect (as defined in paragraph (a) of this section) genetic information for underwriting purposes. *See* paragraph (g) of this section for examples illustrating the rules of this paragraph (f)(1), as well as other provisions of this section.

(ii) *Underwriting purposes defined.* Subject to paragraph (f)(1)(iii) of this section, *underwriting purposes* means, with respect to any issuer offering health insurance coverage in the individual market—

(A) Rules for, or determination of, eligibility (including enrollment and continued eligibility) for benefits under the coverage;

(B) The computation of premium amounts under the coverage;

(C) The application of any preexisting condition exclusion under the coverage; and

(D) Other activities related to the creation, renewal, or replacement of a contract of health insurance.

(iii) *Medical appropriateness.* An issuer in the individual market may limit or exclude a benefit based on whether the benefit is medically appropriate, and the determination of whether the benefit is medically appropriate is not within the meaning of underwriting purposes. Accordingly, if an issuer conditions a benefit based on its medical appropriateness and the medical appropriateness of the benefit depends on a covered individual's genetic information, the issuer is permitted to condition the benefit on the genetic information. An issuer is permitted to request only the minimum amount of genetic information necessary to determine medical appropriateness, and may deny the benefit if the covered individual does not provide the genetic information required to determine medical appropriateness. *See* paragraph (g) of this section for examples illustrating the applicability of this paragraph (f)(1)(iii), as well as other provisions of this section.

(2) *Prior to or in connection with enrollment.*

(i) *In general.* An issuer offering health insurance coverage in the individual market must not collect genetic information with respect to any individual prior to that individual's enrollment under the coverage or in connection with that individual's enrollment. Whether or not an individual's information is collected prior to that individual's enrollment is determined at the time of collection.

(ii) *Incidental collection exception.*

(A) *In general.* If an issuer offering health insurance coverage in the individual market obtains genetic information incidental to the collection

of other information concerning any individual, the collection is not a violation of this paragraph (f)(2), as long as the collection is not for underwriting purposes in violation of paragraph (f)(1) of this section.

(B) *Limitation.* The incidental collection exception of this paragraph (f)(2)(ii) does not apply in connection with any collection where it is reasonable to anticipate that health information will be received, unless the collection explicitly provides that genetic information should not be provided.

(iii) *Examples.* The rules of this paragraph (f)(2) are illustrated by the following examples:

Example 1. (i) *Facts.* Individual *G* applies for a health insurance policy through Issuer *Q. Q*'s application materials ask for the applicant's medical history, but not for family medical history. The application's instructions state that no genetic information, including family medical history, should be provided. *G* answers the questions in the application completely and truthfully, but volunteers certain health information about diseases his parents had, believing that *Q* also needs this information.

(ii) *Conclusion.* In this *Example 1, G*'s family medical history is genetic information with respect to *G.* However, since *Q* did not request this genetic information, and *Q*'s instructions stated that no genetic information should be provided, *Q*'s collection is an incidental collection under paragraph (f)(2)(ii). However, *Q* may not use the genetic information it obtained incidentally for underwriting purposes.

Example 2. (i) *Facts.* Individual *H* applies for a health insurance policy through Issuer *R. R*'s application materials request that an applicant provide information on his or her individual medical history, including the names and contact information of physicians from whom the applicant sought treatment. The application includes a release which authorizes the physicians to furnish information to *R. R* forwards a request for health information about *H,* including the signed release, to his primary care physician. Although the request for information does not ask for genetic information, including family medical history, it does not state that no genetic information should be provided. The physician's office administrator includes part of *H*'s family medical history in the package to *R.*

(ii) *Conclusion.* In this *Example 2, R*'s request was for health information solely about its applicant, *H,* which is not genetic information with respect to *H.* However, *R*'s materials did not state that genetic information should not be provided. Therefore, *R*'s collection of *H*'s family medical history (which is genetic information with respect to *H*), violates the rule against collection of genetic information and does not qualify for the incidental collection exception under paragraph (f)(2)(ii).

Example 3. (i) *Facts.* Issuer *S* acquires Issuer *T. S* requests *T*'s records, stating that *S* should not provide genetic information and should review the records to excise any genetic information. *T* assembles the data requested by *S* and, although *T* reviews it to delete genetic information, the data from a specific region included some individuals' family medical history. Consequently, *S* receives genetic information about some of *T*'s covered individuals.

(ii) *Conclusion.* In this *Example 3, S*'s request for health information explicitly stated that genetic information should not be provided. Therefore, its collection of genetic information was within the incidental collection exception. However, *S* may not use the genetic information it obtained incidentally for underwriting purposes.

(g) *Examples regarding determinations of medical appropriateness.* The application of the rules of paragraphs (e) and (f) of this section to issuer determinations of medical appropriateness is illustrated by the following examples:

Example 1. (i) *Facts.* Individual *I* has an individual health insurance policy through Issuer *U* that covers genetic testing for celiac disease for individuals who have family members with this condition. *I*'s policy includes dependent coverage. After *I*'s son is diagnosed with celiac disease, *I* undergoes a genetic test and promptly submits a claim for the test to *U* for reimbursement. *U* asks *I* to provide the results of the genetic test before the claim is paid.

(ii) *Conclusion.* In this *Example 1,* under the rules of paragraph (e)(4) of this section, *U* is permitted to request only the minimum amount of information necessary to make a decision regarding payment. Because the results of the test are not necessary for *U* to make a decision regarding the payment of *I*'s claim, *U*'s request for the results of the genetic test violates paragraph (e) of this section.

Example 2. (i) *Facts.* Individual *J* has an individual health insurance policy through Issuer *V* that covers a yearly mammogram for participants starting at age 40, or at age 30 for those with increased risk for breast cancer, including individuals with BRCA1 or BRCA2 gene mutations. *J* is 33 years old and has the BRCA2 mutation. *J* undergoes a mammogram and promptly submits a claim to *V* for reimbursement. *V* asks *J* for evidence of increased risk of breast cancer, such as the results of a genetic test, before the claim for the mammogram is paid.

(ii) *Conclusion.* In this *Example 2, V* does not violate paragraphs (e) or (f) of this section. Under paragraph (e), an issuer is permitted to request and use the results of a genetic test to make a determination regarding payment, provided the issuer requests only the minimum amount of information necessary. Because the medical appropriateness of the mammogram depends on the covered individual's genetic makeup, the minimum amount of information necessary includes the results of the genetic test. Similarly, *V* does not violate paragraph (f) of this section because an issuer is permitted to request genetic information in making a determination regarding the medical appropriateness of a claim if the genetic information is necessary to make the determination (and the genetic information is not used for underwriting purposes).

Example 3. (i) *Facts.* Individual *K* was previously diagnosed with and treated for breast cancer, which is currently in remission. In accordance with the recommendation of *K*'s physician, *K* has been taking a regular dose of tamoxifen to help prevent a recurrence. *K* has an individual health insurance policy through Issuer *W* which adopts a new policy requiring patients taking tamoxifen to undergo a genetic test to ensure that tamoxifen is medically appropriate for their genetic makeup. In accordance with, at the time, the latest scientific research, tamoxifen is not helpful in up to 7 percent of breast cancer patients with certain variations of the gene for making the CYP_2D6 enzyme. If a patient has a gene variant making tamoxifen not medically appropriate, *W* does not pay for the tamoxifen prescription.

(ii) *Conclusion.* In this *Example 3, W* does not violate paragraph (e) of this section if it conditions future payments for the tamoxifen prescription on *K*'s undergoing a genetic test to determine the genetic markers *K* has for making the CYP_2D6 enzyme. *W* also does not violate paragraph (e) of this section if it refuses future payment if the results of the genetic test indicate that tamoxifen is not medically appropriate for *K.*

(h) *Applicability date.* The provisions of this section are effective with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after December 7, 2009.

■ 15. The heading for subpart D is revised to read as follows:

Subpart D—Preemption; Excepted Benefits

■ 16. Section 148.220 is amended by adding two new sentences at the end of paragraph (b)(4) to read as follows:

§ 148.220 Excepted benefits.

* * * * *

(b) * * *

(4) * * *. The requirements of this part 148 (including genetic nondiscrimination requirements), do not apply to Medicare supplemental health insurance policies. However, Medicare supplemental health insurance policies are subject to similar genetic nondiscrimination requirements under section 104 of the Genetic Information Nondiscrimination Act of 2008 (Pub. L. 110–233), as incorporated into the NAIC Model Regulation relating to sections 1882(s)(2)(e) and (x) of the Act (The NAIC Model Regulation can be accessed at *http://www.naic.org.*).

* * * * *

Approved: May 7, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: May 15, 2009.

Kathleen Sebelius,

Secretary.

[FR Doc. E9–22504 Filed 10–1–09; 11:15 am]

BILLING CODE 4830–01–P; 4510–29–P; 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 160 and 164

RIN 0991–AB54

HIPAA Administrative Simplification: Standards for Privacy of Individually Identifiable Health Information

AGENCY: Office for Civil Rights, HHS.

ACTION: Proposed rule.

SUMMARY: The Department of Health and Human Services (HHS) proposes to modify certain provisions of the ''Standards for Privacy of Individually Identifiable Health Information'' (Privacy Rule), issued under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The purpose of these proposed modifications is to implement section 105 of Title I of the Genetic Information Nondiscrimination Act of 2008 (GINA) regarding the privacy and confidentiality of genetic information, as well as to make certain other changes to the HIPAA Privacy Rule.

DATES: Comments on the proposed rule will be considered if we receive them at the appropriate address, as provided below, no later than December 7, 2009.

ADDRESSES: Written comments may be submitted through any of the methods specified below. Please do not submit duplicate comments.

- *Federal eRulemaking Portal:* You may submit electronic comments at *http://www.regulations.gov.* Follow the instructions for submitting electronic comments. Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.
- *Regular, Express, or Overnight Mail:* You may mail written comments (one original and two copies) to the following address only: U.S. Department of Health and Human Services, Office for Civil Rights, *Attention:* GINA NPRM (RIN 0991–AB54), Hubert H. Humphrey Building, Room 509F, 200 Independence Avenue, SW., Washington, DC 20201. Mailed comments may be subject to delivery delays due to security procedures. Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.
- *Hand Delivery or Courier:* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to the following address only: Office for Civil Rights, Attention: GINA NPRM (RIN 0991–AB54), Hubert H. Humphrey Building, Room 509F, 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 mail drop slots located in the main lobby of the building.)

Inspection of Public Comments: All comments received before the close of the comment period will be available for public inspection, including any personally identifiable or confidential business information that is included in a comment. We will post all comments received before the close of the comment period at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Andra Wicks, 202–205–2292.

SUPPLEMENTARY INFORMATION:

I. Background

The ''Standards for Privacy of Individually Identifiable Health Information,'' or ''Privacy Rule'' was issued on December 28, 2000 (and later amended in August 2002), pursuant to the Administrative Simplification Provisions of Title II, Subtitle F, of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191. Subtitle F of Title II of HIPAA added a new Part C to Title XI of the Social Security Act (sections 1171–1179 of the Act, 42 U.S.C. 1320d–1320d–8). The Privacy Rule is one of a suite of rules required by the Administrative Simplification provisions of HIPAA, and put in place the first national standards for the privacy protection of certain individually identifiable health information (called ''protected health information'' or ''PHI''). The other HIPAA Administrative Simplification Rules provide national standards for electronic health care transactions and code sets, unique health identifiers for employers and health care providers, and the security of electronic PHI. The HIPAA Privacy and other Administrative Simplification Rules currently apply to three types of covered entities: health care providers who conduct covered health care transactions electronically, health plans, and health care clearinghouses.

The HIPAA Privacy Rule protects individuals' medical records and other individually identifiable health information held by HIPAA covered entities by, among other provisions, requiring appropriate safeguards to protect the privacy of such information, and setting limits and conditions on the uses and disclosures that may be made of the information. The Privacy Rule also gives patients rights over their PHI, including rights to examine and obtain a copy of their health records, and to request corrections.

On May 21, 2008, President Bush signed into law the Genetic Information Nondiscrimination Act of 2008 (''GINA''), Public Law 110–233, 122 Stat. 881. Congress enacted GINA to ''establish [ ] a national and uniform basic standard [that] is necessary to fully protect the public from discrimination and allay their concerns about the potential for discrimination, thereby allowing individuals to take advantage of genetic testing, technologies, research, and new therapies.'' GINA section 2(5). To that end, GINA generally prohibits discrimination based on an individual's genetic information with respect to both health coverage and employment.

In particular, with respect to health coverage, Title I of GINA generally prohibits discrimination in group premiums based on genetic information, proscribes the use of genetic information as a basis for determining eligibility or setting premiums in the individual and Medicare supplemental policy (Medigap) insurance markets, and limits the ability of group health plans, health insurance issuers, and Medigap issuers to collect genetic information or to request or require that individuals undergo genetic testing. Title II of GINA generally prohibits use of genetic information in the employment context, restricts acquisition of genetic information by employers and other entities covered by Title II, and strictly limits such entities from disclosing genetic information. The Departments of Labor (Employee Benefits Security Administration), Treasury (Internal Revenue Service), and HHS (Centers for Medicare & Medicaid Services) are responsible for administering and enforcing the GINA Title I nondiscrimination provisions, and the Equal Employment Opportunity Commission (EEOC) is responsible for administering and enforcing the GINA Title II nondiscrimination provisions.[1]

[1] The Departments of Labor (Employee Benefits Security Administration), Treasury (Internal Revenue Service), and HHS (Centers for Medicare & Medicaid Services (CMS)) have issued regulations in a separate rulemaking to implement sections 101–103 of GINA, which amended: section 702(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(b); section 2702(b) of the Public Health Service Act (42 U.S.C. 300gg–1(b); and subsection (b) of section 9802 of the Internal Revenue Code of 1986. Section 104 of GINA applies to Medigap issuers, which are subject to the provisions of section 1882 of the Social Security Act that are implemented by CMS, and which incorporate by reference certain provisions in a model regulation of the National Association of

In addition to these nondiscrimination provisions, Title I of GINA contains certain new privacy protections for genetic information. In particular, section 105 of GINA, entitled ''Privacy and Confidentiality,'' amends Part C of Title XI of the Social Security Act by adding section 1180 to address the application of the HIPAA Privacy Rule to genetic information. Section 1180 requires the Secretary of HHS to revise the Privacy Rule to clarify that genetic information is health information and to prohibit group health plans, health insurance issuers (including HMOs), and issuers of Medicare supplemental policies from using or disclosing genetic information for underwriting purposes.

In this proposed rule, HHS is proposing to implement the modifications required by GINA section 105, as well as to make certain other modifications to the HIPAA Privacy Rule, and seeks public comment on its proposal. In developing its proposal, HHS consulted with the Departments of Labor and Treasury, as required by section 105(b)(1) of GINA, to ensure, to the extent practicable, consistency across the regulations. In addition, HHS coordinated with the EEOC in the development of these regulations.

II. Description of Proposed Modifications

Overview and Scope

In accordance with section 105 of GINA [2] and the Department's general authority under sections 262 and 264 of HIPAA, the Department proposes to modify the HIPAA Privacy Rule to: (1) Explicitly provide that genetic information is health information for purposes of the Rule; (2) prohibit health plans from using or disclosing protected health information that is genetic information for underwriting purposes; (3) revise the provisions relating to the Notice of Privacy Practices for health plans that perform underwriting; (4) make a number of conforming modifications to definitions and other provisions of the Rule; and (5) make technical corrections to update the definition of ''health plan.''

Section 105 of GINA requires HHS to modify the Privacy Rule to prohibit ''a covered entity that is a group health plan, health insurance issuer that issues health insurance coverage, or issuer of a medicare [sic] supplemental policy'' from using or disclosing genetic information for underwriting purposes. GINA section 105 provides that the terms ''group health plan'' and ''health insurance coverage'' have the meanings given such terms under section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91), and that the term ''medicare [sic] supplemental policy'' has the meaning given such term in section 1882(g) of the Social Security Act. In addition, the term ''health insurance issuer,'' as defined at 42 U.S.C. 300gg–91, includes a health maintenance organization (HMO). These four types of health plans (i.e., group health plans, health insurance issuers, and health maintenance organizations, as defined in the Public Health Service Act, as well as issuers of Medicare supplemental policies), correspond to the types of health plans listed at subparagraphs (i) through (iii) and (vi) of paragraph (1) of the definition of ''health plan'' at § 160.103 in the HIPAA Privacy Rule.

In addition to these four categories of health plans, the HIPAA Privacy Rule also applies to many other types of health plans, including: (1) Long-term care policies (excluding nursing home fixed-indemnity policies); (2) employee welfare benefit plans or other arrangements that are established or maintained for the purpose of offering or providing health benefits to the employees of two or more employers (to the extent that they are not group health plans or health insurance issuers); (3) high risk pools that are mechanisms established under State law to provide health insurance coverage or comparable coverage to eligible individuals; (4) certain public benefit programs, such as Medicare Part A and B, Medicaid, the military and veterans health care programs, the Indian Health Service program, and others; as well as (5) any other individual or group plan, or combination of individual or group plans that provides or pays for the cost of medical care (as defined in section 2791(a)(2) of the PHS Act, 42 U.S.C. 300gg–91(a)(2)). This last category includes, for example, certain ''excepted benefits'' plans described at 42 U.S.C. 300gg–91(c)(2), such as limited scope dental or vision benefits plans. See the definition of ''health plan'' at § 160.103.

The Department proposes to apply the prohibition in GINA on using and disclosing protected health information that is genetic information for underwriting to all health plans that are subject to the Privacy Rule, rather than solely to the plans GINA explicitly requires be subject to the prohibition. We believe that this interpretation is consistent with both GINA and the Secretary's broad authority under HIPAA.

Section 264 of HIPAA (42 U.S.C. 1320d–2 note) provides the Secretary with authority to promulgate privacy standards that govern:

(1) The rights that an individual who is a subject of individually identifiable health information should have.

(2) The procedures that should be established for the exercise of such rights.

(3) The uses and disclosures of such information that should be authorized or required.

Accordingly, the Secretary has wide latitude to promulgate privacy standards that limit the use or disclosure of individually identifiable health information, including genetic information. Furthermore, section 262 of HIPAA, codified at 42 U.S.C. 1320d–1, states that:

> Any standard adopted under this part shall apply, in whole or in part, to the following persons:
>
> (1) A health plan.
>
> (2) A health care clearinghouse.
>
> (3) A health care provider who transmits any health information in electronic form in connection with a transaction referred to in section 1173(a)(1).

While other portions of HIPAA were limited to group health plans, *see, e.g.,* sections 101 and 102 of HIPAA, the Administrative Simplification subtitle governs a substantially broader definition of ''health plan,'' 42 U.S.C. 1320d, and instructs that ''any standard'' will apply to all such health plans.

Based on this broad definition of ''health plan,'' the wide latitude Congress provided to the Secretary to promulgate privacy standards, and the charge that ''any standard'' should apply to all health plans, we interpret that the HIPAA administrative simplification provisions provide the Secretary with broad authority to craft privacy standards that uniformly apply to all health plans, regardless of whether such health plans are governed by other portions of the HIPAA statute.

In GINA, Congress recognized a privacy interest on the part of individuals, distinct from the nondiscrimination provisions, with respect to the use or disclosure of individuals' genetic information in health coverage decisions. At a minimum, GINA requires the Secretary to apply this privacy interest to uses and disclosures of group health plans, health insurance issuers that issue health insurance coverage, and issuers of

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Insurance Commissioners (NAIC). The NAIC amended its model regulation on September 24, 2008, to conform to section 104 of GINA, and the amended regulation was published by CMS in the **Federal Register** on April 24, 2009 at 74 FR 18808. With respect to Title II of GINA, the EEOC issued a notice of proposed rulemaking on March 2, 2009, at 74 FR 9056.

[2] Any reference in this section of the preamble to GINA is a reference to Title I of GINA, except as otherwise indicated.

Medicare supplemental policies. Apart from this required change to the HIPAA Privacy Rule, however, nothing in GINA explicitly or implicitly curtails the broad authority of the Secretary to promulgate privacy standards for any and all health plans that are governed by the HIPAA Administrative Simplification provisions.

Under the Privacy Rule, consistent with the HIPAA statutory text discussed above, an individual's privacy interests and rights with respect to the use and disclosure of PHI are protected uniformly without regard to the type of health plan that holds the information. Thus, under the Privacy Rule, individuals can expect and benefit from privacy protections that do not diminish based on the type of health plan from which they obtain health coverage.

Therefore, in keeping with a uniform privacy construct, and pursuant to its authority under HIPAA sections 262 and 264, the Department proposes to apply the prohibition on using or disclosing PHI that is genetic information for underwriting purposes to all health plans that are covered entities as defined by HIPAA section 262, and, correspondingly, by the Privacy Rule. The Department believes that individuals' interests in uniform protection under the Privacy Rule against the use or disclosure of their genetic information for underwriting purposes outweigh any adverse impact on health plans that are not covered by GINA. This is particularly true since we do not expect that all of the health plans subject to the Privacy Rule use or disclose PHI that is genetic information for underwriting today (or even conduct underwriting generally, in the case of some of the public benefit plans).

Consistent with § 160.104(c), the Department intends to require health plans to comply with these modifications to the privacy standards no later than 180 days from the effective date of such modifications. Note that the Department does not propose to extend the compliance date for small health plans as the Department believes 180 days is sufficient time for small health plans to come into compliance with the proposed requirements.

With this overview and description of the scope of the proposed rule as foundation, the following discussion describes the proposed modifications to the Privacy Rule section by section. Those interested in commenting on the proposed provisions can assist the Department by preceding discussion of any particular provision in the comment with a citation to the section of the proposed rule being discussed, or, if submitting a comment relevant to the above discussion, with the term ''Scope.''

Section 160.103—Definitions

The Department is proposing to modify § 160.103 to: (1) Explicitly provide, as required by GINA, that the definition of ''health information'' encompasses ''genetic information''; (2) add a number of terms used in GINA Title I for purposes of implementing GINA's provisions; and (3) make certain technical corrections to update the definition of ''health plan.'' We note that with respect to the GINA terms, this proposed rule proposes to adopt definitions that are generally consistent with the definitions of such terms promulgated in the implementing regulations for sections 101–103 of GINA.

1. *Health information.* The Department has always maintained that genetic information is health information protected by the Privacy Rule to the extent such information is individually identifiable and held by a covered entity (subject to the general exclusions from the definition of ''protected health information''). Frequently Asked Question number 354, available at *http://www.hhs.gov/ocr/privacy/hipaa/faq/about/354.html*, states:

Question: Does the HIPAA Privacy Rule protect genetic information?

Answer: Yes, genetic information is health information protected by the Privacy Rule. Like other health information, to be protected it must meet the definition of protected health information: it must be individually identifiable and maintained by a covered health care provider, health plan, or health care clearinghouse. See 45 CFR 160.103.

Nevertheless, section 105 of GINA requires the Secretary to revise the Privacy Rule to make clear that genetic information is health information under the Rule. Accordingly, the Department proposes to modify the definition of ''health information'' at § 160.103 to explicitly provide that such term includes genetic information. We note, however, that as before, genetic information, while health information, is only covered by the Privacy Rule to the extent that it meets the definition of ''protected health information.'' That is, the genetic information must be individually identifiable and maintained by a HIPAA covered entity (or business associate of a covered entity) (and not otherwise fall within one of the exceptions to the definition). *See* the definition of ''protected health information'' at § 160.103.

2. *Genetic information.* The term ''genetic information'' is a defined term in GINA that establishes what information is protected by the statute. GINA section 105 provides that the term ''genetic information'' in section 105 shall have the same meaning given the term in section 2791 of the Public Health Service Act (PHSA) (42 U.S.C. 300gg–91), as amended by GINA section 102. Section 102(a)(4) of GINA defines ''genetic information'' to mean, with respect to any individual, information about: (1) Such individual's genetic tests; (2) the genetic tests of family members of such individual; and (3) the manifestation of a disease or disorder in family members of such individual (i.e., family medical history). GINA also provides that the term ''genetic information'' includes, with respect to any individual, any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by such individual or family member of such individual; however, GINA excludes information about the sex or age of any individual. The basic definition of ''genetic information'' in section 102(a)(4) of GINA (and that is to apply for purposes of section 105) is also expanded by section 102(a)(3), which provides that any reference to genetic information concerning an individual or family member in the PHSA shall include: with respect to an individual or family member of an individual who is a pregnant woman, the genetic information of any fetus carried by such pregnant woman; and with respect to an individual or family member utilizing an assisted reproductive technology, the genetic information of any embryo legally held by the individual or family member. The Department proposes to include this statutory definition of ''genetic information'' in § 160.103 without substantive change.

3. *Genetic test.* As indicated above, GINA provides that the term ''genetic information'' includes information about an individual's genetic tests or the genetic tests of family members of such individual. As with the term ''genetic information,'' GINA section 105 provides that the term ''genetic test'' shall have the same meaning as the term has in section 2791 of the PHSA (42 U.S.C. 300gg–91), as amended by section 102 of GINA. Section 102(a)(4) of GINA amends section 2791 of the PHSA to define ''genetic test'' to mean ''an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.'' GINA further clarifies that the term ''genetic test'' does not include an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes, or that is directly related to a

manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

Consistent with the statutory definition of ''genetic test,'' the Department proposes to define ''genetic test'' at § 160.103 as an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, if the analysis detects genotypes, mutations or chromosomal changes, and to provide in the definition that ''genetic test'' does not include an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition. The statute does not define ''manifestation'' or ''manifested.'' Consequently, as discussed below, the Department proposes to include a definition of ''manifestation or manifested.''

Under this proposed definition of ''genetic test,'' a test to determine whether an individual has a gene variant associated with breast cancer (such as the BRCA1 or BRCA2 variant) is a genetic test. Similarly, a test to determine whether an individual has a genetic variant associated with hereditary nonpolyposis colorectal cancer is a genetic test. However, medical tests that analyze genetic material that is not of human origin, such as tests that detect the presence of viruses or bacteria in an individual, or tests that do not detect genotypes, mutations, or chromosomal changes, are not genetic tests. For example, an HIV test, complete blood count, cholesterol test, liver function test, or test for the presence of alcohol or drugs is not a genetic test.

4. *Genetic services.* GINA provides that the term ''genetic information'' includes, with respect to any individual, any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by such individual or any family member of such individual. As with the definitions above, section 105 of GINA provides that the term ''genetic services'' shall have the meaning given such term in section 2791 of the PHSA (42 U.S.C. 300gg–91), as amended by section 102 of GINA. Section 102(a)(4) of GINA defines ''genetic services'' to mean: (1) A genetic test; (2) genetic counseling (including obtaining, interpreting, or assessing genetic information); or (3) genetic education. Thus, the fact that an individual or a family member of the individual requested or received a genetic test, counseling, or education is information protected under GINA.

Genetic counseling is a means for individuals to obtain information and support about potential risks for genetic diseases and disorders. Genetic education is also a means for individuals to obtain information about potential risks for genetic diseases and disorders. The Department proposes to add the statutory definition of ''genetic services'' to § 160.103 without substantive change.

5. *Family Member.* The term ''family member'' is used in the definition of ''genetic information'' in GINA to indicate that an individual's genetic information also includes information about the genetic tests of the individual's family members, as well as family medical history. GINA section 105 states that the term ''family member'' shall have the meaning given such term in section 2791 of the PHSA (42 U.S.C. 300gg–91), as amended by GINA section 102(a)(4), which defines ''family member'' to mean, with respect to any individual: (1) A dependent (as such term is used for purposes of section 2701(f)(2) of the PHSA, 42 U.S.C. 300gg(f)(2)) of such individual; or (2) any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of such individual or of a dependent of the individual. Section 2701(f)(2) of the PHSA uses the term ''dependent'' to mean an individual who is eligible for coverage under the terms of a group health plan because of a relationship to the participant.

The Department proposes to incorporate the statutory definition of ''family member'' into § 160.103 but also to clarify in the regulatory text that relatives by affinity (such as by marriage or adoption) are to be treated the same as relatives by consanguinity (that is, relatives who share a common biological ancestor) and that, in determining the degree of relationship, relatives by less than full consanguinity (such as half-siblings, who share only one parent) are treated the same as relatives by full consanguinity (such as siblings who share both parents). This is consistent with the legislative history of GINA, which suggests that the term ''family member'' is to be broadly construed to provide the maximum protection against discrimination. *See* House Report 110–28, Part 2 at 27. In addition, the Department proposes to include in the regulatory definition, non-exhaustive lists of persons who are first-, second-, third-, or fourth-degree relatives. Finally, the Department proposes in the definition of ''family member'' to refer to the definition of ''dependent'' in the implementing regulations at 45 CFR 144.103 rather than to the PHSA directly. The Department invites public comment on this definition.

We also note that the term ''family member'' is not currently defined in the Privacy Rule but is used in the Privacy Rule at § 164.510(b), which provides the standard for uses and disclosures of an individual's PHI to family members and other persons involved in the individual's care and for notification purposes. It is not expected that adding to the Privacy Rule the above broad definition of the term ''family member'' would impact the scope of these existing provisions, particularly given the use in the provisions of the additional terms ''other relative,'' ''close personal friend,'' ''other person identified by the individual,'' ''personal representative,'' and ''other person responsible for the care of the individual,'' which would appear to capture any other person, as appropriate, who would not qualify as a ''family member'' by the new definition.

In addition to the use of the term ''family member'' in the Privacy Rule, the term ''family'' is used in three other instances in the Rule: (1) In reference to the Family Educational Rights and Privacy Act in the definition of ''protected health information'' at § 160.103; (2) in the definition and disclosure permission for psychotherapy notes (at §§ 164.501 and 164.508(a)(2)(B), respectively) where such notes may be created based upon, and used to train within, a family counseling session; and (3) in the disclosure permission at § 164.512(k)(4) for medical suitability determinations by the Department of State for circumstances where family accompany a Foreign Service member abroad. It is also not expected that including a definition of ''family member'' in the Privacy Rule would impact these provisions, as the scope of the term ''family'' in each occurrence is determined independently of the Privacy Rule.

6. *Manifestation or manifested.* Although not separately defined by GINA, the terms ''manifestation'' or ''manifested'' are used in GINA in three important contexts. First, GINA uses the term ''manifestation'' to incorporate ''family medical history'' into the definition of ''genetic information'' by stating that ''genetic information'' includes, with respect to an individual, the *manifestation* of a disease or disorder in family members of such individual. Second, GINA uses the term ''manifested'' to exclude from the definition of ''genetic test'' those tests that analyze a physical malady rather

than genetic makeup by excluding from the definition analyses of proteins or metabolites that are directly related to a *manifested* disease, disorder, or pathological condition. Third, GINA uses the term ''manifestation'' to clarify that nothing in Title I of GINA should be construed to limit the ability of a health plan to adjust premiums or contribution amounts for a group health plan based on the *manifestation* of a disease or disorder of an individual enrolled in the plan. However, GINA provides that, in such case, the manifestation of a disease or disorder in one individual cannot also be used as genetic information about other group members and to further increase the premium for the plan. Similarly, for the individual health insurance market, GINA clarifies that a health plan is not prohibited from establishing rules for eligibility for an individual to enroll in coverage or from adjusting premium or contribution amounts for an individual based on the *manifestation* of a disease or disorder in that individual or in a family member of such individual where such family member is covered under the individual's policy. However, the manifestation of a disease or disorder in one individual cannot also be used as genetic information about other individuals and to further increase premiums or contribution amounts.

As noted above, GINA does not define the terms ''manifestation'' and ''manifested.'' However, based on the exceptions to the statutory definition of ''genetic test,'' it is clear from the context of the statute that a manifested disease or disorder is one ''that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.'' Thus, given the importance of the term in the contexts described above, the Department proposes to include in § 160.103 a definition of ''manifestation or manifested'' to mean, with respect to a disease, disorder, or pathological condition, that an individual has been or could reasonably be diagnosed with the disease, disorder, or pathological condition by a health care professional with appropriate training and expertise in the field of medicine involved, and to further provide that a disease, disorder, or pathological condition is not manifested if the diagnosis is based principally on genetic information.

Variants of genes associated with diseases have varying degrees of predictive power for later development of the disease. In some cases, an individual may have a genetic variant for a disease and yet never develop the disease. In other cases, the presence of a genetic variant means that the individual will eventually develop the disease. Huntington's disease is an example of the latter case. However, an individual may obtain a positive test that shows the genetic variant for Huntington's disease decades before any clinical symptoms appear. Under the above definition, the presence of a genetic variant alone does not constitute the diagnosis of a disease even in cases where it is certain that the individual possessing the genetic variant will eventually develop the disease, such as the case with Huntington's disease. For example, an individual may have a family member that has been diagnosed with Huntington's disease and also have a genetic test result that indicates the presence of the Huntington's disease gene variant in the individual. However, when the individual is examined by a neurologist (a physician with appropriate training and expertise for diagnosing Huntington's disease) because the individual has begun to suffer from occasional moodiness and disorientation (symptoms which are associated with Huntington's disease), and the results of the examination do not support a diagnosis of Huntington's disease, then Huntington's disease is not manifested with respect to the individual. In contrast, if the individual exhibits additional neurological and behavioral symptoms, and the results of the examination support a diagnosis of Huntington's disease by the neurologist, then Huntington's disease is manifested with respect to the individual.

As another example, an individual has had several family members with colon cancer, one of whom underwent genetic testing which detected a mutation in the MSH2 gene associated with hereditary nonpolyposis colorectal cancer (HNPCC). On the recommendation of his physician (a health care professional with appropriate training and expertise in the field of medicine involved), the individual undergoes a targeted genetic test to look for the specific mutation found in the family member of the individual to determine if the individual himself is at increased risk for cancer. The genetic test shows that the individual also carries the mutation but the individual's colonoscopy indicates no signs of disease and the individual has no symptoms. Because the individual has no signs or symptoms of colorectal cancer that could be used by the individual's physician to diagnose the cancer, HNPCC is not a manifested disease with respect to the individual. In contrast, if the individual undergoes a colonoscopy or other medical tests that indicate the presence of HNPCC, and the individual's physician makes a diagnosis of HNPCC, HNPCC is a manifested disease with respect to the individual.

If a health care professional with appropriate expertise makes a diagnosis based on the symptoms of the patient, and uses genetic tests to confirm the diagnosis, the disease will be considered manifested, despite the use of genetic information. For example, if a neurologist sees a patient with uncontrolled movements, a loss of intellectual faculties, and emotional disturbances, and the neurologist suspects the presence of Huntington's disease, the neurologist may confirm the diagnosis with a genetic test. While genetic information is used as part of the diagnosis, the genetic information is not the sole or principal basis for the diagnosis, and, therefore, the Huntington's disease would be considered a manifested disease of the patient.

7. *Health plan.* The Department proposes to make technical corrections to update the definition of ''health plan'' by revising and renumbering the definition to: Include specific reference to the Voluntary Prescription Drug Benefit Program under Part D of title XVIII of the Social Security Act, 42 U.S.C. 1395w–101 through 1395w–152; remove the specific reference to the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) (as defined in 10 U.S.C. 1072(4)), as this program is now part of the TRICARE health care program under title 10 of the United States Code, and revise the reference to the title 10 health care program accordingly to read more generally ''health care program for the uniformed services'' rather than ''health care program for active military personnel''; and reflect that Part C of title XVIII of the Social Security Act, 42 U.S.C. 1395w–21 through 1395w–28, is now called the Medicare Advantage program.

Section 164.501—Definitions

The Department proposes to modify § 164.501 to add a definition of ''underwriting purposes'' and to make conforming changes to the definitions of ''payment'' and ''health care operations.''

1. *Underwriting Purposes.* GINA section 105 provides that the term ''underwriting purposes'' means, with respect to a group health plan, health insurance coverage, or Medicare supplemental policy: (A) Rules for, or determination of, eligibility (including enrollment and continued eligibility) for, or determination of, benefits under

the plan, coverage, or policy; (B) the computation of premium or contribution amounts under the plan, coverage, or policy; (C) the application of any pre-existing condition exclusion under the plan, coverage, or policy; and (D) other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

The Department proposes to adopt the statutory definition, but also to include certain clarifications for consistency with the regulations promulgated pursuant to GINA sections 101 through 103. Specifically, we include a parenthetical to explain that the rules for, or determination of eligibility for, or determination of, benefits under the plan include changes in deductibles or other cost-sharing mechanisms in return for activities such as completing a health risk assessment or participating in a wellness program. Similarly, we include a parenthetical to make clear that the computation of premium or contribution amounts under the plan, coverage, or policy includes discounts, rebates, payments in kind, or other premium differential mechanisms in return for activities such as completing a health risk assessment or participating in a wellness program. Finally, we add a provision to the definition to clarify that ''underwriting purposes'' does not include determinations of medical appropriateness where an individual seeks a benefit under the plan, coverage, or policy. This provision is intended to be consistent with the provisions in the regulations promulgated pursuant to GINA sections 101 through 103 that provide that determinations of medical appropriateness, where the individual seeks a benefit under the plan, are not considered ''underwriting purposes.''

We also note that the specific types of activities included in the GINA definition of ''underwriting purposes'' proposed above fall within the definitions of ''health care operations'' and ''payment'' under the Privacy Rule, and that the current definition of ''health care operations'' also includes the term ''underwriting.'' Thus, to avoid confusion, the Department proposes conforming changes to the definitions of ''health care operations'' and ''payment,'' as discussed below.

2. *Health care operations.* Paragraph (3) of the definition of ''health care operations'' in the Privacy Rule at § 164.501 includes ''[u]nderwriting, premium rating, and other activities relating to the creation, renewal or replacement of a contract of health insurance or health benefits * * *.'' In order to avoid confusion with the use of both ''underwriting'' and ''underwriting purposes'' in the Privacy Rule, and in recognition of the fact that the proposed definition of ''underwriting purposes'' includes activities that fall within both the definitions of ''payment'' and ''health care operations'' in the Rule, the Department proposes to remove the term ''underwriting'' from the definition of ''health care operations.'' At the same time, we propose to add the term ''enrollment'' to the express list of health care operations activities to make clear that the removal of the term ''underwriting'' would not impact the use or disclosure of PHI that is not genetic information for enrollment purposes. We note that these proposed revisions are not intended to constitute a substantive change to the definition of ''health care operations.'' All uses and disclosures of PHI currently permitted for any activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits under the definition of ''health care operations,'' including what would be considered ''underwriting'' as the term is used in the existing Rule, still would be permitted under the revised definition, subject to the prohibition on using or disclosing PHI that is genetic information at proposed § 164.502(a)(3). However, the Department requests public comment on whether the removal of the term ''underwriting'' from the definition of ''health care operations'' could have unintended consequences.

3. *Payment.* The definition of ''payment'' in the Privacy Rule at § 164.501 includes activities, such as ''determinations of eligibility or coverage'' by a health plan, some of which may also fall within the proposed definition of ''underwriting purposes'' in the same section. Thus, to avoid any implication that a health plan is permitted to disclose PHI that is genetic information for ''payment'' purposes that are otherwise prohibited by § 164.502(a)(3) (i.e., that are also underwriting purposes), the Department proposes to include a cross-reference in the definition of ''payment'' at § 164.501 to the proposed prohibition at § 164.502(a)(3) on health plans using and disclosing genetic information for underwriting purposes to exclude such activities from the ''payment'' definition.

In addition, the inclusion of a cross-reference in the definition of ''payment'' to the new underwriting prohibition at § 164.502(a)(3) is necessary to properly align the definition of ''payment'' in the Privacy Rule with the nondiscrimination provisions of GINA Title I, and their implementing regulations. GINA provides a rule of construction, in section 102(a)(2), which adds paragraph 2702(c)(3) of the Public Health Service Act, to make clear that health plans are not prohibited from obtaining and using the results of a genetic test in making determinations regarding payment, as such term is defined by the HIPAA Privacy Rule. Thus, the proposed exception would make clear that GINA's rule of construction regarding payment does not allow a health plan to request the results of genetic tests for activities that would otherwise constitute ''underwriting purposes,'' such as for determinations of eligibility for benefits.

Section 164.502(a)—Uses and Disclosures of Protected Health Information: General Rules

The proposed rule includes the new prohibition on health plans using or disclosing PHI that is genetic information for underwriting purposes at § 164.502(a)(3), and makes clear that such provision would operate notwithstanding the other provisions in the Rule permitting uses and disclosures. We interpret section 105 of GINA as requiring us to prohibit a health plan's use or disclosure of genetic information for underwriting purposes, even if an individual has signed an authorization for such purposes pursuant to § 164.508. We thus also propose a conforming change to § 164.502(a)(1)(iv) to make clear that an authorization could not be used to permit a use or disclosure of genetic information for underwriting purposes. Additionally, we note that this prohibition applies to all genetic information from the compliance date of these modifications forward, regardless of when or where the genetic information originated.

Consistent with the statute, however, this prohibition should not be construed to limit the ability of a health plan to adjust premiums or contribution amounts for a group health plan based on the manifestation of a disease or disorder of an individual enrolled in the plan, even though a health plan cannot use the manifestation of a disease or disorder in one individual as genetic information about other group members and to further increase the premium for the plan. Similarly, for the individual health insurance market, a health plan is not prohibited from establishing rules for eligibility for an individual to enroll in coverage or from adjusting premium or contribution amounts for an individual based on the manifestation of a disease or disorder in that individual or in a family member of such individual where such family member is covered under the individual's policy,

even though the health plan cannot use the manifestation of a disease or disorder in one individual as genetic information about other individuals to further increase premiums or contribution amounts for those other individuals.

As an example to demonstrate the proposed prohibition, if a health insurance issuer, with respect to an employer-sponsored group health plan, uses an individual's family medical history or the results of genetic tests maintained in the group health plan's claims experience information to adjust the plan's premium rate for the upcoming year, the issuer would be using PHI that is genetic information for underwriting purposes in violation of proposed § 164.502(a)(3). Similarly, if a group health plan uses family medical history provided by an individual incidental to the collection of other information on a health risk assessment to grant a premium reduction to the individual, the group health plan would be using genetic information for underwriting purposes in violation of § 164.502(a)(3).

Also, note that the prohibition is limited to health plans. A health care provider may use or disclose genetic information as it sees fit for treatment of an individual. If a covered entity, such as an HMO, acts as both a health plan and health care provider, the covered entity may use genetic information for purposes of treatment, to determine the medical appropriateness of a benefit, and as otherwise permitted by the Privacy Rule, but may not use such genetic information for underwriting purposes. Such covered entities, in particular, should ensure that appropriate staff members are trained on the permissible and impermissible uses of genetic information.

Section 164.504(f)(1)(ii)—Requirements for Group Health Plans

Section 164.504(f)(1)(ii) permits a group health plan, or health insurance issuer or HMO with respect to the group health plan, to disclose summary health information to the plan sponsor if the plan sponsor requests the information for the purpose of obtaining premium bids from health plans for providing health insurance coverage under the group health plan, or for modifying, amending, or terminating the group health plan. As this provision permits activities that constitute ''underwriting purposes,'' as defined by GINA and this proposed rule, we add a cross-reference to the proposed § 164.502(a)(3) prohibition on the use or disclosure of genetic information for underwriting purposes, to make clear that § 164.504(f)(1)(ii) would not allow a disclosure of PHI that is otherwise prohibited by § 164.502(a)(3).

Section 164.506—Uses and Disclosures to Carry Out Treatment, Payment, or Health Care Operations

Section 164.506(a) of the Privacy Rule sets out the uses and disclosures a HIPAA covered entity is permitted to make to carry out treatment, payment, or health care operations. In light of the fact that the proposed definition of ''underwriting purposes'' encompasses activities that fall both within the definitions of ''payment'' and ''health care operations'' under the Privacy Rule, the Department proposes to add a cross-reference in § 164.506(a) to the new prohibition at proposed § 164.502(a)(3) on health plans using and disclosing PHI that is genetic information for underwriting purposes. This cross-reference is intended to make clear that § 164.506 of the Privacy Rule would not permit health plans to use or disclose an individual's PHI that is genetic information for underwriting, even though such a use or disclosure is considered payment or health care operations.

Section 164.514(g)—Uses and Disclosures for Activities Relating to the Creation, Renewal, or Replacement of a Contract of Health Insurance or Health Benefit

Section 164.514(g) of the Privacy Rule prohibits a health plan that receives PHI for underwriting, premium rating, or other activities relating to the creation, renewal, or replacement of a contract for health insurance or health benefits, from using or disclosing such PHI for any other purpose (except as required by law) if the health insurance or health benefits are not placed with the health plan. The Department proposes conforming amendments to this provision to: (1) Remove the term ''underwriting'' to avoid confusion given the new definition of ''underwriting purposes'' in the proposed rule, which encompasses the activities described above; and (2) make clear that a health plan that receives PHI that is genetic information for the above purposes is not permitted to use or disclose such information, in accordance with proposed § 164.502(a)(3). Note that the removal of the term ''underwriting'' from this provision is not intended as a substantive change to the scope of the provision.

Section 164.520—Notice of Privacy Practices for Protected Health Information

Section 164.520 of the Privacy Rule sets out the requirements for most covered entities to have and distribute a Notice of Privacy Practices (NPP), which describes the uses and disclosures of PHI a covered entity is permitted to make, the covered entity's legal duties to protect PHI, and the individual's rights with respect to PHI. With respect to the description of permitted uses and disclosures, § 164.520(b)(1)(iii) requires a covered entity to include separate statements if the covered entity intends to use or disclose PHI for certain treatment, payment, or health care operations activities, such as fundraising. The purpose of these statements is to put individuals on notice of certain uses and disclosures a covered entity may make as part of treatment, payment, or health care operations that may not otherwise be apparent in the NPP since the Privacy Rule does not require the listing of every permitted use or disclosure that may fall within treatment, payment, or health care operations. In a similar manner, the Department believes that individuals have a right to be specifically informed of the fact that health plans that intend to use or disclose their PHI for underwriting nonetheless may not use or disclose their genetic information for such purposes. Thus, the Department proposes to require health plans that use or disclose PHI for underwriting to include a statement in their NPP making clear that they are prohibited from using or disclosing PHI that is genetic information about an individual for such purposes. Without such a specific statement, individuals would not be aware of this restriction and the general statements regarding permitted uses and disclosures for treatment, payment, and health care operations in the NPP of a health plan that performs underwriting would not be accurate (i.e., the NPP would state that the health plan may use or disclose PHI for purposes of payment and health care operations, which would not be true with respect to genetic information when the use or disclosure is for underwriting purposes).

The proposed prohibition at § 164.502(a)(3) and the proposed requirement to explicitly include a statement regarding the prohibition represent a material change to the NPP of health plans that perform underwriting, and the Privacy Rule requires at § 164.520(c)(1)(i)(C) that plans provide notice to individuals

covered by the plan within 60 days of any material revision to the NPP. The Department recognizes that revising and redistributing a NPP may be costly for health plans that perform underwriting and thus requests comment on ways to inform individuals of this change to privacy practices without unduly burdening health plans, particularly given there may be other material changes to the NPP due to the modifications to the Privacy Rule required by the provisions of the Health Information Technology for Economic and Clinical Health (HITECH) Act, enacted as part of the American Recovery and Reinvestment Act of 2009. In particular, the Department is considering a number of options in this area: (1) Replace the 60-day requirement with a requirement for health plans to revise their NPPs and redistribute them (or at least notify members of the material change to the NPP and how to obtain the revised NPP) in their next annual mailing to members after a material revision to the NPP, such as at the beginning of the plan year or during the open enrollment period; (2) provide a specified delay or extension of the 60-day timeframe for health plans that perform underwriting to implement and inform individuals of the underwriting prohibition; (3) retain the provision generally to require health plans to provide notice within 60 days of a material revision but provide that the Secretary will waive the 60-day timeframe in cases where the timing or substance of modifications to the Privacy Rule call for such a waiver; or (4) make no change and thus, require that health plans that perform underwriting provide notice to individuals within 60 days of the material change to the NPP that would be required by this proposed rule. The Department requests comment on these options, as well as any other options for informing individuals in a timely manner of this proposed or other material changes to the NPP.

The Department also notes that the obligation to revise the NPP for the reasons described above would fall only on health plans that intend to use or disclose PHI for activities that constitute ''underwriting purposes'' as defined in this proposed rule at § 164.501. Thus, health care providers, as well as health plans that do not perform underwriting, would not be required to revise their NPPs.

III. Impact Statement and Other Required Analyses

Executive Order 12866

Executive Order 12866 (58 FR 51735, October 4, 1993) directs agencies to determine whether a regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget and the requirements of the Executive Order. Executive Order 12866, in section 3(f), 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 government or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Executive Order 12866 requires a full economic impact analysis only for ''economically significant'' rules under section 3(f)(1).

The Department has determined that this proposed rule is a ''significant regulatory action'' within the meaning of section 3(f)(4) of Executive Order 12866, because this action raises novel policy issues arising out of legal mandates. However, for the reasons discussed below, the Department has determined that the impact of this proposed regulation is not such that it would reach the economically-significant threshold under section 3(f)(1) of the Executive Order. Therefore, a detailed cost-benefit assessment of the proposed rule is not required.

The proposed rule would prohibit health plans that are HIPAA covered entities from using or disclosing an individual's PHI that is genetic information for underwriting purposes. Health plans that do not currently use or disclose PHI for underwriting purposes would not be affected at all by the proposed rule. Further, even with respect to health plans that perform underwriting, plans and issuers in the group market have commented to the Department that they do not currently use genetic information for underwriting purposes because pre-GINA laws and regulations prohibit them from discriminating against individuals based on any health status-related factors, including genetic information.[3] With respect to issuers in the individual market, the Department acknowledges that there may be more significant policy changes associated with the proposed prohibition on using or disclosing PHI that is genetic information for underwriting purposes. However, the Department does not have sufficient information at this time to determine the extent of such changes, that is, to what extent issuers in the individual market use genetic information for underwriting purposes, and thus, requests comment in this area. In the case of either the individual or group market, however, the Department assumes, because a prohibited use or disclosure of genetic information for underwriting purposes is also a discriminatory use of such information under the nondiscrimination provisions of GINA Title I and its implementing regulations, that there would not be costs associated with conforming a plan's practices to comply with the prohibition proposed at § 164.502(a)(3) that are above and beyond the costs associated with complying with the regulations implementing sections 101–103 of GINA. With respect to the health plans not covered by GINA but subject to the proposed prohibition in the Privacy Rule, the Department also assumes that the costs to comply will be minimal because such plans either: (1) Do not perform underwriting, as is the case generally with public benefit plans; or (2) perform underwriting but do not in most cases use genetic information (including family medical history) for such purposes. The Department requests comment on its assumptions.

However, because these modifications would require a change to the privacy practices of health plans that perform underwriting, health plans that use or disclose PHI for underwriting purposes would be required to undertake a number of actions to comply with existing Privacy Rule requirements. First, these health plans would be required to change their policies and procedures as necessary to comply with the proposed changes to the Privacy Rule. *See* 45 CFR 164.530(i)(2). Second, health plans that use or disclose PHI for underwriting purposes would be required to train workforce members whose functions are affected by the

[3] *See e.g.,* Comments from BlueCross BlueShield Association, pg. 3 (*http://www.dol.gov/ebsa/pdf/cmt-12190808.pdf*) and Society for Human Resource Management, pg. 2 (*http://www.dol.gov/ebsa/pdf/cmt-12190813.pdf*) in response to Request for Information issued by HHS, the Department of Labor, and Treasury/IRS on October 10, 2008, at 73 FR 70208.

change to the health plan's policies and procedures, within a reasonable period of time after the material change becomes effective, and to document the training. *See* 45 CFR 164.530(b)(2)(i)(C) and (ii). Finally, the affected health plans would be required to revise their NPPs to reflect the change in the law and to provide notice of the revision to individuals covered by the plan within 60 days of the change. *See* 45 CFR 164.520(c)(1)(i)(C).

The Department estimates that approximately 630 insurers are affected by GINA, consisting of approximately 460 insurers offering coverage in connection with insured group health plans and approximately 490 health insurance issuers offering policies in the individual health insurance market.[4] These insurers would be required to revise their privacy policies and procedures and train affected workforce members with respect to the proposed prohibition on using or disclosing PHI that is genetic information for underwriting purposes. However, given that a prohibited use or disclosure of genetic information for underwriting purposes would also be a discriminatory use of such information under the nondiscrimination provisions of GINA Title I and its implementing regulations, the Department expects the costs associated with conforming a plan's HIPAA policies and procedures and to conduct training to be a small addition to the costs otherwise associated with updating policies and procedures and developing and conducting the training needed to comply with the regulations implementing sections 101–103 of GINA. Accordingly, the Department estimates that these plans would need to spend an additional one hour of a legal professional's time at an hourly labor rate of $116 [5] to revise the plan's privacy policies and procedures and to ensure the HIPAA Privacy Rule's prohibition is appropriately incorporated into training materials. This results in an estimated cost of $73,000. With respect to the health plans not covered by GINA but subject to the proposed prohibition in the Privacy Rule, the Department does not have sufficient information at this time to determine how many of such plans perform underwriting and are not otherwise part of an issuer that already would be obligated to update policies and procedures and train staff on these new provisions. Thus, the Department requests comment in this area.

We calculate the total cost of revising and distributing notices of privacy practices as $83.4 million. This is based on three components: (1) The cost of printing and mailing the notice; (2) the cost of time associated with distributing the notice; and (3) the cost of time associated with revising the notice.

1. Based on the U.S. Census Bureau's Current Population Survey for 2007, there were 92.3 million participants in employer-based health policies, and 18.9 million policyholders of non-employment related health insurance policies, leading to a total of 111.2 million policies.[6] We use data for participants and policyholders, rather than persons covered, since plans are only expected to provide notice to the named insured. *See* 45 CFR 164.520(c)(1)(iii). We limit our analysis to private insurance, rather than all insurance, because it is our understanding that Medicare, Medicaid, and military health care programs do not use or disclose PHI for underwriting purposes, and, therefore, will not need to change their notices. Our total number of participants and policyholders is limited to comprehensive health insurance plans; we do not have data on the number of other types of plans, such as long-term care insurance, and invite comment on this issue. Based on our data on the total number of private health insurance participants and policyholders, we expect that health plans will need to print and distribute approximately 111.2 million notices. As with the December 2000 preamble to the Privacy Rule, we are estimating that the printing cost for each notice is $0.05.[7] Accordingly, the cost for printing will be approximately $5.6 million. The cost for postage will be approximately $0.44 per notice (although the actual cost may be less, due to bulk mail discounts), resulting in a postage cost of approximately $48.9 million. The total for printing and postage is $54.5 million.

2. We estimate the time to distribute notices to be 100 per hour. For 111.2 million notices, this results in approximately 1,120,000 burden-hours related to distributing the notice. At an hourly labor rate of $26 for a clerical staff's time,[8] this leads to an additional cost of $28.9 million.

3. We estimate that it will take 0.5 hours of a legal professional's time to revise the notice to reflect that the health plan may not use or disclose genetic information for underwriting purposes. As referenced above, we estimate that there are 630 plans affected by GINA. This results in 315 burden-hours related to revising the notice. The wage for a legal professional's time is $116 per hour. This leads to an additional cost of $37,000. We do not have data on the number of additional plans that would be required to change the notice because they are subject to the Privacy Rule's prohibition but not otherwise subject to GINA. As noted above, the Department requests comment in this area.

Thus, the Department estimates the total cost to be incurred to implement these provisions, based on currently available information, would be $83.5 million. These costs represent costs to be incurred as one-time, first year implementation costs.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to federal rules that are subject to the notice and comment rulemaking requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities.

As indicated above, plans and issuers in the group market have indicated that the immediate impact of GINA and the rules on both large and small group health plans and health insurance issuers should be minimal. Plans and issuers commented that they do not currently use genetic information for underwriting purposes because pre-GINA laws and regulations prohibit them from discriminating against individuals based on any health status-related factors, including genetic information. Further, while there may be more significant policy changes associated with compliance by issuers in the individual market, in the case of either the individual or group market, the Department assumes that there would not be costs associated with conforming a plan's practices to comply with the proposed prohibition in this proposed rule on using or disclosing genetic information for underwriting

[4] Estimates are from 2007 NAIC financial statements data and the California Department of Managed Healthcare. Because most self-insured plans hire third-party administrators—insurance companies in most cases—to administer and provide guidance regarding underwriting the plans, we assume that the impact on self-insured plans is addressed in this discussion about the impact of the rule on insurers. We request comment on this assumption.

[5] Based on the National Occupational Employment Survey (May 2007, Bureau of Labor Statistics) and the Employment Cost Index June 2008, Bureau of Labor Statistics).

[6] Current Population Survey, March Supplement, March 2008, using HI and PRIV variables.

[7] 65 FR 82,770 (Dec. 28, 2000).

[8] Based on the National Occupational Employment Survey (May 2007, Bureau of Labor Statistics) and the Employment Cost Index June 2008, Bureau of Labor Statistics).

purposes that are above and beyond the costs associated with complying with the regulations implementing sections 101–103 of GINA. In addition, as explained above for health plans not subject to the regulations implementing sections 101–103 of GINA but subject to this proposed rule, the Department assumes the costs to comply will be minimal because such plans either do not perform underwriting or do not use genetic information for underwriting.

Despite the above, health insurers in both the group and individual health insurance markets would have to incur some cost to comply with this proposed rule. In particular, such plans would have to update their policies and procedures to comply with the proposed changes to the Privacy Rule; train workforce members whose functions are affected by the change to the policies and procedures; and revise and redistribute their NPPs to reflect the change in the law. For this purpose, using the Small Business Administration's definition of a small insurer as a business with less than $ 7 million in revenues, premiums earned as a measure of revenue,[9] and data obtained from the National Association of Insurance Commissioners,[10] the Department estimates that approximately 75 out of 630 insurers had revenues of less than $7 million, and, of these, about 25 had revenues of less than $1 million.[11]

However, as discussed above, for all plans, the Department expects the costs associated with conforming a plan's HIPAA policies and procedures and to conduct training to be a small addition to the costs otherwise associated with updating policies and procedures and developing and conducting the training needed to comply with the regulations implementing sections 101–103 of GINA. Accordingly, the Department estimates that each insurer on average would spend only an additional one hour of a legal professional's time at an hourly labor rate of $116 [12] to revise the plan's privacy policies and procedures and to ensure the HIPAA Privacy Rule's prohibition is appropriately incorporated into training materials. Further, with respect to revising the NPP, we estimate that it will take 0.5 hours of a legal professional's time, at the same $116 an hour, to make the necessary changes, which results in an additional cost of $58 per plan.

With respect to redistributing the revised NPP to the named insured, as described above, we estimate the cost of distributing each notice to be approximately $0.49 for printing and postage and about $0.26 for labor associated with the distribution (100 notices per hour at an hourly labor rate of $26 for a clerical staff's time [13]). However, because we expect smaller plans to have fewer participants and policyholders to whom the plans would need to send the NPP, we do not expect the costs of providing the revised NPP to fall disproportionately on small insurers.

Thus, for the reasons stated above, it is not expected that the cost of compliance would be significant for small health plans. Nor is it expected that the cost of compliance would fall disproportionately on small health plans. Therefore, the Secretary certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The Department invites public comments on its certification.

Paperwork Reduction Act

This proposed rule contains information collections that are subject to review by OMB under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520). Per section 3507(d) of the PRA, we have submitted these information collections to OMB for review. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

1. Whether the information collection is necessary and useful to carry out the proper functions of the agency;

2. The accuracy of the agency's estimate of the information collection burden;

3. The quality, utility, and clarity of the information to be collected; and

4. Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Under the PRA, the time, effort, and financial resources necessary to meet the information collection requirements referenced in this section are to be considered. We explicitly seek, and will consider, public comment on our assumptions as they relate to the PRA requirements summarized in this section. To comment on this collection of information or to obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your comment or request, including your address and phone number to *sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. In making your request and submitting comments, please reference this rule and OMB Control Number 0990–0294. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60 days.

Abstract

Section 105 of GINA amends Part C of Title XI of the Social Security Act by adding section 1180 to address the application of the HIPAA Privacy Rule to genetic information. Section 1180 requires the Secretary of HHS to revise the HIPAA Privacy Rule to clarify that genetic information is health information and to prohibit health plans from using or disclosing genetic information for underwriting purposes. In this notice of proposed rulemaking, we propose to implement the modifications required by GINA section 105, and seek public comment on its proposal. The proposed prohibition at § 164.502(a)(3) and the proposed requirement at § 164.520(b)(1)(iii) to explicitly include a statement regarding the prohibition represent a material change to the Notice of Privacy Practices (NPP) of health plans that perform underwriting. As such, pursuant to § 164.520(c)(1)(i)(C), affected health plans would be required to revise their NPP to reflect the change in the law and to provide notice of the revision to individuals covered by the plan within 60 days of the change.

The estimated annualized burden table below was developed using the same estimates and workload assumptions in the impact statement in the section regarding Executive Order 12866, above.

Estimated Annualized Burden Table

[9] U.S. Small Business Administration, ''Table of Small Business Standards Matched to North American Industry Classification System Codes,'' available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

[10] NAIC 2007 financial statements data.

[11] These counts could be an overestimate. Only health insurance premiums from both the group and individual market were counted. If insurers also offered other types of insurance, their revenues could be higher.

[12] The Department's estimates are based on the National Occupational Employment Survey (May 2007, Bureau of Labor Statistics) and the Employment Cost Index (June 2008, Bureau of Labor Statistics).

[13] Based on the National Occupational Employment Survey (May 2007, Bureau of Labor Statistics) and the Employment Cost Index (June 2008, Bureau of Labor Statistics).

ESTIMATED ANNUALIZED BURDEN HOURS

Section	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
164.520	Revision of Notice of Privacy Practices for Protected Health Information (health plans).	630	1	30/60	315
164.520	Dissemination of Notice of Privacy Practices for Protected Health Information (health plans).	111,200,000	1	1 per 100	1,112,000
Total					1,112,315

Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of $133 million in a single year after adjusting for inflation from 1995. For the reasons discussed above, this proposed rule would not impose a burden large enough to require a section 202 statement under the Unfunded Mandates Reform Act of 1995.

Environmental Impact

The Department has determined under 21 CFR 25.30(k) that this action is of a type that would not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Executive Order 13132: Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. The Federalism implications of the Privacy Rule were assessed as required by Executive Order 13132 and published in the Privacy Rule of December 28, 2000 (65 FR 82462, 82797). The Department believes that these proposed modifications to the Privacy Rule would not significantly affect the rights, roles, and responsibilities of States.

List of Subjects

45 CFR Part 160

Administrative practice and procedure, Computer technology, Electronic information system, Electronic transactions, Employer benefit plan, Health, Health care, Health facilities, Health insurance, Health records, Hospitals, Investigations, Medicaid, Medical research, Medicare, Penalties, Privacy, Reporting and recordkeeping requirements, Security.

45 CFR Part 164

Administrative practice and procedure, Computer technology, Electronic information system, Electronic transactions, Employer benefit plan, Health, Health care, Health facilities, Health insurance, Health records, Hospitals, Medicaid, Medical research, Medicare, Privacy, Reporting and recordkeeping requirements, Security.

For the reasons set forth in the preamble, the Department proposes to amend 45 CFR subtitle A, subchapter C, parts 160 and 164, as follows:

PART 160—GENERAL ADMINISTRATIVE REQUIREMENTS

1. The authority citation for part 160 is revised to read as follows:

Authority: 42 U.S.C. 1302(a), 42 U.S.C. 1320d–1320d–9, sec. 264 of Public Law 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d–2 (note)); 5 U.S.C. 552; and secs. 13400 and 13402, Public Law 111–5, 123 Stat. 258–263.

2. Revise § 160.101 to read as follows:

§ 160.101 Statutory basis and purpose.

The requirements of this subchapter implement sections 1171 through 1180 of the Social Security Act (the Act), as added by sections 262 and 264 of Public Law 104–191 and section 105 of Public Law 110–233, and section 13402 of Public Law 111–5.

3. In § 160.103, add in alphabetical order definitions of ''Family member,'' ''Genetic information,'' ''Genetic services,'' ''Genetic test,'' and ''Manifestation or manifested,'' and revise the introductory text of the definition of ''Health information'' and paragraphs (1)(vi) through (xi), and (xv) of the definition of ''Health plan'' as follows:

§ 160.103 Definitions.

* * * * *

Family member means, with respect to an individual:

(1) A dependent (as such term is defined in 45 CFR 144.103), of the individual; or

(2) Any other person who is a first-degree, second-degree, third-degree, or fourth-degree relative of the individual or of a dependent of the individual. Relatives by affinity (such as by marriage or adoption) are treated the same as relatives by consanguinity (that is, relatives who share a common biological ancestor). In determining the degree of the relationship, relatives by less than full consanguinity (such as half-siblings, who share only one parent) are treated the same as relatives by full consanguinity (such as siblings who share both parents).

(i) First-degree relatives include parents, spouses, siblings, and children.

(ii) Second-degree relatives include grandparents, grandchildren, aunts, uncles, nephews, and nieces.

(iii) Third-degree relatives include great-grandparents, great-grandchildren, great aunts, great uncles, and first cousins.

(iv) Fourth-degree relatives include great-great grandparents, great-great grandchildren, and children of first cousins.

Genetic information means:

(1) Subject to paragraphs (2) and (3) of this definition, with respect to any individual, information about:

(i) Such individual's genetic tests;

(ii) The genetic tests of family members of the individual;

(iii) The manifestation of a disease or disorder in family members of such individual; or

(iv) Any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by such individual or any family member of such individual.

(2) Any reference in this subchapter to genetic information concerning an individual or family member of an individual shall include the genetic information of:

(i) A fetus carried by the individual or family member who is a pregnant woman; and

(ii) Any embryo legally held by an individual or family member utilizing an assisted reproductive technology.

(3) Genetic information excludes information about the sex or age of any individual.

Genetic services means:

(1) A genetic test;

(2) Genetic counseling (including obtaining, interpreting, or assessing genetic information); or

(3) Genetic education.

Genetic test means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, if the analysis detects genotypes, mutations, or chromosomal changes. Genetic test does not include an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition.

* * * * *

Health information means any information, including genetic information, whether oral or recorded in any form or medium, that: * * *

* * * * *

Health plan means * * *

(1) * * *

(vi) The Voluntary Prescription Drug Benefit Program under Part D of title XVIII of the Act, 42 U.S.C. 1395w–101 through 1395w–152.

(vii) An issuer of a Medicare supplemental policy (as defined in section 1882(g)(1) of the Act, 42 U.S.C. 1395ss(g)(1)).

(viii) An issuer of a long-term care policy, excluding a nursing home fixed indemnity policy.

(ix) An employee welfare benefit plan or any other arrangement that is established or maintained for the purpose of offering or providing health benefits to the employees of two or more employers.

(x) The health care program for uniformed services under title 10 of the United States Code.

(xi) The veterans health care program under 38 U.S.C. chapter 17.

* * * * *

(xv) The Medicare Advantage program under Part C of title XVIII of the Act, 42 U.S.C. 1395w–21 through 1395w–28.

* * * * *

Manifestation or *manifested* means, with respect to a disease, disorder, or pathological condition, that an individual has been or could reasonably be diagnosed with the disease, disorder, or pathological condition by a health care professional with appropriate training and expertise in the field of medicine involved. For purposes of this subchapter, a disease, disorder, or pathological condition is not manifested if the diagnosis is based principally on genetic information.

* * * * *

PART 164—SECURITY AND PRIVACY

4. The authority citation for part 164 is revised to read as follows:

Authority: 42 U.S.C. 1320d–1320d–9; sec. 264, Public Law 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d–2 (note)); secs. 13400 and 13402, Public Law No. 111–5, 123 Stat. 258–263.

5. In § 164.501, revise paragraph (3) of the definition of ''Health care operations'' and paragraph (1)(i) of the definition of ''Payment,'' and to add in alphabetical order a definition of ''Underwriting purposes'' to read as follows:

§ 164.501 Definitions.

* * * * *

Health care operations means * * *

(3) Enrollment, premium rating, and other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits, and ceding, securing, or placing a contract for reinsurance of risk relating to claims for health care (including stop-loss insurance and excess of loss insurance), provided that the requirements of § 164.514(g) are met, if applicable;

* * * * *

Payment means:

(1) * * *

(i) Except as prohibited under § 164.502(a)(3), a health plan to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the health plan; or

* * * * *

Underwriting purposes means, with respect to a health plan:

(1) Except as provided in paragraph (2) of this definition:

(i) Rules for, or determination of, eligibility (including enrollment and continued eligibility) for, or determination of, benefits under the plan, coverage, or policy (including changes in deductibles or other cost-sharing mechanisms in return for activities such as completing a health risk assessment or participating in a wellness program);

(ii) The computation of premium or contribution amounts under the plan, coverage, or policy (including discounts, rebates, payments in kind, or other premium differential mechanisms in return for activities such as completing a health risk assessment or participating in a wellness program);

(iii) The application of any pre-existing condition exclusion under the plan, coverage, or policy; and

(iv) Other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

(2) Underwriting purposes does not include determinations of medical appropriateness where an individual seeks a benefit under the plan, coverage, or policy.

* * * * *

6. In § 164.502, revise paragraph (a)(1)(iv) and add paragraph (a)(3) to read as follows:

§ 164.502 Uses and disclosures of protected health information: General rules.

(a) * * *

(1) * * *

(iv) Except for uses and disclosures prohibited under § 164.502(a)(3), pursuant to and in compliance with a valid authorization under § 164.508;

* * * * *

(3) *Prohibited uses and disclosures.* Notwithstanding any other provision of this subpart, a health plan shall not use or disclose protected health information that is genetic information for underwriting purposes.

* * * * *

7. In § 164.504, revise the introductory text of paragraph (f)(1)(ii) to read as follows:

§ 164.504 Uses and disclosures: Organizational requirements.

* * * * *

(f)(1) * * *

(ii) Except as prohibited by § 164.502(a)(3), the group health plan, or a health insurance issuer or HMO with respect to the group health plan, may disclose summary health information to the plan sponsor, if the plan sponsor requests the summary health information for purposes of:

* * * * *

8. In § 164.506, revise paragraph (a) to read as follows:

§ 164.506 Uses and disclosures to carry out treatment, payment, or health care operations.

(a) *Standard: Permitted uses and disclosures.* Except with respect to uses or disclosures that require an authorization under § 164.508(a)(2) or (3) or that are prohibited under § 164.502(a)(3), a covered entity may use or disclose protected health information for treatment, payment, or health care operations as set forth in paragraph (c) of this section, provided that such use or disclosure is consistent with other applicable requirements of this subpart.

* * * * *

9. In § 164.514, revise paragraph (g) to read as follows:

§ 164.514 Other requirements relating to uses and disclosures of protected health information.

* * * * *

(g) *Standard: Uses and disclosures for activities relating to the creation, renewal, or replacement of a contract of health insurance or health benefits.* If a health plan receives protected health information for the purpose of premium rating or other activities relating to the creation, renewal, or replacement of a contract of health insurance or health benefits, and if such health insurance or health benefits are not placed with the health plan, such health plan may only use or disclose such protected health information for such purpose or as may be required by law, subject to the prohibition at § 164.502(a)(3) with respect to genetic information included in the protected health information.

* * * * *

10. In § 164.520, add a new paragraph (b)(1)(iii)(D) to read as follows:

§ 164.520 Notice of privacy practices for protected health information.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(D) If a covered entity that is a health plan intends to use or disclose protected health information for underwriting purposes, a statement that the covered entity is prohibited from using or disclosing protected health information that is genetic information of an individual for such purposes.

Dated: June 5, 2009.

Kathleen Sebelius,

Secretary.

[FR Doc. E9–22492 Filed 10–1–09; 11:15 am]

BILLING CODE 4153–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[REG–123829–08]

RIN 1545–BI02

Genetic Information Nondiscrimination Act

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: Elsewhere in this issue of the **Federal Register**, the IRS is issuing temporary and final regulations governing the provisions of the Genetic Information Nondiscrimination Act (GINA) prohibiting discrimination based on genetic information for group health plans. The IRS is issuing the temporary and final regulations at the same time that the Employee Benefits Security Administration of the U.S. Department of Labor and the Centers for Medicare & Medicaid Services of the U.S. Department of Health and Human Services are issuing substantially similar interim final regulations with respect to GINA for group health plans and issuers of health insurance coverage offered in connection with a group health plan under the Employee Retirement Income Security Act of 1974 and the Public Health Service Act. The temporary regulations provide guidance to employers and group health plans relating to the group health plan genetic nondiscrimination requirements. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by January 5, 2010.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–123829–08), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered to: CC:PA:LPD:PR (REG–123829–08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–123829–08).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Russ Weinheimer at 202–622–6080; concerning submissions of comments, Oluwafumilayo Taylor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information referenced in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, *Attn:* IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by December 7, 2009. Comments are specifically requested concerning:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;
- The accuracy of the estimated burden associated with the proposed collection of information (see the preamble to the temporary regulations published elsewhere in this issue of the **Federal Register**);
- How to enhance the quality, utility, and clarity of the information to be collected;
- How to minimize the burden of complying with the proposed collection of information, including the application of automated collection techniques or other forms of information technology; and
- Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information is in § 54.9802–3 (see the temporary regulations published elsewhere in this issue of the **Federal Register**). The collection of information is required so that the IRS can be apprised when a group health plan is conducting research with respect to genetic information of plan participants or beneficiaries to ensure that all the requirements of the research exception to GINA are being complied with. The likely respondents are business or other for-profit institutions, and nonprofit institutions. Responses to this collection of information are required if a plan wishes to conduct genetic research with respect to participants or beneficiaries of the plan.

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 control number assigned by the Office of Management and Budget.

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

The temporary regulations published elsewhere in this issue of the **Federal Register** add a new § 54.9802–3T to the

Miscellaneous Excise Tax Regulations. In the same document, certain conforming changes are also being made to the final regulations under §§ 54.9801–1, 54.9801–2, 54.9802–1, and 54.9831–1. The proposed, temporary, and final regulations are being published as part of a joint rulemaking with the Department of Labor and the Department of Health and Human Services (the joint rulemaking). The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

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 has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this proposed regulation. It is hereby certified that the collection of information contained in this notice of proposed rulemaking will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. GINA requires group health plans claiming the research exception to GINA to notify the Secretary of the Treasury when the exception is being claimed. This notice of proposed rulemaking does not add to the reporting requirement imposed by the statute. Moreover, it is anticipated that very few and only the largest group health plans are likely to claim the research exception to GINA and thus be subject to the reporting requirement. For this reason, the burden imposed by the reporting requirement of the statute and this notice of proposed rulemaking on small entities is expected to be near zero. For further information and for analyses relating to the joint rulemaking, see the preamble to the joint rulemaking. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are specifically requested on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Russ Weinheimer, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), IRS. The proposed regulations, as well as the temporary and final regulations, have been developed in coordination with personnel from the U.S. Department of Labor and the U.S. Department of Health and Human Services.

List of Subjects in 26 CFR Part 54

Excise taxes, Health insurance, Pensions, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 54 is proposed to be amended as follows:

PART 54—PENSION EXCISE TAXES

Paragraph 1. The authority citation for part 54 is amended by adding an entry in numerical order to read as follows:

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

Section 54.9802–3 also issued under 26 U.S.C. 9833. * * *

Par. 2. Section 54.9802–3 is added to read as follows:

§ 54.9802–3 Additional requirements prohibiting discrimination based on genetic information.

[The text of proposed § 54.9802–3 is the same as the text of § 54.9802–3T published elsewhere in this issue of the **Federal Register**].

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E9–22512 Filed 10–1–09; 11:15 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
October 7, 2009

Part III

Department of Agriculture

Rural Business—Cooperative Service

7 CFR Part 4280

Rural Microentrepreneur Assistance Program; Proposed Rule

DEPARTMENT OF AGRICULTURE

Rural Business—Cooperative Service

7 CFR Part 4280

RIN 0570–AA71

Rural Microentrepreneur Assistance Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food, Conservation, and Energy Act of 2008 (the Act), which amends Section 6022 of the Farm Security and Rural Investment Act of 2002, established the Rural Microentrepreneur Assistance Program. The program will provide technical and financial assistance in the form of loans and grants to qualified Microenterprise Development Organizations to support microentrepreneurs in the development and ongoing success of rural microenterprises. The Agency proposes to implement the program to meet the goals and requirements of the Act.

DATES: Comments on the proposed rule must be received on or before November 23, 2009 to be assured of consideration. The comment period for the information collection under the Paperwork Reduction Act of 1995 continues through December 7, 2009.

ADDRESSES: You may submit comments to this proposed rule by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments electronically.
- *Mail:* Submit your written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Stop 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742.
- *Hand Delivery/Courier:* Submit your written comments via Federal Express mail, or other courier service requiring a street address, to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street, SW., 7th Floor address listed above.

FOR FURTHER INFORMATION CONTACT: Lori Washington, Loan Specialist, Business Programs, Specialty Programs Division, USDA, Rural Development, Rural Business—Cooperative Service, Room 6868, South Agriculture Building, Stop 3225, 1400 Independence Avenue, SW., Washington, DC 20250–3225, *Telephone:* (202) 720–9815, *E-mail: lori.washington@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Background

A. Statutory Authority

Title VI, Section 6022 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246 established the Rural Microentrepreneur Assistance Program (RMAP). The Act mandates that the Secretary of Agriculture establish a program to make loans and grants to microenterprise development organizations (MDOs) to support microentrepreneurs in the development and ongoing success of rural microenterprises. The Act further mandates that, under this program, MDOs will use funds borrowed from the Agency to make fixed interest rate microloans of not more than $50,000 to microentrepreneurs for startup and growing rural microenterprises.

The Secretary shall also make annual grants to borrower MDOs to provide marketing management and other technical assistance (TA) to microentrepreneurs that have received or are seeking a microloan from an MDO under this program. Such grants will be in an amount equal to not more than 25 percent of the total outstanding balance of microloans made by the MDO, under this program, as of the date the grant is awarded or $100,000, whichever is less.

The Secretary shall also make grants to MDOs to provide training or other operational enhancement activities or services for MDOs that serve rural microentrepreneurs. Maximum grant amounts for these enhancement grants will be announced annually and will be based on appropriations and consideration of program needs. In all cases, the maximum enhancement grant funding awarded to a single MDO will not exceed $25,000 or ten percent of the available funding, whichever is less, in any given year.

In making loans to MDOs, the Act requires the Agency to make direct loans to MDOs to provide fixed rate microloans for startup and growing microenterprises. In making grants to MDOs, the Act requires the Agency to place an emphasis on MDOs serving microentrepreneurs located in rural areas that have suffered significant outmigration. The Agency shall also ensure, to the maximum extent practicable, that grant recipients include MDOs of varying sizes and that serve racially and ethnically diverse populations. MDOs will be eligible to receive TA grants to provide assistance to microentrepreneurs who have received, or are seeking, a microloan from the MDO under this program.

The following section describes the proposed RMAP.

B. Nature of the Program

This subpart contains the provisions and procedures by which the Agency will administer the Rural Microenterprise Assistance Program (RMAP). The purpose of the program is to support the development and ongoing success of rural microentrepreneurs and microenterprises (businesses generally with ten employees or fewer and in need of financing in the amount of $50,000 or less). To meet this purpose, the program will make financial assistance, business based training, and technical assistance available to startup and growing microenterprises in rural areas, including agricultural producers that meet the definition of a microenterprise. Loans and training will be delivered to microenterprises via a

network of microenterprise development organizations (MDOs).

An MDO is an organization that provides access to capital and business-based training services to very small (micro) businesses. A microentrepreneur is an owner and operator, or prospective owner and operator, of a rural business with not more than 10 full-time equivalent employees who is unable to obtain sufficient training, technical assistance, or credit. The definition of a Mircoenterprise Development Organization and a mircoentrepreneur is included in the rule at § 4280.302.

In addition to assisting microenterprises, MDOs may also receive grant funding to improve their own capabilities for providing services to their microborrowers.

Microenterprises will not receive funds directly from the government. Rather, microlenders (*i.e.,* MDOs that have been approved for participation in this program) will receive direct loans and grants. Direct loans will be used to capitalize rural revolving loan funds for the exclusive purposes of making microloans in rural areas, accepting payments from microborrowers, and repaying the Agency as required in their loan agreements. Grants will be used to fund business-based training and technical assistance, which will be provided to microenterprises by or in concert with the microlender that has provided one or more microloans to the microborrower seeking training.

In following these guidelines, the Agency hopes to help build stronger rural communities by supporting rural microentrepreneurship, keeping and creating jobs, lessening outmigration, and working toward universal inclusion in the business sector.

The Act provides mandatory funding for the program during years 2009 through 2011 in the amount of $4 million dollars per fiscal year and also provides for $3 million of mandatory funding for FY 2012, plus such other funding as may be appropriated. During any of those years, additional funding may be appropriated. The number of loans and grants will vary from year to year, based on availability of funds and the quality of applications. The maximum annual loan and grant amounts a microlender may receive in any given year will also vary based on the availability of funds and will be announced annually in the **Federal Register**. The maximum loan amount to any one microlender will never exceed $500,000.

Neither TA grant funds nor enhancements grant funds can be used by microlenders to repay their Agency loans.

MDOs seeking to become microlenders under this program will submit application materials to USDA Rural Development through their local or state Rural Development Business Programs office. Microenterprises seeking financial or technical assistance under this program will submit application materials directly to their local microlender.

A list of local microlenders will be made available at the State Rural Development, Business Programs office and will be made available on the USDA Rural Development Web site.

II. Discussion on Public Meeting and Request for Comments

Prior to the development of this proposed rule, USDA published in the **Federal Register** a notice of public meeting [January 21, 2009, 74 FR 3550] inviting interested parties to attend and present their ideas and opinions regarding the proposed program. The meeting was held on January 26, 2009 in Washington, DC. Eight speakers presented comments on the authorizing provisions of the Act regarding program development and operation. USDA considered that input when developing this proposed rule. The comments received during the meeting will be included with those received during the public comment period for proposed rule. All comments and USDA's responses to those comments will be summarized and considered during the development of the final rule.

As a part of today's proposed rulemaking, the Agency is requesting comments on the program being proposed. The Agency is specifically seeking input in the following areas:

1. The scoring section as it applies to administrative funds.

2. The provisions for a maximum loan amount to any one single microlender and a maximum cap of $2.5 million over time as provided in § 4280.311(e)(1).

The Agency will balance comments, where possible, with the need to establish requirements that meet the goals and rules of the program.

Applicants and the Agency must meet all applicable laws, regulations and executive orders. Applicants must provide the Agency with appropriate information so that all compliance issues can be evaluated in a fair and objective process.

Submit comments to the Agency as indicated in the **DATES** and **ADDRESSES** sections above. The Agency will consider all comments during development of the final rule.

III. Discussion of the Proposed Rule

The following paragraphs present a discussion of the provisions of each section of the proposed rule in the order that they appear.

A. Purpose and Scope (§ 4280.301)

This section describes the purpose, scope and applicability of the program and applies to all potential MDO applicants. An MDO selected to receive a direct loan will be automatically eligible to receive a TA grant. As such, RMAP applications will include all information necessary to make a loan and grant determination. Grant dollars will be disbursed as microloans are distributed. The amount of a TA grant may be equal to no more than 25 percent of the total outstanding balance of microloans made by an MDO under this program or $100,000, whichever is less.

B. Definitions and Abbreviations (§ 4280.302)

This section presents program specific definitions. Some of these definitions are included in the statute. Others are proposed for use by the Agency to more clearly implement the program.

Statutorily defined terms. The Act defines several terms that are used in this document. Because the terms are defined by statute, the Agency cannot change the definitions. These terms are:

- Indian tribe,
- Microenterprise development organization,
- Microentrepreneur,
- Microloan,
- Program, and
- Rural microenterprise.

For the purposes of this rule, rural microentrepreneur and microentrepreneur are synonymous.

Proposed non-statutory terms herein include:

- Administrative expenses,
- Agency personnel,
- Award,
- Business incubator,
- Default,
- Delinquency,
- Enhancement grant,
- Facilitation of capital,
- Indian tribal government employee,
- Loan loss reserve fund,
- Microlender,
- Military personnel,
- Rural microloan revolving fund,
- Rural or rural area,
- Significant outmigration,
- Technical assistance and training, and
- Technical assistance grant.

With regard to the definition of Agency personnel, the Agency is

proposing the following definition: ''Individuals employed by the United States Department of Agriculture-Rural Development Agency, who are more than 6 months from separating from the Agency.'' While the Agency does not want to allow the program to provide assistance to Agency personnel, the Agency at the same time wants to ensure that that a person retiring or leaving the Agency and wishing to pursue self employment can obtain the services he or she needs to be ready for self employment at the time of separation. Therefore, the Agency is proposing that the definition of Agency personnel ends at 6 months prior to the expected date of separation in order to allow for pre-separation preparation and to allow these individuals to be considered as non-agency personnel. The Agency is also proposing a similar condition for the definition of military personnel.

C. Exception Authority (§ 4280.303)

This section explains the Administrator's limited authority to make exceptions to regulatory requirements, or provisions. It specifically excludes permissions to make exceptions for applicant or project eligibility, the rural area definition, to accept applicants that would not score at an acceptable level, and to accept applicants that have not successfully completed. Further, it requires that any exceptions be in the best financial interest of the Federal government and that exceptions not be in conflict with any applicable laws.

D. Review or Appeal Rights and Administrative Concerns (§ 4280.304)

This section provides the legal basis by which an unsuccessful applicant may request an Agency review or file an appeal with the USDA National Appeals Division, in accordance with 7 CFR part 11. This section also provides contact information for microborrowers that have any concerns over the implementation of this program.

E. Compliance With Other Federal Laws (§ 4280.305)

Applicants and the Agency must meet all applicable laws, regulations and executive orders including, but not limited to, the Equal Employment Opportunities Act of 1972, the Americans with Disabilities Act, the Equal Credit Opportunity Act, and the Civil Rights Act of 1964. Applicants must provide the Agency with appropriate information so that all compliance issues can be evaluated in a fair and objective process.

This section also presents USDA's policy of prohibiting discrimination in all its programs and activities.

F. Program Requirements for Microenterprise Development Organizations (§ 4280.310)

This section explains the basic criteria for applicant eligibility that apply to all applicants. Requirements specific to direct loan applicants (potential microlenders), grants to enhance the capabilities of the microlender (referred to as enhancement grants) and grants to assist microentrepreneurs (TA grants to microlenders) are also explained. This section also describes eligibility issues, and application qualification issues.

G. Loan Provisions for Agency Loans to MDOs (§ 4280.311)

This section explains, in detail, provisions specific to the direct loan program, including loan purposes; eligible and ineligible activities; the requirement for making microloans and loan terms and conditions for MDO borrowers. Loan funds must be used to capitalize rural microloan revolving funds. The account containing the funds may only be used to make microloans to rural microentrepreneurs and rural microenterprises; to accept repayments from those borrowers, and to repay the Agency. The Agency will require MDOs to report regularly on the status of their microloan portfolios using aging reports and narrative information. Sanctions may be imposed on non-performing lenders deemed to be in either performance or financial default under the program to include loan funds being called immediately due and payable and grant funds being held. Interest rates may be raised on funding that has not been disbursed to microborrowers. Restrictions regarding limitations on microloans are discussed in § 4280.322.

Loan funding limitations are defined in this section. The minimum loan amount from the Agency to any microlender will be $50,000. The maximum loan amount to any microlender will be announced annually based on the availability of funds, but will never exceed $500,000. The Agency believes that setting minimum and maximum loan amounts will best serve rural communities and allow for greater program participation. Loans made to microlenders must be fully supported by the ability to relend the money in accordance with § 4280.311 and with the ability to repay the loan over an 18-year amortization. Because the minimum loan to a microlender is equal to the maximum loan amount for a microloan, and to ensure that rural microloan revolving funds are not exposed to danger of collapse based on a single microloan, no microloan will be made for an amount that is equal to more than $50,000 or 20 percent of the amount loaned to the microlender under a single capitalization, whichever is less.

This section also discusses protection against losses, presenting loan loss reserve fund (LLRF) requirements and Agency oversight. The Agency is requiring quarterly reporting and provision of evidence that the sum of the unexpended amount in the RMRF, plus the amount in the LLRF, plus debt owed by the microborrowers is equal to or greater than 105 percent of the amount owed by the MDO to the Agency. The Agency will hold first lien position on the RMRF account, the LLRF, and all notes receivable from microloans.

H. Grant Provisions (§ 4280.312)

This section presents the requirements for technical assistance and microlender enhancement grants. General provisions include cost share and matching requirements. The Federal share of the cost of any project under this program will not exceed 75 percent. Oversight includes quarterly reporting. To help ensure that MDOs can cover the cost of administering this program, and to ensure that Agency grant funds are used to support rural microenterprise development, the Agency allows each MDO to utilize up to 10 percent of any TA grant received to be used to pay administrative expenses, consistent with the statute. However, the Agency is reserving the right to deny the 10 percent and to fund administrative expenses at a lower percentage. No part of an enhancement grant will be used for administrative expenses. The purpose of these grants is to assist the microlender with obtaining training to improve internal organizational efficiency, lending and training capacity, and skills to better serve microentreprenuers and microenterprises. Because the enhancement grants do not directly assist these clients, no lending or training administrative costs are associated with the grant.

Ineligible grant purposes include application costs, project costs incurred prior to application date, and those purposes prohibited by law.

In this section, we also describe the purposes, selection criteria and award amounts for grants, which must be used to support rural microenterprise development through the provision of training or other operational improvement services to MDOs. Microlender enhancement grants are to

be used to allow MDOs to seek out training and other enhancement services to strengthen their own organizations.

To the extent practicable, the Agency will place an emphasis on providing financial assistance to MDOs of various sizes, that serve microentrepreneurs in rural areas suffering significant outmigration; and that serve racially and ethnically diverse populations.

Maximum amounts for enhancement grants will be determined and announced annually by the Agency based on program needs and the availability of funds. In all cases, the maximum enhancement grant funding awarded to a single MDO will not exceed $25,000 or ten percent of the available funding, whichever is less, in any given year.

The statute requires the Agency to make technical assistance (TA) grants to MDOs to provide marketing, management and other technical assistance to microentrepreneurs that have received a loan from the MDO under this program. Applicant MDOs seeking a direct loan under this program must submit Standard Forms 424, ''Application for Federal Assistance''; 424A, ''Budget Information—Non-construction Programs''; and 424B, ''Assurances—Non-construction Programs'' as a part of the application. An organization selected to become a microlender will be eligible to receive a TA grant in an amount less than or equal to 25 percent of the total outstanding balance of program funded microloans made by that organization or $100,000, whichever is less.

This section also discusses grant administration issues such as determination of grant amount and grant disbursement.

I. MDO Application and Submission Information (§ 4280.315)

This section explains those loan application requirements that will be regulatory. Submission details such as dates, times, and locations will be announced annually in the **Federal Register**. Forms that are required to be submitted with each application are listed in this section of the proposed rule. Form submissions may vary based on the type of assistance being sought.

J. Application Scoring (§ 4280.316)

This section discusses documentation that applicants must provide to meet eligibility requirements for loans and grants. Applicants must clearly indicate the category of funding for which they are applying. These categories are microlenders with 3 or more years experience, microlenders with less than 3 year experience, and MDOs seeking enhancement grant funding. Scoring requirements vary for each category.

This section also provides details regarding the scoring criteria, which is divided into four subsections. Subsection (a) applies to all applicants. Subsections (b) and (c) apply to MDOs seeking to be microlenders depending on the number of years of their experience. Subsection (b) describes the additional information that will be scored for MDOs with three or more years experience, while subsection (c) describes the additional information that will be scored for MDOs with less than three years experience.

Because a successful microlending program integrates training and technical assistance prior to, during, and after the loan making process, MDOs selected to participate as microlenders must include in their applications, along with other required documentation, a description of their technical assistance and training program. This information, along with the applicable Standard Form 424, will be considered the grant application so that a separate application package will not be required for the TA grant. While the maximum TA grant amount is 25 percent of the loan amount or $100,000, whichever is less, grant amounts may be adjusted downward based on information provided in the application.

Subsection (d) describes the additional criteria by which any MDO seeking funding for enhancement grants will be scored. Additionally, the dollar amount of TA grants will be based on the loan amount made to the MDO, in accordance with the statute, and the program microloan portfolio owed to the MDO.

Lastly, subsection (e) describes optional application provisions for microlenders who have participated in this program for at least five years. The optional application provisions reduce the amount of paperwork required to apply for future funding under this program.

K. Selection of Applications for Funding (§ 4280.317)

This section further explains the selection process by which funds will be awarded. Applications from microlenders with 3 or more years experience and applications from microlenders with less than 3 years experience will be ranked together. Enhancement grant applications will be ranked separately from the microlender applications. Subject to the availability of funds, the highest scoring applications will be funded in descending order.

Given the current funding level, during the initial year of operations, applications will be submitted to the State Offices for initial review, intergovernmental review, and comments. The applications will be submitted by the Rural Development State Offices to the Rural Development National Office for final scoring and selection. Applications will be accepted in the National Office on a quarterly basis using Federal Fiscal Quarters. The Agency reserves the right, as funding for the program increases, to update this method of program administration in future years, including managing the program through Rural Development's state offices.

L. Grant Administration (§ 4280.320)

Discusses the quarterly reporting, site visits, and inspection of records that the Agency will utilize to provide oversight of any organization receiving a grant under this program. Also explains that the Agency will make grant payments not more often than on a quarterly basis.

M. Loan and Grant Servicing (§ 4280.321)

Presents a listing of other regulations that will be applicable for servicing loans and grants made to MDOs.

N. Loans From the MDOs to the Microentrepreneurs and Microenterprises (§ 4280.322)

Discusses requirements for microloans from the MDO to the microborrowers. Presents information on the maximum microloan amounts, terms and conditions, insurance requirements, the appeal of MDO lending decisions, and eligible microloan purposes.

O. Ineligible Microloan Purposes (§ 4280.323)

Describes those activities for which Agency microloan funds may not be used.

IV. Administrative Requirements

A. Executive Order 12866

This proposed rule has been reviewed under Executive Order (EO) 12866 and has been determined significant by the Office of Management and Budget. The EO defines a ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise

interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this EO.

The Agency conducted a cost-benefit analysis to fulfill the requirements of Executive Order 12866. The Agency has identified potential benefits to prospective program participants and the Agency that are associated with improving the availability of microlevel business capital, business-based training and technical assistance, and enhancing the ability of microlenders to service the microentrepreneurs to whom they are making their microloans.

B. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, Rural Development must prepare, to the extent practicable, a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. With certain exceptions, section 205 of UMRA requires Rural Development to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

C. Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' Rural Development has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.,* an Environmental Impact Statement is not required.

D. Executive Order 12988, Civil Justice Reform

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. Except where specified, all State and local laws and regulations that are in direct conflict with this rule will be preempted. Federal funds carry Federal requirements. No person is required to apply for funding under this program, but if they do apply and are selected for funding, they must comply with the requirements applicable to the Federal program funds. This rule is not retroactive. It will not affect agreements entered into prior to the effective date of the rule. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

E. Executive Order 13132, Federalism

It has been determined, under Executive Order 13132, Federalism, that this proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in the proposed rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–602) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute. If an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, this analysis is not required. Small entities include small businesses, small organizations, and small governmental jurisdictions.

In compliance with the RFA, Rural Development has determined that this action will not have a significant economic impact on a substantial number of small entities for the reasons discussed below. While, the majority of MDOs expected to participate in this Program will be small businesses, the average cost to an MDO is estimated to be approximately 1 percent of the total mandatory funding available to the program in fiscal years 2009 through 2012. Rural Development estimates that most of the administrative costs incurred by MDOs participating in the program will be covered by the interest rate spread between the one percent loan from Rural Development and the interest rate on loans made to the microentrepreneur by the MDO. Further, this regulation only affects MDOs that choose to participate in the program.

G. Executive Order 12372, Intergovernmental Review of Federal Programs

This program is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. Intergovernmental consultation will occur for the assistance to MDOs in accordance with the process and procedures outlined in 7 CFR part 3015, subpart V. Assistance to rural microenterprises will not require intergovernmental review.

Rural Development will conduct intergovernmental consultation using RD Instruction 1940–J, ''Intergovernmental Review of Rural Development Programs and Activities,'' available in any Rural Development office, on the Internet at *http://www.rurdev.usda.gov/regs,* and in 7 CFR part 3015, subpart V. Note that not all States have chosen to participate in the intergovernmental review process. A list of participating States is available at the following Web site: *http://www.whitehouse.gov/omb/grants/spoc.html.*

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

This executive order imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that the proposed rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian tribes. Thus, the proposed rule is not subject to the requirements of Executive Order 13175.

I. Programs Affected

Catalog of Federal Domestic Assistance (CFDA) Number. This program is listed in the Catalog of Federal Domestic Assistance under Number 10.870.

J. Paperwork Reduction Act

The collection of information requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for clearance. In accordance with the

Paperwork Reduction Act of 1995, USDA Rural Development will seek standard OMB approval of the reporting requirements contained in this proposed rule and hereby opens a 60-day public comment period.

Title: Rural Microentrepreneur Assistance Program.

Type of Request: New Collection.

Abstract: The collection of information is vital to Rural Development to make decisions regarding the eligibility of projects and loan and grant recipients in order to ensure compliance with the regulations and to ensure that the funds obtained from the Government are being used for the purposes for which they were awarded. Microdevelopment organizations seeking funding under this program will have to submit applications that include specified information, certifications, and agreements. This information will be used to determine applicant eligibility and to ensure that funds are used for authorized purposes. Applications for continued participation in the program will include primarily any needed updates to the information submitted with the initial application.

Once an MDO has been approved for participation in the program, it must submit additional documents, reports, and certifications to the Agency. For MDOs receiving loans, the necessary documents are required around loan closing. For MDOs receiving grant funds, the MDO must submit a financial status report and request for advancement or reimbursement. In addition, all MDOs that are awarded funds under this program must submit quarterly reports to the Agency to provide information on their performance. Some grantees will also be required to submit other reports on occasion in the event of poor performance or other such occurrences that require more than the usual set of reporting information. Lastly, grantees that plan to spend technical assistance grant funds on administrative expenses must submit an annual budget of proposed administrative expenses for Agency approval.

In summary, this collection of information is necessary in order to implement this program.

The following estimates are based on the anticipated average over the first three years the program is in place.

Estimate of Burden: Public reporting for this collection of information is estimated to average 2 hours per response.

Respondents: Microenterprise development organizations (nonprofit entities, Indian tribes, and public institutions of higher education).

Estimated Number of Respondents: 66.

Estimated Number of Responses per Respondent: 36.

Estimated Number of Responses: 2,379.

Estimated Total Annual Burden (Hours) on Respondents: 4,462.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch at (202) 692–0043.

Comments

Comments are invited regarding: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Rural Development, including whether the information will have practical utility; (b) the accuracy of Rural Development's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, 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 Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, Stop 0742, 1400 Independence Ave., SW., Washington, DC 20250–0742. All responses to this proposed rule will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

K. E-Government Act Compliance

USDA is committed to complying with the E-Government Act of 2002 (Pub. L. 107–347, December 17, 2002), to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

List of Subjects in 7 CFR 4280

Business programs, Grant programs, Loan programs, Microenterprise development organization, Microentrepreneur, Rural development, Small business, Rural areas.

For the reasons set forth in the preamble, part 4280 of title 7 of the Code of Federal Regulations is proposed to be amended as follows:

PART 4280—LOANS AND GRANTS

1. The authority citation for part 4280 is revised to read as follows:

Authority: 7 U.S.C. 1989(a), 7 U.S.C. 2009s.

2. Part 4280 is amended by adding a new subpart D to read as follows:

Subpart D—Rural Microentrepreneur Assistance Program

Sec.

Subpart D—Rural Microentrepreneur Assistance Program

§ 4280.301 Purpose and scope.

(a) This subpart contains the provisions and procedures by which the Agency will administer the Rural Microenterprise Assistance Program (RMAP). The purpose of the program is to support the development and ongoing success of rural microentrepreneurs and microenterprises (businesses generally with ten employees or fewer and in need of financing in the amount of $50,000 or less). To meet this purpose, the program will make financial assistance, business based training, and technical assistance available to microenterprises in rural areas and will deliver direct loans and technical assistance (TA) grants to Microenterprise Development Organizations (MDOs). These funds will be used by MDOs to assist microentrepreneurs by provision of integrated financial assistance, business training, and technical support. The program will also provide enhancement grants to enhance the capabilities of MDOs to support rural microenterprise development. In addition, program funds will be used to support other such activities as deemed appropriate by the

Secretary to ensure the development and ongoing success of rural microenterprises.

(b) The Agency will make direct loans to microlenders, as defined in § 4280.302, to capitalize microloan revolving funds to provide fixed interest rate microloans to microentrepreneurs for startup and growing microenterprises. Technical assistance grants will be awarded to microlenders to provide technical assistance to microentrepreneurs who have received one or more microloans from the MDO under this program.

(c) To ensure that MDOs are able to provide appropriate training to microentrepreneurs, operate efficiently, and stay up-to-date on business training practices, the Agency will make enhancement grants to microlenders that have successfully completed the application scoring process for such grants, whether or not they receive other funding under this program, to enhance their ability to provide training, operational support, business planning, market development assistance, and other related services to rural microentrepreneurs.

§ 4280.302 Definitions and abbreviations.

(a) *General definitions.* The following definitions apply to the terms used in this subpart.

Administrative expenses. Those expenses incurred by an MDO for the operation of services under this program. Not more than 10 percent of TA grant funding may be used for such expenses.

Agency. USDA Rural Development, Rural Business-Cooperative Service or its successor organization.

Agency personnel. Individuals employed by the United States Department of Agriculture-Rural Development Agency, who are more than 6 months from separating from the Agency.

Applicant. The eligible legal entity, also referred to as a microenterprise development organization or MDO, submitting the application.

Application. The forms and documentation submitted by an MDO for acceptance into the program.

Award. The written documentation, executed by the Agency after the application is approved, containing the terms and conditions for provision of financial assistance to the applicant. Financial assistance may constitute a loan or a grant or both.

Business incubator. An organization that provides temporary premises, and also provides technical assistance, advice, use of equipment, and may provide access to capital, or other facilities or services to microentrepreneurs and microenterprises starting or growing a business.

Default. Default may be monetary or performance based.

(i) Monetary default is failure by a participating MDO to meet any financial obligation or term of a loan or grant. An MDO will be considered in monetary default if it fails to make 3 or more scheduled loan payments in a row; if it misuses grant funding; or if it has less than a total of 105 percent of the dollars lent to it under this program and still owed to the Agency in a combination of the Rural Microloan Revolving Fund (RMRF), the Loan Loss Reserve Fund (LLRF), and the total outstanding balance of microloans made.

(ii) Performance default is failure by a participating MDO to meet any regulatory requirement or any requirement in program guidance.

Delinquency. Failure by an MDO to make a scheduled loan payment by the due date or within any grace period as stipulated in the promissory note and loan agreement.

Enhancement grant. A grant whose funds are used to improve the internal operations of a microlender participating under this program in a manner that allows the microlender to improve their capabilities in delivering training, operational support, business planning, market development assistance, and other related services to rural microentrepreneurs

Facilitation of capital. For purposes of this program, facilitation of capital means assisting a technical assistance client in obtaining a microloan whether or not the microloan is wholly or partially capitalized by funds provided under this program.

Fiscal year (FY). Fiscal year means the 12-month period beginning October 1 of any given year and ending on September 30 of the following year.

Full-time equivalent employee (FTE). The Agency uses the Bureau of Labor Statistics definition of full-time jobs as its standard definition. For purposes of this program, a full-time job is a job that has at least 35 hours in a work week. As such, one full-time job with at least 35 hours in a work week equals one FTE; two part-time jobs with combined hours of at least 35 hours in a work week equals one FTE, and three seasonal jobs equals one FTE. If an FTE calculation results in a fraction, it should be rounded up to the next whole number.

Indian tribal government employee. An individual currently employed by its Indian tribal government with more than 6 months remaining in his/her contract or other agreement to remain a paid, full-time employee of the tribal government. If no written agreement exists, then there must be an understanding with the tribe that the employee is expected to remain employed on a full-time basis with the tribe for 6 months or more.

Indian tribe. The term ''Indian tribe'' as defined in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)—means ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.''

Loan loss reserve fund (LLRF). An interest-bearing deposit account an MDO must establish to pay any shortage in the rural microloan revolving fund caused by delinquencies or losses on microloans. The LLRF account must be maintained in an amount equal to at least 5 percent of the outstanding balance of funds owed to the Agency by the MDO under this program. The Agency will hold a security interest in the account and all funds therein, until the MDO has repaid its debt to the Agency under this program.

Microenterprise development organization (MDO). An organization that:

(i) Is a non-profit entity; an Indian tribe (the government of which tribe certifies that no MDO serves the tribe and no RMAP exists under the jurisdiction of the Indian tribe); or a public institution of higher education; and

(ii) Provides training and technical assistance to rural microentrepreneurs; and

(iii) Facilitates access to capital or another related service; and

(iv) Has a demonstrated record of delivering services to rural microentrepreneurs, or an effective plan to develop a program to deliver such services.

Microentrepreneur. An owner and operator, or prospective owner and operator, of a rural microenterprise who is unable to obtain sufficient training, technical assistance, or credit other than under this section, as determined by the Secretary. For purposes of this regulation, rural microentrepreneur and microentrepreneur are synonymous. All microentrepreneurs assisted under this regulation must be located in rural areas. Microenterprises include businesses employing 10 people or

fewer that are in need of $50,000 or less in business financing and/or in need of business based technical assistance and training. Such businesses may include any type of legal business that meets local standards of decency. Business types may also include agricultural producers provided they meet the stipulations in this definition.

Microlender. An MDO that has been approved by the Agency for participation under this subpart.

Microloan. A business loan of not more than $50,000 with a fixed interest rate that is provided to a rural microentrepreneur for startup and growing rural microenterprises.

Military personnel. Individuals, regardless of rank, currently enlisted in active military service with more than 6 months remaining in their service requirement.

Nonprofit entity. An entity, determined by State Law, to be conducting business so as to be defined as a nonprofit entity and that has applied for or received such designation from the U.S. Internal Revenue Service.

Program. The Rural Microentrepreneur Assistance Program (RMAP).

Rural microenterprise. The term 'rural microenterprise' means:

(i) A sole proprietorship located in a rural area; or

(ii) A business entity with not more than 10 full-time-equivalent employees located in a rural area.

Rural microloan revolving fund (RMRF). An interest-bearing account into which an MDO shall deposit loan funds received from the Agency, from which loans shall be made by the MDO to microentrepreneurs, and from which repayments to the Agency shall be made. The Agency will hold a security interest in the RMRF account and on any funds therein until such time as the MDO repays its debt to the Agency under this program.

Rural or rural area. For the purposes of this program, the terms 'rural' and 'rural area' are defined as any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States; and the contiguous and adjacent urbanized area.

(i) For purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self-government, and legal powers set forth in a charter granted by the State.

(ii) Notwithstanding any other provision of this paragraph, within the areas of the County of Honolulu, Hawaii, and the Commonwealth of Puerto Rico, the Secretary may designate any part of the areas as a rural area if the Secretary determines that the part is not urban in character, other than any area included in the Honolulu census designated place (CDP) or the San Juan CDP.

Significant outmigration. The movement of population, other than migrant worker populations, away from a defined area at a rate of 15 percent or higher based on the three most recent decennial censuses as demonstrated by data supplied by the U.S. Census Bureau.

Technical assistance and training. The provision of education, guidance, or instruction to one or more microentrepreneur(s) to prepare them for self-employment; to improve the state of their current microbusiness; to increase their capacity in a specific technical aspect of the subject business; and, to assist the microentrepreneur(s) in achieving a degree of business preparedness and/or functioning that will allow them to obtain, or have the ability to obtain, one or more microloans of $50,000 or less whether or not from program funds.

Technical assistance grant. A grant whose funds are used to provide technical assistance and training, as defined in this section.

(b) *Abbreviations.* The following abbreviations apply to the terms used in this subpart:

FTE—Full-time employee.
LLRF—Loan loss reserve fund.
MDO—Microenterprise development organization.
RMAP—Rural microentrepreneur assistance program.
RMRF—Rural microloan revolving fund.
TA—Technical assistance.

§ 4280.303 Exception authority.

The Administrator may make limited exceptions to the requirements or provisions of this subpart. Such exceptions must be in the best financial interest of the Federal government, such as agreeing to the terms of a new repayment agreement to ensure repayment by a defaulted microlender. No exceptions may be made regarding applicant eligibility, project eligibility, or the rural area definition. In addition, exceptions may not be made:

(a) To accept an applicant into the program that would not normally be accepted under the scoring system;

(b) To fund an interested party that has not successfully competed for funding in accordance with the regulations.

§ 4280.304 Review or appeal rights and administrative concerns.

(a) *Review or appeal rights.* An applicant MDO may seek a review of an Agency decision under this subpart from the appropriate Agency official that oversees the program in question, or appeal to the National Appeals Division in accordance with 7 CFR part 11.

(b) *Administrative concerns.* If a microborrower has any questions or concerns regarding the administration of the program, including action of the microlender, contact: Business Programs, Specialty Programs Division, USDA, Rural Development, Rural Business—Cooperative Service, Room 6868, South Agriculture Building, Stop 3225, 1400 Independence Avenue, SW., Washington, DC 20250–3225 or the USDA Rural Development State Office in the State in which the microborrower is located.

§ 4280.305 Nondiscrimination and compliance with other Federal laws.

(a) Applicants must comply with other applicable Federal laws, including the Equal Employment Opportunities Act of 1972, the Americans with Disabilities Act, the Equal Credit Opportunity Act, the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and 7 CFR part 1901–E.

(b) The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, *etc.*) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). Any applicant that believes it has been discriminated against as a result of applying for funds under this program should contact: USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice) or (202) 720–6382 (TDD) for information and instructions regarding the filing of a Civil Rights complaint. USDA is an equal opportunity provider, employer, and lender.

(c) A pre-award compliance review will take place at the time of application

when the applicant completes Form RD 400–8, ''Compliance Review'' (or successor form). Post award compliance reviews will take place once every three years after the beginning of participation in the program and until such time as a microlender leaves the program.

§§ 4280.306–4280.309 [Reserved]

§ 4280.310 Program requirements for MDOs.

(a) *Eligibility requirements for applicant MDOs.* To be eligible for a direct loan or grant award under RMAP, an applicant must meet each of the criteria set forth in paragraphs (a)(1) through (8) of this section, as applicable.

(1) *Type of applicant.* The applicant must meet the definition of an MDO under this program.

(2) *Citizenship.* To be eligible to apply for status as an MDO, the applicant must be at least 51 percent controlled by persons who are either:

(i) Citizens of the United States, the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, American Samoa, or the Commonwealth of Puerto Rico; or

(ii) Legally admitted permanent residents residing in the U.S.

(3) *Legal authority and responsibility.* The applicant must have the legal authority necessary to carry out the purpose of the award.

(4) *Direct loans.* The applicant will be considered for a direct loan to capitalize a revolving loan fund if it submits an application that scores sufficiently to indicate that the applicant is appropriately qualified to perform under this program and will use program funding exclusively for making and administering a microloan revolving fund in one or more rural areas; and

(i) Has demonstrated experience in the management of a revolving loan fund; or

(ii) Certifies that it, or its employees, have received education and training from a qualified microenterprise development training entity to the extent that it has the capacity to manage such a revolving loan fund; or

(iii) Is actively and successfully participating as an intermediary lender in good standing under the U.S. Small Business Administration (SBA) Microloan Program or other similar loan programs as determined by the Administrator.

(5) *Grants to support rural microenterprise development (enhancement grants).* Any microlender participating in the program will be considered eligible to apply for an enhancement grant. Such grants must be used to improve the internal operations of the microlender so that they can improve their ability to deliver training, operational support, business planning, market development assistance, and other related services to rural microentrepreneurs. Other related services include improvement in the microlender's ability to make and service loans, arrive at sound lending decisions, improve operational efficiency, improve their marketing strategies so as to reach an increased number of potential microborrowers, enhance record keeping and data gathering, and penetrating new markets as they develop such as sustainable small farming, the greening of existing businesses, development of new green businesses, and other sectors yet to be developed. Any microlender that receives an enhancement grant to pursue an internal enhancement project must enter into an agreement with a trainer/service provider within 90 days of notification of the grant award. If the microlender does not enter into such agreement within these 90 days, the enhancement grant will be forfeited.

(6) *Grants to support microentrepreneurs (TA grants).* The capacity of the applicant MDO to provide an integrated program of microlending and technical assistance will be evaluated during the scoring process. Therefore, an applicant MDO will be considered eligible to receive TA grant funding if it receives funding to provide microloans under this program, and agrees to use TA grant funding exclusively for providing technical assistance and training to eligible microentrepreneurs, with the exception that up to 10 percent of the grant funds may be used to cover administrative expenses, except as may be reduced as provided under § 4280.312(a)(5). The following limitations will apply to TA grant funding:

(i) Administrative expenses should be kept to a minimum. As such, the applicant MDO is required, in the application materials, to provide an administrative budget plan indicating the amount of funding it will need for administrative purposes.

(ii) While operating the program, the selected microlender will be expected to adhere to the estimates it provides in the application. If for any reason, the microlender cannot meet the expectations of the application, it must contact the Agency in writing to request a budget adjustment.

(iii) Budget adjustments will be considered and approved on a case by case basis.

(7) *Ineligible applicants.* An applicant will be considered ineligible if it does not meet the definition of an MDO as provided in § 4280.302; if it is debarred, suspended or otherwise excluded from, or ineligible for, participation in Federal assistance programs. The applicant will also be considered ineligible if it has an outstanding judgment against it, obtained by the United States in a Federal Court (other than U.S. Tax Court), is delinquent in meeting U.S. Internal Revenue Service (IRS) requirements, or cannot meet the requirements of paragraph (a)(6) of this section.

(8) *Delinquencies.* No applicant will be eligible to receive a loan if it is delinquent on a Federal debt. (**Note:** *See* 31 U.S.C. 3720B, an applicant is still eligible for a grant if they are delinquent on a Federal debt; however, *see* 28 U.S.C. 3201, Federal judgment debtors (other than tax debts) are ineligible for Federal loans and grants).

(b) *Application eligibility.* An application will be considered eligible for funding if it is submitted by an eligible MDO and will qualify for funding based on the results of review, scoring, and other procedures as indicated in this subpart, and will either:

(1) Establish, or add capital to, an RMRF originally capitalized under this program; or

(2) Establish or continue a training and TA program for rural microentrepreneurs as defined.

(c) *Business incubators.* Because the purpose of a business incubator is to provide business-based technical assistance and an environment in which micro-level, very small, and small businesses may thrive, a microlender that owns and operates a small business incubator, as described, will be considered eligible to apply. In addition, a business incubator selected to participate as a microlender may use RMAP funding to lend to an eligible microenterprise tenant, without imposing a conflict of interest on itself.

§ 4280.311 Loan provisions for Agency loans to microlenders.

(a) *Purpose of the loan.* Loans will be made to eligible and qualified microlenders to capitalize RMRFs. An RMRF will be an exclusive account, from which fixed interest rate microloans will be made to microentrepreneurs and microenterprises; into which payments from microborrowers and reimbursements from the LLRF will be deposited; and from which payments will be made by the microlender to the Agency. Interest earnings accrued by the RMRF will become part of the RMRF and may be used only for the purposes

stated above. However, with advance written approval by the Agency, the microlender may increase the funding in its LLRF with interest earnings from the RMRF. The Agency will hold first lien position on the RMRF account, the LLRF, and all notes receivable from microloans.

(b) *Eligible activities.* Microlenders may make microloans for qualified business activities as specified in § 4280.322 and may use Agency loan funds only for the purposes stated in § 4280.322.

(c) *Ineligible activities.* Microlenders may not use Agency loan funds for administrative costs or expenses and may not make microloans under this program for ineligible purposes as specified in § 4280.323.

(d) *Loan terms and conditions for microlenders.* Loans will be made to microlenders under the following terms and conditions:

(1) Funds received from the Agency will be deposited into an interest bearing account that will be the RMRF account.

(2) The RMRF account may be used to make microloans, to accept repayments from microborrowers, to repay the Agency and, with the advance written approval of the Agency, to supplement the LLRF with interest earnings from the RMRF. The Agency will only approve the use of interest earning the RMPF account to supplement the LLRF in those cases where the microlender's portfolio is highly performing, where the RMRF account is at an appropriate level to guarantee the ability to repay, and the microlender's repayment history has been highly satisfactory.

(3) The term of a loan made to a microlender will not exceed 20 years and may be less, as determined by the Agency.

(4) Loan repayments will be made in equal monthly installments to the Agency beginning on the last day of the 24th month of the life of the loan.

(5) A microlender may make partial or full repayment of its debt to the Agency at any time without penalty.

(6) The microlender is responsible for full repayment of its loan to the Agency regardless of the performance of its microloan portfolio.

(7) The Agency may call the entire loan due and payable prior to the end of the 20-year period, due to non-performance, delinquency, or default.

(8) Each loan made to a microlender will automatically receive a 2-year deferral during which time no repayment will be due to the Agency.

(i) Interest will accrue during the deferral period on funds drawn down from (disbursed by) the Agency.

(ii) The deferral period will begin on the day the loan to the microlender is closed.

(9) Loan closing between the microlender and the Agency must take place within 60 days of loan approval or funds will be forfeited.

(10) Microlenders will be eligible to receive a disbursement of up to 25 percent of the total loan amount at the time of loan closing. Interest will accrue on all funds disbursed to the microlender beginning on the date of disbursement.

(11) A microlender must make one or more microloans within 30 days of any disbursement it receives from the Agency.

(12) Microlenders may receive additional disbursements not more than quarterly, until the full amount of the loan to the microlender is disbursed, or until the end of the thirty sixth month of the loan, whichever occurs first. To ensure that microleners utilize their funding in an appropriate manner, requests for disbursement must be accompanied by a description of the incoming microloan pipeline. Requests for funding should generally be in the amount of the incoming pipeline plus 20 percent of that amount. Requests in excess of that amount must be explained.

(13) Each loan made to a microlender will bear an interest rate equal to the rate applicable to five-year obligations of the United States treasury, adjusted to the nearest one-eighth percent, subject to:

(i) A minimum interest rate of at least 1 percent, and

(ii) An adjustment as provided in paragraph (d) (17) of this section

(14) Each loan to a microlender will accrue interest at a rate of 1 percent during the initial deferral period. Interest accrued during this period will be capitalized as described in paragraph (d)(15) of this section.

(15) On the first day of the twenty-second month of the initial deferral period, the microlender's debt to the Agency will be calculated and amortized over an 18-year period. The first payment will be due to the Agency on the last day of the twenty-fourth month of the life of the loan. Interest accrued during the deferral period will be calculated into the payment and repaid over the 18-year payment period.

(i) A microlender requesting disbursements after the repayment calculation may inadvertently subject itself to negative amortization. Such a microlender may request to have the loan expeditiously re-amortized by the Agency.

(ii) All loans to microlenders will be automatically re-amortized at the end of the thirty-fourth month of the life of the loan.

(16) Funds not disbursed to the microlender by the end of the thirty-fourth month of the loan from the Agency will be de-obligated.

(17) All loans will receive an evaluation during the thirty-fourth month of the loan, so that:

(i) A microlender that has re-loaned all of its Agency funding to microentrepreneurs will adjust to the rate provided in paragraph (d)(13) of this section less 200 basis points for the life of the loan.

(ii) A microlender that has not fully re-loaned all of its Agency funding to microentrepreneurs, as of month twenty-four, will adjust to the rate provided in paragraph (d)(13) less 100 basis points for the life of the loan.

(18) The Agency will hold first lien position on the RMRF account, the LLRF, and all notes receivable from microloans.

(19) If a microlender makes a withdrawal from the RMRF for any purpose other than to make a microloan, repay the Agency, or, with advance written approval, transfer an appropriate amount of non-Federal funds to the LLRF, the Agency may impose a lien on the account, restricting further access to withdrawals from the account by the microlender O.

(20) In the event a microlender fails to meet its obligations to the Agency, the Agency may:

(i) Take possession of the RMRF and/or any microloans outstanding, and/or the LLRF; or

(ii) Call the loan due and payable in full; or

(iii) Enter into a workout agreement acceptable to the Agency, which may or may not include transfer or sale of the portfolio to another microlender (whether or not funded under this program) deemed acceptable to the Agency; or

(iv) Pursue any combination of actions specified in paragraphs (d)(20)(i) through (iii) on this section.

(e) *Loan funding limitations.* (1) *Minimum and maximum loan amounts.* The minimum loan amount a microlender may borrow under this program will be $50,000 (fifty thousand dollars). The maximum any microlender may borrow in a single funding under this program will be $500,000 provided certain limitations are met. In no case will the aggregate debt owed to the program by any single microlender exceed $2,500,000.

(2) *Use of funds.* Loans must be used only to establish an RMRF out of which

microloans will be made, into which microloan payments will be deposited, and from which repayment will be made to the Agency. Interest earned by the microlender on these funds may, with advance written authorization from the Agency, be used to help fund the LLRF.

(f) *Loan loss reserve fund.* Each microlender that receives one or more loans under this program will be required to establish an LLRF.

(1) *Purpose.* The purpose of the LLRF is to protect the microlender and the Agency against losses that may occur as the result of the failure of one or more microentrepreneurs to repay their loans on a timely basis.

(2) *Capitalization and maintenance.* The LLRF must:

(i) Be held in a Federally-insured deposit account separate and distinct from any other fund owned by the microlender; and

(ii) Be maintained in an amount equal to not less than 5 percent of the amount owed by the microlender to the Agency under this program; and

(iii) Be capitalized using non-Federal funding; and

(iv) Remain open, appropriately capitalized, and active until such time as:

(A) All obligations owed to the Agency by the microlender under this program are paid in full; or

(B) It is used to assist with full repayment/prepayment of the microlender's debt.

(3) *Use of LLRF funds.* The LLRF must be used only to:

(i) Recapitalize the RMRF in the event of the loss and write-off of a microloan; that is, when a loss has been paid to the RMRF, from the LLRF, the microlender must refresh the LLRF to the required level from its own funding; and

(ii) Accept non-Federal deposits as required for maintenance of the fund at a level equal to 5 percent or more of the outstanding microloan balance; and

(iii) Accrue interest; interest earnings accrued by the LLRF will become part of the LLRF and may be used only for eligible purposes; and

(iv) Prepay or repay the Agency.

(4) *LLRF funded in advance.* The LLRF account must be established and partially funded by the microlender prior to the closing of the loan from the agency. Such funds must come from private sector sources. Federal funds will not be accepted as appropriate for the LLRF. At all times, the microlender must maintain the LLRF at a minimum of 5 percent of the total amount owed by the microlender, under this program, to the Agency. In the event of exhibited weaknesses on the part of a microlender, the Agency may require additional funding be put into the LLRF; however, the Agency may never require an LLRF of more than 10 percent of the total amount owed to the microlender.

(g) *Loan approval and obligating funds.* The loan will be considered approved on the date the signed copy of Form RD 1940–1, ''Request for Obligation of Funds,'' (or successor form(s)) is mailed to the microlender. Form RD 1940–1 authorizes funds to be obligated and may be executed by the loan approving official provided the microlender has the legal authority to contract for a loan, and to enter into required agreements, including an Agency-approved loan agreement, and has signed Form RD 1940–1.

(h) *Loan closing.* (1) Prior to loan closing, microlenders providing microloans must provide evidence that the RMRF and LLRF bank accounts have been set up and 5 percent of the initial disbursement has been deposited. USDA will have a first lien on these accounts. The evidence shall consist of:

(i) A pre-authorized debit form allowing the agency to withdraw payments from the RMRF account, and in the event of a repayment workout, from the LLRF account;

(ii) An Agency-approved automatic deposit authorization form from the depository institution providing the Agency with the RMRF account number into which funds may be deposited at time of disbursement to the microlender; and

(iii) A statement from the depository institution as to the amount of cash in the LLRF account.

(2) At loan closing, the microlender must certify that:

(i) All requirements of the letter of conditions have been met and

(ii) There have been no material adverse change(s) in the microlender or its financial condition since the issuance of the letter of conditions. If one or more adverse changes have occurred, the microlender must explain the change(s) and the Agency must review the changes to determine that the microlender remains eligible and qualified to participate as an MDO.

(iii) An Agency-approved promissory note must be executed at loan closing or prior to disbursement of funds.

(3) Agency personnel will not sign any documents other than those specifically provided for in this subpart.

(4) Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign, and return Form RD 1942–46, ''Letter of Intent to Meet Conditions,'' (or successor form) to the Agency; or if certain conditions cannot be met, the applicant may propose alternate conditions. The processing officer will review any requests for changes to the letter of conditions. The processing officer will approve only minor changes that do not materially affect the microlender. Changes in legal entities or where tax considerations are the reason for the change will not be approved.

(5) The microlender will provide sufficient evidence to enable the Agency to ascertain that no claim or liens of laborers, materials, contractors, subcontractors, suppliers of machinery and equipment, or other parties are against the security of the microlender, and that no suits are pending or threatened that would adversely affect the security of the microlender when the security instruments are filed.

(i) *Recordkeeping, reporting, and oversight.* Microlenders must maintain all records applicable to the program, to be made available to the Agency upon request, and must submit quarterly reports as specified in paragraphs (i)(1) through (4) of this section.

(1) On a quarterly basis, within 30 days of the end of the calendar quarter, each microlender that has an outstanding loan under this section must provide to the Agency:

(i) Quarterly reports, using an Agency-approved form, containing such information as the Agency may require, and in accordance with OMB circulars and guidance, to ensure that funds provided are being used for the purposes for which the loan to the microlender was made. At a minimum, these reports should include a discussion reconciling the microlender's actual results for the period against its goals, milestones, and objectives as previously communicated to the Agency;

(ii) SF–269, ''Financial Status report (or successor form)''; and

(iii) SF–270, ''Request for Advance or Reimbursement'' (or successor form).

(2) Microlenders must provide evidence that the sum of the unexpended amount in the RMRF, plus the amount in the LLRF, plus debt owed by the microborrowers is equal to a minimum of 105 percent of the amount owed by the microlender to the Agency unless the Agency has established a higher LLRF reserve requirement for a specific microlender.

(3) If a microlender has more than one loan from the Agency, a separate report must be made for each unless the Agency has given authorization for the microlender to combine its RMRF accounts. The Agency will give authorization to combine RMRF accounts only if (1) the underlying loans

have the same terms and conditions and (2) if the combined report allows the Agency to effectively administer the program, including providing the same level of transparency and information for each loan as if separate reports had been prepared.

(4) The quarterly loan reports will include RD Form 1951–4, ''Report of RMAP/RMRF Lending Activity,'' (or successor form(s)) as well as a discussion of any delinquent loans and the steps being taken to cure the delinquencies. Other reports may be required from time to time in the event of poor performance, one or more work out agreements or other such occurrences that require more than the usual set of reporting information.

(5) Because microloans made by microlenders to microborrowers are not underwritten by the Agency prior to loan making, the Agency may, at any time, choose to visit the microlender and inspect its files to ensure that program requirements are being met.

§ 4280.312 Grant provisions.

(a) *General.* The following provisions apply to both TA and enhancement grants, unless otherwise specified.

(1) *Grant amounts.* Maximum grant amounts for enhancement grants will be determined and announced annually based on the availability of funds. The maximum enhancement grant funding awarded to a single microlender will not exceed $25,000 or ten percent of the available funding, whichever is less, in any given year. The maximum TA grant amount is 25 percent of the loan amount or $100,000, whichever is less. The Agency may adjust the maximum TA grant amount downward based on information provided in the application.

(2) *Cost share.* The Federal share of the cost of a grant (technical assistance or enhancement) provided under this section will not exceed 75 percent.

(3) *Matching requirement.* Microlenders must provide a 10 percent non-Federal cash matching contribution against any grant awarded under this program. Microlenders must also provide a 15 percent non-Federal cash or in-kind contribution against any grant awarded under this program. The total matching requirement is 25 percent of the amount of the grant. The non-Federal match against a grant is separate and distinct from the funds required to be deposited in the LLRF. RD will be able to monitor this match based on the SF 270 which is the Request for Advance or Reimbursement form. The first disbursement will require a match of that disbursement. Using the SF 270, no second grant disbursement would be made unless the matching funds were accounted for in advance.

(4) *Oversight.* Microlenders receiving a grant must submit reports, as specified in paragraphs (a)(4)(i) through (iv) of this section.

(i) On a quarterly basis, within 30 days after the end of the fiscal calendar quarter, a microlender that receives a grant will provide to the Agency an Agency-approved quarterly report containing such information as the Agency may require to ensure that funds provided are being used for the purposes for which the grant was made, including SF–269 or SF–272, ''Federal Cash Transaction Report,'' (or successor form(s)), as appropriate, SF–270 (or successor form) if requesting grant funding at the time of reporting, and narrative reporting information as required by OMB circulars.

(ii) If a microlender has more than one grant from the Agency, a separate report must be made for each.

(iii) The reports will include Standard Form 270 and Standard Form 272 (or successor forms) along with a narrative report as required in OMB Circulars A–102 and A–110. This report will include information on the microlender's technical assistance, training, and/or enhancement activity, and grant expenses, milestones met, or unmet, explanation of difficulties, observations and other such information.

(iv) Other reports may be required by the Agency from time to time in the event of poor performance or other such occurrences that require more than the usual set of reporting information.

(5) *Administrative expenses.* Not more than 10 percent of a TA grant received by a microlender for a fiscal year (FY) may be used to pay administrative expenses. Microlenders must submit an annual budget of proposed administrative expenses for Agency approval. The Agency has the right to deny the 10 percent and to fund administration expenses at a lower level.

(6) *Ineligible grant purposes.* Grant funds may not be used for:

(i) Grant application preparation costs;

(ii) In the case of a TA grant, any costs incurred prior to the application date of the first microloan funded;

(iii) In the case of a enhancement grant, costs incurred prior to the obligation date of the grant and capital improvements;

(iv) Political or lobbying activities;

(v) Assistance to any ineligible entity;

(vi) Payment of any judgment or debt owed to the United States; and

(vii) Payment of any costs other than those allowed in paragraphs (b)(1) and (c)(1) of this section.

(b) *Grants to enhance a microlender capabilities (Enhancement Grants).* (1) *Purpose.* The Agency will make enhancement grants to microlenders to carry out projects and activities that enhances the microlender's capabilities to provide training, operational support, business and strategic planning, and market development assistance, and other related services to assist the microlender in its ability to deliver services to rural microentrepreneurs.

(2) *Grant amounts.* The maximum enhancement grant amount will be announced annually based on the availability of funds. The maximum enhancement grant funding awarded to a single microlender will not exceed $25,000 or ten percent of the available funding, whichever is less, in any given year. Funds cannot be used to pay off any loan amount.

(c) *Grants to assist microentrepreneurs (Technical Assistance (TA) Grants).* (1) *Purpose.* The Agency shall make TA grants to microlenders to assist them in providing marketing, management, and other technical assistance to microentrepreneurs that have received one or more microloans from the microlender.

(2) *Grant amounts.* TA grants will be limited to an amount equal to not more than 25 percent of the total outstanding balance of microloans made and active by the microlender as of the date the grant is awarded or $100,000, whichever is less. However, the minimum TA grant amount will be no less than 15 percent of the outstanding balance of microloans owed to the microlender. Funds cannot be used to pay off the loans. During the first year of operation, the percentage will be determined based on the amount of the loan to the microlender, but will be disbursed on a quarterly basis based on the amount of microloans made. Any grant dollars obligated, but not spent, from the initial grant, will be subtracted from the subsequent year grant to ensure that obligations cover only microloans made and active.

(d) *Grant agreement.* The Agency will notify the approved applicant in writing, using an Agency-approved form (RD 4280–3, ''Rural Economic Development Grant Agreement,'' or successor form), setting out the conditions under which the grant will be made. The form will include those matters necessary to ensure that the proposed grant is completed in accordance with the proposed project and budget, that grant funds are expended for authorized purposes, and

that the applicable requirements prescribed in the relevant Department regulations are complied with.

§§ 4280.313–314 [Reserved]

§ 4280.315 MDO application and submission information.

(a) *Initial and subsequent applications.* Applications shall be submitted in accordance with the provisions of this subpart unless adjusted by the Agency in an annual Notice for Solicitation of Applications (NOSA) or a Notice of Funding Availability (NOFA), depending on the availability of funds at the time of publication.

(b) *Content and form of submission.* Content and form requirements will differ based on the nature of the application. All applicants must provide the information specified in § 4280.316(a).

(1) An applicant with 3 or more years experience as an MDO seeking participation as a microlender must provide the additional information specified in § 4280.316(b). Such an applicant will be applying for a loan to capitalize an RMRF to be accompanied by a TA grant.

(2) An applicant with less than 3 years experience as an MDO seeking participation as a microlender must provide the additional information specified in § 4280.316(c). Such an applicant will also be applying for a loan to capitalize an RMRF to be accompanied by a TA grant.

(3) An applicant seeking enhancement grant funding for a specific enhancement project, internal to its organization, must provide the additional information specified in § 4280.316(d).

(c) *Application submission requirements.* All applicants must submit the following forms (or their successor forms) and information in order to be considered:

(1) Standard Form–424, ''Application for Federal Assistance.''

(2) Standard Form–424A, ''Budget Information—Non-construction Programs.''

(3) Standard Form–424B, ''Assurances—Non-construction Programs.''

(4) For entities that are applying for more than $150,000 in loan funds and/or more than $100,000 in grant funds, only, SF LLL, ''Disclosure of Lobbying Activities.''

(5) AD 1047, ''Certification Regarding Debarment, Suspension, and other Responsibility Matters—Primary Covered Transaction.''

(6) Form RD 1910–11, ''Certification of No Federal Debt.'' Note that this form is only required for loan applicants.

(7) Evidence that the applicant organization meets the citizenship requirements.

(8) Form RD 400–8, ''Compliance Review.''

(d) *Additional documentation.* The information required in this section is necessary for an application to be considered complete.

(1) *Eligibility to apply.* In addition to the forms and information required above, each applicant must demonstrate that it is eligible to apply to participate in this program by submitting documentation that the applicant is an MDO as defined in § 4280.302, as follows:

(i) Copies of the applicant's IRS designation indicating that the applicant is legally considered a non-profit organization; or

(ii) Evidence that the applicant is a Federally recognized Indian tribe, and that the tribe neither operates, nor is served by an existing MDO; or

(iii) Evidence that the applicant is a public institution of higher education.

(iv) A Certificate of Good Standing from the applicant's home state's Office of the Secretary of State.

(2) *Separate applications.* Applicants must submit separate applications for loan funding and for enhancement grant funding.

(i) An entity applying for loan funding as a Microlender will be an MDO, eligible to apply based on the documentation provided under paragraph (b) of this section, that has a demonstrated history of providing microloans and technical assistance and training to rural microentrepreneurs, if it has 3 or more years of experience as an MDO or has an effective plan to develop a program for delivering services to rural microentreprenuers if it has less than 3 years experience as an MDO. Microlenders will apply for loan funds to capitalize an RMRF, and, if selected, will automatically be eligible, though may not receive, a grant for provision of technical assistance and training to rural microentrepreneurs. It will depend on the applicant's score and the number and scores of the other applicant's who apply.

(ii) An entity applying for an enhancement grant must be a microlender participating in this program and must be selected through a separate application process based on the applicant's score and the number and scores of other microlenders applying for enhancement grants.

(e) *Completed applications.* Applications that fulfill the requirements specified in paragraphs (a) through (d) of this section will be fully reviewed, scored, and ranked in accordance with the provisions of § 4280.316. Scoring requirements will vary based on the level of the applicant's experience as an MDO and on the type of funding sought.

§ 4280.316 Application scoring.

Applications will be scored based on the criteria specified in this section using the information submitted in the application. The total available points per application are 100. Points will be awarded as shown in paragraphs (a) through (e) of this section. Awards will be based on the ranking, with the highest ranking applications funded first subject to available funding.

(a) *Application requirements for all loan applications.* All applicants for a loan must submit the information specified in paragraphs (a)(1) through (7) of this section. This information provides a baseline for determination of capacity. Additional information are specified depending on whether the applicant has 3 or more years of experience or less than 3 years of experience. The maximum points available in this paragraph (a) is 45. All applicants must submit:

(1) An organizational chart clearly showing the positions and naming the individuals in those positions. Of particular interest to the Agency are management positions and those positions essential to the operation of microlending and TA programming. Up to 5 points will be awarded.

(2) Information indicating an understanding of microlending. For all applicants, this must be those parts of your policy and procedures manual that deal with the provision of loans, management of loan funds, and provision of technical assistance. Up to 5 points will be awarded.

(3) A succession plan to be followed in the event of the departure of personnel key to the operation of the applicant's RMAP activities. Up to 5 points will be awarded.

(4) Resumes for each of the individuals shown on the organizational chart and indicated as key to the operation of the activities to be funded under this program. Points will be awarded based on the quality of the resumes and on the ability of the key personnel to administer the program. Up to 5 points will be awarded.

(5) Copies of the applicant's most recent, and two years previous, financial statements. Points will be awarded based on the demonstrated ability of the applicant to maintain or grow its bottom line fund balance, its ability to manage

one or more Federal programs, and its capacity to manage multiple funding sources, restricted and non-restricted funding sources, income, earnings, and expenditures. Up to 10 points will be awarded.

(6) A copy of the applicant's organizational mission statement. The mission statement will be rated based on its relative connectivity to microenterprise development and general economic development. The mission statement may or may not be a part of a larger statement. Up to 5 points will be awarded.

(7) Information regarding the geographic service area to be served. Describe the service area. State the number of counties or other jurisdictions to be served. Describe the demographics of the service area and whether or not it is rural, as defined; suffering from significant outmigration as defined; and enjoying a diverse population. Note that you will not be scored on the size of the service area but on the perceived ability to fully cover the service area as described as well as the needs of the service area. Up to 10 points will be awarded.

(b) *Application requirements for microlenders with 3 or more years experience seeking loans only.* In addition to the information specified in paragraph (a) of this section, applicants with 3 or more years experience as an MDO seeking a loan must provide the information specified in paragraphs (b)(1) through (4) of this section. The total number of points available under this paragraph, in addition to the up to 45 points available in paragraph (a) of this section, is 55, for a total of 100.

(1) *History of provision of microloans.* Provide data regarding your history of making microloans for the three years previous to your application by answering the questions in paragraphs (b)(1)(i) through (vi) of this section. This information should be provided clearly and concisely in numerical format as the data will be used to calculate points as noted. Figure 1 presents an example of the format and data required. The total number of available points regarding history is 23.

FIGURE 1—EXAMPLE OF FORMAT AND DATA REQUIREMENTS

Data item	FY2006	FY2007	FY2008	Total
Total # of Microloans Made.				
Total $ Amount of Microloans Made.				
# of Microloans Made in Rural Areas.				
Total $ Amount of Microloans Made in Rural Areas.				
# of Microloans Made to [enter demographic group A].				
# of Microloans Made to [enter demongraphic group B].				
# of Microloans Made to [enter demographic groupd C].				
# of Microloans Made in Areas of Outmigration.				

(i) *Number and amount of microloans made during each of the three previous FYs.* Do not include current year information. If you would like, please include a narrative as a separate attachment; not in the body of the table.

(ii) *Number and amount of microloans made in rural areas.* From the data provided above, please indicate the number and amount of microloans made in rural areas in each of those years. If the history of providing microloans in rural areas shows:

(A) More than the three consecutive years immediately prior to this application, 4 points will be awarded;

(B) At least two of the years but not more than the three consecutive years immediately prior to this application, 2 points will be awarded;

(C) Less than the one year immediately prior to this application, 1 point will be awarded.

(iii) *Percentage of number of loans made in rural areas.* Calculate and enter the percentage of the total portfolio of microloans that have made in rural areas for the past three FYs. If the percentage of the total portfolio of microloans made in rural areas is:

(A) 75 percent or more, 4 points will be awarded;

(B) At least 50 percent but less than 75 percent, 2 points will be awarded;

(C) At least 25 but less than 50 percent, 1 point will be awarded.

(iv) *Percent of dollar amount of loans made in rural areas.* Enter the dollar amount of the total portfolio of microloans you have made in rural areas in the previous three FYs. If the dollar amount of the microloans you made in rural areas is:

(A) 75 percent or more of the total amount, 4 points will be awarded;

(B) At least 50 percent but less than 75 percent, 2 points will be awarded;

(C) At least 25 percent but less than 50 percent, 1 point will be awarded.

(v) *Diversity of microloan portfolio.* Each MDO shall compare the diversity of its microloan portfolio to the demographic makeup of its service area (as determined by the U.S. Census found in the latest decennial census) based on the number of microloans made to microentrepreneurs during the three years preceding applying for a loan under this program. Demographic groups shall include gender, race, ethnicity, disability, and socio-economic status. Points will be awarded on the basis of how close the MDO's microloan portfolio matches the demographic makeup of its service area. A maximum of 7 points will be awarded.

(A) If at least one loan is made to each demographic group and if the percentage of loans made to each demographic group is each within 5 or fewer percentage points of the demographic makeup, 7 points will be awarded.

(B) If at least one loan is made to each demographic group and if the percentage of loans made to each demographic group is each within 10 or fewer percentage points of the demographic makeup, 4 points will be awarded.

(C) If at least one loan is made to each demographic group and if the percentage of loans made to one or more of the demographic groups is greater than 10 percentage points of the demographic makeup OR if no loans are made to one of the demographic groups and if the percentage of loans made to each of the other demographic groups is each within 10 or fewer percentage points of the demographic makeup, 2 points will be awarded..

(D) If no loans have been made to two or more demographic groups, no points will be awarded.

(vi) *Percentage of the total portfolio of microloans made to microentrepreneurs in areas of outmigration for the previous three FYs.* If the percentage of the total portfolio of microloans made to microentrepreneurs in areas of outmigration is:

(A) 75 percent or more, 4 points will be awarded;

(B) At least 50 percent but less than 75 percent, 2 points will be awarded;

(C) At least 25 percent but less than 50 percent, 1 point will be awarded.

(2) *Portfolio management.* Each applicant's ability to manage its portfolio will be determined based on

the data provided in response to paragraphs (b)(2)(i) and (ii) of this section and scored accordingly. Total available points will be 8.

(i) Enter the total number of your microloans paying on time for the three previous FYs. If the total number of microloans paying on time at the end of each year over the prior three FYs is:

(A) 95 percent or more, 4 points will be awarded;

(B) At least 85 percent but less than 95 percent, 2 points will be awarded;

(C) Less than 85 percent, 0 points will be awarded.

(ii) Enter the total number of microloans 30 to 90 days in arrears or that have been written off at year end for the three previous FYs. If the total number of these microloans is:

(A) 5 percent or less of the total portfolio, 4 points will be awarded;

(B) More than 5 percent, 0 points will be awarded.

(3) *History of provision of technical assistance to microentrepreneurs.* Each applicant's history of provision of technical assistance to microentrepreneurs and/or microborrowers, and their ability to reach diverse communities and microborrowers, will be scored based on the data specified in paragraphs (b)(3)(i) through (vi) of this section. The maximum number of points available will be 15.

(i) Provide the total number of rural microentrepreneurs that received both microloans and TA services for each of the previous three FYs.

(ii) Provide the percentage of the total number of rural microentrepreneurs that received both microloans and TA services for each of the previous three FYs (calculate this as the total number of rural microloans made divided by the total number of loans made during the past three FYs). If provision of both microloans and technical assistance to rural microentrepreneurs is demonstrated at a rate of:

(A) 75 percent or more, 4 points will be awarded;

(B) At least 50 percent but less than 75 percent, 2 points will be awarded;

(C) At least 25 percent but less than 50 percent, 1 point will be awarded.

(iii) Provide the percentage of the total number of rural minority, socially-disadvantaged, or disabled microentreprenuers that received both microloans and TA services for each of the previous 3 FYs. If the demonstrated provision of microloans and technical assistance to these rural microentrepreneurs is at a rate of:

(A) 75 percent or more, 7 points will be awarded;

(B) At least 50 percent but less than 75 percent, 4 points will be awarded;

(C) At least 25 percent but less than 50 percent, 1 point will be awarded.

(iv) Enter the percentage of the total number of microentrepreneurs that received both microloans and TA services, for each of the previous three FYs, who were located in areas of outmigration. Demonstration of provision of microloans and technical assistance to microentrepreneurs located in areas of outmigration at a rate of:

(A) 75 percent or more, 4 points will be awarded;

(B) At least 50 percent but less than 75, 2 points will be awarded;

(C) At least 25 percent but less than 50 percent, 1 point will be awarded.

(4) *Ability to provide technical assistance to microentrepreneurs.* In addition to providing a statistical history of their provision of technical assistance to microentrepreneurs and microborrowers, applicants must provide a narrative of not more than five pages describing the teaching and training method(s) used by the applicant organization and discussing the outcomes of their endeavors. Technical assistance is defined in § 4280.302. The narrative will be scored as specified in paragraphs (b)(4)(i) through (iv) of this section and the maximum number of points available will be 5 and:

(i) Applicants that have used more than one method of training and technical assistance (such as classroom training, peer-to-peer discussion groups, individual assistance, distance learning) will be awarded 2 points.

(ii) Applicants that provide success stories to demonstrate the effects of technical assistance on their clients will be awarded 1 point.

(iii) Applicants that provide evidence that they require evaluations by the clients of their training programs and indicate that the level of evaluation scores is ''good'' or higher will be awarded 1 point.

(iv) Applicants that present their narrative information clearly and at a level expected by trainers and teachers will be awarded 1 point.

(5) *Proposed administrative expenses to be spent from TA grant funds.* The maximum total number of points under this criterion is 4. If the percentage of grant funds to be used for administrative purposes is:

(i) Less than 5 percent of the TA grant funding, 4 points will be awarded;

(ii) Between 5 percent and 8 percent, but not including 8 percent, 2 points will be awarded; and

(iii) Between 8 percent up to and including 10 percent, 0 points will be awarded.

(c) *Application requirements for microlenders with less than 3 years experience seeking loans only.* In addition to the information required under paragraph (a) of this section, an applicant with less than 3 years experience as an MDO seeking a loan must submit the information specified in paragraphs (c)(1) through (7) of this section. The total number of points available under this paragraph, in addition to the up to 45 points available in paragraph (a) of this section, is 55, for a total of 100.

(1) The applicant must provide a narrative work plan that clearly indicates its intention for the use of funding. Provide goals and milestones for planned activities. In relation to the information requested in paragraph (a) of this section, the applicant must describe how it will incorporate its mission statement, utilize its employees, and maximize its human and capital assets to meet the goals of this program. The applicant must provide its strategic plan and organizational development goals and clearly indicate its lending goals for the five years after the date of application. The narrative work plan should be not more than 7 pages in length. Up to 13 points will be awarded.

(2) The applicant will provide the date that it opened its doors for business as an MDO or other provider of business education and/or facilitator of capital. ''In business'' means licensed to do business, in good standing with the Secretary of State in which it is registered to do business, and having regular paid staff to conduct business on a daily basis. If you have been in business for:

(i) More than 2 years but less than 3 years, 4 points will be awarded;

(ii) At least 1 year, but not more than 2 years, 2 points will be awarded;

(iii) At least 6 months, but not more than 1 year, 1 point will be awarded;

(iv) Less than 6 months, or more than 3 full years, 0 points will be awarded.

(3) The applicant must describe in detail any microenterprise development organization training received by it as a whole, or its employees as individuals, to date. The training received will be rated on its topical variety, the quality of the description, and its relative value to the narrative requested above, and to the organization's strategic plan. Do not submit training brochures or conference announcements. Up to 9 points will be awarded.

(4) The applicant must indicate its current number of employees, those that concentrate on microentrepreneurial development, and the current average caseload for each.

Indicate how the caseload ratio does or does not optimize the ability to perform the services described in the work plan and how Agency funding will be used to assist with program delivery. Up to 4 points will be awarded.

(5) The applicant must indicate any training organizations with which it has a working relationship. Provide contact information which will be used as references regarding the applicant's capacity to perform the work plan provided. If the recommendations received from references are:

(i) Generally excellent, 9 points will be awarded;

(ii) Generally above average, 6 points will be awarded;

(iii) Generally average, 3 points will be awarded;

(iv) Generally less than average, 0 points will be awarded.

(6) Describe any plans for continuing training relationship(s), including ongoing or future training plans and goals, and the timeline for same. Up to 4 points will be awarded.

(7) The applicant will describe its internal benchmarking system for determining client success, reporting on client success, and following client success for up to 5 years after completion of a training relationship. Up to 9 points will be awarded.

(8) The application will identify their proposed administrative expenses to be spent from TA grant funds. The maximum total number of points under this criterion is 4. If the percentage of grant funds to be used for administrative purposes is:

(i) Less than 5 percent of the TA grant funding, 4 points will be awarded;

(ii) Between 5 percent and 8 percent, but not including 8 percent, 2 points will be awarded; and

(iii) Between 8 percent up to and including 10 percent, 0 points will be awarded.

(d) *Application requirements for microlenders seeking enhancement grants only.* Enhancement grants may be provided to microlenders seeking assistance with specific or general operational issues based on the strength of the application and the availability of funds. An applicant seeking an enhancement grant must submit the information specified in paragraphs (d)(1) through (8) of this section. The total number of points available is 100.

(1) A fully completed Standard Form (SF)424 with attachments as appropriate. If the form and attachments are satisfactorily completed, 5 points will be awarded.

(2) A discussion of the internal self-evaluation plan that led the microlender to determine that external assistance would be helpful. Up to 15 points will be awarded.

(3) A statement of the internal issue(s) to be overcome, why grant funding is necessary, and the ultimate goal of the enhancement project. Up to 15 points will be awarded.

(4) A project description statement of how the grant will be used to overcome the issue. Such statement must include the names of the potential trainers or service providers that will be used by the microlender for the described project. Up to 15 points will be awarded.

(5) A clear benchmarking plan delineating progress expectations, an anticipated timeline, and an anticipated completion date. Up to 15 points will be awarded.

(6) A discussion of how the trainer/service provider will be or has been selected. Up to 15 points will be awarded.

(7) A discussion of which employees will be directly involved in the project and how they fit into the microlender organization. Up to 10 points will be awarded.

(8) A letter, if available from the potential trainer/service provider describing their role in helping the microlender reach its enhancement goals. Up to 10 points will be awarded based on the description. If no letter is submitted, 0 points will be awarded.

(e) *Application requirements for microlenders with more than 5 years experience as an MDO under this program.* (1) Generally, microlenders develop success patterns over time which will be evidenced in the submitted quarterly reports. To take advantage of these patterns, to fully utilize the data available, to help ensure efficiency, and to ensure that any paperwork burden for the microlender is kept to a minimum, microlender applicants with more than 5 years of experience as an MDO under this program may choose to submit a shortened loan/grant application. For these microlenders to apply for subsequent funding, they will be required to submit:

(i) A letter of request for funding stating the amount needed,

(ii) An indication of the loan and grant amounts being requested accompanied by a completed SF 424 and any pertinent attachments,

(iii) An indication of the number of businesses to which loans were made that have been made that remained in business for two years or more after loan repayment, and

(iv) A recent resolution of the applicant's Board of Directors approving the application for debt.

(2) The Agency, using this request, and data available in the reports submitted under previous fundings, will review the overall program performance of the applicant to determine its eligibility for subsequent funding. Benchmarks will include:

(i) A default rate of 5 percent or less over the previous 5 years,

(ii) A pattern of delinquencies of 10 percent or less,

(iii) A pattern of successful use of TA dollars,

(iv) A pattern of long term success of program microborrowers (two years or more) after loan repayment,

(v) A pattern of appropriate reporting, and

(vi) Other such issues as deemed appropriate.

(3) Abridged applications will be rated on a pass or fail basis. Passing scores will be assigned a score of 90 percent and will be ranked accordingly in the quarterly competitions.

§ 4280.317 Selection of applications for funding.

All applications received will be scored using the scoring criteria specified in § 4280.316. Applications from microlenders with 3 or more year experience and applications from microlenders will less than 3 years experience will be ranked together. Enhancement grant applications will be ranked separately from the microlender applications. Subject to the availability of funds, the highest scoring applications will be funded in descending order.

(a) *Availability of funds.* If an application is received, scored, and ranked, but insufficient funds remain to fully fund it, the Agency may elect to fund an application requesting a smaller amount that has a lower score. Before this occurs, the Agency, as applicable, will provide the higher scoring applicant the opportunity to reduce the amount of its request to the amount of funds available. If the applicant agrees to lower its request, it must certify that the purposes of the project can be met, and the Agency must determine that the project is financially feasible at the lower amount.

(b) *Applicant notification.* The National Office will be responsible for notifying the appropriate State Offices of the outcome of the competition. State Offices will be responsible for notification of applicants regarding selection or non-selection, provision of appeal rights, closing the loans and grants to awardees, and notifying the National Office for obligation purposes.

(c) *Regarding successful applications.* The National Office will transfer funds

to the appropriate State office for obligation of successful awards. Awardees unable to complete closing for obligation within the stated timeframe will forfeit their funding. Such funding will revert back to the Agency for later use.

(d) *Regarding unsuccessful applications.* If your application is unsuccessful, the National Office will provide a copy of the final score sheet to the appropriate State Office for inclusion in the notification of non-selection. The National Office may use the score sheet to provide a debriefing to any unsuccessful applicant.

(e) *Regarding the timing and submission of applications.* (1) All applications must be submitted as a complete application, in one package.

(2) Applications will be accepted on a quarterly basis using Federal Fiscal Quarters. Deadlines and specific instructions will be published annually.

(3) Applications received will be reviewed, scored, and ranked quarterly. The Agency will retain unsuccessful applications for consideration in subsequent reviews, through a total of four quarterly reviews.

§§ 4280.318–319 [Reserved]

§ 4280.320 Grant administration.

(a) *Oversight.* Any organization receiving a grant under this program is subject to oversight. Quarterly reporting as described in § 4 280.312(a)(5) and in accordance with OMB circular A–102 and A–110 will be required. That is, on a quarterly basis, each grantee will submit SF 269 and/or 272 (or successor forms) as appropriate and other information as required in § 4280.312(a)(5). Accompanying the Standard Forms will be a narrative report discussing milestones and benchmarks; whether or not they were met; if not, why not; successes, and concerns. Site visits and inspection of records will occur at the discretion of the Agency.

(b) *Payments.* The Agency will make grant payments not more often than on a quarterly basis. The first payment may be made in advance and will equal no more than one fourth of the grant award. Payment requests must be submitted on an SF270 and will only be paid if reports are up to date and approved.

§ 4280.321 Loan and grant servicing.

In addition to the ongoing servicing in regard to oversight of the microlender:

(a) *Grants.* Grants will be serviced in accordance with:

(1) Department of Agriculture regulations including, but not limited to 7 CFR, Part 1951, Subparts E and O,

(2) Department of Agriculture regulations including but not limited to 7 CFR Parts 3015, 3016, 3017, 3018, 3019, and 3052; and

(3) Office of Management and Budget regulations including, but not limited to, 2 CFR 215, 220, 230, and Circulars A–110 and A–133.

(b) *Loans.* Revolving loan funds will be serviced in accordance with the following:

(1) Department of Agriculture regulations 7 CFR Part 1951, Subparts E, R, and O, and

(2) Other Department of Agriculture regulations as may be applicable,

(3) Office of Management and Budget Circular A–129.

§ 4280.322 Loans from the microlenders to the microentrepreneurs and microenterprises.

The primary purpose of making a loan to a microlender is to enable that microlender to make microloans, as defined, to end user microentrepreneurs and microenterprises. It is the responsibility of each microborrower to repay the microlender in accordance with the terms and conditions agreed to with the microlender. It is the responsibility of each microlender to make microloans in such a fashion that the terms and conditions of the microloan will support success for microborrowers while enabling the microlenderto repay the Federal Government.

(a) *Maximum microloan amount.* The maximum amount of a microloan made under this program will be $50,000.

(b) *Microloan terms and conditions.* The terms and conditions for microloans made by microlenders will be negotiated by the microborrower and the microlender, with the following limitations:

(1) The maximum margin a microlender may impose on a microborrowers is 7.5 percent over the microlender's cost of funds;

(2) The cost of funds to the microborrower will be established at the closing of the loan from the Agency to the microlender; and

(3) No microloan may have a term of more than 10 years.

(c) *Microloan insurance requirements.* The requirement of hazard, key personnel, and other insurance will be at the discretion of the microlender except that no insurance requirement should be of a nature to make the payment, combined with the microloan payment, or the coverage excessive.

(d) *Credit elsewhere test.* Microborrowers will be subject to ''credit elsewhere'' test so that the microlender will make loans only to those borrowers that cannot obtain business funding of $50,000 or less at affordable rates and on acceptable terms. Each microborrower file must contain evidence that the microborrower has sought credit elsewhere and has been turned down (*e.g.*, a turn down letter) or that the rates and terms available within the community at the time were outside the range of the microborrower's ability to be a successful borrower from another source of funding (*e.g.*, a comparison of rates for other funding sources compared to the microlender rates offered to the microborrower). It is not the intent to require denial letters from other lenders. It is the intent to ensure that program funds are loaned in a way to ensure that funds go to those businesses traditionally lacking in access to capital.

(e) *Fair credit requirements.* To ensure fairness, microlenders must publicize their rates and terms on a regular basis. Microlenders are also subject to Fair Credit lending laws as discussed in § 4280.305.

(f) *Eligible microloan purposes.* Microlenders may make microloans under this program for qualified business activities including:

(1) Working capital,

(2) The purchase of furniture, fixtures, supplies, inventory or equipment, and

(3) The purchase or lease of real estate that is already improved and will be used for the location of the subject business only, provided no demolition or construction will be accomplished with program funding. Interior decorating is not considered to be demolition or construction.

§ 4280.323 Ineligible microloan purposes.

Agency loan funds may not be used for the payment of administrative costs or expenses and microlenders may not make microloans under this program for any of purposes identified as ineligible in paragraphs (a) through (g) of this section.

(a) Construction costs.

(b) Any amount in excess of that needed by the microborrower to accomplish the immediate business goal.

(c) Assistance that will cause a conflict of interest or the appearance of a conflict of interest including but not limited to:

(1) Financial assistance to principals, directors, officers, or employees of the microlender, or their families (including parents, children, sisters, brothers, aunts, uncles, first cousins, or grandparents),

(2) Financial assistance to any entity the result of which would appear to

benefit the microlender or its principals, directors, or employees, in any way other than the normal repayment of debt.

(d) Distribution or payment to the microentrepreneur or his/her family members when such will use any portion of the microloan for other than the purpose for which it was intended.

(e) Charitable institutions not gaining revenue from sales or fees to support the operation and repay the microloan.

(f) Fraternal organizations.

(g) Any microloan to an applicant that has an RMAP funded microloan application pending with another microlender or that has an RMAP-funded microloan outstanding with another microlender that would cause the applicant to owe more than $50,000 under this program.

(h) Assistance to USDA Rural Development (Agency) employees, or their families.

(i) Assistance to military personnel, except that a microloan may be made by a microlender to any otherwise qualified microenterprise owned in whole or in part by one or more members of the National Guard or the reserve services who are not on active duty with longer than 6 months until their anticipated termination of active duty status, or members of the regular service, who are within 6 months of their anticipated separation date and who are, or plan to be, small business owners. This provides microlenders the opportunity to make microloans to:

(1) Any microenterprise owned in whole or in part by one or more individuals, regardless of rank; and

(i) Who are enlisted in the National Guard or reserve services, or are non-Agency employees or their families; and

(ii) That have recently been deactivated from regular service, but are considered to be in reserve in the event of national need or emergency.

(2) Military personnel who plan to leave active military service within 6 months and who, upon leaving, plan to be self-employed and are in need of business continuation, expansion, or startup capital or of technical assistance.

(j) Assistance to employees of Native American tribal governments when the employer is the tribal government MDO from which the microentrepreneur is seeking funding except that, a microloan may be made to such employee without danger of a conflict of interest when the tribal government employee:

(1) Is a part-time employee with reasonable expectation of capacity to operate a successful microenterprise while working part-time, and

(2) Does not have access to another lending MDO, and

(3) Is the person who will operate the funded business, and

(4) Will be required by the tribal government MDO to participate in technical assistance and training to help ensure the success of the business, and

(5) Due to an impending change of tribal government leaders, can expect to leave his or her job within six months of applying for the microloan.

(k) Any illegal activity.

(l) Any project that is in violation of either a Federal, State, or local environmental protection law, regulation, or enforceable land use restriction unless the microloan will result in curing or removing the violation.

(m) Lending and investment institutions and insurance companies.

(n) Golf courses, race tracks, gambling facilities or swimming pools.

(o) Any purpose deemed to be of a prurient sexual nature as determined by local standards,

(p) Any purpose, not already stated, that would contribute to a conflict of interest or the appearance of a conflict of interest.

(q) Any lobbying activities as described in 7 CFR 3018.

§§ 4280.324–4280.400 [Reserved]

Dated: September 30, 2009.

Judith A. Canales,

Administrator, Rural Business—Cooperative Service.

[FR Doc. E9–24025 Filed 10–6–09; 8:45 am]

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