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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

[FNS–2008–0033]

RIN 0584–AD65

School Food Safety Program Based on Hazard Analysis and Critical Control Point Principles

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Final rule.

SUMMARY: This final rule implements a legislative provision which requires school food authorities participating in the National School Lunch Program (NSLP) or the School Breakfast Program (SBP) to develop a school food safety program for the preparation and service of school meals served to children. The school food safety program must be based on the hazard analysis and critical control point (HACCP) system established by the Secretary of Agriculture. The food safety program will enable schools to take systematic action to prevent or minimize the risk of foodborne illness among children participating in the NSLP and SBP.

DATES: *This final rule is effective* January 14, 2010.

FOR FURTHER INFORMATION CONTACT: William Wagoner or Marisol Benesch, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

I. Background

Section 111 of the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108–265; June 30, 2004) amended section 9(h) of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1758(h)) by adding the requirement that school food authorities (SFAs) implement a food safety program at each food preparation and service facility participating in the NSLP or the SBP. The food safety program, which became a requirement in the school year beginning July 1, 2005, must be based on the HACCP system established by the Secretary of Agriculture. A HACCP-based food safety program should enable SFAs to identify potential food hazards, identify critical points where hazards can be controlled or minimized through control measures, and establish monitoring procedures and corrective action.

Prior to Public Law 108–265, there was no federal requirement for a HACCP-based food safety program for SFAs participating in the NSLP and SBP. Program regulations only required SFAs to follow State and local sanitation and health standards. SFAs were expected to check food temperatures per State and local regulations, but were not required to follow a systematic food safety program.

To provide guidance and help SFAs implement the required food safety program in School Year 2005–2006, FNS issued two memoranda in January 2005 and July 2006, as well as ''Guidance for School Food Authorities: Developing a School Food Safety Program Based on the Process Approach to HACCP Principles'' in June 2005, *http://www.fns.usda.gov/cnd/CNlabeling/Food-Safety/HACCPGuidance.pdf.* This practical guidance was followed by a proposed rule published in the **Federal Register** on August 5, 2008 (73 FR 45359). The FNS guidance and the proposed rule recommend the Process Approach because it is considered easier to implement than the traditional HACCP method. The Process Approach, developed by the Food and Drug Administration, simplifies traditional HACCP by grouping foods according to preparation process and applying the same control measures to all menu items within a group, instead of developing a HACCP plan for each item. The proposed rule also gave SFAs the option to implement traditional HACCP.

This final rule codifies the requirements set forth in the proposed rule. The statutory requirement has already been implemented by program operators with the assistance of guidance, technical assistance, and training from FNS and the National Food Service Management Institute (NFSMI).

II. Discussion of Public Comments

The comment period for the proposed rule ended September 19, 2008 (73 FR 45359). FNS received seven public comments: one from an advocate, one from a State Agency, three from school districts, and two from individuals. The comments addressed the following areas:

Food Safety Program Based on HACCP

A program advocate would like assurances that the HACCP-based food safety programs SFAs had in place prior to this rule would be considered acceptable. The commenter asked the Department to emphasize that SFAs have discretion to follow traditional HACCP or the Process Approach to HACCP.

FNS stated in the proposed rule that SFAs may keep an existing food safety program if it reflects all the HACCP principles described in the rule. SFAs may follow traditional HACCP or the Process Approach to HACCP.

A large school district commented that the Process Approach only saved minimum time, and recommended the Department allow 18–24 months for phased-in implementation to give program operators sufficient time to design/implement the program and train the food service staff. The commenter also expressed concern about the potential cost of equipment for the food safety program and stated that it spent $50,000 in specialized thermometers for all its SFA sites. Another commenter recommended that SFAs be allowed flexibility to develop cost-effective and unique systems that reflect the HACCP principles.

Public Law 108–265 established July 1, 2005 as the effective date for the food safety program requirement. The Department identified school year 2005–2006 as the implementation period for the food safety program, as required by statute, and provided SFAs practical guidance and training in collaboration with NFSMI. Several years have passed since the implementation date established by law; therefore, phased-in implementation is not an option. By now, SFAs should be working on reviewing and improving their established HACCP-based food safety program.

Implementation of this legislative requirement is not expected to result in major equipment expenses for program operators. SFAs operating the NSLP and SBP should already have thermometers and other basic equipment necessary to prepare, serve, and store meals safely in compliance with State and local public health standards, as previously required by the NSLP and SBP regulations.

With regard to ease of implementation and flexibility, the Department wishes to emphasize that the practical guidance and training provided to SFAs presented a simplified version of the Process Approach adapted for school food service operations. The Process Approach is less complex than traditional HACCP and is inherently flexible because it gives each SFA the ability to tailor the food safety program to each site. Furthermore, SFAs have discretion to follow either the Process Approach or traditional HACCP.

Monitoring and Recording Food Temperature Daily

A large school food authority commented that developing and monitoring the HACCP-based food safety program is time consuming. One commenter asked that schools be allowed to maintain electronic records, and another recommended the Department issue schedules for food safety inspections and temperature monitoring.

While the food safety program must reflect all HACCP principles discussed in the FNS guidance, it does not have to be elaborate or extremely time consuming. A number of resources were developed to facilitate implementation of the school food safety program. NFSMI produced templates and other materials to help SFAs implement a basic HACCP-based food safety program in School Year 2005–2006. In addition, NFSMI provided technical assistance and training to SFAs upon request from the State Agencies. These resources continue to be available to SFAs to enhance their current HACCP-based food safety program.

FNS encourages the use of technology to reduce burden when possible. This final rule allows SFAs to maintain electronic records as long as they can be retrieved. FNS does not consider it necessary to set a schedule for temperature checking and recording because HACCP already identifies the critical control points for temperature monitoring and the timing is defined by the food preparation process. The schedule for food safety inspections is determined by the State or local agency in charge of inspections. The food safety inspection requirement is discussed in a separate rule.

Recordkeeping Period

Commenters in general recommended that recordkeeping requirements be based on the incubation period for a likely pathogen or communicable disease and not exceed 1 year. As suggested by several commenters, the proposed recordkeeping period will be changed to six months following each month's temperature records. FNS believes this recordkeeping requirement will not be an unnecessary burden on schools and will allow schools to document their efforts to comply with the food safety program requirement and to prevent foodborne illness.

Miscellaneous Comments

Commenters would like funding for training and program implementation, as well as additional guidance and training activities. A commenter requested refresher training on the Process Approach and regular updates to the FNS practical guidance. Another commenter asked FNS to explicitly state that State Administrative Expense Funds can be used for food safety purposes.

NFSMI continues to offer training to support the implementation of school food safety programs. In addition, FNS continues to serve as an information resource for SFAs and assesses the need for additional training and technical assistance resources on a regular basis.

With regard to funding, State Administrative Expense funds are available to support food safety training and technical assistance activities sponsored by the State agency.

III. Conclusion

This final rule amends 7 CFR 210.9 to incorporate the food safety program in the provisions covered by the SA agreement, 7 CFR 210.13 to add a new paragraph on the food safety program requirement based on HACCP, 7 CFR 210.15 to address the recordkeeping requirement, 7 CFR 210.18 to include the food safety program as part of the administrative reviews, and 7 CFR 220.7 to extend the food safety program requirement to the SBP.

IV. Procedural Matters

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office Management and Budget in conformance with Executive Order 12866.

Regulatory Impact Analysis

Need for Action

This action is needed to formally implement the food safety program requirement established by Public Law 108–265. More than 101,000 schools participate in the NSLP and SBP and serve over 38 million meals daily in a variety of settings. Although school meals are generally safe, it is essential that SFAs follow a systematic food safety program to safeguard the health of children.

Benefits

HACCP is considered an effective method to attain control of foodborne illness risk factors. As a result of this rule, SFAs will implement a HACCP-based food safety program in their preparation and service sites to prevent or minimize the risk of foodborne illness.

Costs

The Regulatory Impact Analysis estimates that the total cost associated with implementing a HACCP-based food safety program at $46 million in the first year of implementation. FNS expects that the subsequent annual costs associated with this proposal would decline as one-time program development efforts are completed, with 5 year costs totaling approximately $116 million.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Implementation of this rule is not expected to impose a significant economic impact on a substantial number of small entities. Existing program regulations in § 210.13(a) require that SFAs follow proper sanitation and health standards established under State and local law. Many SFAs have Standard Operating Procedures in place to comply with State and local public health regulations, or have already implemented a food safety program as a result of the statutory requirement, subsequent FNS guidance and NFSMI training available since 2005.

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, the Department generally must prepare 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 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or to the private sector of $100 million or more in any 1 year. Program operators already have basic equipment and standard operating procedures in place to prepare meals that comply with sanitation and health standards established under State and local law. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The NSLP is listed in the Catalog of Federal Domestic Assistance under No. 10.555 and the SBP is listed under No. 10.553. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice [48 FR 29115, June 24, 1983], these Programs are included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Since the NSLP and SBP are federally funded programs administered at the State level, FNS headquarters and regional office staff have ongoing formal and informal discussions with State and local officials regarding operational issues. This arrangement allows State and local agencies to provide feedback that forms the basis for any discretionary decisions made in this and other rules.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

Prior Consultation With State and Local Officials

Shortly after passage of the Child Nutrition and WIC Reauthorization Act of 2004, FNS met with officials from State education agencies to discuss the new school food safety requirements and to hear their concerns. FNS also solicited input from the Food Safety and Inspection Service, Food and Drug Administration, National Food Service Management Institute, Centers for Disease Control and Prevention, School Nutrition Association, National Environmental Health Association, and State and local public health agencies. Furthermore, the Department published a proposed rule on August 5, 2008 to solicit public comments, which have been addressed in the preamble.

Nature of Concerns and Need To Issue This Rule

During the public comment period, some State and local officials raised concerns that school food service personnel may lack the expertise and time to properly implement a HACCP-based food safety program. Others expressed concern that the proposed requirement will increase the workload of school foodservice personnel.

This rule establishes in regulation the requirement that SFAs follow food safety procedures that are generally regarded as essential in institutional food service operations. Implementation of this requirement also supports the food safety recommendations in the 2005 Dietary Guidelines for Americans.

Extent to Which FNS Meets Those Concerns

To address the stakeholders' concerns, FNS offered the Process Approach to HACCP, which is considered an easier method than traditional HACCP. FNS adapted the Process Approach to fit the school food service operation, issued practical guidance in 2005, and worked with NFSMI to develop training materials for program operators. The guidance and training materials provide step-by-step instructions for implementing the food safety program and examples. FNS will assess the need for additional training and technical assistance resources as we continue to learn about program experience at the State and local levels.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures under § 210.18(q) or § 235.11(f) must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on children on the basis of age, race, color, national origin, sex or disability. After a careful review of the rule's intent and provisions, FNS has determined that this rule does not affect the participation of protected individuals in the NSLP and SBP.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35, *see* 5 CFR 1320) requires that OMB approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. Once OMB approves the information collection, FNS will merge these burden hours into National School Lunch Program, OMB # 0584–0006, expiration date 5/31/2012. A 60-day notice was published in the **Federal Register** at 70 FR 45359 on August 5, 2008, which provided the public an opportunity to submit comments on the information collection burden resulting from this rule. FNS will publish a document in the **Federal Register** once these requirements have been approved. FNS is increasing the burden hours from 1,938,870, which was the total burden hours published in the proposed rule on August 5, 2008, to 2,248,284. The increase is due to the increase in program participants in school food authorities and schools. The 2,248,284 takes into account the increase from 20,710 to 20,858 school food authorities and an increase from 100,398 to 101,705 schools that participate in the NSLP and the 81,517 schools that participate in the SBP.

ESTIMATED ANNUAL BURDEN

	Section	Number of respondents	Annual frequency	Average burden per response	Annual burden hours
Reporting					
State agency shall confirm that each school food authority has a food safety program based on HACCP principles. New Burden.	7 CFR 210.18(h)(6)	57	61	1	3,477
SFA must implement a food safety program based on HACCP principles for each food preparation and service facility under its jurisdiction. New burden.	7 CFR 210.13(c)	20,858	1	76	1,585,208
Total New Reporting	.....	.....	.....	.....	1,588,685
Recordkeeping					
Schools record and maintain NSLP records from food safety program. New Burden.	7 CFR 210.15(b)(5)	101,705	180	.02	366,138
Schools record and maintain SBP records from food safety program.	*7 CFR 220.7*	81,517	180	.02	293,461
Total New Recordkeeping	.....	.....	.....	.....	659,599
Total Burden Requested	.....	.....	.....	.....	2,248,284

E-Government Act Compliance

FNS is committed to complying with the E-Government Act 2002, 44 U.S.C. 3601, et seq. 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

7 CFR Part 210

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 220

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs.

■ Accordingly, 7 CFR parts 210 and 220 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for 7 CFR part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

■ 2. In § 210.9, revise paragraph (b)(14) to read as follows:

§ 210.9 Agreement with State agency.

* * * * *

(b) * * *

(14) Maintain, in the storage, preparation and service of food, proper sanitation and health standards in conformance with all applicable State and local laws and regulations, and comply with the food safety requirements of § 210.13;

* * * * *

■ 3. In § 210.13, redesignate paragraph (c) as paragraph (d), and add a new paragraph (c) to read as follows:

§ 210.13 Facilities management.

* * * * *

(c) *Food safety program.* The school food authority must develop a written food safety program for each of its food preparation and service facilities that meets the requirements in paragraph (c)(1) or paragraph (c)(2) of this section.

(1) A school food authority with a food safety program based on traditional hazard analysis and critical control point (HACCP) principles must:

(i) Perform a hazard analysis;

(ii) Decide on critical control points;

(iii) Determine the critical limits;

(iv) Establish procedures to monitor critical control points;

(v) Establish corrective actions;

(vi) Establish verification procedures; and

(vii) Establish a recordkeeping system.

(2) A school food authority with a food safety program based on the process approach to HACCP must ensure that its program includes:

(i) Standard operating procedures to provide a food safety foundation;

(ii) Menu items grouped according to process categories;

(iii) Critical control points and critical limits;

(iv) Monitoring procedures;

(v) Corrective action procedures;

(vi) Recordkeeping procedures; and

(vii) Periodic program review and revision.

* * * * *

■ 4. In § 210.15,

■ a. Revise the introductory text in paragraph (b); and

■ b. Revise paragraph (b)(5).

The revisions read as follows:

§ 210.15 Reporting and recordkeeping.

* * * * *

(b) *Recordkeeping summary.* In order to participate in the Program, a school food authority or a school, as applicable, must maintain records to demonstrate compliance with Program requirements. These records include but are not limited to:

* * * * *

(5) Records from the food safety program for a period of six months following a month's temperature records to demonstrate compliance with § 210.13(c), and records from the most recent food safety inspection to demonstrate compliance with § 210.13(b).

■ 5. In § 210.18, add a new paragraph (h)(6) to read as follows:

§ 210.18 Administrative reviews.

* * * * *

(h) * * *

(6) *Food safety.* The State Agency must examine records to confirm that each school food authority under its

jurisdiction meets the food safety requirements of § 210.13.

* * * * *

PART 220—SCHOOL BREAKFAST PROGRAM

■ 6. The authority citation for 7 CFR part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

■ 7. In § 220.7:

■ a. Add a new paragraph (a)(3); and

■ b. Revise paragraph (e)(8).

The addition and revision read as follows:

§ 220.7 Requirements for participation.

(a) * * *

(3) A school food authority must implement a food safety program meeting the requirements of § 210.13(c) and § 210.15(b)(5) of this chapter at each of the food preparation and service facilities under its jurisdiction serving breakfasts.

* * * * *

(e) * * *

(8) Maintain, in the storage, preparation and service of food, proper sanitation and health standards in conformance with all applicable State and local laws and regulations, and comply with the food safety requirements in paragraph (a)(2) and paragraph (a)(3) of this section;

* * * * *

Dated: December 4, 2009.

Kevin W. Concannon,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. E9–29799 Filed 12–14–09; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. APHIS-2008-0032]

RIN 0579-AC80

Importation of Cooked Pork Skins

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to allow for the importation of cooked pork skins from regions affected with foot-and-mouth disease, swine vesicular disease, African swine fever, and classical swine fever under certain conditions. We are taking this action after preparing a risk assessment that concluded that the cooking methods examined are sufficient to inactivate the pathogens of concern. This action will relieve restrictions on the importation of cooked pork skins while continuing to protect against the introduction of those diseases of concern.

DATES: *Effective Date:* January 14, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Karen A. James-Preston, Director, Technical Trade Services-Products, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737-1231; (301) 734-8172.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) prohibit or restrict the importation of certain animals and animal products into the United States to prevent the introduction of communicable diseases of livestock and poultry. The regulations in §§ 94.4, 94.8, 94.9, and 94.12, among others, contain requirements for the importation of cured or cooked meat and pork or pork products from regions where rinderpest, foot-and-mouth disease (FMD), African swine fever (ASF), classical swine fever (CSF), and swine vesicular disease (SVD) exist.

On July 2, 2008, we published a proposed rule[1] in the **Federal Register** (73 FR 37892-37896, Docket No. APHIS-2008-0032) in which we proposed to allow for the importation of cooked pork skins from regions affected with FMD, ASF, CSF, and SVD under certain conditions. Specifically, we proposed to amend the FMD-related provisions in § 94.4, the ASF-related provisions in § 94.8, the CSF-related provisions in § 94.9, and the SVD-related provisions in § 94.12 by adding a new paragraph to each section that authorizes the importation of pork skins if they have been cooked using one of the two cooking methods described in the proposed rule.

We solicited comments on the proposed rule for 60 days ending September 2, 2008. We received six comments by that date, from State agriculture departments, a pork industry association, and a snack food manufacturer. The commenters raised several issues related to the proposed rule. These issues are discussed below.

All the commenters expressed concern that importing cooked pork skins into the United States would increase the risk of introducing swine diseases into the United States. Some commenters expressed concern that disease could be introduced through contaminated packaging as well as through the product itself.

As we explained in the proposed rule, cooked pork skins imported into the United States must meet the other requirements of our regulations as well as the provisions of the Federal Meat Inspection Act and the regulations in 9 CFR part 327. These safeguards include requirements for pork and pork products from regions where ASF exists to be packed in clean new packaging that is clearly distinguishable from packaging used for pork or pork products not eligible for export to the United States. These safeguards have been effective in preventing the introduction of swine diseases into the United States.

One commenter stated that the cooking processes do not alter protein functionality in pork skins. The commenter expressed concern that pork skin pellets could be rehydrated to their original consistency and could therefore present a risk of spreading disease.

As we explained in the proposed rule, cooked pork skins would be fully cooked by one of two cooking processes, both of which exceed the heat inactivation requirements for the pathogens of concern. In addition, the low levels of water activity in the pellets would make it unlikely that the pathogens would survive, since viruses prefer moist conditions. Rehydrating the pellets would not reactivate the pathogens.

One commenter stated that when pork skins are cooked in accordance with the proposed processes, there would be a temperature discrepancy between the temperature of the oven or cooking oil and internal temperature of the product. The commenter was concerned that, without proper validation, the internal temperature of the product would not be held high enough for long enough to inactivate viruses.

The product in this case consists of small pieces of skin which are typically 1 to 6 centimeters in width and half a centimeter thick. Given both the size of the pieces of skin and the length of the prescribed cooking times, we are confident that the interior temperature of the product will reach a temperature that will be near that of the oven or cooking oil and that will be sufficient to inactivate all the pathogens of concern.

One commenter stated that the Animal and Plant Health Inspection Service (APHIS) underestimated the likelihood of the imported pork skins

[1] To view the proposed rule and the comments we received, go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0032*).

being fed to swine. The commenter stated that in pork rind frying operations, spent or uncooked pellets would be sent to rendering facilities that would then sell their products to swine feedlots. The commenter stated that because the import request was for cooked product that would need further processing, not for fried product, this represented a risk of spreading disease to domestic swine.

APHIS notes that both cooking processes include cooking in oil, or deep frying, at temperatures which exceed the inactivation requirements for the pathogens of concern. Furthermore, while we acknowledge that commercial operations may send waste pellets to rendering facilities, we also note that any waste pellets used as feed would be regulated under 9 CFR part 166, which includes requirements that any garbage intended for use as swine feed must be treated to kill disease organisms. We are making no changes to the rule in response to this comment.

One commenter stated that the process for approving facilities required only one-time inspection and was inadequate to assure that a facility met the requirements in the regulations.

We disagree. In addition to APHIS inspection and approval of facilities, the Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture, also conducts periodic inspections and audits of overseas facilities. We are confident that these reviews will be effective in ensuring that foreign processing facilities meet the requirements of the regulations.

Several commenters asked for an explanation of how we would know if the requirements set forth in the regulations have been met. One commenter specifically asked how quality control at foreign plants would be documented.

Cooked pork skins to be imported into the United States would have to be produced at a facility that meets both APHIS and FSIS requirements, and would have to be accompanied by both the foreign meat inspection certificate required by 9 CFR part 327 and certificates issued by the national government of the region of origin that state that the cooked pork skins meet the requirements of our regulations. Products that do not meet these requirements are not allowed entry into the United States. These procedures are the same as those currently required for other meat and meat products imported into the United States and have been effective in preventing the introduction of foreign animal diseases.

One commenter asked if there was a need for sampling of products and packaging at the port of entry.

Such sampling will not be necessary. To be allowed entry into the United States, pork skins must be fully cooked according to one of the two cooking processes described in the proposed rule. Sampling cooked products would not provide any additional protection for U.S. animal health because the cooking processes will inactivate the pathogens of concern.

Two commenters raised the issue that States are held to a higher standard of meat inspection than exporting countries.

We are not making any changes in response to these comments, as the issue is outside APHIS' statutory authority.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are amending the regulations to allow for the importation of cooked pork skins from regions affected with FMD, SVD, ASF, and CSF under certain conditions. We are taking this action after preparing a risk assessment that concluded that the cooking methods examined are sufficient to inactivate the pathogens of concern. This action will relieve restrictions on the importation of cooked pork skins while continuing to protect against the introduction of those diseases of concern. In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities.

Pork rinds are a snack food that is made from deep-fried pork rind pellets (cooked pig skins). The size of the pork rind snack manufacturing industry is considered to be relatively small. Available Economic Census data do not provide specific information on the pork rind snack industry. The Census categorizes the pork rind industry with certain other snack foods (excluding potato chips, corn chips, and related products) under ''other snack food manufacturing,'' and the product classification code is 3119197.[2] As table 1 shows, the industry is comprised of a relatively small number of establishments. On average, these establishments employ fewer than 100 employees and therefore most, if not all, of the establishments can be considered to be small entities.[3]

TABLE 1.–SNACK FOOD MANUFACTURING, EXCLUDING POTATO CHIPS, CORN CHIPS, AND RELATED PRODUCTS, 2002

Number of establishments	Number of employees	Payroll ($ million)	Total cost of materials ($ million)	Total value of shipments ($ million)
47	4,284	$131	$365	$959

Source: 2002 Economic Census (*http://www.census.gov/prod/ec02/ec0231i311919.pdf*).

Although no clear-cut method exists to disaggregate the pork rind snack manufacturers from the other snack manufacturers in the Census data, we can use available sales information for pork rind snack food to approximate the size of this segment of the industry. Currently two trade associations keep track of pork rind snack sales: The Snack Food Association of Alexandria, VA, reported sales of $562 million (-21.6 percent)[4] and Information Resources, Inc., of Chicago, IL, reported sales of $98 million (-16.8 percent).[5]

Comparing these trade association data to the $959 million shipment value reported in the Census data for ''other snack food manufacturing,'' sales by the

[2] The products included within this code are other chips, sticks, hard pretzels, bacon rinds, popcorn (except candied), etc., excluding crackers, soft pretzels, and nuts.

[3] The U.S. Small Business Administration (SBA) defines establishments engaged in other snack food manufacturing (North American Industry Classification System code 311919) as small if their employees number no more than 500.

[4] Sales in 2005, which includes all distribution channels. Percentage shows the change from previous year.

[5] Total supermarket, drug store, and mass merchandising sales for the 52 weeks ending May 21, 2006, excluding Wal-Mart. Percentage shows the change from previous year.

pork rind snack manufacturers may represent as much as one-half of sales for this product category. In terms of the sales trend, it is notable that both trade associations reported about 20 percent declines in sales from the previous year. The slowdown in sales may at least partially reflect a shift in consumers' orientation away from the high-protein/low-carbohydrate diet that seems to have peaked in 2004.

Pork Rind Pellet Manufacturers

Pork rind pellets are made from cooked pork skins and are the main material used in making pork rind snacks. The number and size of the pork rind pellet manufacturers (including manufacturers of pork cracklings[6]) are relatively small. Only 17 establishments compose this industry, and they had a total shipment value in 2002 of $196 million, as shown in table 2.

TABLE 2.–PORK RIND PELLET MANUFACTURERS, 2002

Product code	Product description	Number of companies with shipments of $100,000 or more	Shipment value ($ million)	Estimated shipment volume[1]
311611R121	Pork rind pellets, including pork cracklings, made in slaughtering plants	5	$45	155.9 million pounds (70,715 metric tons)
311612A441	Pork rind pellets, including pork cracklings, made from purchased carcasses	12	151	56 million pounds (91,580 metric tons)

[1] Although shipment volumes for pork rind pellets are not available in the 2002 Census data, the 1997 Census data indicate that 123.7 million pounds were shipped for product code 311612A441, with a total shipment value of $130 million. The 2002 figures are calculated based on this information.

Source: 2002 Economic Census.

U.S. Imports and Exports of Pork Rind Products

Trade data[7] specific to pork rinds are not available; instead, three harmonized tariff schedule (HTS) data for the edible offal of swine are examined and summarized.[8, 9] Tables 3 and 4 summarize the import and export trends for these three HTS codes.[10]

The United States has imported a relatively small volume of edible offal of swine, including pork rinds, at an average of 7,000 metric tons annually with a value of $12 million over the past 5 years. Although the import of swine offal peaked in 2005 and has declined since, U.S. exports are relatively stable. The United States exported, on an average, about 24,000 metric tons with an average value of $24 million, and the United States has been a consistent net exporter of the edible offal of swine over the past 5 years.

TABLE 3.–U.S. IMPORTS OF EDIBLE OFFAL OF SWINE, FROZEN, PREPARED, OR PRESERVED

Country	2002		2003		2004		2005		2006	
	Million dollars	Metric ton	Million dollars	Metric ton	Million dollars	Metric ton	Million dollars	Metric ton	Million dollars	Metric ton
Canada	2.9	2,901	4.3	3,553	10.5	4,481	7.0	6,635	5.7	6,274
Denmark	8.1	2,183	6.8	2,281	7.5	1,893	2.1	2,247	2.1	1,127
Mexico	0.0	0	1.1	0	0.6	108	0.0	79	0.0	0
Others	0.0	177	0.0	144	0.1	102	0.1	174	0.0	27
Total	11.3	5,261	12.8	5,978	19.2	6,584	9.5	9,135	7.8	7,428

Source: U.S. International Trade Commission, HTS 0206490000, 0206490050, 1602494000

TABLE 4.–U.S. EXPORTS OF EDIBLE OFFAL OF SWINE, FROZEN, PREPARED, OR PRESERVED

Country	2002		2003		2004		2005		2006	
	Million dollars	Metric tons	Million dollars	Metric tons	Million dollars	Metric tons	Million dollars	Metric tons	Million dollars	Metric tons
Mexico	10.1	15,405	11.0	16,747	19.4	24,325	18.3	21,235	16.5	22,078
Japan	9.4	3,102	3.3	1,410	0.9	272	1.4	435	4.4	1,494
Korea	0.5	358	1.6	776	1.8	848	2.2	1,029	3.0	1,330

[6] Cracklings are produced from pellets — cooked pork skins — that are thicker and meatier than rinds.

[7] Source: U.S. International Trade Commission Interactive Tariff and Trade Dataweb.

[8] HTS 020649 – Edible offal of swine, frozen: Other; HTS 0206490050 – Edible offal of swine, frozen, pork rind (Note: This classification is no longer available in the 2007 HTS); HTS 1602494000 – Other prepared or preserved meat, meat offal, or blood of swine: Other, not containing cereals or vegetables, other.

[9] Of those, only one HTS is specifically for pork rind (frozen). The other two include other edible offal of frozen, prepared, or preserved swine.

[10] ''Landed Duty-Paid Value,'' which is the sum of the cost, insurance, and freight (CIF) value plus calculated duties, is used for the trade data.

TABLE 4.–U.S. EXPORTS OF EDIBLE OFFAL OF SWINE, FROZEN, PREPARED, OR PRESERVED—Continued

Country	2002		2003		2004		2005		2006	
	Million dollars	Metric tons	Million dollars	Metric tons	Million dollars	Metric tons	Million dollars	Metric tons	Million dollars	Metric tons
Hong Kong	2.3	1,097	1.4	679	1.2	353	1.1	261	1.5	330
Others	3.8	2,518	2.3	2,720	1.1	1,584	1.1	853	0.8	695
Total	26.1	22,120	19.6	22,332	24.4	27,382	24.1	23,813	26.2	25,927

Source: U.S. International Trade Commission.

Exports of Pork Rind Products from Brazil

Two HTS categories that include pork skins are used to examine the status of Brazilian exports of pork rinds: 160249 (Meat, Meat Offal or Mixtures of Swine, Prepared or Preserved, NESOI[11]) and 020649 (Offal of Swine Except Livers, Edible, Frozen).

TABLE 5.–EXPORTS OF SWINE OFFAL FROM BRAZIL

Country	2003			2004			2005			
	Million dollars	Metric tons	Per metric ton	Million dollars	Metric tons	Per metric ton	Million dollars	Metric tons	Per metric ton	% share of volume
Hong Kong	$7.2	9.199	781.9	$9.5	10.347	916.9	$15.2	14,537	1,046.9	65.2%
Russia	3.4	4,621	725.3	2.2	2,897	750.1	4.1	4,689	876.8	21.0%
Others	2.3	3,882	602.7	3.3	3,493	942.7	3.0	3,064	960.1	13.7%
World Total	12.9	17,702	727.8	15.0	16,737	893.4	22.3	22,290	999.2	100%

Source: U.S. Census Bureau, as reported by Global Trade Information Services, Inc.

Brazil exports a relatively small amount of swine offal products. On an average, it exports about 19,000 metric tons annually with a total value of $17 million. Hong Kong is by far the largest buyer of Brazilian swine offal, accounting for almost two-thirds of total exports. Russia is the second largest buyer; however, its imports are limited to frozen swine offal (HTS 0206491).

In terms of the aggregate world export of swine offal products, Brazil is ranked around tenth in both HTS categories with its share accounting for about 1 percent of world trade.[12]

Expected Economic Impact

The expected impact of the final rule on the U.S. economy is illustrated under two scenarios: 3 million pounds (1,361 metric tons) and 4 million pounds (1,814 metric tons) of pork rind pellets imported from Brazil.[13] These scenarios reflect the initial plan of the U.S. importer who requested the rule.

Table 6 summarizes the estimated price effects and impacts for U.S. producers and consumers under these two scenarios, using a nonspatial, partial equilibrium welfare model. The changes are minor; the model estimates that the net welfare benefit would be about $19,000 under the first scenario (3 million pounds imported) and $30,000 under the second scenario (4 million pounds imported). These welfare measures reflect a reduction in domestic production that would be more than offset by an increase in consumption. The changes in domestic production and consumption would be less than 1 percent. It is, therefore, safely assumed that the final rule will not have a significant economic impact on small entities in the pork rind industry.

TABLE 6.–ESTIMATED IMPACT ON THE U.S. ECONOMY OF PORK OFFAL IMPORTS FROM BRAZIL

	Pork rind pellets imported from Brazil	
	1,361 metric tons (3 million pounds)	1,814 metric tons (4 million pounds)
Change in U.S. consumption, metric ton	680.8	840.8
Change in U.S. production, metric ton	-730.2	-973.2
Change in price of pork rind pellets, dollars per metric ton	-$17.08	-$22.76

[11] Not Elsewhere Specified Or Indicated.

[12] Top exporters of HTS 020649 in 2005 were the United States (18 percent share), Germany (16 percent), Canada (13 percent), and Denmark (11 percent). For HTS 160249, top exporters were China (25 percent), Denmark (14 percent), Germany (12 percent), and the United States (8 percent).

[13] We used a nonspatial, partial equilibrium welfare model to quantify the economic effects of this rule. In addition to the importer's plan to import 3 to 4 million pounds, the price and quantity data explained in previous sections are used as inputs.

TABLE 6.–ESTIMATED IMPACT ON THE U.S. ECONOMY OF PORK OFFAL IMPORTS FROM BRAZIL—Continued

	Pork rind pellets imported from Brazil	
	1,361 metric tons (3 million pounds)	1,814 metric tons (4 million pounds)
Change in consumer welfare, thousand dollars	$1,577	$2,104
Change in annual net welfare, thousand dollars	$19	$30

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Has no retroactive effect; and (2) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, SWINE VESICULAR DISEASE, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, 7781-7786, and 8301-8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 94.4 is amended as follows:

■ a. In paragraph (b)(7), by removing the citation ''§ 94.4(b)(4) or (b)(5)'' and adding the words ''paragraph (b)(4) or (b)(5) of this section'' in its place.

■ b. By redesignating paragraphs (b)(8) and (b)(9) as paragraphs (b)(9) and (b)(10), respectively, and adding a new paragraph (b)(8) to read as set forth below.

■ c. In newly redesignated paragraph (b)(9)(ii), by removing the citation ''(b)(8)(i)'' and adding the citation ''(b)(9)(i)'' in its place.

§ 94.4 Cured or cooked meat from regions where rinderpest or foot-and-mouth disease exists.

* * * * *

(b) * * *

(8) *Pork rind pellets (pork skins).* Pork rind pellets (pork skins) must be cooked in one of the following ways:

(i) *One-step process.* The pork skins must be cooked in oil for at least 80 minutes when oil temperature is consistently maintained at a minimum of 114 °C.

(ii) *Two-step process.* The pork skins must be dry-cooked at 260 °C for approximately 210 minutes after which they must be cooked in hot oil (deep-fried) at 104 °C for an additional 150 minutes.

* * * * *

■ 3. Section 94.8 is amended as follows:

■ a. In paragraph (a)(3)(i), by removing the citation ''(a)(4)'' and adding the words ''(a)(5) of this section'' in its place.

■ b. By redesignating paragraph (a)(4) as paragraph (a)(5), and by adding a new paragraph (a)(4) to read as set forth below.

§ 94.8 Pork and pork products from regions where African swine fever exists or is reasonably believed to exist.

* * * * *

(a) * * *

(4) The pork product is pork rind pellets (pork skins) that were cooked in one of the following ways in an establishment that meets the requirements in paragraph (a)(5) of this section:

(i) *One-step process.* The pork skins must be cooked in oil for at least 80 minutes when oil temperature is consistently maintained at a minimum of 114 °C.

(ii) *Two-step process.* The pork skins must be dry-cooked at a minimum of 260 °C for approximately 210 minutes after which they must be cooked in hot oil (deep-fried) at a minimum of 104 °C for an additional 150 minutes.

* * * * *

■ 4. Section 94.9 is amended as follows:

■ a. In paragraph (c)(1)(ii)(B), by removing the word ''or'' the second time it appears.

■ b. In paragraph (c)(1)(iii)(C)(*2*), by removing the period at the end of the paragraph and adding ''; or'' in its place.

■ c. By adding a new paragraph (c)(1)(iv) to read as set forth below.

■ d. In paragraph (c)(2), by removing the citation ''(c)(1)(ii) or (iii)'' and adding the citation ''(c)(1)(ii), (iii), or (iv)'' in its place.

■ e. In paragraph (c)(3), by removing the citation ''(c)(1)(ii) or (iii)'' both places it occurs and adding the citation ''(c)(1)(ii), (iii), or (iv)'' in its place.

§ 94.9 Pork and pork products from regions where classical swine fever exists.

* * * * *

(c) * * *

(1) * * *

(iv) Pork rind pellets (pork skins) originating in regions where classical swine fever is known to exist may be imported into the United States provided they have been cooked in one of the following ways:

(A) *One-step process.* The pork skins must be cooked in oil for at least 80 minutes when oil temperature is consistently maintained at a minimum of 114 °C.

(B) *Two-step process.* The pork skins must be dry-cooked at a minimum of 260 °C for approximately 210 minutes after which they must be cooked in hot oil (deep-fried) at a minimum of 104 °C for an additional 150 minutes.

* * * * *

■ 5. In § 94.12, a new paragraph (b)(1)(vi) is added to read as follows:

§ 94.12 Pork and pork products from regions where swine vesicular disease exists.

* * * * *

(b) * * *

(1) * * *

(vi) Pork rind pellets (pork skins) must be cooked in one of the following ways:

(A) *One-step process.* The pork skins must be cooked in oil for at least 80 minutes when oil temperature is consistently maintained at a minimum of 114 °C.

(B) *Two-step process.* The pork skins must be dry-cooked at a minimum of 260 °C for approximately 210 minutes after which they must be cooked in hot oil (deep-fried) at a minimum of 104 °C for an additional 150 minutes.

* * * * *

Done in Washington, DC, this 9th day of December 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–29797 Filed 12–14–09; 8:33 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 95

[Docket No. APHIS-2006-0113]

RIN 0579-AC11

Importation of Swine Hides and Skins, Bird Trophies, and Ruminant Hides and Skins

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of animal byproducts to require that untanned swine hides and skins from regions with African swine fever and bird trophies from regions with exotic Newcastle disease meet certain requirements or go directly to an approved establishment upon importation into the United States. We are also setting out certain requirements for the importation of untanned bovine, deer, and other ruminant hides and skins into the United States from Mexico to prevent the spread of bovine babesiosis. These requirements will provide for the importation of these articles under conditions intended to prevent the introduction of African swine fever, bovine babesiosis, and exotic Newcastle disease.

DATES: *Effective Date:* January 14, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Tracye Butler, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737-1231; (301) 734-7476.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 93, 94, 95, and 96 (referred to below as the regulations) govern the importation of certain animals, birds, poultry, meat, other animal products and byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including rinderpest, foot-and-mouth disease (FMD), African swine fever (ASF), and exotic Newcastle disease (END). The regulations in § 95.5 set out requirements for the entry of untanned hides and skins. Section 95.6 sets out restrictions for those hides or skins that do not meet the requirements for entry in § 95.5.

On August 4, 2006, we published in the **Federal Register** (71 FR 44234-44239, Docket No. APHIS- 2006-0113) a proposal[1] to provide specific conditions under which untanned swine hides and skins from regions not considered free of ASF and bovine, deer and other ruminant hides and skins from Mexico could be imported into the United States in order to protect the U.S. livestock populations from incursions of ASF and bovine babesiosis. We also proposed to restrict the importation of bird trophies in order to protect U.S. bird populations against the introduction of END. For greater clarity, we also proposed to reorganize the provisions of § 95.5.

We solicited comments concerning our proposal for 60 days ending October 3, 2006. We received three comments by that date. They were from a representative of a consortium of scientific societies, a representative of a foreign government, and a private citizen. They are discussed below.

One commenter suggested that we prohibit all imports mentioned in this proposed rule, because, according to the commenter, neither our treatment and certification requirements nor our inspections are rigorous enough to prevent the introduction of disease.

The commenter did not provide specific information indicating how the proposed requirements or our inspection procedures were insufficient to prevent the introduction of ASF, bovine babesiosis, and END into the United States. Our existing requirements and inspection procedures have been effective in preventing the introduction of rinderpest and FMD, and we believe that the requirements of this rule will be effective in preventing the introduction of ASF, bovine babesiosis, and END into the United States.

One commenter pointed out an inconsistency between our explanation of the proposed regulations in the preamble of the proposed rule and the proposed regulatory text.

We proposed to revise § 95.5 by redesignating paragraphs (a) through (e), which contain general provisions to allow the importation of ruminant hides and skins, as paragraphs (a)(1) through (a)(5). To address the specific risk of infestation with ticks carrying bovine babesiosis, we proposed to allow the importation of ruminant hides and skins from Mexico under proposed paragraph (b)(1) if they are hard dried in accordance with proposed paragraph (a)(2); have been pickled in a solution of salt containing mineral acid which has a pH of less than or equal to 5 and placed in containers while wet in accordance with proposed paragraph (a)(4); have been treated with lime so as to have become dehaired and ready for preparation into rawhide products in accordance with proposed paragraph (a)(5); have been frozen solid for 24 hours; are certified to be free of ticks; or were taken from cattle subjected to a tickicidal dip prior to slaughter.

However, as the commenter correctly noted, the proposed regulatory text in paragraph (b)(1) incorrectly referred to subjecting ruminant hides or skins from Mexico to one of the treatments listed in proposed § 95.5(a)(2), (a)(3), or (a)(4); paragraph (a)(3) contains a certification process that does not address the risk associated with ticks. Accordingly, the regulatory text in § 95.5(b)(1) in this final rule refers to the treatments in paragraphs (a)(2), (a)(4), and (a)(5) of § 95.5.

We proposed to add paragraph (c) in § 95.5 to provide for the importation of bird trophies from END-free regions. Under this paragraph, bird trophies from END-free regions may be imported without further restriction if they are accompanied by a certificate of origin issued by the national government of the region of export.

One commenter suggested two changes to the manner in which the proposed rule addressed bird trophies.

The commenter's first suggested change was to add a definition of ''bird trophy'' to the regulations in order to distinguish between bird carcasses or skins imported for ornamental or decorative display and those bird carcasses or skins imported for the purpose of research or display in a museum or educational institution. The commenter stated that adding such a definition to the regulations would help port inspectors to distinguish a bird trophy from research material.

We agree that defining ''bird trophy'' may make distinguishing a bird trophy from material of avian origin intended

[1] To view the proposed rule and the comments we received, go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0113*).

for research easier for all members of the public. Therefore, we are adding to the list of definitions in § 95.1 a definition of *bird trophy*. We define a *bird trophy* as ''a carcass or part of a carcass of a wild bird taken as game during a hunting expedition for the purpose of processing into taxidermy mounts for personal exhibition.''

Although a bird trophy may be a carcass or part of a carcass, similar in appearance to material of avian origin intended for research, the additional requirements under our definition distinguish a bird trophy from other avian material: It must be a wild bird taken as game, obtained in a hunting expedition, or imported for the specific purpose of being processed through taxidermy methods for personal use.

Additionally, we believe that any confusion regarding the purpose of importation of avian material at the port of entry would be resolved by examining the accompanying permit or certificate. Such documentation would necessarily indicate the purpose and destination of the article.

We proposed to amend the introductory paragraph of § 95.5 to state that bird trophies may be imported into the United States without restriction if they meet the requirements of that section; if the bird trophies are imported from regions where END exists and thus do not meet the requirements of § 95.5, we proposed to require that they be handled at an approved establishment as set forth in § 95.6.

The commenter's second suggested change to the proposed rule was to clarify that these requirements in part 95 are distinct from the requirements in 9 CFR part 94 that apply to the importation of carcasses and the parts or products of carcasses of poultry, game birds, or other birds from regions where END is considered to exist. The commenter acknowledged that with the assistance of APHIS, importers of avian material for research or educational purposes are aware of the differing requirements and that no confusion by these importers or inspectors at the port of entry exists. However, she was concerned that some entities may believe that the more stringent requirements regarding research material from END and highly pathogenic avian influenza (HPAI) subtype H5N1 regions might be applied to the bird trophies covered by this rule.

Because we are defining ''bird trophy'' to further distinguish bird trophies from avian material intended for research purposes, we believe the distinction between materials of avian origin for research or educational purposes and bird trophies is sufficiently clear in the regulations. As the commenter noted, no confusion currently exists. We have made concerned importers familiar with our requirements through frequent communication and by providing specific guidance and advice, and we will continue to offer such assistance and technical information in the future.

We are making additional changes to the proposed regulations in this final rule.

The current heading of § 95.5 contains the phrase ''Requirements for unrestricted entry'' in addressing the articles to which the section refers. As § 95.5 does in fact require various conditions for the importation of untanned hides and skins and bird trophies, this heading as written is not clear and could create confusion. Therefore, for greater clarity and to ensure compliance with the regulations, we are removing the word ''unrestricted'' from the heading.

Similarly, the introductory language to § 95.5 contains the phrase ''without restriction'' in its discussion of those regulations contained in the section. As noted above, § 95.5 does require various conditions for the importation of untanned hides and skins and bird trophies. Therefore, for greater clarity and transparency, we are amending the introductory text of § 95.5 to state that untanned hides and skins and bird trophies may be imported into the United States if they meet the requirements of the section or if they are handled at an approved establishment as set forth in § 95.6. The importation of bird trophies, however, is also subject to the restrictions of § 95.30, as discussed below.

To address the specific risk of ruminant hides and skins from Mexico being infested with ticks carrying bovine babesiosis, we proposed to allow the importation of these hides and skins under proposed paragraph (b) of § 95.5. This paragraph contains several possible treatment options, all of which we have determined to be effective at eliminating ticks that could spread bovine babesiosis.

Proposed paragraph (b)(2) of § 95.5 would have allowed the importation of ruminant hides and skins from Mexico without further restriction if they have been frozen solid for 24 hours and are accompanied by a written statement from the owner attesting to that fact. To provide additional assurance that the freezing requirement has been met, we are changing proposed paragraph (b)(2) to require that an inspector, as defined in § 95.1, inspect the hides or skins to ensure they are frozen and verify, by a review of the available documentation provided by the shipper or importer attesting to the fact, that the hides or skins have been frozen solid for 24 hours. In addition, in order to provide maximum protection for the U.S. ruminant population, we are changing proposed paragraph (b)(2) to add a requirement that frozen hides and skins presented for importation under paragraph (b)(2) of the regulations also be free of ticks.

Proposed paragraph (b)(4) would have allowed ruminant hides and skins from Mexico to be imported if they were taken from cattle that were subjected to a tickicidal dip at a Mexican export facility 7 to 12 days prior to slaughter. In order to make clear which dips are approved for use, we have changed proposed paragraph (b)(4) to indicate that the ruminant hides and skins must be dipped in one of the permitted dips listed in § 72.13(b). This is consistent with our regulations in § 93.427 governing the importation of live cattle from Mexico for purposes other than immediate slaughter. In order to provide flexibility without incurring greater disease risk, we are also removing the requirement in proposed paragraph (b)(4) that the required tickicidal dip must take place at a Mexican export facility. Although the dip may be conducted at a Mexican export facility, it can be conducted successfully at any type of facility in Mexico, as long as the permitted dips listed in § 72.13(b) are used. In addition, in order to provide maximum protection for the U.S. ruminant population, we are changing proposed paragraph (b)(4) to add a requirement that hides and skins presented for importation under paragraph (b)(4) of the regulations also be free of ticks.

As noted above, the introductory paragraph of § 95.5 provides that any untanned hides or skins or bird trophies that do not meet the requirements of that section must be handled at an approved establishment as set forth in § 95.6. Section 95.6 addresses the importation of hides and skins which do not meet the conditions or requirements of § 95.5 by requiring, among other things, that such hides and skins be consigned to an approved establishment.

In the proposed rule, we neglected to include changes to § 95.6 to reflect the proposed changes in § 95.5. In this final rule, we are adding the words ''bird trophies'' to the title of § 95.6 and in the appropriate places throughout the text to indicate that the section applies to bird trophies. We are also adding END and ASF to the list of diseases in paragraph (c) whose dissemination the regulations are designed to prevent. We

are taking this action to clarify the applicability of § 95.6 to the importation of bird trophies and untanned hides and skins.

The proposed introductory text of § 95.5 stated that bird trophies may be imported into the United States without restriction if they meet the requirements of that section. However, other requirements in part 95 also apply to bird trophies; specifically, § 95.30 requires bird trophies from areas where HPAI subtype H5N1 exists to be imported with a permit. To ensure that all relevant requirements are taken into account, the introductory text of § 95.5 in this final rule indicates that bird trophies must meet both the requirements of § 95.5 and be eligible for importation under § 95.30.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule amends the regulations in § 95.5 governing the requirements for importation of untanned hides and skins and adds import requirements for bird trophies. We are now requiring that untanned swine hides and skins from regions with ASF and bird trophies from regions with END meet the requirements of § 95.5 or go directly to an approved establishment upon importation into the United States and be subject to the requirements under § 95.6 of the regulations. We are also requiring that deer and other ruminant hides and skins imported into the United States from Mexico be subjected to one of several possible treatments that we view as effective in killing ticks that could transmit bovine babesiosis.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities.

We anticipate this rule will produce economic benefits by preventing the introduction of ASF, END, and bovine babesiosis, which could negatively affect the ability of the U.S. swine, poultry, and ruminant industries to export their products to international markets. The economic effects of END have been demonstrated by the recent 2002 and 2003 outbreak of the disease in the Western United States. END was diagnosed in both backyard poultry flocks and in commercial poultry in California, Nevada, Arizona, and Texas. Over the course of the outbreak, more than 18,000 premises were quarantined, and more than 3 million birds were depopulated. The eradication efforts cost taxpayers in excess of $180 million. In addition, over 30 international governments placed varying levels of import restrictions on poultry and poultry products from the United States as a result of this outbreak. These restrictions consisted primarily of bans on poultry and poultry products from the affected areas of the United States, resulting in approximately $121 million of direct total value of exports affected by these restrictions. Incursions of ASF and bovine babesiosis could cause similar serious economic damage to the U.S. swine and cattle industries. These three livestock industries were valued at more than $72 billion in 2000. Specifically, the U.S. cattle industry was valued at $67.1 billion, the swine industry at $4.3 billion, and the poultry industry at $1.2 billion (Agricultural Statistics, 2001).

U.S. imports of untanned swine hides and skins from ASF-affected regions are relatively meager (see table 1 below). The average value of such imports in 2000 and 2001, all of which came from sub-Saharan Africa, was $4,500, while the average value of all U.S. imports of untanned swine hides and skins during the same period was $980,500. There were no U.S. imports of untanned swine hides and skins from ASF-affected regions in 2002 and 2003. We can conclude, then, that the amount of untanned swine hides and skins coming from ASF-affected countries into the United States is insignificant and that the requirement that these hides and skins be consigned to an approved establishment is not likely to have a significant economic effect on U.S. importers of such hides and skins.

TABLE 1.–VALUE OF U.S. IMPORTS OF UNTANNED SWINE HIDES AND SKINS[1]

Region	2000	2001	2002	2003
Sub-Saharan Africa	$3,000	$6,000	0	0
World	1,292,000	669,000	$1,401,000	$868,000

[1] Fresh or salted untanned swine-hides – (Harmonized Schedule (HS) 4103900060). Import HS-10 Digit-U.S. International Trade Commission Commodities in Detail.

Source: Foreign Agricultural Service (FAS), U.S. Trade Internet System, Imports, Foreign Agriculture Trade of United States (FATUS) Web site: (*http://www.fas.usda.gov/ustrade*).

U.S. imports of untanned deer hides and skins from Mexico have also been limited. As shown in table 2, the value of U.S. imports of untanned deer hides and skins from Mexico in 2001 was $2,000, accounting for approximately 0.33 percent of the U.S. total for that year. There were no untanned deer hides and skins imported from Mexico in 2000, 2002, and 2003. The average value of total U.S. imports of untanned deer hides and skins in 2000 and 2001 was $700,000, and none were imported in 2002 or 2003. Since Mexico's share of this market has been so small, we can conclude that this rule is not likely to have a significant economic effect on U.S. importers of untanned deer hides and skins.

TABLE 2.–VALUE OF U.S. IMPORTS OF UNTANNED DEER HIDES AND SKINS[1]

Region	2000	2001	2002	2003
Mexico	0	$2,000	0	0
World	$805,000	604,000	0	0

[1] Fresh or dried or salted, but not tanned deer skins – (HS 4103900030). Import HS-10 Digit-USITC Commodities in Detail.

Source: FAS, U.S. Trade Internet System, Imports, FATUS. Web site: (*http://www.fas.usda.gov/ustrade*).

Other ruminant hides and skins that are currently being imported into the United States from Mexico and that will be subject to provisions of this rule include those of bovines, sheep or lambs, and chamoises. The latest available data on the value of U.S. imports from Mexico of such hides and skins and the percentages of Mexico's market share for the years 1997 through 2001 are presented in tables 3 through 6.

TABLE 3.–VALUE OF U.S. IMPORTS OF UNTANNED BOVINE HIDES, WHOLE, RAW

Region	1997	1998	1999	2000	2001	5-year average
Mexico	$10,000 (0.5%)	0	$1,000 (0.1%)	0	$177,000 (15%)	3.12%
World	1,964,000	$667,000	962,000	$1,135,000	1,217,000	

Source: United Nations (*http://untrade.fas.usda.gov/untrade*).

TABLE 4.–VALUE OF U.S. IMPORTS OF NES [1] UNTANNED BOVINE SKINS

Region	1997	1998	1999	2000	2001	5-year average
Mexico	$142,000 (0.8%)	$704,000 (5%)	$372,000 (4%)	$63,000 (0.8%)	$59,000 (0.9%)	2.3%
World	17,733,000	14,974,000	10,123,000	8,319,000	6,768,000	

[1] Not elsewhere specified.
Source: United Nations (*http://untrade.fas.usda.gov/untrade*).

TABLE 5.–VALUE OF U.S. IMPORTS OF SHEEP OR LAMB SKINS, RAW, WITH WOOL ON

Region	1997	1998	1999	2000	2001	5-year average
Mexico	$486,000 (23%)	$59,000 (3.2%)	0	$13,000 (5.8%)	0	6.4%
World	2,116,000	1,828,000	$256,000	226,000	$764,000	

Source: United Nations (*http://untrade.fas.usda.gov/untrade*).

TABLE 6.–VALUE OF U.S. IMPORTS OF UNTANNED CHAMOIS HIDES

Region	1997	1998	1999	2000	2001	5-year average
Mexico	$3,753,000 (27%)	$4,358,000 (29%)	$4,907,000 (34%)	$5,588,000 (38%)	$6,156,000 (48%)	35.2%
World	13,711,000	15,150,000	14,483,000	14,849,000	12,969,000	

Source: United Nations (*http://untrade.fas.usda.gov/untrade*).

As the tables illustrate, with the exception of chamois hides (table 6), imports from Mexico account for a relatively small proportion of the total U.S. imports of these commodities. Over the 5-year period, an average of 3.12 percent of the untanned whole bovine hides, 2.3 percent of the NES untanned bovine skins, and 6.4 percent of the untanned sheep and lamb skins that were imported into the United States came from Mexico. Mexican chamois hides, however, did account for a significantly larger proportion of total imports, averaging 35.2 percent. Still, given the relatively small amounts of most of these commodities that Mexico provides and the fact that the procedures specified in this rule are already being required for entry of ruminant hides and skins into the United States in most cases, it appears unlikely that this rule will have a significant effect on any U.S. importers of untanned ruminant hides or skins from Mexico.

The United States Fish and Wildlife Service grants permits to individuals for the importation of bird trophies but does not require a separate permit for each trophy, whether imported as a finished product or as skin, bones, and feathers, and does not collect data on the number of mounts prepared by each permit holder. Therefore, reliable data on imported bird trophies from END-free regions are not available.

Economic Impact on Small Entities

Agencies are required to analyze the impacts of their regulations on small businesses and to use flexibility to provide regulatory relief when regulations create economic disparities between different-sized entities. Among the small entities that could be affected by this rule are importers of hides and skins. According to the 2002 Economic Census, in that year there were 260 establishments in the United States which primarily engaged in the wholesale distribution of untanned hides and skins. No data were available on how many of these entities were importers. According to the criteria used by the Small Business Administration (SBA), an entity in this category (North American Industrial Classification System [NAICS] 4225159) is considered small if it employs fewer than 100 persons. In 2002, these 260 entities employed a total of 1,983 paid employees, an average of approximately 7 per entity. It is likely, therefore, that the overwhelming majority of these establishments were small. As we have already noted, imports of the commodities potentially affected by this rule are relatively low, and we do not

expect this rulemaking to have a significant economic impact on any U.S. entities, large or small. Moreover, any possible negative effects of this rule on U.S. importers of untanned ruminant or swine hides and skins, deer or other ruminant hides and skins from Mexico, and bird trophies would be far outweighed by the benefits to other small entities by preventing outbreaks of ASF, END, and bovine babesiosis. Over 99 percent of U.S. cattle producers and more than 88 percent of U.S. swine producers have annual receipts of $750,000 or less, which is the criterion by which such firms are designated as small entities by the SBA. The majority of meat packing plants (NAICS 311612 and NAICS 311613), which could be affected by an ASF or bovine babesiosis outbreak, and poultry processors (NAICS 311615), which could be affected by an END outbreak, are also small entities, the SBA threshold for these entities being 100 or fewer employees. The latest available data show that in 1997, more than 96 percent of meat packing firms were small. These small firms accounted for approximately 40 percent of the total value of the industry's shipments. All of these small entities will benefit from this final rule by being protected from potential outbreaks of ASF, END, and bovine babesiosis.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Has no retroactive effect; and (2) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

The information collection burden in this final rule includes 240 hours that were not included in the proposed rule. Specifically, the additional hours are for compliance with the inspection of ruminant hides and skins from Mexico, which were added to the coverage of the final rule. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0307.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act 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. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

List of Subjects in 9 CFR Part 95

Animal feeds, Hay, Imports, Livestock, Reporting and recordkeeping requirements, Straw, Transportation.

■ Accordingly, we are amending 9 CFR part 95 as follows:

PART 95—SANITARY CONTROL OF ANIMAL BYPRODUCTS (EXCEPT CASINGS), AND HAY AND STRAW, OFFERED FOR ENTRY INTO THE UNITED STATES

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 7 U.S.C. 8301-8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§§ 95.7, 95.9, and 95.26 [Amended]

■ 2. Sections 95.7, 95.9, and 95.26 are amended as follows:

■ a. Footnote 1 in § 95.7, footnote 1 in § 95.9, and footnote 2 in § 95.26 are redesignated as footnotes 3 through 5, respectively.

■ b. Redesignated footnote 3 in § 95.7 and redesignated footnote 4 in § 95.9 are revised to read as follows: ''See footnote 2 in § 95.5.''

■ 3. Section 95.1 is amended by adding, in alphabetical order, a new definition of *bird trophy* to read as follows:

§ 95.1 Definitions.

* * * * *

Bird trophy. A carcass or part of a carcass of a wild bird taken as game during a hunting expedition for the purpose of processing into taxidermy mounts for personal exhibition.

* * * * *

■ 4. Section 95.5 is revised to read as follows:

§ 95.5 Untanned hides and skins and bird trophies; requirements for entry.

Untanned hides and skins and bird trophies[1] may be imported into the United States if they meet the requirements of this section or if they are handled at an approved establishment as set forth in § 95.6.

(a) *Untanned hides and skins.* (1) Except for ruminant hides or skins from Mexico, any untanned hides or skins of ruminants from regions free of foot-and-mouth disease and rinderpest and any untanned hides or skins of swine from regions free of foot-and-mouth disease, rinderpest, and African swine fever may be imported without further restriction.

(2) Untanned ruminant hides or skins may be imported from any region without other restriction if an inspector determines, based on inspection and upon examination of a shipper or importer certificate, that they are hard dried hides or skins.

(3) Except for ruminant hides or skins from Mexico, untanned abattoir hides or skins of ruminants may be imported from any region without other restriction if the following requirements are met:

(i) The ruminants from which the hides or skins were taken have been slaughtered under national government inspection in a region[2] and in an abattoir in which is maintained an inspection service that meets the requirements and has been approved pursuant to part 327 of this title; and

(ii) The hides or skins are accompanied by a certificate bearing the seal of the proper department of that national government and signed by an official veterinary inspector of the region in which the ruminants were slaughtered. The certificate must state that the hides or skins were taken from ruminants slaughtered in an abattoir that meets the requirements of paragraph (a)(3)(i) of this section and that the hides or skins are free from anthrax, foot-and-mouth disease, and rinderpest.

(4) Untanned ruminant hides or skins from any region may be imported without other restriction if an inspector determines, based on inspection and upon examination of a shipper or importer certificate, that they have been pickled in a solution of salt containing mineral acid and packed in barrels, casks, or tight cases while still wet with such solution. The solution must be determined by the inspector to have a pH of less than or equal to 5.

(5) Untanned ruminant hides or skins from any region may be imported without other restriction if an inspector determines, based on inspection and upon examination of a shipper or importer certificate, that they have been

[1] The importation of bird trophies is also subject to restrictions under § 95.30.

[2] Names of these regions will be furnished upon request to the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, Maryland 20737-1231.

treated with lime in such manner and for such period as to have obviously been processed, to have become dehaired, and to have reached the stage of preparation for immediate manufacture into products ordinarily made from rawhide.

(b) *Ruminant hides and skins from Mexico.* Ruminant hides and skins from Mexico may enter the United States without other restriction if:

(1) They have been subjected to any one of the treatments specified in paragraphs (a)(2), (a)(4), or (a)(5) of this section; or

(2) They are inspected and found to have been frozen solid for 24 hours by an inspector and are accompanied by a certificate attesting to that fact issued by the shipper or importer that is reviewed by the inspector, and are free from ticks; or

(3) They are free from ticks and are accompanied by a certificate issued by a full-time salaried veterinary officer of the Government of Mexico stating that they have been treated with an acaricide; or

(4) They are bovine hides taken from cattle that were subjected to a tickicidal dip in one of the permitted dips listed in § 72.13(b) of this chapter at a Mexican facility 7 to 12 days prior to slaughter, and are free from ticks.

(c) *Bird trophies.* Bird trophies from regions designated in § 94.6 of this subchapter as free of exotic Newcastle disease and free of HPAI subtype H5N1 may be imported without further restriction if accompanied by a certificate of origin issued by the national government of the region of export.

(Approved by the Office of Management and Budget under control numbers 0579-0015 and 0579-0307)

§ 95.6 [Amended]

■ 5. Section 95.6 is amended as follows:

■ a. In the section heading, by removing the words ''and skins'' and adding the words '', skins, and bird trophies'' in their place.

■ b. In the introductory text, by adding the words ''or bird trophies'' after the word ''skins''.

■ c. In paragraph (a), by adding the words ''or bird trophies'' after the word ''skins'' each time it appears.

■ d. In paragraph (c), in the first sentence, by removing the words ''and rinderpest'' and adding the words '', rinderpest, African swine fever, and exotic Newcastle disease'' after the words ''foot-and-mouth disease'' and, in the second sentence, by adding the words ''or bird trophies'' after the word ''skins''.

Done in Washington, DC, this 4th day of December 2009.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–29798 Filed 12–14–09; 8:45 am]

BILLING CODE 3410–34–S

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1104; Directorate Identifier 2009–NM–167–AD; Amendment 39–16121; AD 2008–04–10 R1]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 727 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: The FAA is revising an existing airworthiness directive (AD), which applies to all The Boeing Company Model 727 airplanes. That AD currently requires revising the FAA-approved maintenance program by incorporating new airworthiness limitations (AWLs) for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. That AD also requires an initial inspection to phase in a certain repetitive AWL inspection, and repair if necessary. This AD clarifies the intended effect of the AD on spare and on-airplane fuel tank system components. This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective December 30, 2009.

On March 28, 2008 (73 FR 9668, February 22, 2008), the Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD.

We must receive any comments on this AD by January 29, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, *Attention:* Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com*.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Thorson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6508; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

On February 13, 2008, we issued AD 2008–04–10, amendment 39–15382 (73 FR 9668, February 22, 2008). That AD applies to all The Boeing Company Model 727 airplanes. That AD requires revising the FAA-approved maintenance program by incorporating new airworthiness limitations (AWLs) for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. That AD also requires an initial inspection to phase in a certain repetitive AWL inspection, and repair if necessary. That AD resulted from a design review of the fuel tank systems. The actions specified in that AD are intended to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel

vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Critical design configuration control limitations (CDCCLs) are limitation requirements to preserve a critical ignition source prevention feature of the fuel tank system design that is necessary to prevent the occurrence of an unsafe condition. The purpose of a CDCCL is to provide instruction to retain the critical ignition source prevention feature during configuration change that may be caused by alterations, repairs, or maintenance actions. A CDCCL is not a periodic inspection.

Actions Since AD Was Issued

Since we issued that AD, we have determined that it is necessary to clarify the AD's intended effect on spare and on-airplane fuel tank system components, regarding the use of maintenance manuals and instructions for continued airworthiness.

Section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403(c)) specifies the following:

> No person may operate an aircraft for which a manufacturer's maintenance manual or instructions for continued airworthiness has been issued that contains an airworthiness limitation section unless the mandatory * * * procedures * * * have been complied with.

Some operators have questioned whether existing components affected by the new CDCCLs must be reworked. We did not intend for the AD to retroactively require rework of components that had been maintained using acceptable methods before the effective date of the AD. Owners and operators of the affected airplanes therefore are not required to rework affected components identified as airworthy or installed on the affected airplanes before the required revisions of the FAA-approved maintenance program. But once the CDCCLs are incorporated into the FAA-approved maintenance program, future maintenance actions on components must be done in accordance with those CDCCLs.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to revise AD 2008–04–10. This new AD retains the requirements of the existing AD, and adds a new note to clarify the intended effect of the AD on spare and on-airplane fuel tank system components.

Explanation of Additional Change to AD

AD 2008–04–10 allowed the use of alternative inspections, inspection intervals, and CDCCLs if they are part of a later revision of the Boeing 727–100/200 Airworthiness Limitations (AWLs), D6–8766–AWL, dated March 2006. AD 2008–04–10 also allowed use of later revisions of Boeing 727–100/200 Airworthiness Limitations (AWL), D6–8766–AWL, dated March 2006. Those provisions have been removed from this AD. Allowing the use of a ''later revision'' of a specific service document violates Office of the Federal Register regulations for approving materials that are incorporated by reference. Affected operators, however, may request approval to use a later revision or an alternative inspection, inspection interval, or CDCCL that is part of a later revision of the referenced service document as an alternative method of compliance, under the provisions of paragraph (j) of this AD.

Costs of Compliance

This revision imposes no additional economic burden. The current costs for this AD are repeated for the convenience of affected operators, as follows:

There are about 530 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs, at an average labor rate of $80 per work hour, for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Maintenance program revision	8	None	$640	272	$174,080
Inspection	8	None	640	272	174,080

FAA's Justification and Determination of the Effective Date

This revision merely clarifies the intended effect on spare and on-airplane fuel tank system components, and makes no substantive change to the AD's requirements. For this reason, it is found that notice and opportunity for prior public comment for this action are unnecessary, and good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–1104; Directorate Identifier 2009–NM–167–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition

that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing amendment 39–15382 (73 FR 9668, February 22, 2008) and adding the following new AD:

2008–04–10 R1 The Boeing Company: Amendment 39–16121. Docket No. FAA–2009–1104; Directorate Identifier 2009–NM–167–AD.

Effective Date

(a) This airworthiness directive (AD) is effective December 30, 2009.

Affected ADs

(b) This AD revises AD 2008–04–10, Amendment 39–15382.

Applicability

(c) This AD applies to all The Boeing Company Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (j) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Unsafe Condition

(d) This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of AD 2008–04–10, With Change to Compliance Method

Service Information Reference

(f) The term ''Document D6–8766–AWL,'' as used in this AD, means Boeing 727–100/200 Airworthiness Limitations (AWLs), D6–8766–AWL, dated March 2006.

Maintenance Program Revision

(g) Before December 16, 2008, revise the FAA-approved maintenance program to incorporate the information in the sections specified in paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD; except that the initial inspection required by paragraph (h) of this AD must be done at the applicable compliance time specified in that paragraph.

(1) Section A, ''SCOPE'' of Document D6–8766–AWL.

(2) Section B, ''FUEL SYSTEMS AIRWORTHINESS LIMITATIONS,'' of Document D6–8766–AWL.

(3) Section C, ''SYSTEM AWL PAGE FORMAT,'' of Document D6–8766–AWL.

(4) Section D, ''AIRWORTHINESS LIMITATIONS—FUEL SYSTEMS,'' of Document D6–8766–AWL.

Initial Inspection and Repair if Necessary

(h) At the later of the compliance times specified in paragraphs (h)(1) and (h)(2) of this AD, do a detailed inspection of the wire bundles routed over the center fuel tank for damaged clamps, wire chafing, and wire bundles in contact with the surface of the center fuel tank, in accordance with AWL No. 28–AWL–01 of Section D of Document D6–8766–AWL. If any discrepancy is found during the inspection, repair the discrepancy before further flight, in accordance with AWL No. 28–AWL–01 of Section D of Document D6–8766–AWL. Accomplishing AWL No. 28–AWL–01 as part of an FAA-approved maintenance program prior to the applicable compliance time specified in paragraph (h)(1) or (h)(2) of this AD constitutes compliance with the requirements of this paragraph.

Note 2: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

(1) Prior to the accumulation of 36,000 total flight cycles, or within 120 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs first.

(2) Within 72 months after March 28, 2008 (the effective date AD 2008–04–10).

No Alternative Inspections, Inspection Intervals, or Critical Design Configuration Control Limitations (CDCCLs)

(i) After accomplishing the applicable actions specified in paragraphs (g) and (h) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (j) of this AD.

New Information

Explanation of CDCCL Requirements

Note 3: Notwithstanding any other maintenance or operational requirements, components that have been identified as airworthy or installed on the affected airplanes before the revision of the AWL, as required by paragraph (g) of this AD, do not need to be reworked in accordance with the CDCCLs. However, once the AWL has been revised, future maintenance actions on these components must be done in accordance with the CDCCLs.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Tom Thorson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6508; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC–Requests@faa.gov*.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR

39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Material Incorporated by Reference

(k) You must use Boeing 727–100/200 Airworthiness Limitations (AWLs), D6–8766–AWL, dated March 2006, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register previously approved the incorporation by reference of Boeing 727–100/200 Airworthiness Limitations (AWLs), D6–8766–AWL, dated March 2006, on March 28, 2008 (73 FR 9668, February 22, 2008).

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com*.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on November 19, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–29737 Filed 12–14–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0704; Airspace Docket No. 09–ANM–9]

Amendment of Class E Airspace; Riverton, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will amend Class E airspace at Riverton Regional Airport, Riverton, WY. Additional controlled airspace is necessary to accommodate aircraft using the VHF Omni-Directional Radio Range (VOR), Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Riverton Regional Airport, Riverton, WY. This will improve the safety of Instrument Flight Rules (IFR) aircraft executing the VOR (RNAV) GPS (SIAP) at Riverton Regional Airport, Riverton, WY.

DATES: Effective 0901 UTC, February 11, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On October 2, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E controlled airspace at Riverton Regional Airport, Riverton, WY (74 FR 50928). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the Class E airspace for the Riverton, WY, area, adding additional controlled airspace extending upward from 700 feet above the surface to accommodate IFR aircraft executing VOR (RNAV) (GPS) SIAPs at Riverton Regional Airport. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (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 U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Riverton Regional Airport, Riverton, WY.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 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 the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WY E5 Riverton, WY [Modified]

Riverton Regional Airport, WY
(Lat. 43°03′51″ N., long. 108°27′35″ W.)
Riverton VOR/DME
(Lat. 43°03′57″ N., long. 108°27′20″ W.)

That airspace extending upward from 700 feet above the surface within an 8.7-mile radius of the Riverton Regional Airport and within 4 miles each side of the Riverton VOR/DME 291° radial extending from the 8.7-mile radius to 16.6 miles west of the VOR/DME, and within 3.1 miles each side of the Riverton VOR/DME 123° radial extending from the 8.7-mile radius to 10.5 miles southeast of the VOR/DME; that airspace extending upward from 1,200 feet above the surface within a 21.8-mile radius of the Riverton VOR/DME within 8.7 miles east and 6.1 miles west of the Riverton VOR/DME 016° radial extending from the 21.8-mile radius to 33.1 miles north of the VOR/DME, and within 6.1 miles northeast and 12.7 miles southwest of the Riverton VOR/DME 301° radial extending from the 21.8-mile radius to 32.2 miles northwest of the VOR/DME, on the east within an area bounded by a point beginning at lat. 42°56′30″ N., long. 107°59′45″ W.; to lat. 42°54′53″ N., long. 107°44′31″ W.; to lat. 42°42′35″ N., long. 107°53′00″ W.; to lat. 42°49′00″ N., long. 108°06′00″ W.; thence to the point of beginning.

* * * * *

Issued in Seattle, Washington, on December 2, 2009.

H. Steve Karnes,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. E9–29758 Filed 12–14–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0695; Airspace Docket No. 09–AWP–7]

Establishment and Modification of Class E Airspace; Bishop, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish Class E surface airspace and modify existing Class E airspace at Bishop, CA. Additional controlled airspace is necessary to accommodate a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) developed for Eastern Sierra Regional Airport, Bishop, CA. This will improve the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, February 11, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On September 24, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to modify and establish additional controlled airspace at Bishop, CA, (74 FR 48671). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.9T 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 will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace designated as surface areas and modifying existing Class E airspace extending upward from 700 feet above the surface at Bishop, CA. Additional controlled airspace is necessary for the safety and management of IFR aircraft executing a new RNAV (GPS) SIAP at Eastern Sierra Regional Airport, Bishop, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (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 FAAs authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Eastern Sierra Regional Airport, Bishop, CA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 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 the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

AWP CA, E2 Bishop, CA [New]

Eastern Sierra Regional, CA
(Lat. 37°22′23″ N., long. 118°21′49″ W.)

Within a 4.2-mile radius of Eastern Sierra Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA, E5 Bishop, CA [Modified]

Eastern Sierra Regional, CA
(Lat. 37°22′23″ N., long. 118°21′49″ W.)
Beatty VORTAC
(Lat. 36°48′02″ N., long. 116°44′52″ W.)
LIDAT Intersection

(Lat. 37°25′49″ N., long. 117°16′41″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Eastern Sierra Regional Airport, and that airspace within 2.2 miles each side of the Eastern Sierra Regional Airport 337° bearing extending from the 6.7-mile radius to 27.8 miles northwest of the Eastern Sierra Regional Airport; and that airspace extending upward from 1,200 feet above the surface of the earth bounded by a line beginning at lat. 38°11′08″ N., long. 118°46′30″ W.; to lat. 38°13′14″ N., long. 118°41′00″ W.; to lat. 38°14′25″ N., long. 118°17′04″ W.; to lat. 38°03′17″ N., long. 118°02′30″ W.; to lat. 37°41′20″ N., long. 118°16′42″ W.; to lat. 37°09′50″ N., long. 118°00′13″ W.; to lat. 37°02′00″ N., long. 118°21′30″ W.; to lat. 38°11′08″ N., long. 118°57′00″ W.; thence to the point of origin. That airspace extending upward from 12,500 feet MSL within 4.3 miles each side of a direct course between the Eastern Sierra Regional Airport and LIDAT Intersection, 36.5 miles 12,500 feet MSL, 10,500 feet MSL LIDAT Intersection; and within 4.3 miles each side of a direct course between Eastern Sierra Regional Airport and the Beatty VORTAC 69.5 miles 12,500 feet MSL, 10,500 feet MSL Beatty VORTAC.

* * * * *

Issued in Seattle, Washington, on December 2, 2009.

H. Steve Karnes,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. E9–29757 Filed 12–14–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 090130089–91425–02]

RIN 0691–AA71

Direct Investment Surveys: BE–10, 2009 Benchmark Survey of U.S. Direct Investment Abroad

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends regulations of the Bureau of Economic Analysis (BEA), Department of Commerce, setting forth the reporting requirements for the 2009 BE–10, Benchmark Survey of U.S. Direct Investment Abroad. The benchmark survey covers the U.S. direct investment abroad universe, and is BEA's most comprehensive survey of such investment in terms of subject matter. Benchmark surveys are conducted every 5 years. The changes to the 2009 benchmark survey include: (a) Changes in survey form design and reporting criteria to simplify the survey forms and improve response rates; and (b) modifications, deletions and additions of specific items on the survey forms. Some of the items that will no longer be collected are those that are now collected on BEA's surveys of international services.

DATES: This final rule will be effective on January 14, 2010.

FOR FURTHER INFORMATION CONTACT: David H. Galler, Chief, Direct Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9835 or e-mail *David.Galler@bea.gov*.

SUPPLEMENTARY INFORMATION: In the September 30, 2009, **Federal Register**, 74 FR 50150–50154, BEA published a notice of proposed rulemaking that set forth revised reporting criteria for the BE–10, Benchmark Survey of U.S. Direct Investment Abroad. No comments on the proposed rule were received. Thus, the proposed rule is adopted without change.

This final rule amends 15 CFR 806.16 to set forth the reporting requirements for the BE–10, Benchmark Survey of U.S. Direct Investment Abroad—2009.

Description of Changes

The changes to the benchmark survey include: (a) Changes in survey form design and reporting criteria to simplify the survey forms and improve response rates; and (b) modifications, deletions and additions of specific items on the survey forms. BEA is adding a question that will identify U.S. parent companies that use foreign manufacturing services to process or further manufacture goods that they own. Several items on cross-border services transactions between affiliated parties are no longer being collected on the benchmark survey because they are now collected on BEA's surveys of international services (BE–45, BE–120, BE–125, and BE–185).

BEA is discontinuing the use of separate forms for banks. The benchmark survey Form BE–10A BANK is being discontinued. Similarly, Form BE–10B BANK, report for foreign affiliates that are banks, is being discontinued. For 2009, bank and nonbank U.S. Reporters must file Form BE–10A, Report for U.S. Reporter. A U.S. Reporter must report all domestic operations on a fully consolidated basis. BEA is adding a question to Form BE–10A so it can continue to identify U.S. Reporters that are banks even if the majority of their revenues are generated by nonbanking activities.

All foreign affiliates, regardless of industry, must be filed on one of three foreign affiliate forms—

(a) Form BE–10B—report for majority-owned foreign affiliates with total assets, sales or gross operating revenues, or net income greater than $80 million, positive or negative; additional items must be filed for affiliates with assets, sales, or net income greater than $300 million, positive or negative. Form BE–10B replaces the 2004 benchmark survey Forms BE–10B(LF) long form and BE–10B(SF) short form for reporting large majority-owned foreign affiliates;

(b) Form BE–10C—report for majority-owned foreign affiliates with total assets, sales or gross operating revenues, or net income greater than $25 million, positive or negative, but for which no one of these items is greater than $80 million, positive or negative, and for minority-owned foreign affiliates with total assets, sales or gross operating revenues, or net income greater than $25 million, positive or negative. Form BE–10C replaces the 2004 benchmark survey Form BE–10B(SF) short form for reporting small majority-owned foreign affiliates and minority-owned foreign affiliates; or

(c) Form BE–10D—schedule for foreign affiliates with total assets, sales or gross operating revenues, and net income less than or equal to $25 million, positive or negative. Form BE–10D replaces the 2004 benchmark survey Form BE–10B Mini and the 2004 BE–10A Supplement A schedule for reporting the smallest majority- and minority-owned foreign affiliates.

BEA is also increasing the exemption level for reporting of selected items on Form BE–10A from $150 million to $300 million.

Survey Background

The BEA conducts the BE–10, Benchmark Survey of U.S. Direct Investment Abroad under the International Investment and Trade in Services Survey Act, 22 U.S.C. 3101–3108 (the Act). Section 4(b) of the Act provides that, with respect to United States direct investment abroad, ''the President shall conduct a benchmark survey covering year 1982, a benchmark survey covering year 1989, and benchmark surveys covering every fifth year thereafter. In conducting surveys pursuant to this subsection, the ''President shall, among other things and to the extent he determines necessary and feasible—

(1) Identify the location, nature, and magnitude of, and changes in total investment by any parent in each of its affiliates and the financial transactions

between any parent and each of its affiliates;

(2) Obtain (A) information on the balance sheet of parents and affiliates and related financial data, (B) income statements, including the gross sales by primary line of business (with as much product line detail as is necessary and feasible) of parents and affiliates in each country in which they have significant operations, and (C) related information regarding trade, including trade in both goods and services, between a parent and each of its affiliates and between each parent or affiliate and any other person;

(3) Collect employment data showing both the number of United States and foreign employees of each parent and affiliate and the levels of compensation, by country, industry, and skill level;

(4) Obtain information on tax payments by parents and affiliates by country; and

(5) Determine, by industry and country, the total dollar amount of research and development expenditures by each parent and affiliate, payments or other compensation for the transfer of technology between parents and their affiliates, and payments or other compensation received by parents or affiliates from the transfer of technology to other persons.''

In section 3 of Executive Order 11961, as amended by Executive Orders 12318 and 12518, the President delegated responsibility for performing functions under the Act concerning direct investment to the Secretary of Commerce, who has redelegated it to BEA.

The benchmark survey covers the U.S. direct investment abroad universe, and is BEA's most comprehensive survey of such investment in terms of subject matter. U.S. direct investment abroad is defined as the ownership or control, directly or indirectly, by one U.S. person of 10 percent or more of the voting securities of an incorporated foreign business enterprise or an equivalent interest in an unincorporated foreign business enterprise, including a branch.

The purpose of the benchmark survey is to obtain universe data on the financial and operating characteristics of, and on positions and transactions between, U.S. parent companies and their foreign affiliates. The data are needed to measure the size and economic significance of U.S. direct investment abroad, measure changes in such investment, and assess its impact on the U.S. and foreign economies. These data are used to derive current universe estimates of direct investment from sample data collected in other BEA surveys in nonbenchmark years. In particular, they would serve as benchmarks for the quarterly direct investment estimates included in the U.S. international transactions and national income and product accounts, and for annual estimates of the U.S. direct investment position abroad and of the operations of U.S. parent companies and their foreign affiliates.

Executive Order 12866

This final rule has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Paperwork Reduction Act

The collection-of-information in this final rule has been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). OMB approved the information collection under control number 0608–0049.

Notwithstanding any other provisions 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 displays a currently valid OMB control number.

The BE–10 survey is expected to result in the filing of reports from approximately 3,800 respondents. The respondent burden for this collection of information will vary from one company to another, but is estimated to average 121 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus the total respondent burden for the 2009 survey is estimated at 459,400 hours, compared to 428,750 hours estimated for the previous, 2004, survey. The increase in burden hours is associated with an increase in the respondent universe, and is largely offset by changes in survey form design and reporting criteria and information to be collected.

Comments regarding the burden-hour estimates or any other aspects of the collection-of-information requirements contained in the final rule should be sent both to the Bureau of Economic Analysis via mail to U.S. Department of Commerce, Bureau of Economic Analysis, Office of the Chief, Direct Investment Division, BE–50, Washington, DC 20230; via e-mail at *David.Galler@bea.gov;* or by FAX at (202) 606–5311, and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0049, Attention PRA Desk Officer for BEA, via e-mail at *pbugg@omb.eop.gov,* or by FAX at (202) 395–7245.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding the economic impact of the rule. As a result, no final regulatory flexibility analysis was prepared.

List of Subjects in 15 CFR Part 806

Economic statistics, Multinational corporations, Penalties, Reporting and recordkeeping requirements, U.S. investment abroad.

Dated: Novemember 20, 2009.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

■ For the reasons set forth in the preamble, BEA amends 15 CFR part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

■ 1. The authority citation for 15 CFR part 806 continues to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101–3108; E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12318 (3 CFR, 1981 Comp., p. 173) and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

■ 2. Section 806.16 is revised to read as follows:

§ 806.16 Rules and regulations for BE–10, Benchmark Survey of U.S. Direct Investment Abroad—2009.

A BE–10, Benchmark Survey of U.S. Direct Investment Abroad will be conducted covering 2009. All legal authorities, provisions, definitions, and requirements contained in § 806.1 through § 806.13 and § 806.14(a) through (d) are applicable to this survey. Specific additional rules and regulations for the BE–10 survey are given in paragraphs (a) through (d) of this section. More detailed instructions are given on the report forms and instructions.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE–10, Benchmark Survey of U.S. Direct Investment Abroad—2009, contained herein, whether or not they are contacted by BEA. Also, a person, or their agent, that is contacted by BEA about reporting in this survey, either by sending them a report form or by written inquiry, must respond in writing pursuant to § 806.4. This may be accomplished by:

(1) Certifying in writing, by the due date of the survey, to the fact that the person had no direct investment within the purview of the reporting requirements of the BE–10 survey;

(2) Completing and returning the ''BE–10 Claim for Not Filing'' by the due date of the survey; or

(3) Filing the properly completed BE–10 report (comprising Form BE–10A and Form(s) BE–10B, BE–10C, and/or BE–10D) by May 28, 2010, or June 30, 2010, as required.

(b) *Who must report.* (1) A BE–10 report is required of any U.S. person that had a foreign affiliate—that is, that had direct or indirect ownership or control of at least 10 percent of the voting stock of an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise, including a branch—at any time during the U.S. person's 2009 fiscal year.

(2) If the U.S. person had no foreign affiliates during its 2009 fiscal year, a ''BE–10 Claim for Not Filing'' must be filed by the due date of the survey; no other forms in the survey are required. If the U.S. person had any foreign affiliates during its 2009 fiscal year, a BE–10 report is required and the U.S. person is a U.S. Reporter in this survey.

(3) Reports are required even if the foreign business enterprise was established, acquired, seized, liquidated, sold, expropriated, or inactivated during the U.S. person's 2009 fiscal year.

(4) The amount and type of data required to be reported vary according to the size of the U.S. Reporters or foreign affiliates, and, for foreign affiliates, whether they are majority-owned or minority-owned by U.S. direct investors. For purposes of the BE–10 survey, a ''majority-owned'' foreign affiliate is one in which the combined direct and indirect ownership interest of all U.S. parents of the foreign affiliate exceeds 50 percent; all other affiliates are referred to as ''minority-owned'' affiliates.

(c) *Forms to be filed*—(1) Form BE–10A must be completed by a U.S. Reporter. If the U.S. Reporter is a corporation, Form BE–10A is required to cover the fully consolidated U.S. domestic business enterprise.

(i) If for a U.S. Reporter any one of the following three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—was greater than $300 million (positive or negative) at any time during the Reporter's 2009 fiscal year, the U.S. Reporter must file a complete Form BE–10A. It must also file Form(s) BE–10B, C, and/or D, as appropriate, for its foreign affiliates.

(ii) If for a U.S. Reporter none of the three items listed in paragraph (c)(1)(i) of this section was greater than $300 million (positive or negative) at any time during the Reporter's 2009 fiscal year, the U.S. Reporter is required to file on Form BE–10A only certain items as designated on the form. It must also file Form(s) BE–10B, C, and/or D for its foreign affiliates.

(2) Form BE–10B must be filed for each majority-owned foreign affiliate, whether held directly or indirectly, for which any of the following three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than $80 million (positive or negative) at any time during the affiliate's 2009 fiscal year. Additional items must be filed for affiliates with assets, sales, or net income greater than $300 million (positive or negative).

(3) Form BE–10C must be reported:

(i) For each majority-owned foreign affiliate, whether held directly or indirectly, for which any one of the three items listed in paragraph (c)(2) of this section was greater than $25 million but for which none of these items was greater than $80 million (positive or negative), at any time during the affiliate's 2009 fiscal year, and

(ii) For each minority-owned foreign affiliate, whether held directly or indirectly, for which any one of the three items listed in (c)(2) of this section was greater than $25 million (positive or negative), at any time during the affiliate's 2009 fiscal year.

(4) Form BE–10D must be filed for majority- or minority-owned foreign affiliates, whether held directly or indirectly, for which none of the three items listed in paragraph (c)(2) of this section was greater than $25 million (positive or negative) at any time during the affiliate's 2009 fiscal year. Form BE–10D is a schedule; a U.S. Reporter would submit one or more pages of the form depending on the number of affiliates that are required to be filed on this form.

(d) *Due date.* A fully completed and certified BE–10 report comprising Form BE–10A and Form(s) BE–10B, C, and/or D (as required) is due to be filed with BEA not later than May 28, 2010 for those U.S. Reporters filing fewer than 50, and June 30, 2010 for those U.S. Reporters filing 50 or more, foreign affiliate Forms BE–10B, C, and/or D. If the U.S. person had no foreign affiliates during its 2009 fiscal year, it must file a BE–10 Claim for Not Filing by May 28, 2010.

[FR Doc. E9–29732 Filed 12–14–09; 8:45 am]

BILLING CODE 3510–06–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Allocation of Assets in Single-Employer Plans; Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: Pension Benefit Guaranty Corporation's regulations on Allocation of Assets in Single-Employer Plans and Benefits Payable in Terminated Single-Employer Plans prescribe interest assumptions for valuing and paying certain benefits under terminating single-employer plans. This final rule amends the asset allocation regulation to adopt interest assumptions for plans with valuation dates in the first quarter of 2010 and amends the benefit payments regulation to adopt interest assumptions for plans with valuation dates in January 2010. Interest assumptions are also published on PBGC's Web site (*http://www.pbgc.gov*).

DATES: Effective January 1, 2010.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest

assumptions are intended to reflect current conditions in the financial and annuity markets.

These interest assumptions are found in two PBGC regulations: The regulation on Allocation of Assets in Single-Employer Plans (29 CFR Part 4044) and the regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR Part 4022). Assumptions under the asset allocation regulation are updated quarterly; assumptions under the benefit payments regulation are updated monthly. This final rule updates the assumptions under the asset allocation regulation for the first quarter (January through March) of 2010 and updates the assumptions under the benefit payments regulation for January 2010.

The interest assumptions prescribed under the asset allocation regulation (found in Appendix B to Part 4044) are used for the valuation of benefits for allocation purposes under ERISA section 4044. Two sets of interest assumptions are prescribed under the benefit payments regulation: (1) A set for PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by PBGC (found in Appendix B to Part 4022), and (2) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology (found in Appendix C to Part 4022).

This amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during the first quarter (January through March) of 2010, (2) adds to Appendix B to Part 4022 the interest assumptions for PBGC to use for its own lump-sum payments in plans with valuation dates during January 2010, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology for valuation dates during January 2010.

The interest assumptions that PBGC will use for valuing benefits for allocation purposes (set forth in Appendix B to part 4044) will be 4.89 percent for the first 20 years following the valuation date and 4.63 percent thereafter. In comparison with the interest assumptions in effect for the fourth quarter of 2009, these interest assumptions represent a decrease of 0.41 percent for the first 20 years following the valuation date and a decrease of 0.38 percent for all years thereafter.

The interest assumptions that PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 2.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for December 2009, these interest assumptions are unchanged. For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during January 2010, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. *See* 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 195, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
195	1–1–10	2–1–10	2.50	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 195, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
195	1–1–10	2–1–10	2.50	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry for January—March 2010, as set forth below, is added to the table.

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the months—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * *	*		*	*		*
January—March 2010	0.0489	1–20	0.0463	>20	N/A	N/A

Issued in Washington, DC, on this 10th day of December 2009.

Vincent K. Snowbarger,

Acting Director, Pension Benefit Guaranty Corporation.

[FR Doc. E9–29835 Filed 12–14–09; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0670]

RIN 1625–AA09

Drawbridge Operation Regulation; Franklin Canal, Franklin, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulation governing the operation of the Chatsworth Road Swing Span Bridge across the Franklin Canal, mile 4.8, at Franklin, St. Mary Parish, Louisiana. The St. Mary Parish Government requested that the operating regulation of the Chatsworth Road swing span bridge be changed in order for the bridge not to have to be continuously manned by a draw tender. This change allows the bridge to remain unmanned during most of the day by requiring a one-hour notice for an opening of the draw between 5 a.m. and 9 p.m., during which time the bridge normally opens on signal.

DATES: This rule is effective January 14, 2010.

ADDRESSES: Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–0670 and are available online by going to *http://www.regulations.gov*, inserting USCG–2009–0670 in the ''Keyword'' box, and then clicking ''Search.'' This material is 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 rule, call or e-mail Phil Johnson, Bridge Administration Branch, Eighth Coast Guard District; telephone 504–671–2128, e-mail *Philip.R.Johnson@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

On August 19, 2009, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Franklin Canal, Franklin, LA in the **Federal Register** (74 FR 41816). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The St. Mary Parish Government requested that the operating regulation of the Chatsworth Road Swing Span Bridge, located on the Franklin Canal at mile 4.8 in Franklin, St. Mary Parish, Louisiana, be changed in order for the bridge not to have to be continuously manned by a draw tender from 5 a.m. to 9 p.m. when the bridge is now required to open on signal. Because of the relocation of a public boat landing downstream of the bridge, vessel traffic has become infrequent, and it is no longer necessary to have a bridge tender continuously man the bridge.

Concurrent with the publication of the Notice of Proposed Rulemaking, a Test Deviation [USCG–2009–0670] was issued to allow the St. Mary Parish Government to test the proposed schedule and to obtain data and public comments. The Test Deviation has allowed the bridge to operate as follows: The Chatsworth Road Bridge, mile 4.8 at Franklin, shall open on signal from 5 a.m. to 9 p.m. if at least one hour notice is given. From October 1 through January 31 from 9 p.m. to 5 a.m., the draw shall be opened on signal if at least three hours notice is given. From February 1 through September 30 from 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given. The test period has been in effect during the entire Notice of Proposed Rulemaking comment period. No comments were received from the public from this Notice of Proposed Rulemaking or the above referenced Temporary Deviation. The Coast Guard has reviewed bridge tender logs from before and after the temporary test deviation became effective. The logs do not indicate an appreciable difference in the number of openings between 5 a.m. and 9 p.m., since the test deviation was issued. Based on the fact that no objections were received to the

proposed change, the Coast Guard has determined that the proposed permanent change to the special drawbridge operating regulation is warranted.

Discussion of Comments and Changes

The Coast Guard did not receive any comments in response to the NPRM.

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.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. The public will need to notify the bridge owner one hour in advance for an opening of the draw between 5 a.m. and 9 p.m. There is no change in the regulatory text published in the NPRM.

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 might be small entities: The owners or operators of vessels needing to transit the bridge with less than 1-hour notice between the hours of 5 a.m. and 9 p.m. Because of the relocation of a public boat landing downstream of the bridge, vessel traffic has become so infrequent that this rule will not affect a substantial number of small entities.

Assistance for Small Entities

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

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 would not create an environmental risk to health or risk to safety that might 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 guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that 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 (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. § 117.445 is revised to read as follows:

§ 117.445 Franklin Canal.

The draw of the Chatsworth Bridge, mile 4.8 at Franklin, shall open on signal from 5 a.m. to 9 p.m. if at least one hour notice is given. From October 1 through January 31 from 9 p.m. to 5 a.m., the draw shall be opened on signal if at least three hours notice is given. From February 1 through September 30 from 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

Dated: November 28, 2009.

Mary E. Landry,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. E9–29748 Filed 12–14–09; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–1029]

Drawbridge Operation Regulation; Grassy Sound Channel, Middle Township, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District has issued a temporary deviation from the regulations governing the operation of the Grassy Sound Channel Bridge (County Route 619), mile 1.0, at Middle Township, NJ. The deviation restricts the operation of the draw span to facilitate the cleaning and painting of the structure.

DATES: This deviation is effective from 5 a.m. on April 1, 2010 until 5 p.m. on May 15, 2010.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–1029 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–1029 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 rule, call or e-mail Terrance Knowles, Environmental Protection Specialist, Fifth Coast Guard District; telephone 757–398–6587, e-mail *Terrance.A.Knowles@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Cape May County Bridge Commission, who owns and operates this bascule drawbridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.721 to facilitate the cleaning and painting of the bridge structure.

The Grassy Sound Channel Bridge (CR–619), at mile 1.0, in Middle Township NJ has a vertical clearance in the closed position to vessels of 15 feet above mean high water (MHW).

Under normal operating conditions, two hours advance notice is required to open the draw of the Grassy Sound Channel Bridge. Under this temporary deviation, the Grassy Sound Channel Bridge will be maintained in the closed-to-navigation position beginning at 5 a.m. on April 1, 2010 until and including 5 p.m. on May 15, 2010.

The drawbridge will open in the event of an emergency. Vessels that can pass under the bridge without a bridge opening may do so at all times. Vessels with mast height greater than 15 feet have an alternate route by transiting approximately two miles away at the nearby County of Cape May Bridge across Great Channel between Stone Harbor and Nummy Island NJ.

The Coast Guard will inform the users of the waterway through our Local and Broadcast Notices to Mariners of the closure periods for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: December 1, 2009.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, By Direction of the Commander, Fifth Coast Guard District.

[FR Doc. E9–29749 Filed 12–14–09; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 151

[Docket No. USCG–2009–0273]

RIN 1625–AB41

Amendment to the List of MARPOL Annex V Special Areas That Are Currently in Effect To Add the Gulfs and Mediterranean Sea Special Areas

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: By this final rule, the Coast Guard amends the list of special areas in effect under Annex V of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, as amended, (MARPOL) to include the Gulfs and Mediterranean Sea special areas. The current list of special areas in effect is now outdated because it does not list these two special areas. The Coast Guard must update its regulations to harmonize its list of special areas with MARPOL Annex V. This rule will correct the list of special areas in effect to provide accurate information to the public.

DATES: This final rule is effective December 15, 2009.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–0273 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2009–0273 in the ''Keyword'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. David Major, Coast Guard Environmental Standards Division (CG–5224); telephone 202–372–1431, e-mail *David.W.Major@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Abbreviations

APPS Act To Prevent Pollution From Ships, 33 U.S.C. 1901 *et seq.*
CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
IMO International Maritime Organization
MARPOL The International Convention for the Prevention of Pollution From Ships, 1973, as Modified by the Protocol of 1978
MEPC Marine Environmental Protection Committee
NPRM Notice of Proposed Rulemaking
OMB Office of Management and Budget
RFA Regulatory Flexibility Act
U.S.C. United States Code

II. Regulatory History

The Coast Guard did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM for the revision of the rule because this final rule is non-substantive, in that it merely updates in the Coast Guard's regulations the list of special areas currently in effect, as established by the International Maritime Organization (IMO) in accordance with the procedures described in 33 CFR 151.53(b). Under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Good cause exists when publication would be impracticable, unnecessary, or contrary to the public interest. Here, publishing an NPRM and delaying the effective date are unnecessary because the change being made is a conforming amendment required by existing authority and because an opportunity for public comment has already been provided.

Publishing an NPRM and delaying the effective date are unnecessary because this rulemaking merely restates a legal responsibility already in effect under MARPOL and the Act to Prevent Pollution from Ships (codified at 33 U.S.C. 1901 *et seq.*) (APPS), which is the U.S. authority implementing MARPOL. When APPS became law, the United States accepted the IMO process for bringing special areas into effect and, for convenience, the Coast Guard listed the special areas currently in effect in the CFR. Since then, two more of the special areas have come into effect through the IMO process. This rulemaking corrects the list at 33 CFR 151.53 to accurately list the special areas currently in effect.

Another reason publishing an NPRM is unnecessary is because opportunity for public comment on the regulations related to APPS, including the IMO process for bringing special areas into effect, was provided in 1989. The original APPS regulations in 33 CFR parts 151, 155, and 158 were implemented through a full informal rulemaking process, including an Advance Notice of Proposed Rulemaking (53 FR 23884, June 24, 1988), an Interim Rule with Request for Comments (54 FR 18384, April 28, 1989), and a Final Rule (55 FR 35986, September 4, 1990) (APPS rulemaking). The Coast Guard held three public meetings, received public comments, and responded to all comments received. The Coast Guard received no comments on the Gulfs or Mediterranean special areas or on the IMO process for bringing special areas into effect, there have been no substantive changes regarding these special areas since the APPS rulemaking. This rulemaking also does not make any such substantive changes.

III. Background

A MARPOL Annex V special area is a sea area where, for recognized technical reasons, the adoption of special mandatory methods for the prevention of sea pollution by garbage is required. The Coast Guard is updating the APPS regulations at 33 CFR part 151 to reflect that two special areas already defined by MARPOL Annex V are now in effect. A special area under MARPOL Annex V enters into effect on the date set by the International Maritime Organization. The IMO sets an effective date after it receives sufficient notification of port reception facility adequacy from coastal states bordering a special area. In a special area prior to its effective date, 33 CFR 151.69 (Operating requirements: Discharge of garbage outside special areas) applies. In a special area after its effective date, the more restrictive requirements of 33 CFR 151.71 (Operating Requirements: Discharge of garbage within special areas) apply.

The two special areas that this rulemaking addresses and their corresponding effective dates are:

- The Gulfs area, as defined in Regulation 5(e) of MARPOL Annex V, in effect as of August 1, 2008 (Marine Environmental Protection Committee (MEPC) 56/23); and
- The Mediterranean Sea area, as defined in Regulation 5(a) of MARPOL Annex V, in effect as of May 1, 2009 (MEPC 57/21).

Both of these special areas entered into force (but not effect) on December 31, 1988, as agreed to by Parties to MARPOL Annex V. As of the above effective dates, the discharge of garbage from vessels in these areas is restricted to the discharge of food wastes only (*i.e.,* subject to the restrictions of MARPOL Annex V, Regulation 5 and 33 CFR 151.71).

These special areas are already defined at 33 CFR 151.06. However, the Gulfs and Mediterranean Sea special areas must be added to the list of special areas in effect at 33 CFR 151.53. The more restrictive requirements of 33 CFR 151.71 only apply within special areas, and enforcement by the Coast Guard is limited to vessels subject to U.S. jurisdiction.

IV. Discussion of the Rule

This final rule modifies 33 CFR 151.53 to add the Gulfs and Mediterranean Sea special areas to the list of special areas in effect to be consistent with MARPOL and to clarify where the discharge restrictions of 33 CFR 151.71 (Operating Requirements: Discharge of garbage within special areas) apply. This modification will take effect upon publication.

V. 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.

A. 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.

The Coast Guard does not expect this rule to impose an additional burden on the U.S. maritime industry. The Gulfs and Mediterranean Sea special area requirements currently apply to all U.S. vessels under MARPOL Annex V. Vessels of all signatories to MARPOL on international voyages, including U.S. flagged vessels, are required to adhere to these standards regardless of whether this rule is promulgated. Because industry is currently required to adhere to the MARPOL Annex V special area requirements, this modification to 33 CFR 151.33 is not expected to impose a burden on industry.

The primary benefit of this rule is to provide consistent information on MARPOL Annex V special area requirements in order to increase the regulated community's awareness of the requirements. The secondary benefit is more efficient regulations through greater consistency between U.S. domestic regulations and MARPOL Annex V.

B. Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider whether regulatory actions 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. An RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). The Coast Guard has determined that this rule is exempt from notice and comment rulemaking pursuant to 5 U.S.C. 553(b)(B). Therefore, an RFA analysis is not required for this rule. The Coast Guard, nonetheless, expects that this final rule will not have a significant economic impact on a substantial number of small entities.

C. 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.

D. 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).

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if the rule 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.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more (adjusted for inflation) 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.

G. 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.

H. 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.

I. 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.

J. 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.

K. 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.

L. Technical Standards

The National Technology Transfer and Advancement Act (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.

M. 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 (42

U.S.C. 4321–4370f), and have concluded that 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 section 6(b) of the ''Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy'' (67 FR 48243, July 23, 2002). An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under the **ADDRESSES** section of this preamble.

List of Subjects in 33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 151 as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

■ 1. The authority citation for part 151 continues to read:

Authority: 33 U.S.C. 1321, 1902, 1903, 1908; 46 U.S.C. 6101; Pub. L. 104–227 (110 Stat. 3034); Pub. L. 108–293 (118 Stat. 1063), § 623; E.O. 12777, 3 CFR, 1991 Comp. p. 351; DHS Delegation No. 0170.1, sec. 2(77).

■ 2. Amend § 151.53 by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 151.53 Special areas for Annex V of MARPOL 73/78.

(a) For the purposes of §§ 151.51 through 151.77, the special areas are the Mediterranean Sea area, the Baltic Sea area, the Black Sea area, the Red Sea area, the Gulfs area, the North Sea area, the Antarctic area, and the Wider Caribbean region, including the Gulf of Mexico and the Caribbean Sea which are described in § 151.06.

* * * * *

(c) The discharge restrictions are in effect in the Mediterranean Sea, Baltic Sea, the North Sea, the Gulfs and the Antarctic special areas.

Dated: November 24, 2009.

F.J. Sturm,

Acting Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. E9–29747 Filed 12–14–09; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 111

Advertisements for Animals and Sharp Instruments for Use in Animal Fighting Ventures are Nonmailable

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) 601.9.3.1, 601.11.20, and 601.12.5.7, to align our standards with section 26 of the Animal Welfare Act as amended by the Food, Conservation, and Energy Act of 2008.

DATES: *Effective Date:* February 1, 2010.

FOR FURTHER INFORMATION CONTACT: Mary Collins at 202–268–5440.

SUPPLEMENTARY INFORMATION: On June 18, 2008, Congress enacted the Food, Conservation, and Energy Act of 2008 (the 2008 Act) which amended certain provisions of the Animal Welfare Act pertaining to animal fighting ventures. The 2008 Act's amendments added prohibitions on using the mail service of the United States (1) to advertise an animal for use in an animal fighting venture, or (2) to advertise a knife, a gaff, or any other sharp instrument attached, or designed or intended to be attached, to the leg of a bird for use in an animal fighting venture. The 2008 Act also revised the definition of the term ''animal fighting venture'' to refer to ''any event, in or affecting interstate or foreign commerce'' involving a fight ''conducted or to be conducted'' between at least two animals. To implement the 2008 Act's amendments and to ensure that our standards comport with the current language in section 26 (7 U.S.C. 2156) of the Animal Welfare Act (AWA), we are implementing the new standards.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S. C. 553 (b), (c)], regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invited public comments on the following proposed revision of the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations. See* 39 CFR part 111.

Comments Received

The Postal Service received comments from six parties. Three commenters supported the rule as proposed by the Postal Service without modification. Other comments were submitted as follows:

One commenter suggested for the US Postal Service to decline adopting the Humane Society's proposed change to section 601.12.5.7 of the DMM. We noted that the suggested change to proposed section 601.12.5.7 is not explicitly supported by the text of subsections 2156(c) and (d) in 7 U.S.C. 2156 (the AWA). In the absence of further guidance from the text of the statute, we decline to adopt the suggested change.

One commenter urged the Postal Service not to adopt the proposed rule on the grounds that the proposed rule violates the First Amendment of the U.S. Constitution. The proposed rule only implements the statutory language set forth in 7 U.S.C. 2156, therefore we find that the comment is beyond the scope of this rulemaking.

Finally, another commenter appears to object to the exception in proposed section 601.12.5.7 for fighting ventures involving live birds if such fight is permitted under the laws of the state in which the fight is to take place. The commenter suggests that no states permit animal fighting. We note that paragraph 2156(g)(3) in Title 7, U.S. Code, provides that the term ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States. We understand that at least one of these jurisdictions continues to permit fights involving live birds. Therefore, we decline to modify the exception to proposed section 601.12.5.7 of the DMM for fighting ventures involving live birds that are permitted under the laws of the state in which the fight is to take place. The other issues raised by the commenter are beyond the scope of this rulemaking.

The Postal Service hereby adopts the following changes to the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), which is incorporated by reference in the *Code of Federal Regulations. See* 39 CFR Part 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR Part 111 is amended as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

* * * * *

600 Basic Standards for All Mailing Services

601 Mailability

* * * * *

9.0 Perishable

* * * * *

9.3 Live Animals

[Revise the heading and text of 9.3.1, as follows:]

9.3.1 Prohibition on Animals Intended for Use in an Animal Fighting Venture

An animal is nonmailable if such animal is being mailed for the purpose of having it participate in an animal fighting venture (7 U.S.C. 2156). This standard applies regardless of whether such venture is permitted under the laws of the state in which it is conducted. Violators can be subject to the criminal penalties in 18 U.S.C. 49. *See* 601.11.20 for the prohibition on mailing sharp instruments intended for use in an animal fighting venture and 601.12.5.7 for restrictions on mailing written, printed, or graphic matter related to animal fighting ventures.

For this standard:

a. The term *animal* means any live bird, or any live mammal (e.g., dog), except human;

b. The term *animal fighting venture* means any event, in or affecting interstate or foreign commerce, that involves a fight conducted or to be conducted between at least two animals for purposes of sport, wagering, or entertainment (excluding any activity whose primary purpose involves using one or more animals in hunting other animals); and

c. The term *state* means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any U.S. territory or possession.

* * * * *

11.0 Other Restricted and Nonmailable Matter

* * * * *

[Revise the heading and text of 11.20, as follows:]

11.20 Prohibition on Sharp Instruments Intended for Use in an Animal Fighting Venture

The interstate or international mailing of a knife, a gaff, or any other sharp instrument attached, or designed or intended to be attached, to the leg of a bird for use in an animal fighting venture (as defined in section 601.9.3.1b) is prohibited (7 U.S.C. 2156). Violators can be subject to the criminal penalties in 18 U.S.C. 49. *See* 601.9.3.1 for the prohibition on mailing animals intended for use in an animal fighting venture and 601.12.5.7 for the restrictions on mailing written, printed, or graphic matter related to animal fighting ventures.

* * * * *

12.0 Written, Printed, and Graphic Matter Generally

* * * * *

12.5 Other Nonmailable Matter

* * * * *

[Revise the heading and text of 12.5.7, as follows:]

12.5.7 Restriction on Matter Related to Animal Fighting Ventures

This standard does not pertain to written, printed, or graphic matter related to fighting ventures involving live birds if such fight is permitted under the laws of the state in which the fight is to take place (7 U.S.C. 2156). The terms *animal, animal fighting venture,* and *state* are defined in 601.9.3.1. Written, printed, or graphic matter is nonmailable if it:

a. Advertises an animal for use in an animal fighting venture;

b. Advertises a knife, a gaff, or any other sharp instrument attached, or designed or intended to be attached, to the leg of a bird for use in an animal fighting venture; or

c. Promotes or in any other manner furthers an animal fighting venture.

* * * * *

We will publish an appropriate amendment to 39 CFR 111 to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. E9–29723 Filed 12–14–09; 8:45 am]

BILLING CODE 7710–12–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2010–5 and CP2010–5; Order No. 340]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Express Mail Contract 5 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 December 15, 2009 and is applicable beginning November 13, 2009.

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

SUPPLEMENTARY INFORMATION:

Regulatory History, 74 FR 57536 (November 6, 2009).

I. Introduction

The Postal Service seeks to add a new product identified as Express Mail Contract 5 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

II. Background

The Postal Service filed a formal request and associated supporting information pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Express Mail Contract 5 to the Competitive Product List.[1] The Postal Service asserts that the Express Mail Contract 5 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. MC2010–5.

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. CP2010–5.

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors' Decision authorizing an Express Mail Contract Group; [2] (2) a redacted version of the contract; [3] (3) a requested change in the Mail Classification Schedule

[1] Notice of Establishment of Rates and Class Not of General Applicability, Request of the United States Postal Service to Add Express Mail Contract 5 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract and Supporting Data, October 28, 2009 (Request). On October 29, 2009, the Postal Service filed errata to its Request. *See* Notice of the United States Postal Service of Filing Errata to Request and Notice, October 29, 2009. Accordingly, the filing of the entire set of documents related to this Request was not completed until October 29, 2009.

[2] Attachment A to the Request, reflecting Governors' Decision No. 09–14, October 26, 2009.

[3] Attachment B to the Request.

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 non-public 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 for 3 years from the effective date subject to annual price adjustments. Request, Attachment B.

In the Statement of Supporting Justification, Mary Prince Anderson, 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.[8]

In Order No. 329, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.[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 meets the pertinent provisions of title 39 and the relevant Commission rules. *Id.* at 1–3. He further states that the agreement is fair to the parties and employs pricing terms favorable to the customer, the Postal Service, and thereby, the public. *Id.* at 4–5. The Public Representative also believes that the Postal Service has provided appropriate 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 Express Mail Contract 5 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 Express Mail Contract 5 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 consists 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 Express Mail Contract 5 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Express Mail Contract 5 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 Express Mail Contract 5 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 Express Mail Contract 5 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 Express Mail Contract 5 indicates that it comports with the provisions applicable to rates for competitive products.

Other considerations. The Postal Service shall notify the Commission if termination occurs prior to the scheduled termination date. Following the scheduled termination date of the agreement, the Commission will remove the product from the Competitive Product List.

In conclusion, the Commission approves Express Mail Contract 5 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. Express Mail Contract 5 (MC2010–5 and CP2010–5) is added to the

[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] In its application for non-public treatment, the Postal Service requests an indefinite extension of non-public treatment of customer-identifying information. *Id.* at 7. For the reasons discussed in PRC Order No. 323, that request is denied. *See, e.g.,* Docket No. MC2010–1 and CP2010–1, Order Concerning Express Mail Contract 19 Negotiated Service Agreement, October 26, 2009.

[9] PRC Order No. 329, Notice and Order Concerning Express Mail Contract 5 Negotiated Service Agreement, October 30, 2009 (Order No. 329).

[10] Public Representative Comments in Response to United States Postal Service Request to Add Express Mail Contract 5 to the Competitive Products List, November 9, 2009 (Public Representative Comments).

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 discussed in the preamble, the Postal Regulatory Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3020—PRODUCT LISTS

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

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

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

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

Part A—Market Dominant Products
- 1000 Market Dominant Product List
- First-Class Mail
- Single-Piece Letters/Postcards
- Bulk Letters/Postcards
- Flats
- Parcels
- Outbound Single-Piece First-Class Mail International
- Inbound Single-Piece First-Class Mail International

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

[FR Doc. E9–29721 Filed 12–14–09; 8:45 am]

BILLING CODE 7710–FW–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–64

[GSPMR Amendment 2009–01; GSPMR Case 2009–105–1; Docket Number 2009–0018 Sequence 1]

RIN 3090–AJ00

General Services Administration Property Management Regulations; GSA Privacy Act Rules

AGENCY: Office of the Chief Human Capital Officer, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is revising its Privacy Act rules to reflect organizational changes and to update policies and procedures. This revision

informs individuals of procedures for obtaining personal information in GSA's systems of records, provides current organizational titles and addresses of offices to contact about the GSA Privacy Program, the systems of records that are maintained by GSA, how to file a privacy complaint, how GSA collects personal information from the public, and how often GSA reviews its systems that collect and store Personally Identifiable Information.

DATES: Effective December 15, 2009.

FOR FURTHER INFORMATION CONTACT: GSA Privacy Act Officer, General Services Administration, Office of the Chief Human Capital Officer, 1800 F Street, NW., Washington, DC 20405, telephone (202) 208–1317, or e-mail at *gsa.privacyact@gsa.gov.*

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Background

GSA focused on making sure that all GSA Privacy Act Rules are still relevant, necessary, and covered by a legal or regulatory authority and that the GSA regulations implementing the Privacy Act Rules reflect the current GSA organization, policies, standards, and practices. As a result of this review GSA is publishing updated Privacy Act Rules. Nothing in the final rule indicates a change in authorities or practices regarding the collection and maintenance of information. The changes do not impact individuals' rights to access or amend their records in the systems of records.

B. Executive Order 12866

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.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this final rule. It is not expected to have a significant economic impact on small business entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule imposes no recordkeeping or information collection requirements nor the collection of information from offerors, contractors, or members of the public that would require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. Chapter 35, *et seq.;* and the rule is exempt from Congressional review under 5 U.S.C. 801.

List of Subjects in 41 CFR Part 105–64

Privacy.

Dated: October 29, 2009.

Cheryl M. Paige,

Director, Office of Information Management, Office of the Chief Human Capital Officer.

■ Therefore, GSA revises 41 CFR part 105–64 to read as follows:

PART 105–64—GSA PRIVACY ACT RULES

Sec.

Authority: 5 U.S.C. 552a.

§ 105–64.000 What is the purpose of this part?

This part implements the General Services Administration (GSA) rules under the Privacy Act of 1974, 5 U.S.C. 552a, as amended. The rules cover the GSA systems of records from which information is retrieved by an individual's name or personal identifier. These rules set forth GSA's policies and procedures for accessing, reviewing, amending, and disclosing records covered by the Privacy Act. GSA will comply with all existing and future privacy laws.

§ 105–64.001 What terms are defined in this part?

GSA defines the following terms to ensure consistency of use and understanding of their meaning under this part:

Agency means any organization covered by the Privacy Act as defined in 5 U.S.C. 551(1) and 5 U.S.C. 552a (a)(1). GSA is such an agency.

Computer matching program means the computerized comparison of two or more Federal personnel or payroll systems of records, or systems of records used to establish or verify an individual's eligibility for Federal benefits or to recoup delinquent debts.

Disclosure of information means providing a record or the information in a record to someone other than the individual of record.

Exempt records means records exempted from access by an individual under the Privacy Act, subsections (j)(1), Central Intelligence Agency, (j)(2) and (k)(2), law enforcement, (k)(1), Section 552 (b)(1), (k)(3), protective services to the President,(k)(4), statistical records, (k)(5), employee background investigations, (k)(6), federal service disclosure, and (k)(7), promotion in armed services.

Individual means a citizen of the United States or a legal resident alien on whom GSA maintains Privacy Act records. An individual may be addressed as *you* when information is provided for the individual's use.

Personally Identifiable Information (PII) means information about a person that contains some unique identifier, including but not limited to name or Social Security Number, from which the identity of the person can be determined. In OMB Circular M–06–19, the term ''Personally Identifiable Information'' is defined as any information about an individual maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and information which can be used to distinguish or trace an individual's identity, such as their name, Social Security Number, date and place of birth, mother's maiden name, biometric records, including any other personal information which can be linked to an individual.

Record means any item, collection, or grouping of information about an individual within a system of records which contains the individual's name or any other personal identifier such as number or symbol, fingerprint, voiceprint, or photograph. The information may relate to education, financial transactions, medical conditions, employment, or criminal history collected in connection with an individual's interaction with GSA.

Request for access means a request by an individual to obtain or review his or her record or information in the record.

Routine use means disclosure of a record outside GSA for the purpose for which it is intended, as specified in the systems of records notices.

Solicitation means a request by an officer or employee of GSA for an individual to provide information about himself or herself for a specified purpose.

System of records means a group of records from which information is retrieved by the name of an individual, or by any number, symbol, or other identifier assigned to that individual.

System manager means the GSA associate responsible for a system of records and the information in it, as noted in the **Federal Register** systems of records notices.

Subpart 105–64.1—Policies and Responsibilities

§ 105–64.101 Who is responsible for enforcing these rules?

GSA Heads of Services and Staff Offices and Regional Administrators are responsible for ensuring that all systems of records under their jurisdiction meet the provisions of the Privacy Act and these rules. System managers are responsible for the system(s) of records assigned to them. The GSA Privacy Act Officer oversees the GSA Privacy Program and establishes privacy-related policy and procedures for the agency under the direction of the GSA Senior Agency Official for Privacy.

§ 105–64.102 What is GSA's policy on disclosure of information in a system of records?

No information contained in a Privacy Act system of records will be disclosed to third parties without the written consent of you, the individual of record, except under the conditions cited in § 105–64.501.

§ 105–64.103 What is GSA's policy on collecting and using information in a system of records?

System managers must collect information that is used to determine your rights, benefits, or privileges under GSA programs directly from you whenever practical, and use the information only for the intended purpose(s).

§ 105–64.104 What must the system manager tell me when soliciting personal information?

When soliciting information from you or a third party for a system of records, system managers must: Cite the authority for collecting the information; say whether providing the information is mandatory or voluntary; give the purpose for which the information will be used; state the routine uses of the information; and describe the effect on you, if any, of not providing the information. This information is found in the Privacy Act Statement. Any form that asks for personal information will contain this statement.

§ 105–64.105 When may Social Security Numbers (SSNs) be collected?

(a) Statutory or regulatory authority must exist for collecting Social Security Numbers for record systems that use the SSNs as a method of identification. Systems without statutory or regulatory authority implemented after January 1, 1975, will not collect Social Security Numbers.

(b) In compliance with OMB M–07–16 (Safeguarding Against and Responding to the Breach of Personally Identifiable Information) collection and storage of SSN will be limited to systems where no other identifier is currently available. While GSA will strive to reduce the collection and storage of SSN and other PII we recognize that some systems continue to need to collect this information.

§ 105–64.106 What is GSA's policy on information accuracy in a system of records?

System managers will ensure that all Privacy Act records are accurate, relevant, necessary, timely, and complete. All GSA systems are reviewed annually. Those systems that contain Personally Identifiable Information (PII) are reviewed to ensure they are relevant, necessary, accurate, up-to-date, and covered by the appropriate legal or regulatory authority. A listing of GSA Privacy Act Systems can be found at the following link (*http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_BASIC&contentId=21567*).

§ 105–64.107 What standards of conduct apply to employees with privacy-related responsibilities?

(a) Employees who design, develop, operate, or maintain Privacy Act record systems will protect system security, avoid unauthorized disclosure of information, both verbal and written, and ensure that no system of records is maintained without public notice. All such employees will follow the standards of conduct in 5 CFR part 2635, 5 CFR part 6701, 5 CFR part 735, and 5 CFR part 2634 to protect personal information.

(b) Employees who have access to privacy act records will avoid unauthorized disclosure of personal information, both written and verbal, and ensure they have met privacy training requirements. All such employees will follow GSA orders HCO 9297.1 GSA Data Release Policy, HCO 9297.2A GSA Information Breach Notification Policy, HCO 2180.1 GSA Rules of Behavior for Handling Personally Identifiable Information (PII), CIO P 2100.1E CIO P GSA Information Technology (IT) Security Policy, and CIO 2104.1 GSA Information Technology (IT) General Rules of Behavior.

§ 105–64.108 How does GSA safeguard personal information?

(a) System managers will establish administrative, technical, and physical safeguards to ensure the security and confidentiality of records, protect the records against possible threats or hazards, and permit access only to authorized persons. Automated systems will incorporate security controls such as password protection, verification of identity of authorized users, detection of break-in attempts, firewalls, or encryption, as appropriate.

(b) System managers will ensure that employees and contractors who have access to personal information in their system will have the proper background investigation and meet all privacy training requirements.

§ 105–64.109 How does GSA handle other agencies' records?

In cases where GSA has either permanent or temporary custody of other agencies' records, system managers will coordinate with those agencies on any release of information. Office of Personnel Management (OPM) records that are in GSA's custody are subject to OPM's Privacy Act rules.

§ 105–64.110 When may GSA establish computer matching programs?

(a) System managers will establish computer matching programs or agreements for sharing information with other agencies only with the consent and under the direction of the GSA Data Integrity Board that will be established when and if computer matching programs are used at GSA.

(b) GSA will designate which positions comprise the Data Integrity Board and develop a policy that defines the roles and responsibilities of these positions.

§ 105–64.111 What is GSA's policy on directives that may conflict with this part?

These rules take precedence over any GSA directive that may conflict with the requirements stated here. GSA officials will ensure that no such conflict exists in new or existing directives.

Subpart 105–64.2—Access to Records

§ 105–64.201 How do I get access to my records?

You may request access to your record in person or by writing to the system manager or, in the case of geographically dispersed records, to the office maintaining the records (*see* Appendix A to this part). Parents or guardians may obtain access to records of minors or when a court has determined that the individual of record is incompetent.

§ 105–64.202 How do I request access in person?

If appearing in person, you must properly identify yourself through photographic identification such as an agency identification badge, passport, or driver's license. Records will be available during normal business hours at the offices where the records are maintained. You may examine the record and be provided a copy on request. If you want someone else to accompany you when reviewing a record, you must first sign a statement authorizing the disclosure of the record; the statement will be maintained with your record.

§ 105–64.203 How do I request access in writing?

If you request access in writing, mark both the envelope and the request letter ''Privacy Act Request''. Include in the request your full name and address; a description of the records you seek; the title and number of the system of records as published in the **Federal Register;** a brief description of the nature, time, and place of your association with GSA; and any other information you believe will help in locating the record.

§ 105–64.204 Can parents and guardians obtain access to records?

If you are the parent or guardian of a minor, or of a person judicially determined to be incompetent, you must provide full information about the individual of record. You also must properly identify yourself and provide a copy of the birth certificate of the individual, or a court order establishing guardianship, whichever applies.

§ 105–64.205 Who will provide access to my record?

The system manager will make a record available to you on request, unless special conditions apply, such as for medical, law enforcement, and security records.

§ 105–64.206 How long will it take to get my record?

The system manager will make a record available within 10 workdays after receipt of your request. If a delay of more than 10 workdays is expected, the system manager will notify you in writing of the reason for the delay and when the record will be available. The system manager may ask you for additional information to clarify your request. The system manager will have an additional 10 workdays after receipt of the new information to provide the record to you, or provide another acknowledgment letter if a delay in locating the record is expected.

§ 105–64.207 Are there any fees?

No fees are charged for records when the total fee is less than $25. The system manager may waive the fee above this amount if providing records without charge is customary or in the public interest. When the cost exceeds $25, the fee for a paper copy is 10 cents per page, and the fee for materials other than paper copies is the actual cost of reproduction. For fees above $250, advance payment is required. You should pay by check or money order made payable to the General Services Administration, and provide it to the system manager.

§ 105–64.208 What special conditions apply to release of medical records?

Medical records containing information that may have an adverse effect upon a person will be released only to a physician designated in writing by you, or by your guardian or conservator. Medical records in an Official Personnel Folder (OPF) fall under the jurisdiction of the Office of Personnel Management (OPM) and will be referred to OPM for a response.

§ 105–64.209 What special conditions apply to accessing law enforcement and security records?

Law enforcement and security records are generally exempt from disclosure to individuals except when the system manager, in consultation with legal counsel and the Head of the Service or Staff Office or Regional Administrator or their representatives, determines that information in a record has been used or is being used to deny you any right, privilege, or benefit for which you are eligible or entitled under Federal law. If so, the system manager will notify you of the existence of the record and disclose the information, but only to the extent that the information does not identify a confidential source. If

disclosure of information could reasonably be expected to identify a confidential source, the record will not be disclosed to you unless it is possible to delete all such information. A confidential source is a person or persons who furnished information during Federal investigations with the understanding that his or her identity would remain confidential.

Subpart 105–64.3—Denial of Access to Records

§ 105–64.301 Under what conditions will I be denied access to a record?

The system manager will deny access to a record that is being compiled in the reasonable anticipation of a civil action or proceeding or to records that are specifically exempted from disclosure by GSA in its system of records notices, published in the **Federal Register.** Exempted systems include the Investigation Case Files, Internal Evaluation Case Files, and Security Files. These systems are exempted to maintain the effectiveness and integrity of investigations conducted by the Office of Inspector General, and others, as part of their duties and responsibilities involving Federal employment, contracts, and security.

§ 105–64.302 How will I be denied access?

If you request access to a record in an exempt system of records, the system manager will consult with the Head of Service or Staff Office or Regional Administrator or their representatives, legal counsel, and other officials as appropriate, to determine if all or part of the record may be disclosed. If the decision is to deny access, the system manager will provide a written notice to you giving the reason for the denial and your appeal rights.

§ 105–64.303 How do I appeal a denial to access a record?

If you are denied access to a record in whole or in part, you may file an administrative appeal within 30 days of the denial. The appeal should be in writing and addressed to: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405. Mark both the envelope and the appeal letter ''Privacy Act Appeal''.

§ 105–64.304 How are administrative appeal decisions made?

The GSA Privacy Act Officer will conduct a review of your appeal by consulting with legal counsel and appropriate officials. The Privacy Act Officer may grant record access if the appeal is granted. If the decision is to reject the appeal, the Privacy Act Officer will provide all pertinent information about the case to the Deputy Administrator and ask for a final administrative decision. The Deputy Administrator may grant access to a record, in which case the Privacy Act Officer will notify you in writing, and the system manager will make the record available to you. If the Deputy Administrator denies the appeal, he or she will notify you in writing of the reason for rejection and of your right to a judicial review. The administrative appeal review will take no longer than 30 workdays after the Privacy Act Officer receives the appeal. The Deputy Administrator may extend the time limit by notifying you in writing of the extension and the reason for it before the 30 days are up.

§ 105–64.305 What is my recourse to an appeal denial?

You may file a civil action to have the GSA administrative decision overturned within two years after the decision is made. You may file in a Federal District Court where you live or have a principal place of business, where the records are maintained, or in the District of Columbia.

Subpart 105–64.4—Amending Records

§ 105–64.401 Can I amend my record?

You may request to amend your record by writing to the system manager with the proposed amendment. Mark both the envelope and the letter ''Privacy Act Request to Amend Record''.

§ 105–64.402 What records are not subject to amendment?

You may not amend the following records under the law:

(a) Transcripts of testimony given under oath or written statements made under oath.

(b) Transcripts of grand jury proceedings, judicial proceedings, or quasi-judicial proceedings which constitute the official record of the proceedings.

(c) Pre-sentence reports that are maintained within a system of records but are the property of the courts.

(d) Records exempted from amendment by notice published in the **Federal Register.**

§ 105–64.403 What happens when I submit a request to amend a record?

The system manager will consult with the Head of Service or Staff Office or Regional Administrator or their representatives, and legal counsel. They will determine whether to amend an existing record by comparing its accuracy, relevance, timeliness, and completeness with the amendment you propose. The system manager will notify you within 10 workdays whether your proposed amendment is approved or denied. In case of an expected delay, the system manager will acknowledge receipt of your request in writing and provide an estimate of when you may expect a decision. If your request to amend is approved, the system manager will amend the record and send an amended copy to you and to anyone who had previously received the record. If your request to amend is denied, the system manager will advise you in writing, giving the reason for denial, a proposed alternative amendment if possible, and your appeal rights. The system manager also will notify the GSA Privacy Act Officer of any request for amendment and its disposition. Any amendment to a record may involve a person's Official Personnel Folder (OPF). OPF regulations are governed by OPM regulations, including alternate amendments and appeals of denials, and not GSA regulations.

§ 105–64.404 What must I do if I agree to an alternative amendment?

If you agree to the alternative amendment proposed by the system manager, you must notify the manager in writing of your concurrence. The system manager will amend the record and send an amended copy to you and to anyone else who had previously received the record.

§ 105–64.405 Can I appeal a denial to amend a record?

You may file an appeal within 30 workdays of a denial to amend your record by writing to the: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405. Mark both the envelope and the appeal letter ''Privacy Act Amendment Appeal.'' Appeals to amend records in a GSA employee's official personnel file will be sent to the Office of Personnel Management, Washington, DC 20415.

§ 105–64.406 How will my appeal be handled?

The GSA Privacy Act Officer will consult with legal counsel and appropriate GSA officials concerning your appeal. If they decide to reject your appeal, the Privacy Act Officer will provide the Deputy Administrator with all pertinent information about the case and request a final administrative decision. The Deputy Administrator may approve your amendment, in which case the Privacy Act Officer will notify you in writing, and the system manager will amend the record and send an amended copy to you and

anyone who had previously been provided with the record. If the Deputy Administrator denies the appeal, he or she will notify you in writing of the reason for denial, of your right to a judicial review, and of your right to file a Statement of Disagreement. The amendment appeal review will be made within 30 workdays after the Privacy Act Officer receives your appeal. The Deputy Administrator may extend the time limit by notifying you in writing of the reason for the extension before the 30 days are up.

§ 105–64.407 How do I file a Statement of Disagreement?

You may file a Statement of Disagreement with the system manager within 30 days of the denial to amend a record. The statement should explain why you believe the record to be inaccurate, irrelevant, untimely, or incomplete. The system manager will file the statement with your record, provide a copy to anyone who had previously received the record, and include a copy of it in any future disclosure.

§ 105–64.408 What is my recourse to a denial decision?

You may file a civil action to have the GSA decision overturned within two years after denial of an amendment appeal. You may file the civil action in a Federal District Court where you live or have a principal place of business, where the records are maintained, or in the District of Columbia.

Subpart 105–64.5—Disclosure of Records

§ 105–64.501 Under what conditions may a record be disclosed without my consent?

A system manager may disclose your record without your consent under the Privacy Act when the disclosure is: To GSA officials or employees in the performance of their official duties; required by the Freedom of Information Act; for a routine use stated in a **Federal Register** notice; to the Bureau of the Census for use in fulfilling its duties; for statistical research or reporting, and only when the record is not individually identifiable; to the National Archives and Records Administration (NARA) when the record has been determined to be of historical or other value that warrants permanent retention; to a U.S. law enforcement agency or instrumentality for a civil or criminal law enforcement purpose; under compelling circumstances affecting an individual's health and safety, and upon disclosure a notification will be sent to the individual; to Congress or its committees and subcommittees when the record material falls within their jurisdiction; to the Comptroller General or an authorized representative in the performance of the duties of the Government Accountability Office (GAO); under a court order; or to a consumer reporting agency under the Federal Claims Collection Act of 1966, 31 U.S.C. 3711.

§ 105–64.502 How do I find out if my record has been disclosed?

You may request an accounting of the persons or agencies to whom your record has been disclosed, including the date and purpose of each disclosure, by writing to the system manager. Mark both the envelope and the letter ''Privacy Act Accounting Request''. The system manager will provide the requested information in the same way as that for granting access to records; see Subpart 105–64.2, providing no restrictions to disclosure or accounting of disclosures applies.

§ 105–64.503 What is an accounting of disclosures?

The system manager maintains an account of each record disclosure for five years or for the life of the record, whichever is longer. The accounting of disclosure information includes the name of the person or agency to whom your record has been provided, the date, the type of information disclosed, and the reason for disclosure. Other pertinent information, such as justifications for disclosure and any written consent that you may have provided, is also included. No accounting needs to be maintained for disclosures to GSA officials or employees in the performance of their duties, or disclosures under the Freedom of Information Act.

§ 105–64.504 Under what conditions will I be denied an accounting of disclosures?

The system manager will deny your request for an accounting of disclosures when the disclosures are to GSA officials or employees in the performance of their duties or disclosures under the Freedom of Information Act, for which no accounting is required; law enforcement agencies for law enforcement activities; and systems of records exempted by notice in the **Federal Register.** You may appeal a denial using the same procedures as those for denial of access to records, *see* Subpart 105–64.3.

Subpart 105–64.6—Establishing or Revising Systems of Records in GSA

§ 105–64.601 Procedures for establishing system of records.

The following procedures apply to any proposed new or revised system of records:

(a) Before establishing a new or revising an existing system of records, the system manager, with the concurrence of the appropriate Head of Service or Staff Office, will provide to the GSA Privacy Act Officer a proposal describing and justifying the new system or revision.

(b) A Privacy Impact Assessment (PIA) will be filled out to determine if a system notice needs to be completed.

(c) The GSA Privacy Act Officer will work with the program office to create the draft system of notice document.

(d) The GSA Privacy Office will work with various offices to take the draft system notice through the concurrence process.

(e) The GSA Privacy Act Officer will publish in the **Federal Register** a notice of intent to establish or revise the system of records at least 30 calendar days before the planned system establishment or revision date.

(f) The new or revised system becomes effective 30 days after the notice is published in the **Federal Register** unless submitted comments result in a revision to the notice, in which case, a new revised notice will be issued.

(g) When publishing a new system notice letters will be sent to the Chairman, Committee on Homeland Security and Governmental Affairs, Chairman, Committee on Oversight and Government Reform, and the Docket Library Office of Information and Regulatory Affairs, Office of Management and Budget.

Subpart 105–64.7—Assistance and Referrals

§ 105–64.701 Submittal of requests for assistance and referrals.

Address requests for assistance involving GSA Privacy Act rules and procedures, or for referrals to system managers or GSA officials responsible for implementing these rules to: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

Subpart 105–64.8—Privacy Complaints

§ 105–64.801 How to file a privacy complaint.

E-mail your complaint to *gsa.privacyact@gsa.gov* or send to: GSA Privacy Act Officer (CIB), General

Services Administration, 1800 F Street NW., Washington, DC 20405. Please provide as much details about the complaint in the communication. Provide contact information where you prefer all communication to be sent. The Privacy Officer will conduct an investigation and consult with appropriate GSA officials and legal counsel to render a decision within 30 workdays of the complaint being received by the privacy office. The decision will be sent by the method the complaint was received.

§ 105–64.802 Can I appeal a decision to a privacy complaint?

You may file an appeal within 30 workdays of a denial of a privacy complaint by writing to: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street NW., Washington, DC 20405. Mark both the envelope and appeal letter ''Privacy Act Complaint appeal''.

§ 105–64.803 How will my appeal be handled?

The Privacy Act Officer will consult with legal counsel and the appropriate GSA officials concerning your appeal. The decision will be made by the Senior Agency Official for Privacy. The decision will be sent within 30 workdays of the appeal being received by the privacy office. The decision provided in the appeal letter is the final recourse.

Appendix A to Part 105–64—Addresses for Geographically Dispersed Records

Address requests for physically dispersed records, as noted in the system of records notices, to the Regional Privacy Act Coordinator, General Services Administration, at the appropriate regional GSA office, as follows:

Great Lakes Region (includes Illinois, Indiana, Michigan, Ohio, Minnesota, and Wisconsin), 230 South Dearborn Street, Chicago, IL 60604–1696.

Greater Southwest Region (includes Arkansas, Louisiana, Oklahoma, New Mexico, and Texas), 819 Taylor Street, Fort Worth, TX 76102.

Mid-Atlantic Region (includes Delaware, Maryland, Pennsylvania, Virginia, and West Virginia, but excludes the National Capital Region), The Strawbridge Building, 20 North 8th Street, Philadelphia, PA 19107–3191.

National Capital Region (includes the District of Columbia; the counties of Montgomery and Prince George's in Maryland; the city of Alexandria, Virginia; and the counties of Arlington, Fairfax, Loudoun, and Prince William in Virginia), 7th and D Streets, SW., Washington, DC 20407.

New England Region (includes Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), 10 Causeway Street, Boston, MA 02222.

Northeast and Caribbean Region (includes New Jersey, New York, Puerto Rico, and Virgin Islands), 26 Federal Plaza, New York, NY 10278.

Northwest/Arctic Region (includes Alaska, Idaho, Oregon, and Washington), 400 15th Street, SW., Auburn, WA 98001–6599.

Pacific Rim Region (includes Arizona, California, Hawaii, and Nevada), 450 Golden Gate Avenue, San Francisco, CA 94102–3400.

Rocky Mountain Region (includes Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming), U.S. General Services Administration, DFC, Bldg. 41, Rm. 210, P.O. Box 25006, Denver, CO 80225–0006.

Southeast-Sunbelt Region (includes Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee), Office of the Regional Administrator (4A), 77 Forsyth Street, Atlanta, GA 30303.

The Heartland Region (includes Iowa, Kansas, Missouri, and Nebraska), 1500 East Bannister Road, Kansas City, MO 64131–3088.

[FR Doc. E9–29122 Filed 12–14–09; 8:45 am]

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GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 511, and 552

[GSAR Amendment 2009–14; GSAR Case 2007–G507 (Change 42) Docket 2008–0007; Sequence 9]

RIN 3090–AI74

General Services Administration Acquisition Regulation; GSAR Case 2007–G507, Describing Agency Needs

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

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the GSA Acquisition Regulation (GSAR) to revise language that provide requirements for describing agency needs.

DATES: *Effective Date:* January 14, 2010.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Beverly Cromer, Procurement Analyst, at (202) 501–1448. For information pertaining to status or publication schedules, contact the Regulatory Secretariat (MVPR), Room 4041, 1800 F Street, NW., Washington, DC 20405, (202) 501–4755. Please cite Amendment 2005–14, GSAR case 2007–G507 (Change 42).

SUPPLEMENTARY INFORMATION:

A. Background

The GSA is amending the GSAR to update the text addressing GSAR part 511, Describing Agency Needs. This rule is a result of the GSA Acquisition Manual (GSAM) Rewrite initiative undertaken by GSA to revise the GSAM to maintain consistency with the Federal Acquisition Regulation (FAR) and implement streamlined and innovative acquisition procedures that contractors, offerors, and GSA contracting personnel can utilize when entering into and administering contractual relationships. The GSAM incorporates the GSAR as well as internal agency acquisition policy.

The GSA is rewriting each part of the GSAR and GSAM, and as each GSAR part is rewritten, is publishing it in the **Federal Register.**

This rule covers the rewrite of GSAR part 511, entitled ''Describing Agency Needs''. Due to scheduling requirements, a proposed rule was published concurrently with the internal GSA comment process. The proposed rule was published in the **Federal Register** at 73 FR 59590 on October 9, 2008.

Discussion

The current GSAR part 511 contains—

- Instructions (that are not a solicitation provision) at GSAR 511.104–70 on information to be included after a brand name or equal item description;
- Prescriptions for seven solicitation provisions and contract clauses for GSAR subpart 511.2, entitled ''Using and Maintaining Requirements Documents'';
- Prescriptions for eight solicitation provisions and contract clauses for GSAR subpart 511.4, entitled ''Delivery or Performance Schedules'';
- A clause prescription at GSAR 511.503; and
- GSAR subpart 511.6, entitled ''Priorities and Allocations'', implementing the Defense Priorities and Allocations System (DPAS) for GSA. There is one clause associated with GSAR subpart 511.6.

In addition to changes made in response to the two public comments received in response to the proposed rule (see section C below), a number of additional changes have been made to the final rule as a result of the GSA internal comment process.

In GSAR subpart 511.1, the instructions at GSAR 511.104–70 have been deleted because they are redundant to instructions in the FAR for use of the FAR clause at 52.211–6, Brand Name or Equal, at FAR 11.104(b) and 11.107(a).

In GSAR subpart 511.2, the solicitation provisions and contract clauses at GSAR 511.204 have been

substantially rewritten to accommodate the incorporation of clauses used by the former Federal Supply Service into the GSAR and to revise prescriptions for certain clauses. The clause at GSAR 552.211–71, Standard References, has been deleted in favor of the clause at GSAR 552.211–72, Reference to Specifications in Drawings, which can now be used in construction contracts as well as supply contracts. Four other clauses currently prescribed in GSAR 511.204 are retained with minor edits; they are—

- GSAR 552.211–73, Marking;
- GSAR 552.211–75, Preservation, Packaging, and Packing, with its Alternate I;
- GSAR 552.211–76, Charges for Packaging, Packing, and Marking; and
- GSAR 552.211–77, Packing List.

A total of 10 new clauses are added to GSAR subpart 511.2 from the Federal Acquisition Service (formerly Federal Supply Service). These clauses, prescribed at GSAR 511.204, are the following:

- GSAR 552.211–85, Consistent Pack and Package Requirements;
- GSAR 552.211–86, Maximum Weight Per Shipping Container;
- GSAR 552.211–87, Export Packing;
- GSAR 552.211–88, Vehicle Export Preparation;
- GSAR 552.211–89, Non-Manufactured Wood Packaging Material for Export;
- GSAR 552.211–90, Small Parts;
- GSAR 552.211–91, Vehicle Decals, Stickers, and Data Plates;
- GSAR 552.211–92, Radio Frequency Identification (RFID) Using Passive Tags; and
- GSAR 552.211–93, Unique Item Identification (UID).
- GSAR 552.211–94, Time of Delivery.

In addition to GSAR 552.211–71, Standard References, discussed above, GSAR clause 552.211–74, Charges for Marking, has been deleted because its substance was incorporated into GSAR 552.211–76, now titled ''Charges for Packaging, Packing, and Marking.

The material in GSAR subpart 511.4 is at GSAR 511.404, ''Contract clauses''. This section has been revised to eliminate redundant GSAR clauses and clarify the use and requirements for existing GSAR clauses. Four clauses have been deleted:

GSAR 552.211–8, Time of Delivery. This clause was transferred to GSAR part 538, Federal Supply Schedule Contracting. A new clause with the same number and title, but a different prescription, has been substituted.

GSAR 552.211–78, Commercial Delivery Schedule (Multiple Award Schedule). This clause was transferred to GSAR part 538, Federal Supply Schedule Contracting.

GSAR 552.211–82, Notice of Shipment. This clause was deleted because it is redundant to various requirements already addressed in the FAR.

GSAR 552.211–84, Non-Compliance with Contract Requirements. The clause was revised to address construction contracts and transferred to the group revising GSAR part 536, Construction.

Four of the eight GSAR subpart 511.2 clauses are retained, with very minor edits:

- GSAR 552.211–79, Acceptable Age of Supplies.
- GSAR 552.211–80, Age on Delivery.
- GSAR 552.211–81, Time of Shipment.
- GSAR 552.211–83, Availability for Inspection, Testing, and Shipment/Delivery.

The proposed rule added the clause entitled ''Liquidated Damages for Phased Completion-Construction,'' and its prescription at GSAR 511.503, which are deleted from this final rule because they were transferred to the group rewriting GSAR part 536, Construction and Architect-Engineer Contracts.

GSAR subpart 511.6, entitled ''Priorities and Allocations'', has been substantially rewritten and clarified using the Defense Priorities Allocation System (DPAS) delegation to GSA from the Department of Commerce (DOC). Scope of GSAR subpart 511.600, includes language from the delegation to GSA that explains the limitations placed on GSA's use of this authority by DOC. The definitions at GSAR 511.601 have been deleted as unnecessary. GSAR 511.602, General, has been edited and revised to add the language that specifically limits GSA's actions and authority under the delegation. The procedures for use of the DPAS, at GSAR 511.603, have been strengthened and clarified. In addition, GSAR 511.603 now makes it clear that GSA is to use the clauses at FAR 52.211–54, Notice of Priority Rating for National Defense, Emergency Preparedness, and Energy Program Use, and FAR 52.211–15, Defense Priority and Allocation Requirements, without supplementation. These FAR clauses include the definitions and procedures necessary for proper use of DPAS. Thus, the clause at GSAR 552.211–15 and its prescription at GSAR 511.604, are deleted.

Discussion of Comments

Two public comments were received in response to the proposed rule.

Comment: One commenter was concerned that the clause text at GSAR 552.211–84, entitled ''Non-Compliance with Contract Requirements'', and re-titled ''Non-Compliance with Contract Requirements (Phased Completion of Work)'' in the proposed rule, did not even mention phased work. The proposed change, the commenter contended, does not clarify, but rather confuses.

Response: The commenter is correct, and this clause and its prescription have been transferred to the GSAR part 536 team, where they have been substantially rewritten and clarified.

Comment: A second commenter believes that the clause entitled ''Time of Delivery, does not have a prescription for its use included at the cited location (GSAR 511.404(a)).

Response: The commenter was correct. An appropriate clause prescription has been included in the text at GSAR 511.404(d).

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 while this rule does add new contract clauses, these clauses do not add any new requirements unique to small businesses and have, in fact, been used by what is now the Federal Acquisition Service, formerly the Federal Supply Service, for many years. For these reasons, it is expected that the number of entities impacted by this rule will be minimal.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies, however, these changes to the GSAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Numbers 3090–0203, 3090–0204, and 3090–0246. In fact, two of these information collections are no longer required. GSAR 511.104–70 has been deleted, so OMB Control Number 3090–0203 is no longer required, nor is OMB Control Number 3090–0204, because this rewrite eliminates the former GSAR 511.404(a)(1), 511.404(a)(2), and 511.404(a)(5), 552.211–78, and 552.211–82. However, the information collection

requirement imposed by GSAR 511.204(d), now 511.204(c), has been retained. There are no new information collection requirements in the nine clauses added to those prescribed at GSAR Subpart 511.2.

List of Subjects in 48 CFR Parts 501, 511, and 552

Government procurement.

Dated: December 8, 2009.

David A. Drabkin,

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

■ Therefore, GSA amends 48 CFR parts 501, 511, and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 501, 511, and 552 continues to read as follows:

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

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION SERVICES

501.106 [Amended]

■ 2. Amend section 501.106, in the table, by—

■ a. Removing the GSAR reference number ''511.104–70'' and its corresponding OMB Control Number ''3090–0203'';

■ b. Removing GSAR reference number ''511.204(d)'' and adding ''511.204(c)'' in its place; and

■ c. Removing GSAR reference numbers ''511.404(a)(1), 511.404(a)(2), 511.404(a)(5), 552.211–8, 552.211–78, and 552.211–82'' and their corresponding OMB Control Number ''3090–0204''.

PART 511—DESCRIBING AGENCY NEEDS

Subpart 511.1 [Removed]

■ 3. Remove subpart 511.1.

■ 4. Revise section 511.204 to read as follows:

511.204 Solicitation provisions and contract clauses.

(a) *Federal specifications.* The contracting officer shall insert the clause at 552.211–72, Reference to Specifications in Drawings, in solicitations and contracts citing Federal or agency specifications that contain drawings.

(b) *Supply contracts that exceed the simplified acquisition threshold.* (1) The contracting officer shall include the clause at 552.211–73, Marking, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities and the contract amount is expected to exceed the simplified acquisition threshold.

(2) The contracting officer shall include the clause at 552.211–75, Preservation, Packaging, and Packing, in solicitations and contracts for supplies expected to exceed the simplified acquisition threshold. The contracting officer may also include the clause in contracts estimated to be at or below the simplified acquisition threshold when appropriate. The contracting officer shall use Alternate I in solicitations and contracts for—

(i) Federal Supply Schedule 70 and the Consolidated Products and Services Schedule containing information technology Special Item Numbers; or

(ii) Federal Supply Schedules for recovery purchasing (see 538.7102).

(3) The contracting officer shall insert a clause substantially the same as the clause at 552.211–76, Charges for Packaging, Packing, and Marking, in solicitations and contracts for supplies to be delivered to GSA distribution centers.

(4) The contracting officer shall include the clause 552.211–85, Consistent Pack and Package Requirements, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities and the contract amount is expected to exceed the simplified acquisition threshold.

(5) The contracting officer shall include the clause 552.211–86, Maximum Weight Per Shipping Container, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities and the contract amount is expected to exceed the simplified acquisition threshold.

(6) The contracting officer shall include the clause 552.211–87, Export Packing, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities and the contract amount is expected to exceed the simplified acquisition threshold.

(7) The contracting officer shall include the clause 552.211–88, Vehicle Export Preparation, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities and the contract amount is expected to exceed the simplified acquisition threshold.

(8) The contracting officer shall include the clause at 552.211–89, Non-Manufactured Wood Packaging Material for Export, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities overseas and the contract amount is expected to exceed the simplified acquisition threshold.

(9) The contracting officer shall include the clause 552.211–90, Small Parts, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities and the contract amount is expected to exceed the simplified acquisition threshold.

(10) The contracting officer shall include the clause 552.211–91, Vehicle Decals, Stickers, and Data Plates, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities and the contract amount is expected to exceed the simplified acquisition threshold.

(11) The contracting officer shall include the clause 552.211–92, Radio Frequency Identification (RFID) using Passive Tags, in solicitations and contracts for supplies when deliveries may be made to military activities and the contract amount is expected to exceed the simplified acquisition threshold.

(12) The contracting officer shall include the clause 552.211–93, Unique Item Identification (UID), in solicitations and contracts for supplies when deliveries may be made to military activities and a single item exceeds $5,000.00 in cost.

(c) *Supply contracts.* The contracting officer shall include the clause at 552.211–77, Packing List, in solicitations and contracts for supplies, including purchases over the micropurchase threshold. Use Alternate I in solicitations and contracts for—

(1) FSS Schedule 70 and the Consolidated Products and Services Schedule containing information technology Special Item Numbers; or

(2) Federal Supply Schedules for recovery purchasing (see 538.7102).

■ 5. Revise section 511.404 to read as follows:

511.404 Contract clauses.

In supply contracts, the contracting officer shall use the clauses as specified in this section.

(a) *Shelf-life items.* The contracting officer shall use the following clauses in solicitations and contracts that require delivery of shelf-life items within a specified number of months from the date of manufacture or production:

(1) The contracting officer shall insert 552.211–79, Acceptable Age of Supplies, if the required shelf-life period is 12 months or less, and lengthy acceptance testing may be involved. For items having a limited shelf-life, substitute Alternate I when required by the director of the portfolio concerned.

(2) The contracting officer shall insert 552.211–80, Age on Delivery, if the required shelf-life period is more than 12 months, or when source inspection can be performed within a short time period.

(b) *Stock replenishment contracts.* The contracting officer shall insert 552.211–81, Time of Shipment, in solicitations and stock replenishment contracts that do not include the Availability for Inspection, Testing, and Shipment/Delivery clause at 552.211–83 and require shipment within 45 calendar days after receipt of the order. If shipment is required in more than 45 days, the contracting officer shall use Alternate I.

(c) *Indeterminate testing time.* The contracting officer shall insert 552.211–83, Availability for Inspection, Testing, and Shipment/Delivery, in solicitations and contracts that provide for source inspection by Government personnel and that require lengthy testing for which time frames cannot be determined in advance. If the contract is for stock items, the contracting officer shall use Alternate I.

(d) The contracting officer shall insert the clause at 552.211–94, Time of Delivery, in solicitations and contracts for supplies for the Stock Program when neither of the FAR delivery clauses (FAR 52.211–8 or 52.211–9) is suitable.

■ 6. Revise section 511.600 to read as follows:

511.600 Scope of subpart.

Pursuant to the Defense Priorities and Allocations System (DPAS) Delegation 3, the Department of Commerce (DOC) has delegated to GSA the authority to use the DPAS under certain conditions. DPAS Delegation 3 restricts use of DPAS authority to GSA supply system procurement in support of the Department of Defense (DoD), Department of Energy (DoE), and Federal Emergency Management Agency (FEMA) approved programs.

511.601 [Removed and Reserved]

■ 7. Remove and reserve section 511.601.

■ 8. Revise section 511.602 to read as follows:

511.602 General.

(a) The purpose of the DPAS is to assure the timely availability of industrial resources to meet current national defense, energy, and civil emergency preparedness program requirements and to provide an operating system to support rapid industrial response in a national emergency. The primary statutory authority for the DPAS is Title I of the Defense Production Act of 1950, as amended, with additional authority from the Selective Service Act of 1948 and the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Executive Orders 12919 and 12742 delegate to the DOC authority to administer the DPAS. Within the DOC, the Office of Strategic Industries and Economic Security (SIES) is assigned responsibility for DPAS implementation, administration, and compliance.

(b) The DPAS is published in the Code of Federal Regulations at 15 CFR part 700. This regulation provides an overview, a detailed explanation of operations and procedures, and other implementing guidance, including information on special priorities assistance and compliance.

(c) Orders placed under DPAS are ''rated orders.'' Rated orders must receive preferential treatment only as necessary to meet delivery requirements. Rated orders are identified by a rating symbol of either ''DX'' or ''DO'' followed by a program identification symbol. All ''DO'' rated orders have equal priority with each other and take preference over unrated orders. All ''DX'' rated orders have equal priority with each other and take preference over ''DO'' rated orders and unrated orders. A program identification symbol indicates which approved program is supported by the rated order.

(d) The authority delegated to GSA shall not be used to support the procurement of any items that—

(1) Are commonly available in commercial markets for general consumption;

(2) Do not require major modification when purchased for approved program use;

(3) Are readily available in sufficient quantity so as to cause no delay in meeting approved program requirements; or

(4) Are to be used primarily for administrative purposes (including Federal Supply Classification (FSC) classes, groups, or items), such as for personnel or financial management. The Commissioner, FAS, shall issue additional guidance, as may be necessary, to ensure effective implementation of its delegated DPAS authority.

■ 9. Revise section 511.603 to read as follows:

511.603 Procedures.

(a) A DPAS rating may be placed against an entire contract at time of award or an individual order issued under an existing, otherwise unrated, contract. FAR 11.604 requires contracting officers to insert the provision at 52.211–14, Notice of Priority Rating for National Defense, Emergency Preparedness, and Energy Program Use, in solicitations when the contract or order to be awarded will be a rated order and to insert the clause at 52.211–15, Defense Priority and Allocation Requirements, in contracts that are rated orders.

(b) In addition to the FAR provision and clause referenced in paragraph (a) of this section, the contract or order must include the following (*see* 15 CFR 700.12):

(1) The appropriate priority rating symbol (*i.e.,* either ''DO'' or ''DX'') along with the program identification symbol. When GSA contracting officers place DO rated orders, they must use program identification symbol ''K1''. When placing a DX-rated order for other agencies, GSA contracting officers must use the requesting agency program identification symbol from the DoD Master Urgency List and may only do so when GSA is acting as the procuring agent for DoD or DoE and has received a ''DX'' rated contract or order from either department.

(2) A required delivery date. The words ''as soon as possible'' or ''immediately'' do not constitute a required delivery date. Use of either a specific date or a specified number of days ARO (after receipt of order) is acceptable.

(3) The written signature on a manually placed order, or the digital signature or name on an electronically placed order of an individual authorized to place rated orders.

(4) A statement that reads substantially as follows: ''This is a rated order certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR part 700)''.

(c) Multiple and Single Award Schedule contracts are not rated at time of award.

511.604 [Removed]

■ 10. Remove section 511.604.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

552.211–8 [Removed]

■ 11. Remove section 552.211–8.

552.211–15 [Removed]

■ 12. Remove section 552.211–15.

552.211–71 [Removed and Reserved]

■ 13. Remove and reserve section 552.211–71.

552.211–72 [Amended]

■ 14. Amend section 552.211–72 by removing from the introductory paragraph ''511.204(b)'' and adding ''511.204(a)'' in its place.

552.211–73 [Amended]

■ 15. Amend section 552.211–73 by removing from the introductory paragraph ''511.204(c)(1)'' and adding ''511.204(b)(1)'' in its place.

552.211–74 [Removed and Reserved]

■ 16. Remove and reserve section 552.211–74.

552.211–75 [Amended]

■ 17. Amend section 552.211–75 by removing from the introductory paragraph and the Alternate I introductory paragraph ''511.204(c)(3)'' and adding ''511.204(b)(2)'' in its place (twice).

■ 18. Revise section 552.211–76 to read as follows:

552.211–76 Charges for packaging, packing, and marking.

As prescribed in 511.204(b)(3), insert a clause substantially as follows:

Charges for Packaging, Packing, and Marking (Jan 2010)

If supplies shipped to a GSA wholesale distribution center are not packaged, packed and marked in accordance with contract requirements, the Government has the right, without prior notice to the Contractor, to perform the required repackaging/repacking/remarking, by contract or otherwise, and charge the Contractor therefore at the rate of $_____* per man-hour or fraction thereof. The Contractor will also be charged for material costs, if incurred. This right is not exclusive, and is in addition to other rights or remedies provided for in this contract.

(End of clause)

*The rate to be inserted in the above clause shall be determined by the Commissioner, Federal Acquisition Service, or a designee.

552.211–77 [Amended]

■ 19. Amend section 552.211–77 by removing from the introductory paragraph ''511.204(d)'' and adding ''511.204(c)'' in its place.

552.211–78 [Removed and Reserved]

■ 20. Remove and reserve section 552.211–78.

552.211–79 [Amended]

■ 21. Amend section 552.211–79 by removing from the introductory paragraph ''511.404(a)(3)(i)'' and adding ''511.404(a)(1)'' in its place.

552.211–80 [Amended]

■ 22. Amend section 552.211–80 by removing from the introductory paragraph ''511.404(a)(3)(ii)'' and adding ''511.404(a)(2)'' in its place.

552.211–81 [Amended]

■ 23. Amend section 552.211–81 by removing from the introductory paragraph ''511.404(a)(4)'' and adding ''511.404(b)'' in its place.

552.211–82 [Removed and Reserved]

■ 24. Remove and reserve section 552.211–82.

552.211–83 [Amended]

■ 25. Amend section 552.211–83 by removing from the introductory paragraph ''511.404(a)(6)'' and adding ''511.404(c)'' in its place.

552.211–84 [Removed and Reserved]

■ 26. Remove and reserve section 552.211–84.

■ 27. Add sections 552.211–85 through 552.211–94 to read as follows:

552.211–85 Consistent pack and package requirements.

As prescribed in 511.204(b)(5), insert the following clause:

Consistent Pack and Package Requirements (Jan 2010)

The Contractor is advised that the Government will, where possible, order in full shipping containers and/or unitized loads. If volume warrants, the Government may also order in truckload or carload quantities provided such quantities do not exceed the maximum order limitation of this contract.

When the number of items per unit container, intermediate container and/or shipping container is not specified for an item, the offeror will state, in the spaces provided in the schedule of items, the number of items to be provided in each container. The quantities which are accepted at the time of award shall remain in effect throughout the term of the contract unless the Contracting Officer approves in writing a request by the Contractor to change the package quantities. Requests for changes shall be directed to the Contracting Officer or Administrative Contracting Officer, whichever is applicable.

(End of clause)

552.211–86 Maximum weight per shipping container.

As prescribed in 511.204(b)(6), insert the following clause:

Maximum Weight per Shipping Container (Jan 2010)

In no instance shall the weight of a shipping container and its contents exceed 23 kilograms (51 pounds), except when caused by—

(1) The weight of a single item within the shipping container;

(2) A prescribed quantity per pack for an item per shipping container; or

(3) A definite weight limitation set forth in the purchase description.

(End of clause)

552.211–87 Export packing.

As prescribed in 511.204(b)(7), insert the following clause:

Export Packing (Jan 2010)

(a) Offerors are requested to quote, in the pricelist accompanying their offer (or by separate attachment), additional charges or net prices covering delivery of the items furnished with commercial or military export packing. Military export packing, if offered, shall be in accordance with Mil-Std-2073–1 Level A or B as specified. If commercial export packing is offered, the offer or pricelist shall include detailed specifications describing the packing to be furnished at the price quoted.

(b) Ordering activities will not be obligated to utilize the Contractor's services for export packing accepted under this solicitation, and they may obtain such services elsewhere if desired. However, the Contractor shall furnish items export packed when such packing is specified on the purchase order.

(End of clause)

552.211–88 Vehicle export preparation.

As prescribed in 511.204(b)(8), insert the following clause:

Vehicle Export Preparation (Jan 2010)

Vehicles shall be prepared for export on wheels, unboxed, unless otherwise specified in the Schedule of Items. All parts and equipment easily removable (subject to pilferage) shall be enclosed in a box substantially secured to the vehicle (inside body if feasible) in such a manner as to minimize the possibility of loss or damage while in transit to ultimate destination.

(End of clause)

552.211–89 Non-manufactured wood packaging material for export.

As prescribed in 511.204(b)(4), insert the following clause:

Non-Manufactured Wood Packaging Material for Export (Jan 2010)

(a) *Definitions:*

IPPC Country: Countries of the European Union (EU) or any other country endorsing the International Plant Protection Convention (IPPC) ''Guidelines for Regulating Wood Packaging Material in International Trade,'' approved March 15, 2002. A listing of countries participating in the IPPC is found at *http://www.aphis.usda.gov/import_export/plants/plant_exports/wpm/country/index.shtml.*

Non-manufactured wood, is also called solid wood and defined as wood packing other than that comprised wholly of wood-based products such as plywood, particle

board, oriented strand board, veneer, wood wool, and similar materials, which has been created using glue, heat and pressure or a combination thereof.

Packaged material, and solid wood packing material (SWPM), for purposes of this clause, is defined as each separate and distinct material that by itself or in combination with other materials forms the container providing a means of protecting and handling a product. This includes, but is not limited to, pallets, dunnage, crating, packing blocks, drums, load boards, pallet collars, and skids.

(b) Non-manufactured wood pallets and other non-manufactured wood packaging material used to pack items for delivery to or through IPPC countries must be marked and properly treated in accordance with IPPC guidelines.

(c) This requirement applies whether the shipment is direct to the end user or through a Government designated consolidation point. Packaging that does not conform to IPPC guidelines will be refused entry, destroyed or treated prior to entry.

(d) For Department of Defense distribution facilities or freight consolidation points, all non-manufactured wood pallets or packaging material with a probability of entering countries endorsing the IPPC Guidelines must be treated and marked in accordance with DLAD 47.305–1 (available at *http://www.dla.mil/j-3/j-3311/DLAD/rev5.htm*), and MIL–STD–2073–1, Standard Practice for Military Packaging (and any future revision).

(e) Pallets and packing material shipped to FAS distribution facilities designated for possible delivery to the countries endorsing the IPPC Guidelines will comply with DLAD 47.305–1, and MIL–STD–2073–1.

(f) Delays in delivery caused by non-complying pallets or wood package material will not be considered as beyond the control of the Contractor. Any applicable Government expense incurred as a result of the Contractor's failure to provide appropriate pallets or package material shall be reimbursed by the Contractor. Expenses may include the applicable cost for repackaging, handling and return shipping, or the destruction of solid wood packaging material.

(End of clause)

552.211–90 Small parts.

As prescribed in 511.204(b)(9), insert the following clause:

Small Parts (Jan 2010)

All small parts required to be furnished with machines covered by contracts resulting from this solicitation shall be packed in envelopes, sealed, identified with part numbers and quantity on outside of envelopes. Larger parts must be individually tagged and identified with part number on face of tag.

(End of clause)

552.211–91 Vehicle decals, stickers, and data plates.

As prescribed in 511.204(b)(10), insert the following clause:

Vehicle Decals, Stickers, and Data Plates (Jan 2010)

Unless otherwise specified, caution plates/decals shall be conspicuously installed for all equipment requiring such notices. Vehicles for civil agencies shall be provided with the manufacturer's current warranty legend imprinted on decalcomania, and applied in a visible area of the engine compartment. In addition, a decal or sticker shall provide at least the following information: contract number; purchase order number; date of delivery, month and year; and the warranty time, in month and miles.

(End of clause)

552.211–92 Radio Frequency Identification (RFID) using passive tags.

As prescribed in 511.204(b)(11), insert the following clause:

Radio Frequency Identification (RFID) Using Passive Tags (Jan 2010)

Radio Frequency Identification shall be required on all non-bulk shipments to the Defense Logistics Agency (DLA) or Department of Defense (DoD) destinations. Shipments shall be tagged in accordance with 48 CFR clause 252.211–7006. Shipments to GSA Distribution Centers with final destinations to DLA and DoD shall be in compliance to 48 CFR 252.211–7006. Copies may be obtained from *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

(End of clause)

552.211–93 Unique Item Identification (UID).

As prescribed in 511.204(b)(12), insert the following clause:

Unique Item Identification (UID) (Jan 2010)

Unique Item Identification shall be required on tangible personal property in accordance with DFARS 211.274–4 as requested by the Defense Logistics Agency (DLA) or Department of Defense (DOD). Item Property that falls within this criterion shall be valuated and identified in accordance with DFARS 252.211–7003. Details shall be found in DFARS 252.211–7007. Copies can be obtained from *http://www.access.gpo.gov* the 48 Code of Federal Regulations.

(End of clause)

552.211–94 Time of delivery.

As prescribed at 511.404(d), insert the following clause:

Time of Delivery (Jan 2010)

An ''X'' mark in the left hand block shall be considered a mandatory requirement to be fulfilled by the contractor.

	The Contractor will ship contract item(s) to the Federal Acquisition Service (FAS) stocking points identified in the delivery order at its discretion in order to maintain the required stock levels within the minimum and maximum requirements provided in the weekly status report.
	Delivery is required to be made at destination within *_____* calendar days after receipt of order for deliveries to a GSA facility.
	Orders under this contract may require direct delivery to other agencies. Orders for direct delivery must be shipped and delivered within the time specified in blocks below.
	Shipment must be made with *_____* days after receipt of order.
	In addition to block above the Contractor must also ensure that delivery will be made within *_____* days after receipt of order.

(End of clause)

[FR Doc. E9–29753 Filed 12–14–09; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 802, 804, 808, 809, 810, 813, 815, 817, 819, 828, and 852

RIN 2900–AM92

VA Acquisition Regulation: Supporting Veteran-Owned and Service-Disabled Veteran-Owned Small Businesses

Correction

In rule document E9–28461 beginning on page 64619 in the issue of Tuesday, December 8 make the following correction:

On page 64619, in the third column, under the **DATES** heading, in the first line, ''January 7, 2010'' should read ''*Effective date:* January 7, 2010''.

[FR Doc. Z9–28461 Filed 12–14–09; 8:45 am]

BILLING CODE 1505–01–D

Proposed Rules

Federal Register
Vol. 74, No. 239
Tuesday, December 15, 2009

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0954; Airspace Docket No. 09–ANM–11]

Proposed Establishment of Class E Airspace; Hailey, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Friedman Memorial Airport, Hailey, ID. Controlled airspace is necessary to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Friedman Memorial Airport, Hailey, ID. The FAA is proposing this action to enhance the safety and management of aircraft operations at Friedman Memorial Airport.

DATES: Comments must be received on or before January 29, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, 20590. Telephone (202) 366–9826. You must identify FAA Docket No. FAA–2009–0954; Airspace Docket No. 09–ANM–11, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

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 (FAA Docket No. FAA 2009–0954 and Airspace Docket No. 09–ANM–11) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2009–0954 and Airspace Docket No. 09–ANM–11''. 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 action 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 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/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace designated as surface area at Friedman Memorial Airport, Hailey, ID. Controlled airspace is necessary to accommodate aircraft using RNAV (GPS) SIAPs at Friedman Memorial Airport, Hailey, ID. This action would enhance the safety and management of aircraft operations at Friedman Memorial Airport, Hailey, ID.

Class E airspace designations are published in paragraph 6002 of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (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 proposed rule, when promulgated, would 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 U.S. Code. Subtitle 1, Section 106, describes the authority for

the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This Rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish additional controlled airspace at Friedman Memorial Airport, Hailey, ID.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 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 the FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 6002. Class E airspace designated as surface areas.

* * * * *

ANM ID, E2 Hailey, ID [New]

Friedman Memorial Airport, Hailey, ID
(Lat. 43°30′14″ N., long. 114°17′44″ W.)

Within a 4.1-mile radius of the Friedman Memorial Airport, and within 1.8 miles each side of the 159° bearing from the airport, extending from the 4.1-mile radius to 6 miles southeast of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on December 2, 2009.

H. Steve Karnes,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. E9–29761 Filed 12–14–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

20 CFR Part 901

[REG–159704–03]

RIN 1545–BC82

Performance of Actuarial Services Under the Employee Retirement Income Security Act of 1974; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the enrollment of actuaries under section 3042 of the Employee Retirement Income Security Act of 1974.

DATES: The public hearing is being held on Thursday, February 25, 2010, at 10 a.m. The IRS has extended the deadline for requests to speak. The IRS must receive requests to speak, along with outlines of the topics to be discussed at the public hearing by January 25, 2010.

ADDRESSES: The public hearing is being held in room 2615 at the Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

Send Submissions to CC:PA:LPD:PR (REG–159704–03), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday to CC:PA:LPD:PR (REG–159704–03), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically via the Federal e-rulemaking Portal at *http://www.regulations.gov* IRS–REG–159704–03.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Patrick McDonough at (202) 622–8225; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing Oluwafunmilayo Taylor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

The subject of the public hearing is the notice of proposed rulemaking (REG–159704–03) that was published in the **Federal Register** on Monday, September 21, 2009 (74 FR 48030).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be addressed and the amount of time to be denoted to each topic (Signed original and two copies) by January 25, 2010.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or in the Freedom of Information Reading Room (FOIA RR) (Room 1621) which is located at the 11th and Pennsylvania Avenue, NW., entrance, 1111 Constitution Avenue, NW., Washington, DC.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the ''**FOR FURTHER INFORMATION CONTACT**'' section of this document.

LaNita VanDyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E9–29752 Filed 12–14–09; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[RCRA—2003–0004; FRL–9092–6]

RIN 2050–AE51

Hazardous Waste Management System: Identification and Listing of Hazardous Waste: Conditional Exclusion From Hazardous Waste and Solid Waste for Solvent-Contaminated Industrial Wipes; Extension of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Data availability; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for the document entitled ''Conditional Exclusion from Hazardous and Solid Waste for Solvent-

Contaminated Industrial Wipes,'' which appeared in the **Federal Register** on October 27, 2009. The public comment period for this document was to close on December 28, 2009. The purpose of this document is to extend the comment period for 60 days until February 26, 2010.

DATES: EPA will accept public comments on the Notice of Data Availability (NODA) published October 27, 2009 (74 FR 55163), until February 26, 2010. Comments submitted after this date will be marked ''late'' and may not be considered.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2003–0004 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: rcra-docket@epa.gov,* Attention Docket No. EPA–HQ–RCRA–2003–0004.
- *Fax:* 202–566–9744, Attention Docket No. EPA–HQ–RCRA–2003–0004.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Resource Conservation and Recovery Act (RCRA) Docket, 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket No. EPA–HQ–RCRA–2003–0004. Please include 2 copies.
- *Hand Delivery:* Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, Attention Docket No. EPA–HQ–RCRA–2003–0004. Such deliveries are only accepted during the docket's normal hours, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–RCRA–2003–0004. 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 send information you consider CBI or that is 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 direct 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 send 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 send. If EPA cannot read your comment because of 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 more 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 *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 Resource Conservation and Recovery Act (RCRA) Docket, EPA/DC, EPA West, 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 RCRA Docket is (202) 566–0270.

FOR FURTHER INFORMATION CONTACT: Teena Wooten, Office of Resource Conservation and Recovery (ORCR), (703) 308–8751, *wooten.teena@epa.gov.* Direct mail inquiries to the U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (Mailstop 5304P), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The subject of this notice is to extend the time to comment on a revised risk analysis for solvent contaminated wipes. The revised risk analysis was developed in support of a rule proposed on November 20, 2003 (68 FR 65586). The revised risk analysis and supporting documents are available through *http://www.regulations.gov* under docket EPA–HQ–RCRA–2003–0004 and *http://www.epa.gov/epawaste/hazard/wastetypes/wasteid/solvents/wipes.htm.*

On November 20, 2003, EPA proposed to: (1) Conditionally exclude from the definition of solid waste industrial wipes contaminated with solvent and sent to laundries or dry cleaners for cleaning and reuse and (2) conditionally exclude from the definition of hazardous waste industrial wipes contaminated with solvent and sent to disposal. The proposed rule is available through *http://www.regulations.gov* under docket EPA–HQ–RCRA–0004 and *http://www.epa.gov/epawaste/hazard/wastetypes/wasteid/solvents/wipes.htm.*

The comment period for the NODA was scheduled to close on December 28, 2009. However, EPA received a request to extend the comment period to allow the requester additional time to review the available information. In addition, EPA recently updated its contact list used to notify stakeholders when **Federal Register** notices about rulemaking activities in the areas of hazardous waste regulations are published. Extending the comment period responds to the commenter's request and allows recent additions to the contact list time to comment on the revised risk analysis. EPA has also received a request for the mathematical models and input/output files used to develop the revised risk analysis. Although this information is not necessary for review of the revised risk analysis, you may obtain a copy of the mathematical models and input/output files upon request through the contact listed above. EPA also notes that this rule is not subject to any statutory or judicial deadlines. We are therefore extending the comment period for this NODA until February 26, 2010.

Dated: December 9, 2009.

Matthew Hale,

Director, Office of Resource Conservation and Recovery.

[FR Doc. E9–29804 Filed 12–14–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R2–ES–2009–0076; 92210–1111–0000 B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on Petitions To List Nine Species of Mussels From Texas as Threatened or Endangered With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 90–day finding on two petitions to list nine species of freshwater mussels, the Texas fatmucket (*Lampsilis bracteata*), Texas heelsplitter (*Potamilus amphichaenus*), Salina mucket (*Potamilus metnecktayi*), golden orb (*Quadrula aurea*), smooth pimpleback (*Quadrula houstonensis*), Texas pimpleback (*Quadrula petrina*), false spike (*Quincuncina mitchelli*), Mexican fawnsfoot (*Truncilla cognata*), and Texas fawnsfoot (*Truncilla macrodon*), as threatened or endangered under the Endangered Species Act of 1973, as amended (Act) and designate critical habitat. Based on our review, we find that the petitions present substantial scientific or commercial information indicating that listing these species may be warranted. Therefore, with the publication of this notice, we are initiating a status review of the nine species of mussels to determine if listing them is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial data and other information regarding these species. At the conclusion of this review, we will issue a 12–month finding on the petitions, which will address whether the petitioned actions are warranted, as provided in section 4(b)(3)(B) of the Act. We will make a determination on critical habitat for these species if, and when, we initiate a listing action.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before February 16, 2010. After this date, you must submit information directly to the Field Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we may not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit information by one of the following methods:

• *Federal rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

• *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS-R2-ES-2009-0076; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information received on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the **Information Solicited** section below for more details).

FOR FURTHER INFORMATION CONTACT: Stephen D. Parris, Field Supervisor, Clear Lake Ecological Services Field Office, 17629 El Camino Real, Ste. 211, Houston, TX 77058; telephone 281-286-8282, extension 230. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on the nine species of mussels (Texas fatmucket, Texas heelsplitter, Salina mucket, golden orb, smooth pimpleback, Texas pimpleback, false spike, Mexican fawnsfoot, and Texas fawnsfoot). We request information from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties concerning the status of the nine species of mussels. We seek information for each of the nine species regarding:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species or its habitat.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act, which are:

(a) The present or threatened destruction, modification, or curtailment of the species' habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting their continued existence.

(3) Information about any ongoing conservation measures for, or threats to, the species and their habitats.

Please include sufficient information with your submission (such as full references) to allow us to verify any scientific or commercial information you include.

If, after the status review, we determine that listing any of the nine species of mussels under the Act is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act), in accordance with section 4 of the Act, to the maximum extent prudent and determinable at the time we would propose to list the species. Therefore, within the geographical range currently occupied by the nine species of mussels, we also request data and information on:

(1) What may constitute physical or biological features essential to the conservation of the species,

(2) Where these features are currently found, and

(3) Whether any of these features may require special management considerations or protection.

In addition, we request data and information on specific areas outside the geographical area occupied by the species that are essential to the conservation of the species. Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if any of the nine species of mussels are proposed for listing, and why such habitat meets the requirements of section 4 of the Act.

Submissions merely stating support or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made solely on the basis of the best scientific and commercial data available.

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. We will not consider submissions sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the website. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Information and supporting documentation that we received and used in preparing this finding, will be available for public inspection at *http://www. regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Clear Lake Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90–day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to commence a review of the status of the species, which is subsequently summarized in our 12–month finding.

Petition History

On June 25, 2007, we received a petition dated June 18, 2007, from Forest Guardians (now WildEarth Guardians) requesting that the Service: (1) Evaluate all full species in our Southwest Region ranked as G1 or G1G2 by the organization NatureServe, except those that are currently listed, proposed for listing, or candidates for listing; and (2) list each G1 or G1G2 species as either endangered or threatened with critical habitat. The petitioned group of species included the Texas fatmucket, Texas heelsplitter, Salina mucket, and golden orb. The petition incorporates all analyses, references, and documentation provided by NatureServe in its online database at *http://www.natureserve.org/* (hereafter cited as NatureServe 2007) into the petition. The information presented by NatureServe is considered to be a reputable source of information with respect to taxonomy and distribution. However, NatureServe indicates on their website that information in their database is not intended for determining whether species are warranted for listing under the Act. Where NatureServe presented assertions without supporting references that allow us to verify their statements, we found that the information presented by NatureServe was limited in its usefulness for this process. The petition clearly identified itself as such and included the identification information required at 50 CFR 424.14(a). We sent a letter dated July 11, 2007, to the petitioner acknowledging receipt of the petition and stating that the petition was under review by staff in our Southwest Regional Office.

On June 18, 2008, we received a petition from WildEarth Guardians, dated June 12, 2008, to emergency list 32 species, including the Salina mucket, under the Administrative Procedure Act (APA) (5 U.S.C. Subchapter II) and the Act. In a letter dated July 22, 2008, we stated that the information provided in both the 2007 and 2008 petitions and in our files did not indicate that emergency listing of any of the petitioned species was warranted. That letter concluded our evaluation of the emergency aspect of the 2008 petition.

On October 15, 2008, we received a petition dated October 9, 2008, from WildEarth Guardians requesting that the Service list six species of freshwater mussels, the smooth pimpleback, Texas pimpleback, false spike, Mexican fawnsfoot, Texas fawnsfoot, and southern hickorynut, as either endangered or threatened throughout their historic ranges within the United States and internationally. The petitioner also requested the designation of critical habitat for each of the petitioned mussel species. The petition clearly identified itself as such and included the identification information required at 50 CFR 424.14(a). In addition to other information cited in the petition, the petition incorporates all analyses, references, and documentation provided by NatureServe in its online database at *http://www.natureserve.org/* (hereafter cited as NatureServe 2009) into the petition. To clarify, for the first four species addressed in this finding (Texas fatmucket, Texas heelsplitter, Salina mucket, and golden orb), we referenced the species profiles retrieved from the NatureServe online database in 2007. For the following five species (smooth pimpleback, Texas pimpleback, false spike, Mexican fawnsfoot, and Texas fawnsfoot), we referenced the species profiles retrieved from the NatureServe online database in 2009. In a November 26, 2008, letter to the petitioner, we acknowledged receipt of the petition and stated that the petition for the six mussel species was under review by staff in our Southwest (Region 2) and Southeast (Region 4) Regional Offices. This finding addresses 5 of the 6 petitioned species that occur within Region 2: smooth pimpleback, Texas pimpleback, false spike, Mexican fawnsfoot, and Texas fawnsfoot. Region 4 is addressing the southern hickorynut in a separate finding. In total, this 90–day finding includes nine mussel species; four species (Texas fatmucket, Texas heelsplitter, Salina mucket, and golden orb) are included from the June 18, 2007, petition, and five species (smooth pimpleback, Texas pimpleback, false spike, Mexican fawnsfoot, and Texas fawnsfoot) from the October 9, 2008, petition.

Previous Federal Actions

There are no previous Federal actions or previous determinations for the Texas fatmucket, Salina mucket, golden orb, smooth pimpleback, Texas pimpleback and Texas fawnsfoot. However, the Texas heelsplitter, the false spike, Salina mucket (listed as *Disconaias salinasensis*), and the Mexican fawnsfoot were listed as Category 2 candidate species in the 1989 Animal Notice of Review (published January 6, 1989, at 54 FR 554) and again in the 1991 and 1994 candidate species lists (56 FR 58804 and 59 FR 58982, respectively). Category 2 candidate species included taxa for which information in the Service's possession indicated that a proposed listing rule was possibly appropriate, but we did not have sufficient data available on biological vulnerability and threats to support a proposed rule.

In 1996, the Service changed its definition of candidate species (see 61 FR 7596). Species that had been listed as Category 1 species remained on the candidate list and those that were listed as Category 2 species were dropped from the candidate list. Therefore, the Texas heelsplitter, the false spike, Salina mucket, and the Mexican fawnsfoot have not been on the candidate species list since 1996. There are no other previous Federal actions for these species.

Species Information

All of the nine species are freshwater mussels in the family Unionidae, and all are known to occur in Texas (Howells 2007). Mussels in the family Unionidae are generally referred to as unionids, and we use that term in this finding. Freshwater mussels are bottom-dwelling and burrow into the substrate to maintain position on the stream bottom. Some mussel species require free-flowing streams, while other species

prefer, or are tolerant of, lentic (lake or pond) habitat. All freshwater mussels are filter-feeders, collecting algae, detritus, and bacteria from the water as it passes across the gills. Excessive amounts of suspended sediments can interfere with a mussel's ability to efficiently filter feed.

Unionid reproduction requires separate male and female individuals. Fertilization takes place when a male discharges sperm into the water column and the female intakes the water-born sperm through siphon tubes during normal feeding and respiration (Howells *et al.* 1996, p. 9). Fertilized eggs are retained in the female's brood pouch (Howells *et al.* 1996, p. 9). The larvae, called glochidia, are retained in the female brood pouch until released, then live temporarily as obligate parasites (cannot live independently of its host) on a suitable host fish before transforming into bottom-dwelling juveniles (Howells *et al.* 1996, p. 9). If the glochidia do not find a suitable host fish, they die.

Texas fatmucket

Gould described the Texas fatmucket in 1855 (*http://www. natureserve.org/explorer/*; accessed July 2, 2007; hereafter cited as NatureServe 2007). The shell is tan to brown, is rhomboidal to oval in shape, and reaches 9 centimeters (cm) (3.5 inches (in)) in length (NatureServe 2007). The Texas fatmucket is historically known to occur in the Colorado, Guadalupe, and San Antonio river systems in Texas (Howells *et al.* 1996, p. 61). It is currently known from two tributaries of the Colorado River, the Llano River, upper San Saba River, and the upper Guadalupe River (Howells 2006, p. 97). This species occurs in streams and smaller rivers where water depths are less than 1 meter (m) (3.3 feet (ft)) and lives in substrates of sand, mud, and gravel (NatureServe 2007). The glochidial host fish include bluegill *(Lepomis macrochirus*) and green sunfish *(L. cyanellus*) (Howells *et al.* 1996, p. 62).

Texas heelsplitter

Frierson described the Texas heelsplitter in 1898 (NatureServe 2007). The shell is tan to brown, is elongated, and 17.7 cm (7 in) in length (Howells *et al.* 1996, p. 95). The Texas heelsplitter historically and currently is known to occur in the Neches River, the lower-central Trinity River, and the upper Sabine River in Texas (Howells 2006, p. 98). This species inhabits flowing waters, preferring mud or sand substrates in small to medium rivers, but it can also be found in reservoirs (NatureServe 2007). The glochidial host fish for the Texas heelsplitter are unknown (Howells *et al.* 1996. p. 96).

Salina mucket

Johnson described the Salina mucket in 1998 (NatureServe 2007). Salina mucket has undergone taxonomic changes since the mussel's original listing on the 1989 Animal Notice of Review. We intend to investigate these taxonomic revisions further during the status review. The shell is tan to dark brown or black, is oval, and reaches a length of 10.5 cm (4.1 in) (Howells *et al.* 1996, pp. 103-104). The Salina mucket historically occurred in the Rio Grande as far north and west as New Mexico and as far south as northern Mexico (Howells *et al.* 1996, p. 103). It currently is known from the Rio Grande in Texas from the Big Bend region in Brewster County downstream to below the Falcon Dam in Starr County (NatureServe 2007), although there is no mention of its occurrence in Falcon Reservoir. The species inhabits flowing streams and rivers with sand and gravel substrates (NatureServe 2007). The glochidial host fish for the Salina mucket are unknown (Howells *et al.* 1996, p. 104).

Golden orb

Lea described the golden orb in 1859 (NatureServe 2007). The shell varies from tan, reddish-brown, orange-brown, to gray-brown; is somewhat rectangular to broadly elliptical in shape; and reaches an overall length of 7.7 cm (3.0 in) (Howells *et al.* 1996, p. 108). The golden orb historically occurred in the Guadalupe, San Antonio, Colorado, and Nueces-Frio river systems. Currently, it is known from the upper and central Guadalupe River, lower San Marcos River, and Lake Corpus Christi in the lower Nueces River drainage (Howells 2006, p. 98). This species appears to be restricted to flowing waters with sand, gravel, and cobble bottoms at depths of a few cm (few in) to over 3 m (9.8 ft). The glochidial host fish for the golden orb are unknown (Howells*et al.* 1996, p. 109).

Smooth pimpleback

Lea described the smooth pimpleback in 1859 (*http://www.natureserve.org/explorer/;* accessed February 12-13, 2009; hereafter cited as NatureServe 2009). The shell is dark brown to black, round in shape, and generally smooth, but it may have a few small pimples (bumps) and can reach a length of 6.5 cm (2.5 in) (NatureServe 2009). The smooth pimpleback historically occurred in the Brazos and Colorado River systems of central Texas (Howells 2006, p. 98). Currently, it is known from the central Brazos, central Leon, central Little Brazos, and Navasota rivers in the Brazos River system, and from the central Colorado River (Howells 2007, slide 13). It prefers small-to moderate-sized streams and rivers, as well as moderate-sized reservoirs, and it is found in mixed-mud, sand, and fine gravel substrate (NatureServe 2009). The glochidial host fish for the smooth pimpleback are unknown (NatureServe 2009).

Texas pimpleback

Gould described the Texas pimpleback in 1855 (NatureServe 2009). The shell is glossy and tan to brown in color, with some individuals displaying distinctive green and yellow markings (NatureServe 2009). The Texas pimpleback historically occurred in the upper and central Brazos, Colorado, and Guadalupe-San Antonio river systems (Howells 2006, p. 99); currently, it is known from two tributaries of the Colorado River, the lower Concho and upper San Saba rivers, as well as the upper San Marcos River (Howells 2007, slide 13). Texas pimplebacks generally inhabit rivers with low flow rates with mud, gravel, and sand substrates (NatureServe 2009). The glochidial host fish for the Texas pimpleback are unknown (NatureServe 2009).

False spike

Simpson described the false spike in 1895 (NatureServe 2009). The shell is tawny-brown to dark brown or black, oval to round in shape, and up to 13.2 cm (5.2 in) in length (Howells *et al.* 1996, p. 128). According to information in the petition, it has parallel, ripple-like ridges in the posterior and central portion of the shell. The false spike occurred historically in the Brazos, Colorado, and Guadalupe river systems in central Texas and in the Rio Grande system in New Mexico, Texas, and Mexico (NatureServe 2009). The only known extant population occurs in the lower San Marcos River, a tributary to the Guadalupe River system (Howells 2007, slide 16). False spike has been found in medium to large rivers with substrates varying from mixed mud, sand, and gravel, to cobble (NatureServe 2009). The glochidial host fish for the false spike are unknown (NatureServe 2009).

Mexican fawnsfoot

Lea described the Mexican fawnsfoot in 1860 (NatureServe 2009). The shell is yellow- to gray-green, elliptical in shape, and up to 4.4 cm (1.7 in) in length (NatureServe 2009). The Mexican fawnsfoot historically occurred in a large section of the Rio Grande system, including the lower Pecos River near

Del Rio, Texas, and through the Rio Salado of Nuevo Leon and Tamaulipas, Mexico (NatureServe 2009). Now, the Mexican fawnsfoot is known to inhabit only a small section of the lower Rio Grande in Laredo, Texas (NatureServe 2009). Habitat preferences for the Mexican fawnsfoot are largely unknown because environmental modifications of the Rio Grande make it difficult to define clearly the habitats that are required or preferred by the Mexican fawnsfoot (NatureServe 2009). This species has not been reported from reservoirs, suggesting a preference for flowing streams and rivers with sand or gravel bottoms (NatureServe 2009). The glochidial host fish for the Mexican fawnsfoot are unknown (NatureServe 2009).

Texas fawnsfoot

Lea described the Texas fawnsfoot in 1850 (NatureServe 2009). Shell color varies from gray-green, greenish-brown, orange brown to dark brown, often with a pattern of broken rays (NatureServe 2009). It is oval in shape and reaches a length of 5.5 cm (2.2 in) (NatureServe 2009). The Texas fawnsfoot historically occurred in the Brazos and Colorado river systems. Until 2009, the only known surviving population was in the Brazos River system (NatureServe 2009). We are aware of a recently discovered population estimated to be approximately 3,000 individuals in the upper portion of the Colorado River (Burlakova 2009, pers. comm.; Leggett 2009). We intend to investigate the report more thoroughly in our status review for the species. The species appears to prefer flowing rivers and large streams with sand, gravel, and mixed muddy substrates (NatureServe 2009). Living specimens have not been documented in reservoirs, but in the past have been found alive in flowing rice irrigation canals (NatureServe 2009). The glochidial host fish for the Texas fawnsfoot are unknown (NatureServe 2009).

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations at 50 CFR 424 set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

In making this 90–day finding, we evaluated whether information regarding the nine species of mussels, as presented in the petitions and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below. The information discussed below was presented by the petitioner, unless otherwise noted.

Texas fatmucket

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Information Provided in the Petition

The petition incorporates all analyses, references, and documentation provided by NatureServe in its online database at *http://www.natureserve.org/* (hereafter cited as NatureServe 2007) into the petition. NatureServe (2007) claims that poor land management activities in the past century have resulted in the loss and modification of habitat, and the reduction in abundance, of the Texas fatmucket. NatureServe (2007) identifies intense overgrazing as a land management activity that has been harmful to the Texas fatmucket; however, no further discussion or reference is provided.

Five of the six known populations, all in central Texas, are threatened by periodic flooding and possibly dewatering (NatureServe 2007). Howells *et al.* (2003, p. 5), cited in NatureServe (2007), report that the population of a Colorado River tributary in Runnels County experienced extensive, if not complete, dewatering in 1999 and 2000, then flood-scouring in 2000 and 2001. No living or recently dead specimens could be found in a 2001 survey, and the stream had suffered major alterations in form and structure. A second population in a Concho River tributary in Tom Green County is presumed extirpated. The small stream reportedly dried completely in 1999 and 2000, and no specimens have been reported from the stream from subsequent surveys (Howells *et al.* 2003, p. 5). A third population in the San Saba River in Menard County experienced reduced water levels in the late 1990s followed by flooding in 2000. Based on post-flood examination of river and bank structure, mussels in the San Saba are thought to still persist (Howells *et al.* 2003, p. 5). A fourth population in the Guadalupe River in Kerr County is presumed to have been eliminated in 1998, when river levels were drawn down to build a footbridge (Howells *et al.* 2003, p. 5). A fifth population in a Pedernales River tributary in Gillespie County was discovered when flood waters stranded specimens in 2002 (Howells *et al.* 2003, p. 5). This area had been surveyed prior to the flood, yielding no living or recently dead specimens, and the recent collection of a single living specimen at this site suggests that the population is limited (Howells *et al.* 2003, p. 5).

Evaluation of Information

In our evaluation of the petition, we find that the petitioner provides substantial information indicating that listing the Texas fatmucket may be warranted due to present or threatened destruction, modification, or curtailment of the species' habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petitioner does not address overutilization for commercial, recreational, scientific or educational purposes, and we have no information in our files indicating that listing the Texas fatmucket due to overutilization may be warranted.

C. Disease or Predation

The petitioner does not address disease or predation, and we have no information in our files indicating that listing the Texas fatmucket due to disease or predation may be warranted.

D. Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

NatureServe (2007) states that few occurrences of Texas fatmucket are appropriately protected and managed, and that only one Texas fatmucket population is currently in an area designated as a no-harvest mussel sanctuary, meaning commercial harvest is not permitted. NatureServe (2007) cites Howells *et al.* (1997, p.126) in stating that no-harvest sanctuary designations alone afford little protection where environmental disturbances of terrestrial habitats result in subsequent loss of aquatic habitats. NatureServe (2007) states that the Texas fatmucket is not a State or federally protected species.

Evaluation of Information

Since mussel harvest was not identified as a potential threat to the Texas fatmucket, we find the petition does not provide substantial

information indicating that listing the species due to inadequacy of existing regulatory mechanisms may be warranted.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

The petitioner does not address other natural and manmade factors, and we have no information in our files indicating that listing the Texas fatmucket due to other natural and manmade factors may be warranted.

Texas heelsplitter

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Information Provided in the Petition

The petition incorporates all analyses, references, and documentation provided by NatureServe in its online database at *http://www.natureserve.org/* (hereafter cited as NatureServe 2007) into the petition. NatureServe (2007) claims that Texas heelsplitter habitat is threatened by siltation. NatureServe (2007) cites Neck and Howells (1995, cited in NatureServe 2007 as Neck and Howells 1994) in stating that sand and silt deposition create undesirable mussel habitat and cover existing mussel beds. In their status survey for the species, Neck and Howells (1995, p. 14) report that silt and mud deposition in the B.A. Steinhagen Reservoir, which is occupied by the Texas heelsplitter, caused many areas of the reservoir to become shallow and filled some bays in the reservoir with silt. These conditions do not support habitation by Texas heelsplitter.

NatureServe (2007) identifies pollution as a threat to Texas heelsplitter habitat. Neck and Howells (1995, p. 15) state that increases in acidity, runoff, effluents from wood pulp and paper mills, human-caused nutrient enrichment, tar and oil, and increased silt loads due to land clearing are shown to have damaging effects on mussel habitat. Pollutants of these types have been reported in the upper Trinity River, in Pine Island Bayou (a tributary to the Neches River), and in the lower Neches River, all of which are situated within the range of the Texas heelsplitter (Neck and Howells 1995, p. 15). They conclude that the anticipated urban expansion of cities in Texas will likely amplify this threat in the foreseeable future (Neck and Howells 1995, p. 14).

Neck and Howells (1995, pp. 15-16), which is cited in NatureServe (2007), indicate that the Texas heelsplitter is negatively impacted by aquatic plants, including water hyacinth (*Eichhornia crassipes)* and hydrilla (*Hydrilla verticillata)*, which have invaded reservoirs occupied by the Texas heelsplitter. Unmanaged, these plants can eliminate mussel habitat; however, the techniques currently employed for the management of these species, including mechanical removal, herbicides, and water drawdowns, also negatively affect mussel populations (Neck and Howells 1995, pp. 15-16). NatureServe (2007) identifies fluctuating water levels associated with water drawdowns at reservoirs as a current threat for the Texas heelsplitter.

Evaluation of Information

Information in our files supports the claims made in the petition regarding the present and future threat of fluctuating water levels to the Texas heelsplitter and its habitat. Howells (2006, p. 32) indicates that the Texas heelsplitter is negatively affected by water drawdowns at B.A. Steinhagen Reservoir, part of the Neches River drainage. These drawdowns result in mussel mortality and overall decreased mussel abundance and diversity (Howells 2006, pp. 24-34). Since the early 1990s, the Texas Parks and Wildlife Department (TPWD) and the reservoir operator have employed mid-winter water drawdowns to reduce aquatic plant density through drying and cold temperatures on the reservoir (Howells 2006, p. 32). The water level is lowered slowly to allow the mussels to follow the receding water level, and the duration of the drawdown is as short as possible to minimize mussel mortality; however, repeated drawdowns in the range of the Texas heelsplitter may be decreasing the abundance of the species (Howells 2006, p. 32).

In our evaluation of the petition and information in our files, we find that there is substantial information indicating that listing the Texas heelsplitter may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petitioner does not address overutilization for commercial, recreational, scientific or educational purposes, and we have no information in our files indicating that listing the Texas heelsplitter due to overutilization may be warranted.

C. Disease or Predation

The petitioner does not address disease or predation, and we have no information in our files indicating that listing the Texas heelsplitter due to disease or predation may be warranted.

D. Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

NatureServe (2007) states that it is unknown whether any occurrences of Texas heelsplitter are appropriately protected and managed.

Evaluation of Information

We do not consider the statement by NatureServe (2007) to be a sufficient presentation of information indicating to a reasonable person that listing may be warranted.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

The petitioner does not address other natural and manmade factors, and we have no information in our files indicating that listing the Texas heelsplitter due to other natural and manmade factors may be warranted.

Salina mucket

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Information Provided in the Petition

The petition incorporates all analyses, references, and documentation provided by NatureServe in its online database at *http://www.natureserve.org/* (hereafter cited as NatureServe 2007) into the petition. NatureServe (2007) identifies poor land and water management practices as threats to Salina mucket habitat. NatureServe (2007) cites Howells (2003, p. 70; cited in NatureServe 2007 as Howells 2001) in stating that the lower Rio Grande system within the range of the Salina mucket has experienced a significant increase in human population and urban development in the last 30 years. Land management activities associated with increased human development include land clearing and construction of impervious surfaces, which contribute to increased runoff and silt loads during storms and to additional scouring and riverbed modifications (Howells 2003, p. 66). Howells (2004b, p. 2) states that the only known surviving Salina mucket specimens in the Rio Grande are in areas undergoing major development and modification. Increased water demands that are projected with continuing residential and commercial

development in the range of the Salina mucket will likely compound factors currently affecting the species (Howells 2004b, p. 2).

NatureServe (2007) identifies siltation as a threat to Salina mucket habitat; however, no further discussion is provided. NatureServe (2007) also identifies drought-related dewatering as a threat to Salina mucket habitat. The Salina mucket habitat within the Rio Grande system has been subject to periods of drought punctuated by severe storm events, often producing scouring floods that modify the riverbed and alter mussel habitat (Howells 2003, p. 66). Historical drought-related dewatering likely reduced or eliminated some unionid populations in the region, and the current decline in water flow rates constitutes an increasing threat to the species and its habitat (Howells 2003, p. 67).

Evaluation of Information

In our evaluation of the petition, we find that the petitioner provides substantial information indicating that listing the Salina mucket may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petitioner does not address overutilization for commercial, recreational, scientific or educational purposes, and we have no information in our files indicating that listing the Salina mucket due to overutilization may be warranted.

C. Disease or Predation

The petitioner does not address disease or predation, and we have no information in our files indicating that listing the Salina mucket due to disease or predation may be warranted.

D. Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

NatureServe (2007) states that no occurrences of Salina mucket are appropriately protected and managed, that no Salina mucket populations occur in State-designated no-harvest mussel sanctuaries, and that the Salina mucket is not a State or federally protected species.

Evaluation of Information

Since mussel harvest was not identified as a potential threat to the Salina mucket, we find the petition does not provide substantial information indicating that listing the species due to inadequacy of existing regulatory mechanisms may be warranted.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Information Provided in the Petition

NatureServe (2007) identifies population isolation as a threat to the Salina mucket. Howells (2003, p. 68) indicates that the Pecos River, a tributary of the Rio Grande, is the major source of elevated salinity of the waters in the lower Rio Grande drainage. Natural salt seeps and deposits are present in the area, but groundwater pumping that has lowered the water table and reduced freshwater input, long periods of reduced precipitation, and brines from oil and gas drilling operations likely contribute to current high saline conditions (Howells 2003, pp. 68-69). Howells (2004b, p. 2) reports that the salinity of the Pecos River creates a functional barrier between Salina mucket specimens in the area, thus inhibiting opportunities for dispersal and interbreeding. This physical separation may result in the genetic isolation of surviving Salina mucket populations downstream of the Big Bend in the area of Brewster County, Texas (Howells 2003, p. 69).

Evaluation of Information

In our evaluation of the petition, we find that the petition presents substantial information indicating that listing the Salina mucket may be warranted due to population isolation.

Golden orb

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Information Provided in the Petition

The petition incorporates all analyses, references, and documentation provided by NatureServe in its online database at *http://www.natureserve.org/* (hereafter cited as NatureServe 2007) into the petition. NatureServe (2007) identifies flooding as a threat to golden orb habitat. Howells *et al.* (1997, p. 118), cited in NatureServe (2007), report that the greatest decline in golden orb numbers appears to have occurred in 1978 during a major hurricane and subsequent flooding in the species' range. NatureServe (2007) asserts that this single event appears to have reduced the species to four primary populations, and that three of these populations in the Guadalupe River are still subject to flood-related scouring and large water-level fluctuations.

NatureServe (2007) identifies the effects of poor land and water management practices as a threat to golden orb habitat; however, no further discussion is provided. NatureServe (2007) also identifies drought as a threat to golden orb habitat; however, no further discussion is provided.

Evaluation of Information

The petition does not provide substantial information indicating that listing the golden orb due to poor land and water management or to drought may be warranted. However, information in our files from Howells' 2006 Statewide freshwater mussel survey supports the petitioner's claim of the species' negative response to flooding in its habitat. Specifically, in the Guadalupe River below the Upper Guadalupe River Authority dam, no golden orbs were found in a survey following a 1996 flood, three were found dead following a second flood in 1997, none were found following a high water release from the dam 4 months later, and none were found in a 2005 survey (Howells 2006, p. 71). In our evaluation of the petition and information in our files, we therefore find that there is substantial information indicating that listing the golden orb may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petitioner does not address overutilization for commercial, recreational, scientific, or educational purposes, and we have no information in our files indicating that listing the golden orb due to overutilization may be warranted.

C. Disease or Predation

The petitioner does not address disease or predation, and we have no information in our files indicating that listing the golden orb due to disease or predation may be warranted.

D. Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

NatureServe (2007) states that few occurrences of golden orb are appropriately protected and managed, and that none of the inhabited sites of the four known populations are protected. NatureServe (2007) states that the golden orb is not a State or federally protected species.

Evaluation of Information

We do not consider the statements by NatureServe (2007) to be a sufficient presentation of information indicating

to a reasonable person that listing may be warranted.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

The petitioner does not address other natural and manmade factors, and we have no information in our files indicating that listing the golden orb due to other natural and manmade factors may be warranted.

Smooth pimpleback

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Information Provided in the Petition

In addition to other information cited in the petition, the petition incorporates all analyses, references, and documentation provided by NatureServe in its online database at *http://www.natureserve.org/* (hereafter cited as NatureServe 2009) into the petition. The petitioner identifies increased human activity within the species' range and associated poor land and water management practices as a threat to smooth pimpleback habitat. NatureServe (2009) adds that recent habitat loss continues to affect the species.

The petitioner identifies pollution as a threat to smooth pimpleback habitat, and cites NatureServe (2009) in claiming that a chemical dump on the Little Brazos River in 1993 eliminated many of the mussel populations there, including the smooth pimpleback.

The petitioner cites NatureServe (2009) in asserting that drought conditions that decreased surface water levels in the 1980s in the Leon River range caused extensive loss of smooth pimpleback individuals. The petitioner also cites NatureServe (2009) in asserting that scouring floods in 1978 throughout the range of the species in central Texas were responsible for the reduction or elimination of many mussel populations, including the smooth pimpleback. NatureServe (2009) clarifies that the species does not tolerate dramatic water fluctuations, scoured bedrock substrates, or shifting sand bottoms, all of which are associated with floods.

Evaluation of Information

Information in our files indicates that water fluctuations unrelated to drought occur in areas occupied by smooth pimplebacks. Howells (2006, p. 67) reports that water-level drawdowns adversely impact Inks Lake's population of smooth pimplebacks. Lake elevation is rapidly reduced by 3 meters (m) (9.8 ft) during biannual maintenance and repair drawdowns (Howells 2006, p. 67). Howells (2006, p. 67) reports that these drawdowns occur so quickly that any unionids occupying the shallows are generally killed with each drawdown.

In our evaluation of the petition and information in our files, we find that there is substantial information indicating that listing the smooth pimpleback may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petitioner does not address overutilization for commercial, recreational, scientific or educational purposes, and we have no information in our files indicating that listing the smooth pimpleback due to overutilization may be warranted.

C. Disease or Predation

The petitioner does not address disease or predation, and we have no information in our files indicating that listing the smooth pimpleback due to disease or predation may be warranted.

D. Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

NatureServe (2009) states that no occurrences of smooth pimpleback are appropriately protected and managed, and that no smooth pimpleback populations occur in State-designated no-harvest mussel sanctuaries. The petitioner states that the smooth pimpleback is not a State or federally protected species (NatureServe 2009).

Evaluation of Information

Since mussel harvest was not identified as a potential threat to the smooth pimpleback, we find the petition does not provide substantial information indicating that listing the species due to inadequacy of existing regulatory mechanisms may be warranted.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Information Provided in the Petition

The petitioner identifies climate change as an additional factor affecting the species' continued existence; however, no specific justification or reference is provided.

Evaluation of Information

The information presented on climate change is not specific to the smooth pimpleback and no specific references were provided. The petition does not provide substantial information indicating that listing the species due to climate change may be warranted. We intend to investigate this factor more thoroughly in our status review of the species.

Texas pimpleback

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Information Provided in the Petition

The petitioner states that dewatering is a threat to the species, but points out that some individuals survive severe stream dewatering. Howells (2006, p. 61) reports that in the Concho River in Concho County, low water levels and high temperatures killed large numbers of Texas pimplebacks and other mussels in 1997, and in 1999 and early 2000. The Concho River was reduced to stagnant pools and dry bottoms. Results from subsequent surveys indicate that Texas pimpleback abundance was significantly reduced, presumably due to habitat modifications that restrict mussel habitation (Howells 2006, p. 61). The petitioner states that habitat occupied by the Texas pimpleback is threatened by drought and flooding; however, no further discussion is provided.

Evaluation of Information

Information in our files shows that over the 10 years from 1998 to 2007, there was zero flow measured at the stream gage at the Concho River mussel survey site 26 percent of the days (Asquith and Heitmuller 2008, pp. 810-813, 846-853). These data suggest that dewatering may be continuing in the Concho River.

Information in our files indicates that scouring floods and drought-related dewatering have caused recent losses of Texas pimpleback populations in Runnels County, Texas. No live Texas pimpleback individuals were found during a 2005 survey in the Colorado River drainage at either a site on the San Saba River or one on Elm Creek where they had been found previously (Howells 2006, pp. 63-64). These sites showed signs of extensive flood scouring during surveys conducted throughout the 1990s and early 2000s, and overall mussel abundance and diversity have been reduced (Howells 2006, pp. 63-64).

In our evaluation of the petition and information in our files, we find that

there is substantial information indicating that listing the Texas pimpleback may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information Provided in the Petition

The petitioner states that overcollection at one site has negatively impacted the Texas pimpleback; however, no further discussion is provided.

Evaluation of Information

Information in our files indicates that the Texas pimpleback may be taken by rare-shell collectors (Howells 2004a, slide 14). Howells (2006, p. 63) reports that details released over the Internet in 2001 disclosing the location of rare mussels at the site may have been used by rare-shell collectors to find and harvest Texas pimplebacks.

We find that the petition and information in our files presents substantial information indicating that listing the Texas pimpleback may be warranted due to overutilization for commercial, recreational, scientific, or educational purposes.

C. Disease or Predation

The petitioner does not address disease or predation, and we have no information in our files indicating that listing the Texas pimpleback due to disease or predation may be warranted.

D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

In addition to other information cited in the petition, the petition incorporates all analyses, references, and documentation provided by NatureServe in its online database at *http://www.natureserve.org/* (hereafter cited as NatureServe 2009) into the petition. NatureServe (2009) indicates that few occurrences of Texas pimpleback are appropriately protected and managed, and that only one Texas pimpleback population is currently in a State-designated no-harvest mussel sanctuary. The petitioner cites Howells *et al.* (1997, p.126) in stating that no-harvest sanctuary designations alone afford little protection where environmental disturbances of terrestrial habitats result in subsequent loss of aquatic habitats.

Evaluation of Information

In Factor B, the petitioner and our files identify overutilization for commercial, recreational, scientific, or educational purposes as a potential threat to the Texas pimpleback. Here, we find that the petitioner and information in our files provides substantial information indicating that listing the Texas pimpleback may be warranted due to inadequacy of existing regulatory mechanisms to protect the species from this potential threat.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Information Provided in the Petition

The petitioner identifies climate change as an additional factor affecting the species' continued existence; however, no specific justification or reference is provided.

Evaluation of Information

The information presented on climate change is not specific to the Texas pimpleback and no specific references were provided. The petition does not provide substantial information indicating that listing the species due to climate change may be warranted. We intend to investigate this factor more thoroughly in our status review of the species.

False spike

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Information Provided in the Petition

The petitioner claims that the dramatic land use modification of the lower Rio Grande drainage over the past 100 years has negatively affected the false spike. The petitioner further claims that continued development and modification, including increases in human activity and associated negative environmental impacts, may preclude future conservation of the species.

The petitioner identifies overgrazing and increased runoff from rains as threats to false spike habitat in central Texas. The petitioner, citing a personal communication with R. Howells in July 2008, claims that in the mid-to late 1800s, overgrazing resulted in loss of terrestrial vegetative cover and soils. Subsequently, when rains fell, runoff increased, scouring riverbeds. The petitioner references the same personal communication in stating that prior to the 1900s, the Guadalupe River never rose more than 1.8 m (6 ft), but that 6-m (20-ft) rises are now regularly observed. This has resulted in scour of river bottoms to bedrock and cobble, which the petitioner claims is unacceptable habitat for unionid mussels.

The petitioner identifies drought and flooding as threats to false spike habitat. Howells (2006, p. 73) states that drought conditions in the late 1970s, followed by major flooding events in 1978 and 1981 within the false spike's range in the San Marcos River, part of the Guadalupe River drainage, likely had negative impacts on unionid mussels in that area, including the false spike.

Evaluation of Information

Information in our files supports the petitioner's claim that humans have significantly modified land use in the Rio Grande basin in Texas and Mexico, and that this land use change may be a threat to false spike. Howells (2003, pp. 66, 70) states that human-caused impacts appear to be the major reason for the massive reduction in mussel fauna and diversity there, including the apparent extinction of the false spike. He identifies climate change; altered water flows; impoundments; and increased nutrient, salt, and sediment pollution as the human-caused threats responsible for the threats (Howells 2003, pp. 66-70).

The petitioner and information in our files provide substantial information indicating that listing the false spike may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petitioner does not address overutilization for commercial, recreational, scientific or educational purposes, and we have no information in our files indicating that listing the false spike due to overutilization may be warranted.

C. Disease or Predation

The petitioner does not address disease or predation, and we have no information in our files indicating that listing the false spike due to disease or predation may be warranted.

D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

In addition to other information cited in the petition, the petition incorporates all analyses, references, and documentation provided by NatureServe in its online database at *http://www.natureserve.org/* (hereafter cited as NatureServe 2009) into the petition. NatureServe (2009) states that

no occurrences of false spike are appropriately protected and managed.

Evaluation of Information

Since mussel harvest was not identified as a potential threat to the false spike, we find the petition does not provide substantial information indicating that listing the species due to inadequacy of existing regulatory mechanisms may be warranted.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Information Provided in the Petition

The petitioner identifies climate change as an additional factor affecting the false spike's continued existence; however, no specific justification or reference is provided.

Evaluation of Information

The information presented on climate change is not specific to the false spike and no specific references were provided. The petition does not provide substantial information indicating that listing the species due to climate change may be warranted. We intend to investigate this factor more thoroughly in our status review of the species.

Mexican fawnsfoot

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Information Provided in the Petition

In addition to other information cited in the petition, the petition incorporates all analyses, references, and documentation provided by NatureServe in its online database at *http://www.natureserve.org/* (hereafter cited as NatureServe 2009) into the petition. NatureServe (2009) identifies the effects of increased human activity as a threat to Mexican fawnsfoot habitat. Trade and development along the U.S. (Texas)-Mexico border have had extensive environmental impacts on this area, which has already undergone great ecological modification (NatureServe 2009). The petitioner cites Howells (2004a) in stating that the only known extant population of the Mexican fawnsfoot, located near Laredo, Texas, is threatened by impacts from development. Additional landscape modification is anticipated, including the proposed construction of a fence at the border (Howells 2007, slide 14). The petitioner also identifies smothering and siltation as a threat to the Mexican fawnsfoot and its habitat; however, no further discussion is provided. The petitioner cites NatureServe (2009) in stating that the general fragility of the Rio Grande aquatic ecosystem and ecological alterations to date are likely a cause of the extreme rarity of this species.

The petitioner identifies dewatering as a threat to Mexican fawnsfoot habitat. The petitioner cites Howells (2004b, p. 2) in stating that all unionid assemblages in the Rio Grande basin, including the Mexican fawnsfoot, have been subject to drought-related dewatering.

Evaluation of Information

In our evaluation of the petition, we find that the petitioner provides substantial information indicating that listing the Mexican fawnsfoot may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petitioner does not address overutilization for commercial, recreational, scientific, or educational purposes, and we have no information in our files indicating that listing the Mexican fawnsfoot due to overutilization may be warranted.

C. Disease or Predation

The petitioner does not address disease or predation, and we have no information in our files indicating that listing the Mexican fawnsfoot due to disease or predation may be warranted.

D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

The petitioner cites NatureServe (2009) in stating that no occurrences of Mexican fawnsfoot are appropriately protected and managed, and that no Mexican fawnsfoot populations occur in State-designated no-harvest mussel sanctuaries. The petitioner states that the Mexican Fawnsfoot is not a State or federally protected species (NatureServe 2009).

Evaluation of Information

Since mussel harvest was not identified as a potential threat to the Mexican fawnsfoot, we find the petition does not provide substantial information indicating that listing the species due to inadequacy of existing regulatory mechanisms may be warranted.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Information Provided in the Petition

The petition identifies climate change as an additional factor affecting the species' continued existence; however, no specific justification or reference is provided.

Evaluation of Information

The information presented on climate change is not specific to the Mexican fawnsfoot and no specific references were provided. The petition does not provide substantial information indicating that listing the species due to climate change may be warranted. We intend to investigate this factor more thoroughly in our status review of the species.

Texas fawnsfoot

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Information Provided in the Petition

The petitioner identifies aquatic habitat destruction and modification from wide-ranging terrestrial sources as a threat to the Texas fawnsfoot; however, these terrestrial sources are not specified and no further discussion is provided. The petitioner also identifies smothering and siltation as a threat to the Texas fawnsfoot and its habitat; however, no further discussion is provided that is specific to the species or to the rivers and streams where it is known to occur.

The petitioner identifies dewatering as a threat to Texas fawnsfoot habitat, stating that in 2000, the Colorado River above Lake Buchanan dried, and all mussels in that area, including the Texas fawnsfoot, were presumed lost. The petitioner further states that because the species is intolerant of impounded water bodies, the species would not be able to recolonize the dewatered area from Lake Buchanan. The petitioner also identifies scouring floods during times of intense precipitation as a threat to Texas fawnsfoot habitat.

Evaluation of Information

In our evaluation of the petition, we find that the petitioner provides substantial information indicating that listing the Texas fawnsfoot may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petitioner does not address overutilization for commercial, recreational, scientific or educational purposes, and we have no information in our files indicating that listing the Texas fawnsfoot due to overutilization may be warranted.

C. Disease or Predation

The petitioner does not address disease or predation, and we have no information in our files indicating that listing the Texas fawnsfoot due to disease or predation may be warranted.

D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

In addition to other information cited in the petition, the petition incorporates all analyses, references, and documentation provided by NatureServe in its online database at *http://www.natureserve.org/* (hereafter cited as NatureServe 2009) into the petition. NatureServe (2009) indicates that few occurrences of Texas fawnsfoot are appropriately protected and managed. There are two no-harvest sanctuaries within the range of the Texas fawnsfoot; however, the species has not been historically or recently documented at these sites (NatureServe 2009). The petitioner states that the Texas fawnsfoot is not a State or federally protected species (NatureServe 2009).

Evaluation of Information

Since mussel harvest was not identified as a potential threat to the Texas fawnsfoot, we find the petition does not provide substantial information indicating that listing the species due to inadequacy of existing regulatory mechanisms may be warranted.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Information Provided in the Petition

The petitioner identifies climate change as an additional factor affecting the species' continued existence; however, no specific justification or reference is provided.

Evaluation of Information

The information presented on climate change is not specific to the Texas fawnsfoot and no specific references were provided. The petition does not provide substantial information indicating that listing the species due to climate change may be warranted. We intend to investigate this factor more thoroughly in our status review for the species.

Finding

On the basis of our evaluation under section 4(b)(3)(A) of the Act, we have determined that the petition presents substantial information indicating that listing the Texas fatmucket, Texas heelsplitter, Salina mucket, golden orb, smooth pimpleback, Texas pimpleback, false spike, Mexican fawnsfoot, and Texas fawnsfoot throughout the entire range of each species may be warranted.

The petitioner presents substantial information indicating that the Texas fatmucket may be threatened by Factor A. The petitioner does not present substantial information indicating that Factors B, C, D or E are currently, or in the future may be, considered a threat to the Texas fatmucket.

The petitioner presents substantial information indicating that the Texas heelsplitter may be threatened by Factor A. The petitioner does not present substantial information indicating that Factors B, C, D, or E are currently, or in the future may be, considered a threat to the Texas heelsplitter.

The petitioner presents substantial information indicating that the Salina mucket may be threatened by Factors A and E. The petition does not present substantial information indicating that Factors B, C, and D are currently, or in the future may be, considered a threat to the Salina mucket.

The petitioner presents substantial information indicating that the golden orb may be threatened by Factor A. The petitioner does not present substantial information indicating that Factors B, C, D, or E are currently, or in the future may be, considered a threat to the golden orb.

The petitioner presents substantial information indicating that the smooth pimpleback may be threatened by Factor A. The petitioner does not present substantial information indicating that Factors B, C, D, or E are currently, or in the future may be, considered a threat to the smooth pimpleback.

The petitioner presents substantial information indicating that the Texas pimpleback may be threatened by Factors A, B, and D. The petitioner does not present substantial information indicating that Factors C or E are currently, or in the future may be, considered a threat to the Texas pimpleback.

The petitioner presents substantial information indicating that the false spike may be threatened by Factor A. The petitioner does not present substantial information indicating that Factors B, C, D, or E are currently, or in the future may be, considered a threat to the false spike.

The petitioner presents substantial information indicating that the Mexican fawnsfoot may be threatened by Factor A. The petitioner does not present substantial information indicating that Factors B, C, D, or E are currently, or in the future may be, considered a threat to the Mexican fawnsfoot.

The petitioner presents substantial information indicating that the Texas fawnsfoot may be threatened by Factor A. The petitioner does not present substantial information indicating that Factors B, C, D, or E are currently, or in the future may be, considered a threat to the Texas fawnsfoot.

Based on this review and evaluation, we find that the petitions present substantial scientific or commercial information that listing the nine mussel species throughout the range of each species may be warranted due to current and future threats presented in our discussion of the five listing factors. As such, we are initiating a status review to determine whether listing these mussels under the Act is warranted. We will issue one or more 12–month findings as to whether any of the petitioned actions are warranted.

The ''substantial information'' standard for a 90–day finding differs from the Act's ''best scientific and commercial data'' standard that applies to a status review to determine whether a petitioned action is warranted. A 90–day finding does not constitute a status review under the Act. In one or more 12–month findings, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90–day finding. Because the Act's standards for 90–day and 12–month findings are different, as described above, a substantial 90–day finding does not mean that the 12–month finding will result in a warranted finding.

The petitioner requested that we designate critical habitat for these species. If we determine in our 12–month finding(s) that listing the mussels is warranted, we will address the designation of critical habitat at the time of the proposed rulemaking.

References Cited

A complete list of references cited in this finding is available on the Internet at *http://www.regulations.gov* and upon request from the Clear Lake Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this rule are the Clear Lake Ecological Services Field Office's staff members (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 25, 2009

Daniel M. Ashe,

Acting Director, Fish and Wildlife Service

[FR Doc. E9–29698 Filed 12–14–09; 8:45 am]

BILLING CODE 4310–55–S

Notices

Federal Register
Vol. 74, No. 239
Tuesday, December 15, 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

Submission for OMB Review; Comment Request

December 9, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Plant Protection and Quarantine; Official Control Program.

OMB Control Number: 0579–NEW.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement of plants and plant pests to prevent the introduction of plant pests into the United States or their dissemination within the United States. The Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine (PPQ) program has established the following procedures for State to petition the Agency to recognize State-level plant pest regulations and associated action taken as meeting the international criteria for Official Control. The International Plant Protection Convention (IPPC) defines ''Official Control'' as the active enforcement of mandatory phytosanitary regulations and the application of mandatory phytosanitary procedures with the objective of eradication or containment of quarantine pests or for the management of regulated non-quarantine pests.

Need and Use of the Information: To obtain a program's designation as an Official Control Program, States must petition APHIS–PPA to recognize their established or proposed programs to eradicate or contain a regulated plant pest. The State should provide the following supporting information and documentation for Quarantine Pests of Concern: (1) Evidence the pest does not exist in the State; (2) Evidence that the pest could become established or widespread in the State; (3) Evidence that the pest could cause economic and/or environmental harm in the State; (4) A description of the State actions used to maintain and monitor for pest freedom upon eradication; and (5) A copy of the State or local quarantine regulations that provide enforcement of the appropriate programs. The State should provide the following supporting information and documentation for Regulated Non-Quarantine Pests: (1) Evidence that a particular pest could cause significant harm to plant for planting if the pest was not managed through a certification program; (2) Evidence the State has regulatory authority and a program established to manage the levels of the pest in plants for planting that are the hosts for the pest; and (3) A description of State actions to manage the level and or producers' management of pests in the plants for planting where the pest is maintained below a level that can affect production, health, or marketability of plants for planting. Without the information, APHIS would be less effective in establishing procedures that are used to contain regulated plant pests within the United States.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 53.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 106,000.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–29728 Filed 12–14–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 9, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB),

OIRA_Submission@OMB.EOP.GOV or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Business Service

Title: Intermediary Re-lending Program.

OMB Control Number: 0570–0021.

Summary of Collection: The objective of the Intermediary Relending Program (IRP) is to improve community facilities and employment opportunities and increase economic activity in rural areas by financing business facilities and community development. This purpose is achieved through loans made by the Rural Business-Cooperative Service (RBS) to intermediaries that establish programs for the purpose of providing loans to ultimate recipients for business facilities and community development. The Community Economic Development Act of 1981 (42 U.S.C. 9812(a), section 623(a)) provides for the Secretary the authority to make loans to nonprofit entities who will in turn provide financial assistance to rural businesses to improve business, industry and employment opportunities as well as provide a diversification of the economy in rural areas.

Need and Use of the Information: The information requested is necessary for RBS to process applications in a responsible manner, make prudent credit and program decisions, and effectively monitor the intermediaries' activities to protect the Government's financial interest and ensure that funds obtained from the Government are used appropriately. Various forms are used to include information to identify the intermediary, describe the intermediary's experience and expertise, describe how the intermediary will operate its revolving loan fund, provide for debt instruments, loan agreements, and security, and other material necessary for prudent credit decisions and reasonable program monitoring.

Description of Respondents: Not-for-profit institutions; Business or other for-profit

Number of Respondents: 202.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 17,959.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–29726 Filed 12–14–09; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–LS–09–0078]

Request for an Extension of and Revision to a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget (OMB), for an extension of and revision to the currently approved information collection for the Seed Service Testing Program.

DATES: Comments received by February 16, 2010 will be considered.

ADDRESSES: Interested persons are invited to submit written comments concerning this currently approved information collection notice. Comments should be submitted through the Web site at *http://www.regulations.gov*. Send written comments to Richard C. Payne, Chief, Seed Regulatory and Testing Branch (SRTB), Livestock and Seed Program, AMS, USDA, 801 Summit Crossing Place, Suite C, Gastonia, North Carolina 28054–2193, or by facsimile to (704) 852–4109. All comments should reference the docket number AMS–LS–09–0078. All comments received will be posted without change, including any personal information provided, on the Web site at *http://www.regulations.gov* and will be made available for public inspection at the above physical address during regular business hours.

SUPPLEMENTARY INFORMATION:

Title: Seed Service Testing Program.

OMB Number: 0581–0140.

Expiration Date of Approval: August 31, 2010.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: This information collection is necessary to conduct voluntary seed testing on a fee for service basis. The Agricultural Marketing Act of 1946, as amended, 7 U.S.C. 1621 *et seq.* authorizes the Secretary to inspect and certify the quality of agricultural products and collect such fees as reasonable to cover the cost of service rendered. Regulations for inspection and certification of quality of agricultural and vegetable seeds are contained in 7 CFR part 75.

The purpose of the voluntary program is to promote efficient, orderly marketing of seeds, and assist in the development of new and expanding markets. Under the program, samples of agricultural and vegetable seeds submitted to AMS are tested for factors such as purity and germination at the request of the applicant for the service. In addition, grain samples, submitted at the applicant's request, by the Grain Inspection, Packers, and Stockyards Administration are examined for the presence of certain weed and crop seed. A Federal Seed Analysis Certificate is issued giving the test results. Most of the seed tested under this program is scheduled for export. Many importing countries require a Federal Seed Analysis Certificate on U.S. seed.

The only information collected is information needed to provide the service requested by the applicant. This includes information to identify the seed being tested, the seed treatment (if treated with a pesticide), the tests to be performed, and any other appropriate information required by the applicant to be on the Federal Seed Analysis Certificate.

The number of seed companies applying for the seed testing service has increased from 53 to 81 during the past 3 years due to an increase in the number of companies exporting seed. The total number of samples received for testing has decreased slightly. Therefore, the average burden for information collection has decreased for seed companies applying for the service.

The information in this collection is used only by authorized AMS employees to track, test, and report results to the applicant.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response.

Respondents: Applicants for seed testing service.

Estimated Number of Respondents: 81.

Estimated Number of Responses per Respondent: 33.0.

Estimated Total Annual Burden on Respondents: 668.0 hours.

Comments are invited on: (1) 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) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: December 8, 2009.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. E9–29800 Filed 12–14–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by February 16, 2010.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Deputy Director, Program Development and Regulatory Analysis, RUS, 1400 Independence Ave., SW., STOP 1522, Room 5159 South Building, Washington, DC 20250–1522. *Telephone:* (202) 690–1078. *FAX:* (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies an information collection that will be submitted to OMB for approval.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, 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: Michele Brooks, Deputy Director, Program Development and Regulatory Analysis, RUS, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. *FAX:* (202)720–4120.

Title: 7 CFR part 1738, Rural Broadband Loans and Loan Guarantee Program.

OMB Control Number: 0572–0130.

Type of Request: Extension of a currently approved information collection.

Abstract: USDA Rural Development, through the Rural Utilities Service, is authorized by Title VI, Rural Broadband Access, of the Rural Electrification Act of 1936, as amended (RE Act), to provide loans and loan guarantees to fund the cost of construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in eligible rural communities in States and Territories of the United States. The term of the loans is based on the expected composite economic life based on the depreciation of the facilities financed. The term of the loan can be as high as 25 years or even longer. In the interest of protecting loan security and accomplishing the statutory objective of a sound program of rural broadband service access, Title VI of the RE Act requires that Rural Development make or guarantee a loan only if there is reasonable assurance that the loan, together with all outstanding loans and obligations of the borrower will be repaid in full within the time agreed. The items covered by this collection include forms and related documentation to support a loan application, including Form 532 and supporting documentation.

Estimate of Burden: Public reporting for this collection of information is estimated to average 225 hours per response.

Respondents: Businesses and Not-for-profit institutions.

Estimated Number of Respondents: 40.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 13,480 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690–1078. *FAX:* (202) 720–4120.

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.

Dated: *December 7, 2009.*

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. E9–29802 Filed 12–14–09; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–TM–09–0061; TM–09–08]

Notice of Funds Availability (NOFA) Inviting Applications for the Federal-State Marketing Improvement Program (FSMIP)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) announces the availability of approximately $1.3 million in competitive grant funds for fiscal year 2010, subject to final appropriation action by Congress, which would enable States to explore new market opportunities for U.S. food and agricultural products and to encourage research and innovation aimed at improving the efficiency and performance of the U.S. marketing system. Eligible applicants include State departments of agriculture, State agricultural experiment stations, and other appropriate State Agencies. Applicants are encouraged to involve industry groups, academia, community-based organizations, and other stakeholders in developing proposals and conducting projects. In accordance with the Paperwork Reduction Act of 1995, the information collection requirements have been previously

approved by OMB under 0581–0240, Federal-State Marketing Improvement Program (FSMIP).

DATES: Proposals will be accepted through February 10, 2010.

ADDRESSES: Submit proposals and other required documents to: FSMIP Staff Officer, Transportation and Marketing Programs, Agricultural Marketing Service (AMS), U.S. Department of Agriculture, 1800 M Street, NW., Room 3002–South Tower, Washington, DC 20036; telephone (202) 694–4002; e-mail *janise.zygmont@ams.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, FSMIP Staff Officer; telephone (202) 694–4002; fax (202) 694–5950; or e-mail *janise.zygmont@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: FSMIP is authorized under Section 204(b) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). FSMIP provides matching grants on a competitive basis to enable States to explore new market opportunities for U.S. food and agricultural products and to encourage research and innovation aimed at improving the efficiency and performance of the U.S. marketing system. Eligible applicants include State departments of agriculture, State agricultural experiment stations, and other appropriate State Agencies. Other organizations interested in participating in this program should contact their State Department of Agriculture's Marketing Division. State agencies specifically named under the authorizing legislation should assume the lead role in FSMIP projects, and use cooperative or contractual linkages with other agencies, universities, institutions, and producer, industry or community-based organizations as appropriate. Multi-State projects are encouraged as long as one State assumes the coordinating role, using appropriate cooperative arrangements with the other States involved. Applicants other than State Departments of Agriculture and State agricultural experiment stations may wish to include with their applications an explanation of how they meet the definition of ''other appropriate State agency.''

Proposals must be accompanied by completed Standard Forms (SF) 424 and 424A. AMS will not approve the use of FSMIP funds for advertising or, with limited exceptions, for the purchase of equipment. Detailed program guidelines may be obtained from the contact listed above, and are available at the FSMIP Web site: *http://www.ams.usda.gov/FSMIP.*

Background

FSMIP funds a wide range of applied research projects that address barriers, challenges, and opportunities in marketing, transportation, and distribution of U.S. food and agricultural products domestically and internationally.

Eligible agricultural categories include livestock, livestock products, food and feed crops, fish and shellfish, horticulture, viticulture, apiary, and forest products and processed or manufactured products derived from such commodities. Projects that support biobased products and bioenergy and energy programs, including biofuels and other alternative uses for agricultural and forestry commodities (development of biobased products) should see the USDA energy Web site at: *http://www.energymatrix.usda.gov/* for information on how to submit those projects for consideration to the energy programs supported by USDA.

Proposals may deal with barriers, challenges, or opportunities manifesting at any stage of the marketing chain including direct, wholesale, and retail. Proposals may involve small, medium, or large scale agricultural entities but should potentially benefit multiple producers or agribusinesses. Proprietary proposals that benefit one business or individual will not be considered.

Proposals that address issues of importance at the State, regional or national level are appropriate for FSMIP. FSMIP also seeks unique proposals on a smaller scale that may serve as pilot projects or case studies useful as a model for other States. Of particular interest are proposals that reflect a collaborative approach among the States, academia, the farm sector and other appropriate entities and stakeholders. FSMIP's enabling legislation authorizes projects to:

- Determine the best methods for processing, preparing for market, packing, handling, transporting, storing, distributing, and marketing agricultural products.
- Determine the costs of marketing agricultural products in their various forms and through various channels.
- Assist in the development of more efficient marketing methods, practices, and facilities to bring about more efficient and orderly marketing, and reduce the price spread between the producer and the consumer.
- Develop and improve standards of quality, condition, quantity, grade, and packaging in order to encourage uniformity and consistency in commercial practices.
- Eliminate artificial barriers to the free movement of agricultural products in commercial channels.
- Foster new/expanded domestic/foreign markets and new/expanded uses of agricultural products.
- Collect and disseminate marketing information to anticipate and meet consumer requirements, maintain farm income, and balance production and utilization.

All proposals which fall within the FSMIP guidelines will be considered. FSMIP encourages States to submit proposals that address the following objectives:

- Creating wealth in rural communities through the development of local and regional food systems and value-added agriculture.
- Developing direct marketing opportunities for producers, or producer groups.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the FSMIP information collection requirements were previously approved by the Office of Management and Budget (OMB) and were assigned OMB control number 0581–0240.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public with the option of submitted information or transacting business electronically to the maximum extent possible.

How To Submit Proposals and Applications

Applicants have the option of submitting FSMIP applications electronically through the Federal grants Web site, *http://www.grants.gov* instead of mailing hard copy documents. Applicants considering the electronic application option are strongly urged to familiarize themselves with the Federal grants Web site well before the application deadline and to begin the application process before the deadline. Additional details about the FSMIP application process for all applicants are available at the FSMIP Web site: *http://www.ams.usda.gov/FSMIP.*

FSMIP is listed in the ''Catalog of Federal Domestic Assistance'' under number 10.156 and subject agencies must adhere to Title VI of the Civil Rights Act of 1964, which bars discrimination in all Federally assisted programs.

Authority: 7 U.S.C. 1621–1627.

Dated: December 7, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–29462 Filed 12–14–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

[3410–11–0203–S20202]

Custer County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Custer County Resource Advisory Committee will meet in Custer, South Dakota. The purpose of the meeting is review and selection of project proposals to be funded by the 2009 allocation.

DATES: The meeting will be held on January 12, 2010 at 5:30 p.m.

ADDRESSES: The meeting will be held at the Black Hills National Forest Supervisors Office. Written comments should be sent to Lynn Kolund at 330 Mount Rushmore Road, Custer, South Dakota 57730. Comments may also be sent via e-mail to *lkolund@fs.fed.us,* or via facsimile to 605–673–5461.

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 330 Mount Rushmore Road, Custer, South Dakota. Visitors are encouraged to call ahead to 605–673–4853 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Lynn Kolund, Designated Federal Official, Hell Canyon Ranger District, 605–673–4853.

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 Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council discussion is limited to Forest Service staff and Council members. However, persons who wish to bring 2009 Project Proposal matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by January 8, 2010 will have the opportunity to address the Council at the January 12, 2010 session.

Dated: December 7, 2009.

Lynn Kolund,

District Ranger.

[FR Doc. E9–29658 Filed 12–14–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 0911121401–91402–01]

FY 2010 Measurement, Science and Engineering Research Grants Programs; Availability of Funds

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the following programs are soliciting applications for financial assistance for FY 2010: (1) The Electronics and Electrical Engineering Laboratory Grants Program; (2) the Manufacturing Engineering Laboratory Grants Program; (3) the Chemical Science and Technology Laboratory Grants Program; (4) the Physics Laboratory Grants Program; (5) the Materials Science and Engineering Laboratory Grants Program; (6) the Building Research Grants and Cooperative Agreements Program; (7) the Fire Research Grants Program; (8) the Information Technology Laboratory Grants Program; (9) the NIST Center for Neutron Research Grants Program; (10) Center for Nanoscale Science and Technology Grants Program; and (11) the Technology Services Grants Program.

Each program will only consider applications that are within the scientific scope of the program as described in this notice and in the detailed program descriptions found in the Federal Funding Opportunity (FFO) announcement for these programs. Prior to preparation of a proposal, it is strongly suggested that potential applicants contact the Program Manager for the appropriate field of research, as specified in the FFO announcement found at *http://www.grants.gov,* for clarification of the program objectives and to determine whether their proposal is responsive to this notice.

DATES: For all programs except the *Fire Research Grants Program,* applications received after June 1, 2010 may be processed and considered for funding under this solicitation in the current fiscal year or in the next fiscal year, subject to the availability of funds. For the *Fire Research Grants Program,* applications received after January 15, 2010 may be processed and considered for funding under this solicitation in the current fiscal year or in the next fiscal year, subject to the availability of funds. Applications, paper and electronic, must be received prior to the publication date in the **Federal Register** of the FY 2011 solicitation for the NIST Measurement, Science and Engineering Research Grants Programs in order to be processed under this solicitation.

ADDRESSES: *See* below.

SUPPLEMENTARY INFORMATION: *Catalog of Federal Domestic Assistance Name and Number:* Measurement and Engineering Research and Standards—11.609.

Electronics and Electrical Engineering Laboratory (EEEL) Grants Program

Program Description: The *Electronics and Electrical Engineering Laboratory (EEEL) Grants Program* will provide grants and cooperative agreements for the development of fundamental electrical metrology and of metrology supporting industry and government agencies in the broad areas of semiconductors, electronic instrumentation, radio-frequency technology, optoelectronics, magnetics, superconductors, electronic commerce as applied to electronic products and devices, the transmission and distribution of electrical power, national electrical standards (fundamental, generally quantum-based physical standards), and law enforcement standards. Financial support may be provided for conferences, workshops, or other technical research meetings that are relevant to the mission of the Electronics and Electrical Engineering Laboratory. Specific information regarding program objectives can be found in the corresponding Federal Funding Opportunity for this announcement.

DATES: Applications will be considered on a continuing basis. Applications received after June 1, 2010 may be processed and considered for funding under this solicitation in the current fiscal year or in the next fiscal year, subject to the availability of funds. All applications, paper and electronic, must be received prior to the publication date in the **Federal Register** of the FY 2011 solicitation for the NIST Measurement, Science and Engineering Research Grants Programs in order to be processed under this solicitation.

ADDRESSES: Paper applications must be submitted to: Ms. Sheilda Bryner, Electronics and Electrical Engineering Laboratory, National Institute of Standards and Technology, 100 Bureau

Drive, Stop 8100, Gaithersburg, MD 20899–8100. Electronic applications and associated proposal information should be uploaded to *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: Program questions should be addressed to Sheilda Bryner, Electronics and Electrical Engineering Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8100, Gaithersburg, MD 20899–8100, *Tel.:* (301) 975–2959, *Fax:* (301) 975–4091. Grants administration questions concerning this program should be addressed to: Christopher Hunton, NIST Grants and Agreements Management Division, (301) 975–5718; *christopher.hunton@nist.gov.* For assistance with using *http://www.grants.gov,* contact *support@grants.gov* or (800) 518–4726.

Electronic Access: Applicants are strongly encouraged to read the Federal Funding Opportunity (FFO) available at *http://www.grants.gov* for complete information about this program, all program requirements, and instructions for applying by paper or electronically. A paper copy of the FFO may be obtained by calling (301) 975–6328.

Funding Availability: In fiscal year 2009, the *EEEL Grants Program* made 5 new awards, totaling $388,383. The amount available each year fluctuates considerably based on programmatic needs and funding availability. For FY 2010, awards are expected to range between $5,000 and $150,000.

For the *Electronics and Electrical Engineering Laboratory Grants Program,* proposals will be considered for research projects from one to three years. When a proposal for a multi-year award is approved, funding will generally be provided for only the first year of the program. If an application is selected for funding, NIST has no obligation to provide any additional funding in connection with that award. Continuation of an award to increase funding or extend the period of performance is at the total discretion of NIST. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress, continued relevance to the mission of the *Electronics and Electrical Engineering Laboratory Grants Program,* and the availability of funds. Multi-year awards must have scopes of work that can be easily separated into annual increments of meaningful work that represent solid accomplishments if prospective funding is not made available to the applicant, (*i.e.,* the scopes of work for each funding period must produce identifiable and meaningful results in and of themselves).

Statutory Authority: As authorized by 15 U.S.C. 272(b) and (c), the NIST Electronics and Electrical Engineering Laboratory conducts a basic and applied research program directly and through grants and cooperative agreements to eligible recipients.

Eligibility: The *Electronics and Electrical Engineering Laboratory Grants Program* is open to institutions of higher education; hospitals; non-profit organizations; commercial organizations; State, local, and Indian Tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; and international organizations.

Review and Selection Process: For the *Electronics and Electrical Engineering Laboratory Grants Program,* proposals will be reviewed in a three-step process. First, the EEEL Grants Coordinator, or the Deputy Director of EEEL, will determine the compatibility of the applicant's proposal with EEEL Program Areas and the relevance to the objectives of the *Electronics and Electrical Engineering Laboratory Grants Program,* described in the Program Description section above. If it is determined that the proposal is incomplete or non-responsive to the scope of the stated objectives, the proposal will not be reviewed for technical merit. If it is determined that sufficient funding is not available to consider grant and cooperative agreement proposals in the technical area of the proposal, the proposal will not be reviewed for technical merit. One copy of any such proposal will be retained for record keeping purposes for three years and all remaining copies will be destroyed. Proposers may contact EEEL at 301–975–2959 to find out if funds have been exhausted for the fiscal year. EEEL will also post a notice on its Web site, *http://www.eeel.nist.gov/eeel_grants/*, when funds are exhausted for the fiscal year. EEEL will notify proposers in writing if their proposals are not reviewed for technical merit.

Second, proposals will be distributed for technical review by the EEEL Grants Coordinator, or other technical professionals familiar with the programs of the Electronics and Electrical Engineering Laboratory, to the appropriate Division or Office based on technical area. At least three independent, objective individuals knowledgeable about the particular scientific area addressed by the proposal will conduct a technical review based on the evaluation criteria. If non-Federal reviewers are used, the reviewers may discuss the proposals with each other, but scores will be determined on an individual basis, not as a consensus.

Reviews will be conducted on a monthly basis, and all proposals received on or before the 15th day of the month will be ranked based on the reviewers' scores.

Third, the Division Chief or Office Director will make application selections. In making application selections, the Division Chief or Office Director will take into consideration the results of the reviewers' evaluations, the availability of funding, and relevance to the objectives of the *Electronics and Electrical Engineering Laboratory Grants Program,* as described in the Program Description section above. The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice and the FFO, compliance with applicable legal and regulatory requirements, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The decision of the Grants Officer is final.

Unsuccessful applicants will be notified in writing. The Program will retain one copy of each unsuccessful application for three years for record keeping purposes. The remaining copies will be destroyed.

Evaluation Criteria: For the *Electronics and Electrical Engineering Laboratory Grants Program,* the evaluation criteria the technical reviewers will use in evaluating the proposals are as follows:

1. *Rationality.* Reviewers will consider the coherence of the applicant's approach and the extent to which the proposal effectively addresses scientific and technical issues.

2. *Technical Merit of Contribution.* Reviewers will consider the potential technical effectiveness of the proposal and the value it would contribute to the field of electronics, electrical engineering and metrology research. Proposals must be relevant to current EEEL research and have a relation to the objectives of ongoing EEEL programs and activities.

3. *Qualifications of Technical Personnel.* Reviewers will consider the professional accomplishments, skills, and training of the proposed personnel to perform the work in the project.

4. *Resources Availability.* Reviewers will consider the extent to which the proposer has access to the necessary

facilities and overall support to accomplish project objectives.

Each of these factors will be given equal weight in the evaluation process.

Cost Share Requirements: The *Electronics and Electrical Engineering Laboratory Grants Program* does not require any cost share or matching funds.

Manufacturing Engineering Laboratory (MEL) Grants Program

Program Description: The Manufacturing Engineering Laboratory (MEL) Grants Program will provide grants and cooperative agreements in the following fields of research: Dimensional Metrology for Manufacturing, Mechanical Metrology for Manufacturing, Machine Tool and Machining Process Metrology, Intelligent Systems, and Information Systems Integration for Applications in Manufacturing. Financial support may be provided for conferences, workshops, or other technical research meetings that are relevant to the mission of the Manufacturing Engineering Laboratory. Specific information regarding program objectives can be found in the corresponding Federal Funding Opportunity for this announcement.

Dates: Applications will be considered on a continuing basis. Applications received after June 1, 2010 may be processed and considered for funding under this solicitation in the current fiscal year or in the next fiscal year, subject to the availability of funds. All applications, paper and electronic, must be received prior to the publication date in the **Federal Register** of the FY 2011 solicitation for the NIST Measurement, Science and Engineering Research Grants Programs in order to be processed under this solicitation.

Addresses: Paper applications must be submitted to: Ms. Alana Glover, Manufacturing Engineering Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8200, Gaithersburg, Maryland 20899–8200. Electronic applications and associated proposal information should be uploaded to *http://www.grants.gov.*

For Further Information Contact: Program questions should be addressed to Ms. Alana Glover, Manufacturing Engineering Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8200, Gaithersburg, Maryland 20899–8200, Tel: (301) 975–3400, *E-mail: aglover@nist.gov.* Grants administration questions concerning this program should be addressed to: Christopher Hunton, NIST Grants and Agreements Management Division, (301) 975–5718; *christopher.hunton@nist.gov.* For assistance with using *http://www.grants.gov,* contact *support@grants.gov* or (800) 518–4726.

Electronic Access: Applicants are strongly encouraged to read the Federal Funding Opportunity (FFO) available at *http://www.grants.gov* for complete information about this program, all program requirements, and instructions for applying by paper or electronically. A paper copy of the FFO may be obtained by calling (301) 975–6328.

Funding Availability: In fiscal year 2009, the *MEL Grants Program* funded six new awards, totaling $473,613. In fiscal year 2010 awards are expected to range from approximately $25,000 to $250,000.

For the *MEL Grants Program,* proposals will be considered for research projects from one to five years. When a proposal for a multi-year award is approved, funding will generally be provided for only the first year of the program. If an application is selected for funding, NIST has no obligation to provide any additional funding in connection with the award. Continuation of an award to increase funding or extend the period of performance is at the total discretion of NIST. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress, continued relevance to the mission of the *MEL Grants Program,* and the availability of funds. Multi-year awards must have scopes of work that can be easily separated into annual increments of meaningful work that represent solid accomplishments if prospective funding is not made available to the applicant, (*i.e.,* the scopes of work for each funding period must produce identifiable and meaningful results in and of themselves).

Statutory Authority: As authorized under 15 U.S.C. 272(b) and (c), the MEL conducts a basic and applied research program directly and through grants and cooperative agreements to eligible recipients.

Eligibility: The *MEL Grants Program* is open to institutions of higher education; hospitals; non-profit organizations; commercial organizations; State, local, and Indian Tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; and international organizations.

Review and Selection Process: For the *MEL Grants Program* responsive proposals will be assigned, as received on a rolling basis, to the most appropriate area for review. Proposals will be reviewed on a rolling basis in a three-step process. First, the MEL Deputy Director or the appropriate MEL Division Chief will determine the applicability of the proposal with regard to MEL programs and the relevance of the proposal's objectives to current MEL research. If it is determined that the proposal is incomplete or non-responsive to the scope of the stated objectives, the proposal will not be reviewed for technical merit. One copy of any such proposal will be retained for record keeping purposes for three years and any remaining copies will be destroyed. Second, the appropriate MEL Division Chief or MEL Program Manager will determine the possibility for funding availability within the MEL technical program area most relevant to the objectives of the proposal. If it is determined that sufficient funding is not available to consider grant and cooperative agreement proposals in the technical area of the proposal, the proposal will not be reviewed for technical merit. One copy of any such proposal will be retained for record keeping purposes for three years and all remaining copies will be destroyed. Proposers may contact MEL at 301–975–3400 to find out if funds have been exhausted for the fiscal year. MEL will also post a notice on its Web site, *http://www.mel.nist.gov* when funds are exhausted for the fiscal year. MEL will notify proposers in writing if their proposals are not reviewed for technical merit. Third, if the proposal passes the first two steps, at least three independent, objective individuals knowledgeable about the particular scientific area addressed by the proposal will conduct a technical review based on the evaluation criteria. If non-Federal reviewers are used, the reviewers may discuss the proposal with each other, but scores will be determined on an individual basis, not as a consensus.

The MEL Director or appropriate MEL Division Chief will make application selections from the grants proposals submitted. In making the application selections, the Laboratory Director or Division Chief will take into consideration the results of the reviewers' evaluations, the availability of funds, and relevance to the objectives or research areas of the *MEL Grants Program.* These objectives are described above in the Program Description section.

The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice and the FFO, compliance with applicable legal and regulatory requirements, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or

budgets and provide supplemental information required by the agency prior to award. The decision of the Grants Officer is final.

Unsuccessful applicants will be notified in writing. The Program will retain one copy of each unsuccessful application for three years for record keeping purposes. The remaining copies will be destroyed.

Evaluation Criteria: For the *MEL Grants Program,* the evaluation criteria the technical reviewers will use in evaluating the proposals are as follows:

1. *Rationality.* Reviewers will consider the coherence of the applicant's approach and the extent to which the proposal effectively addresses scientific and technical issues.

2. *Technical Merit of Contribution.* Reviewers will consider the potential technical effectiveness of the proposal and the value it would contribute to the field of manufacturing engineering and metrology research. Proposals must be relevant to current MEL research and have a relation to the objectives of ongoing MEL programs and activities.

3. *Qualifications of Technical Personnel.* Reviewers will consider the professional accomplishments, skills, and training of the proposed personnel to perform the work in the project.

4. *Resources Availability.* Reviewers will consider the extent to which the proposer has access to the necessary facilities and overall support to accomplish project objectives.

Each of these factors will be given equal weight in the evaluation process.

Cost Share Requirements: The *MEL Grants Program* does not require any cost share or matching funds.

Chemical Science and Technology Laboratory Grants Program

Program Description: The Chemical Science and Technology Laboratory (CSTL) Grants Program will provide grants and cooperative agreements consistent with the CSTL mission in the following fields of measurement science research, focused on reference methods, reference materials and reference data: Biochemical Science, Chemical and Biochemical Reference Data, Process Measurements, Surface and Microanalysis Science, Thermophysical Properties, and Analytical Chemistry. Financial support may be provided for conferences, workshops, or other technical research meetings that are relevant to the mission of the CSTL. Specific information regarding program objectives can be found in the corresponding Federal Funding Opportunity for this announcement.

The Programs are structured to support CSTL's three objectives:

1. Provide the national traceability and international comparability structure for measurements in chemistry, chemical engineering, and biochemical sciences.

2. Assure that U.S. industry has access to accurate and reliable data and predictive models to determine the chemical and physical properties of materials and processes.

3. Anticipate and address next-generation measurement needs of the Nation.

Dates: Applications will be considered on a continuing basis. Applications received after June 1, 2010 may be processed and considered for funding under this solicitation in the current fiscal year or in the next fiscal year, subject to the availability of funds. All applications, paper and electronic, must be received prior to the publication date in the **Federal Register** of the FY 2011 solicitation for the NIST Measurement, Science and Engineering Research Grants Programs in order to be processed under this solicitation.

Addresses: Paper applications must be submitted to: Ms. Donna Kimball, Chemical Science and Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8300, Gaithersburg, MD 20899–8300. Electronic applications and associated proposal information should be uploaded to *http://www.grants.gov*.

For Further Information Contact: Program questions should be addressed to Ms. Donna Kimball, Chemical Science and Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8300, Gaithersburg, MD 20899–8300, Tel (301) 975–8300, e-mail: *donna.kimball@nist.gov*. Grants administration questions concerning this program should be addressed to: Christopher Hunton, NIST Grants and Agreements Management Division, (301) 975–5718; *christopher.hunton@nist.gov*. For assistance with using *http://www.grants.gov*, contact *support@grants.gov* or (800) 518–4726.

Electronic Access: Applicants are strongly encouraged to read the Federal Funding Opportunity (FFO) available at *http://www.grants.gov* for complete information about this program, all program requirements, and instructions for applying by paper or electronically. A paper copy of the FFO may be obtained by calling (301) 975–6328.

Funding Availability: No funds have been set aside specifically for the *CSTL Grants Program.* The availability of funds depends upon actual authorization of funds and other costs expected to be incurred by individual divisions within the laboratory. Where funds are identified as available for grants, those funds will be awarded to highly ranked proposals as determined by the process described in this notice.

In fiscal year 2009, the *CSTL Grants Program* funded 7 new awards, totaling $1,688,939. In fiscal year 2010, the *CSTL Grants Program* anticipates funding of approximately $1,000,000. For FY 2010 awards are expected to range from approximately $5,000 to $200,000.

For the *Chemical Science and Technology Laboratory Grant Program*, proposals will be considered for research projects from one to three years. When a proposal for a multi-year award is approved, funding will generally be provided for only the first year of the program. If an application is selected for funding, NIST has no obligation to provide any additional funding in connection with that award. Continuation of an award to increase funding or extend the period of performance is at the total discretion of NIST. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress, continued relevance to the mission of the *Chemical Science and Technology Laboratory Grants Program*, and the availability of funds. The multi-year awards must have scopes of work that can be easily separated into annual increments of meaningful work that represent solid accomplishments if prospective funding is not made available to the applicant, (*i.e.* the scopes of work for each funding period must produce identifiable and meaningful results in and of themselves).

Statutory Authority: As authorized under 15 U.S.C. 272(b) and (c), the Chemical Science and Technology Laboratory conducts a basic and applied research program directly and through grants and cooperative agreements to eligible recipients.

Eligibility: The *Chemical Science and Technology Laboratory Grants Program* is open to institutions of higher education; hospitals; non-profit organizations; commercial organizations; State, local, and Indian Tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; and international organizations.

Review and Selection Process: For the *Chemical Science and Technology Laboratory Grants Program*, proposals will be reviewed in a three-step process. First, the CSTL Grants Coordinator, the Deputy Director of CSTL or the corresponding CSTL Division Chief will determine the compatibility of the

applicant's proposal with CSTL Program Areas and the relevance to the objectives of the *Chemical Science and Technology Laboratory Grants Program*, described in the Program Description section above. If it is determined that the proposal is incomplete or non-responsive to the scope of the stated objectives, the proposal will not be reviewed for technical merit. One copy of any such proposal will be retained for record keeping purposes for three years and all remaining copies will be destroyed.

Second, at least three independent, objective individuals knowledgeable about the particular measurement science area addressed by the proposal will conduct a technical review based on the evaluation criteria. Reviews will be conducted on a quarterly basis, subject to the availability of funds, and all responsive, complete proposals received and reviewed since the last quarter will be ranked based on the reviewers' scores. If non-Federal reviewers are used, the reviewers may discuss the proposals with each other, but scores will be determined on an individual basis, not as a consensus.

Third, the Division Chief or the CSTL Deputy Director, generally after collaboration, will make application selections, taking into consideration the results of the reviewers' evaluations, the availability of funds, and the relevance to the objectives described in the Program Description section above.

The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice and the FFO, compliance with applicable legal and regulatory requirements, whether the application furthers the objectives of the Department of Commerce, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The decisions of the Grants Officer are final.

Unsuccessful applicants will be notified in writing. The Program will retain one copy of each unsuccessful application for three years for record keeping purposes. The remaining copies will be destroyed.

Evaluation Criteria: For the *Chemical Science and Technology Laboratory Grants Program*, the evaluation criteria the technical reviewers will use in evaluating the proposals are as follows:

1. *Rationality.* Reviewers will consider the coherence of the applicant's approach and the extent to which the proposal effectively addresses scientific and technical issues.

2. *Qualifications of Technical Personnel.* Reviewers will consider the professional accomplishments, skills, and training of the proposed personnel to perform the work in the project.

3. *Resources Availability.* Reviewers will consider the extent to which the proposer has access to the necessary facilities and overall support to accomplish project objectives.

4. *Technical Merit of Contribution.* Reviewers will consider the potential technical effectiveness of the proposal and the value it would contribute to the field of measurement science, especially as it pertains to reference methods, reference materials and reference data in Chemical Science and Technology.

Each of these factors will be given equal weight in the evaluation process.

Cost Share Requirements: The *Chemical Science and Technology Laboratory Grants Program* does not require any cost sharing or matching funds.

Physics Laboratory Grants Program

Program Description: The Physics Laboratory (PL) Grants Program will provide grants and cooperative agreements in the following fields of research: Electron and Optical Physics, Atomic Physics, Optical Technology, Ionizing Radiation, Time and Frequency, and Quantum Physics. Specific information regarding program objectives can be found in the corresponding Federal Funding Opportunity for this announcement. Financial support may be provided for conferences, workshops, or other technical research meetings that are relevant to the mission of the Physics Laboratory.

Dates: Applications will be considered on a continuing basis. Applications received after June 1, 2010 may be processed and considered for funding under this solicitation in the current fiscal year or in the next fiscal year, subject to the availability of funds. All applications, paper and electronic, must be received prior to the publication date in the **Federal Register** of the FY 2011 solicitation for the NIST Measurement Science and Engineering Research Grants Programs in order to be processed under this solicitation.

Addresses: Paper applications must be submitted to: Ms. Anita Sweigert, Physics Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8400, Gaithersburg, MD 20899–8400. Electronic applications and associated proposal information should be uploaded to *http://www.grants.gov.*

For Further Information Contact: Program questions should be addressed to Ms. Anita Sweigert, Physics Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8400, Gaithersburg, MD 20899–8400, Tel (301) 975–4200, E–Mail: *anita.sweigert@nist.gov.* It is strongly suggested to first confirm the program objectives with the Program Manager prior to preparing a detailed proposal. Grants administration questions concerning this program should be addressed to: Christopher Hunton, NIST Grants and Agreements Management Division, (301) 975–5718; *christopher.hunton@nist.gov.* For assistance with using *http://www.grants.gov* contact, *support@grants.gov* or (800) 518–4726.

Electronic Access: Applicants are strongly encouraged to read the Federal Funding Opportunity (FFO) available at *http://www.grants.gov* for complete information about this program, all program requirements, and instructions for applying by paper or electronically. A paper copy of the FFO may be obtained by calling (301) 975–6328.

Funding Availability

In fiscal year 2009, the *PL Grants Program* funded 21 new awards, totaling $2,566,192. In fiscal year 2010, the *PL Grants Program* anticipates funding of approximately $2,000,000, including new awards and continuing projects. Funding availability will be apportioned by quarter. For FY 2010 individual awards are expected to range from approximately $5,000 to $500,000 per year.

For the *Physics Laboratory Grants Program*, proposals will be considered for research projects from one to five years. When a proposal for a multi-year project is approved, funding will generally be provided for only the first year of the program. If an application is selected for funding, NIST has no obligation to provide any additional funding in connection with that award. Continuation of an award to increase funding or extend the period of performance is at the total discretion of NIST. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress, continued relevance to the mission of the *Physics Laboratory Grants Program*, and the availability of funds. The multi-year awards must have scopes of work that can be easily separated into annual increments of meaningful work that represent solid accomplishments if prospective funding is not made available to the applicant (*i.e.*, the scopes of work for each funding period must produce identifiable and

meaningful results in and of themselves).

Statutory Authority: As authorized under 15 U.S.C. 272(b) and (c), the Physics Laboratory conducts a basic and applied research program directly and through grants and cooperative agreements to eligible recipients.

Eligibility: The *Physics Laboratory Grants Program* is open to institutions of higher education; hospitals; non-profit organizations; commercial organizations; State, local, and Indian Tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; and international organizations.

Review and Selection Process: For the *Physics Laboratory Grants Program*, responsive proposals will be considered as follows: If a preliminary review determines that the proposal is incomplete or non-responsive to the scope of the stated objectives, the proposal will not be reviewed for technical merit. One copy of any such proposal will be retained for record keeping purposes for three years and all remaining copies will be destroyed. All applications that are complete and responsive to the solicitation will be reviewed for technical merit.

First, at least three independent, objective individuals knowledgeable about the particular scientific area described in the proposal will conduct a technical review of each proposal, based on the evaluation criteria described in the Evaluation Criteria section below. Reviews will be conducted on a monthly basis within each division of the Physics Laboratory, and all proposals received during the month will be ranked based on the reviewers' scores. If non-Federal reviewers are used, reviewers may discuss the proposals with each other, but scores will be determined on an individual basis, not as a consensus.

Next, the Division Chief will make final application selections, taking into consideration the results of the reviewers' evaluations, including rank; the compilation of a slate that, when taken as a whole, is likely to best further the program interests described in the Program Description section above; and the availability of funds. The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice and the FFO, compliance with applicable legal and regulatory requirements, and whether the recommended applicants appear to be responsible.

Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award.

The decisions of the Grants Officer are final.

Unsuccessful applicants will be notified in writing. The Program will retain one copy of each unsuccessful application for three years for record keeping purposes. The remaining copies will be destroyed.

Evaluation Criteria: For the *Physics Laboratory Grants Program,* the evaluation criteria the technical reviewers will use in evaluating the proposals are as follows:

1. *Rationality.* Reviewers will consider the coherence of the applicant's approach and the extent to which the proposal effectively addresses scientific and technical issues that are relevant to Physics Laboratory programs.

2. *Qualifications of Technical Personnel.* Reviewers will consider the professional accomplishments, skills, and training of the proposed personnel to perform the work in the project.

3. *Resources Availability.* Reviewers will consider the extent to which the proposer has access to the necessary facilities and overall support to accomplish project objectives.

4. *Technical Merit of Contribution.* Reviewers will consider the potential technical effectiveness of the proposal and the value it would contribute to the field of physics.

Each of these factors will be given equal weight in the evaluation process.

Cost Share Requirements: The *Physics Laboratory Grants Program* does not require any cost sharing or matching funds.

MSEL Grants Program

Program Description: The Materials Science and Engineering Laboratory (MSEL) Grants Program will provide grants and cooperative agreements in the following fields of research: Ceramics; Metallurgy; Polymers; and Materials Reliability. Specific information regarding program objectives can be found in the corresponding Federal Funding Opportunity for this announcement. Financial support may be provided for conferences, workshops, or other technical research may be provided for conferences, workshops, or other technical research meetings that are relevant to the mission of the MSEL.

Dates: Applications will be considered on a continuing basis. Applications received after June 1, 2010 may be processed and considered for funding under this solicitation in the current fiscal year or in the next fiscal year, subject to the availability of funds. All applications, paper and electronic, must be received prior to the publication date in the **Federal Register** of the FY 2011 solicitation for the NIST Measurement, Science and Engineering Research Grants Programs in order to be processed under this solicitation.

Addresses: Paper applications must be submitted to: Ms. Nancy Selepak, Materials Science and Engineering Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8500, Gaithersburg, Maryland 20899–8500. Electronic applications and associated proposal information should be uploaded to *http://www.grants.gov.*

For Further Information Contact: Program questions should be addressed to Ms. Nancy Selepak, Materials Science and Engineering Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8500, Gaithersburg, Maryland 20899–8500, Tel: (301) 975–2047 E-mail: *nancy.selepak@nist.gov.* Grants administration questions concerning this program should be addressed to: Christopher Hunton, NIST Grants and Agreements Management Division, (301) 975–5718; *christopher.hunton@nist.gov.* For assistance with using *http://www.grants.gov,* contact *support@grants.gov* or (800) 518–4726.

Electronic Access: Applicants are strongly encouraged to read the Federal Funding Opportunity (FFO) available at *http://www.grants.gov* for complete information about this program, all program requirements, and instructions for applying by paper or electronically. A paper copy of the FFO may be obtained by calling (301) 975–6328.

Funding Availability: In fiscal year 2009, the *MSEL Grants Program* funded 19 new awards, totaling $2,496,714. In fiscal year 2010, the *MSEL Grants Program* anticipates funding of approximately $4,600,000, including new awards and continuing projects. For FY 2010 most grants and cooperative agreements are expected to be in the $2,000 to $500,000 per year range.

For the *MSEL Grants Program,* proposals will be considered for research projects from one to five years. When a proposal for a multi-year award is approved, funding will generally be provided for only the first year of the program. If an application is selected for funding, NIST has no obligation to provide any additional funding in connection with that award. Continuation of an award to increase funding or extend the period of performance is at the total discretion of

NIST. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress, continued relevance to the mission of the *MSEL Grants Program,* and the availability of funds. The multi-year awards must have scopes of work that can be easily separated into annual increments of meaningful work that represent solid accomplishments if prospective funding is not made available to the applicant (*i.e.,* the scopes of work for each funding period must produce identifiable and meaningful results in and of themselves).

Statutory Authority: As authorized under 15 U.S.C. 272(b) and (c), the MSEL conducts a basic and applied research program directly and through grants and cooperative agreements to eligible recipients.

Eligibility: The *MSEL Grants Program* is open to institutions of higher education; hospitals; non-profit organizations; commercial organizations; State, local, and Indian Tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; and international organizations.

Review and Selection Process: For the *MSEL Grants Program* proposals will be reviewed in a two-step process. If a preliminary review determines that the proposal is incomplete or non-responsive to the scope of the stated objectives, the proposal will not be reviewed for technical merit. One copy of any such proposal will be retained for record keeping purposes for three years and all remaining copies will be destroyed. All applications that are complete and responsive to the solicitation will be reviewed for technical merit using the following process.

First, at least three independent, objective individuals knowledgeable in the particular scientific area addressed by the proposal will conduct a technical review. Proposals are received and will be reviewed on a rolling basis based on the evaluation criteria. If non-Federal reviewers are used, the reviewers may discuss the proposals with each other, but scores will be determined on an individual basis, not as a consensus. Second, the Division Chief or Laboratory Deputy Director will make application selections. In making application selections, the Division Chief or Laboratory Deputy Director will take into consideration the results of the reviewers' evaluations, the availability of funds, and relevance to the objectives of the MSEL Grants Program, described in the Program Description section of the FFO. For applications for funding for conferences, workshops, or other technical research meetings, the Division Chief or Laboratory Deputy Director will also take into consideration whether they align with ongoing MSEL programmatic activities. The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice and the FFO, compliance with applicable legal and regulatory requirements, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The decision of the Grants Officer is final.

Unsuccessful applicants will be notified in writing. The Program will retain one copy of each unsuccessful application for three years for record keeping purposes. The remaining copies will be destroyed.

Evaluation Criteria: For the *MSEL Grants Program,* the evaluation criteria the technical reviewers will use in evaluating the proposals are as follows:

1. *Rationality.* Reviewers will consider the coherence of the applicant's approach and the extent to which the proposal effectively addresses scientific and technical issues.

2. *Qualifications of Technical Personnel.* Reviewers will consider the professional accomplishments, skills, and training of the proposed personnel to perform the work in the project.

3. *Resources Availability.* Reviewers will consider the extent to which the proposer has access to the necessary facilities and overall support to accomplish project objectives.

4. *Technical Merit of Contribution.* Reviewers will consider the potential technical effectiveness of the proposal and the value it would contribute to the field of materials science and engineering. Proposals must be relevant to current MSEL research and have a relation to the objectives of ongoing MSEL programs and activities.

Each of these factors will be given equal weight in the evaluation process.

Cost Share Requirements: The *MSEL Grants Program* does not require any cost sharing or matching funds.

Building Research Grants and Cooperative Agreements Program

Program Description: The Building Research Grants and Cooperative Agreements Program will provide grants and cooperative agreements in the following fields of research: Structures, Construction Metrology and Automation, Inorganic Materials, Polymeric Materials, HVAC & R Equipment Performance, Mechanical Systems and Controls, Heat Transfer and Alternative Energy Systems, Computer Integrated Building Processes, Indoor Air Quality and Ventilation, the National Earthquake Hazard Reduction Program, and Building Economics. Financial support may be provided for conferences, workshops, or other technical research meetings that are relevant to the mission of the Building and Fire Research Laboratory.

The *Building Research Grants and Cooperative Agreements Program* supports the formal mission of the Building and Fire Research Laboratory, which is to promote U.S. innovation and competitiveness by anticipating and meeting the measurement science, standards and technology needs of the U.S. building and fire safety industries in ways that enhance economic security and improve the quality of life. All proposals submitted must be in accordance with the program objectives found in the corresponding Federal Funding Opportunity for this announcement.

Dates: Applications will be considered on a continuing basis. Applications received after June 1, 2010 may be processed and considered for funding under this solicitation in the current fiscal year or in the next fiscal year, subject to the availability of funds. All applications, paper and electronic, must be received prior to the publication date in the **Federal Register** of the FY 2011 solicitation for the NIST Measurement Science and Engineering Research Grants Programs in order to be processed under this solicitation.

Addresses: Paper applications must be submitted to: Karen Perry, Building and Fire Research Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8602, Gaithersburg, MD 20899–8602. Electronic applications and associated proposal information should be uploaded to *http://www.grants.gov.*

For Further Information Contact: Program questions should be addressed to Karen Perry, Building and Fire Research Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8602, Gaithersburg, MD 20899–8602, Tel.: (301) 975–5910, *karen.perry@nist.gov,* Fax: (301) 975–4032, and Web site *http://www.bfrl.nist.gov.* Grants administration questions concerning this program should be addressed to: Christopher Hunton, NIST Grants and Agreements Management Division, (301) 975–5718; *christopher.hunton@nist.gov.* For assistance with using *http://*

www.grants.gov, contact *support@grants.gov* or (800) 518–4726.

Electronic Access: Applicants are strongly encouraged to read the Federal Funding Opportunity (FFO) available at *http://www.grants.gov* for complete information about this program, all program requirements, and instructions for applying by paper or electronically. A paper copy of the FFO may be obtained by calling (301) 975–6328.

Funding Availability: In fiscal year 2009, the *Building Research Grants and Cooperative Agreements Program* funded 18 new awards, totaling $1,953,509. No funds have been set aside specifically for the *Building Research Grants and Cooperative Agreements Program.* The availability of funds depends upon actual authorization of funds and other costs expected to be incurred by the individual divisions. The amount available each year fluctuates considerably based on programmatic needs. For FY 2010 awards are expected to range between $5,000 and $500,000.

For the *Building Research Grants and Cooperative Agreements Program,* proposals will be considered for research projects from one to three years. When a proposal for a multi-year award is approved, funding will generally be provided for only the first year of the program. If an application is selected for funding, NIST has no obligation to provide any additional funding in connection with that award. Continuation of an award to increase funding or extend the period of performance is at the total discretion of NIST. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress, continued relevance to the mission of the *Building Research Grants and Cooperative Agreements Program,* and the availability of funds. The multi-year awards must have scopes of work that can be easily separated into annual increments of meaningful work that represent solid accomplishments if prospective funding is not made available to the applicant (*i.e.,* the scopes of work for each funding period must produce identifiable and meaningful results in and of themselves).

Statutory Authority: As authorized by 15 U.S.C. 272(b) and (c) and 42 U.S.C. 7704, the NIST Building and Fire Research Laboratory conducts a basic and applied research program directly and through grants and cooperative agreements to eligible recipients.

Eligibility: The *Building Research Grants and Cooperative Agreements Program* is open to institutions of higher education; hospitals; non-profit organizations; commercial organizations; State, local, and Indian Tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; and international organizations.

Review and Selection Process: For the *Building Research Grants and Cooperative Agreements Program* proposals will be reviewed in a two-step process. If a preliminary review determines that the proposal is incomplete or non-responsive to the scope of the stated objectives, the proposal will not be reviewed for technical merit. One copy of each such proposal will be retained for record keeping purposes for three years and all remaining copies will be destroyed.

All applications that are complete and responsive to the solicitation will be reviewed for technical merit using the following process.

First, at least three independent, objective individuals knowledgeable about the particular scientific area addressed by the proposal will conduct a technical review. Proposals are received and will be reviewed on a rolling basis based on the evaluation criteria listed in the Evaluation Criteria section below. If non-Federal reviewers are used, reviewers may discuss the proposals with each other, but scores will be determined on an individual basis, not as a consensus. Second, the Division Chief or Laboratory Director or Deputy Director will take into consideration the results of the reviewers' evaluation, the availability of funds, and relevance to the objectives described in the Program Description section of the FFO.

The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The award decision of the Grants Officer is final. Applicants should allow up to 90 days processing time.

Unsuccessful applicants will be notified in writing. The Program will retain one copy of each unsuccessful application for three years for record keeping purposes. The remaining copies will be destroyed.

Evaluation Criteria: The Divisions of the Building and Fire Research Laboratory will score proposals based on the following criteria and weights:

1. Technical quality of the research. Reviewers will assess the rationality, innovation and imagination of the proposal and the fit to NIST's in-house building research programs. (0–35 points).

2. Potential impact of the results. Reviewers will assess the potential impact and the technical application of the results. (0–25 points).

3. Staff and institution capability to do the work. Reviewers will evaluate the quality of the facilities and experience of the staff to assess the likelihood of achieving the objective of the proposal. (0–20 points).

4. Match of budget to proposed work. Reviewers will assess the budget against the proposed work to ascertain the reasonableness of the request. (0–20 points).

Cost Share Requirements: The *Building Research Grants and Cooperative Agreements Program* does not require any cost sharing or matching funds.

Fire Research Grants Program

Program Description: The Fire Research Grants Program will provide funding through grants and cooperative agreements to support the conduct of research or a recipient's portion of collaborative research in areas of current interest to the Building and Fire Research Laboratory. For details on current fire research activities, please *see* the Building and Fire Research Laboratory Web site at *http://www.bfrl.nist.gov.* Specific information regarding program objectives can be found in the corresponding Federal Funding Opportunity for this announcement. Financial support may be provided for conferences, workshops, or other technical meetings that are relevant to the objectives of the Fire Research Grants Program.

Dates: For the *Fire Research Grants Program,* applications received by January 15, 2010 will be processed and considered for funding under this solicitation in the current fiscal year. Applications received after January 15, 2010 may be processed and considered for funding under this solicitation in the current fiscal year or in the next fiscal year, subject to the availability of funds. Applications, paper and electronic, must be received prior to the publication date in the **Federal Register** of the FY 2011 solicitation for the NIST Measurement Science and Engineering Research Grants Programs in order to be processed under this solicitation.

Addresses: Paper applications must be submitted to: Ms. Wanda Duffin-

Ricks, Building and Fire Research Laboratory (BFRL), National Institute of Standards and Technology, 100 Bureau Drive, Stop 8660, Gaithersburg, Maryland 20899–8660. Electronic applications and associated proposal information should be uploaded to *http://www.grants.gov*.

For Further Information Contact: Program questions should be addressed to Ms. Wanda Duffin-Ricks, Building and Fire Research Laboratory (BFRL), National Institute of Standards and Technology, 100 Bureau Drive, Stop 8660, Gaithersburg, Maryland 20899–8660, Tel: (301) 975–6863, E-mail: *wanda.duffin@nist.gov*, Web site: *http://www.bfrl.nist.gov*. Grants administration questions concerning this program should be addressed to: Christopher Hunton, NIST Grants and Agreements Management Division, (301) 975–5718; *christopher.hunton@nist.gov*. For assistance with using *http://www.grants.gov*, contact *support@grants.gov* or (800) 518–4726.

Electronic Access: Applicants are strongly encouraged to read the Federal Funding Opportunity (FFO) available at *http://www.grants.gov* for complete information about this program, all program requirements, and instructions for applying by paper or electronically. A paper copy of the FFO may be obtained by calling (301) 975–6328.

Funding Availability: For the *Fire Research Grants Program*, the annual budget is approximately $1.0 to $1.5 million. Because of commitments for the support of multi-year projects and because proposals may have been deferred from the previous year's competition, only a portion of the budget is available to fund applications received in response to this notice. For FY 2010 most grants and cooperative agreements are in the $25,000 to $125,000 per year range, with a maximum requested duration of three years. In fiscal year 2009, the *Fire Research Grants Program* funded 4 new awards, totaling $337,406.

For the *Fire Research Grants Program*, proposals will be considered for research projects from one to three years. When a proposal for a multi-year project is approved, funding will generally be provided for only the first year of the program. If an application is selected for funding, NIST has no obligation to provide any additional future funding in connection with that award. Continuation of an award to increase funding or extend the period of performance is at the total discretion of NIST. Funding for each subsequent year of a multi-year proposal will be contingent on satisfactory progress, continuing relevance to the mission of the *Fire Research Grants Program*, and the availability of funds. The multi-year awards must have scopes of work that can be easily separated into annual increments of meaningful work that represent solid accomplishments if prospective funding is not made available to the applicant (*i.e.*, the scopes of work for each funding period must produce identifiable and meaningful results in and of themselves).

Statutory Authority: As authorized by 15 U.S.C. 278f, the NIST Building and Fire Research Laboratory conducts directly and through grants and cooperative agreements, a basic and applied fire research program.

Eligibility: The *Fire Research Grants Program* is open to institutions of higher education; hospitals; non-profit organizations; commercial organizations; State, local, and Indian Tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; and international organizations.

Review and Selection Process: Prospective proposers are encouraged to contact the group leaders listed in the FFO announcement to determine the responsiveness of the proposal and compliance with program objectives prior to preparation of a detailed proposal; however, written pre-proposals and white papers are not solicited and will not be reviewed for other than informational purposes. Responsive proposals will be assigned to the most appropriate group and reviewed as received on a rolling basis. If it is determined that the proposal is incomplete or non-responsive to the scope of the stated objectives, the proposal will not be reviewed for technical merit. One copy of any such proposal will be retained for record keeping purpose for three years and all remaining copies will be destroyed. Proposals are evaluated for technical merit based on the evaluation criteria described below by at least three reviewers chosen from NIST professionals, technical experts from other interested government agencies, and experts from the fire research community at large. When non-Federal reviewers are used, reviewers may discuss the proposals with each other, but scores will be determined on an individual basis, not as a consensus.

A Review Panel, consisting of group leaders and the Deputy Division Chief, will make funding recommendations to the Selecting Official (the Fire Research Division Chief). In making recommendations for application selections, the Review Panel and the Selecting Official will consider the results of the reviewers' evaluations, the scores of the reviewers, the availability of funds, program balance, and the relevance to the objectives of the *Fire Research Grants Program*, as described in the Program Description section of the FFO and at the Building and Fire Research Laboratory Web site at *http://www.bfrl.nist.gov*.

The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice and the FFO, compliance with applicable legal and regulatory requirements, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The award decision of the Grants Officer is final. Applicants should allow up to 90 days processing time.

Proposals submitted to another agency will be considered for possible joint funding if approved by the other agency.

Initial review of the proposal will consider completeness and responsiveness of the proposal to the program requirements. Proposals on product development and commercialization are not considered responsive to this solicitation.

Unsuccessful applicants will be notified in writing. The Program will retain one copy of each unsuccessful application for three years for record keeping purposes. The remaining copies will be destroyed.

Evaluation Criteria: For the *Fire Research Grants Program,* the technical evaluation criteria are as follows:

1. Technical quality of the research. Reviewers will assess the clarity, rationality, organization and innovation of the proposed work. (0–40 points).

2. Potential impact of the results. Reviewers will assess the potential impact and the technical application of the results to address aspects of the national fire problem. (0–40 points).

3. Staff and institution capability to do the work. Reviewers will evaluate the quality of the facilities and experience of the staff to assess the likelihood of achieving the objective of the proposal. (0–10 points).

4. Match of budget to proposed work. Reviewers will assess the budget against the proposed work to ascertain the reasonableness of the request. (0–10 points).

Cost Share Requirements: The *Fire Research Grants Program* does not

require any cost sharing or matching funds.

Information Technology Laboratory (ITL) Grants Program

Program Description: The Information Technology Laboratory Grants Program will provide grants and cooperative agreements in the broad areas of mathematical and computational sciences, advanced network technologies, information access, and software testing. Specific objectives of interest in these areas of research include: Quantum information theory, computational materials science, network science, mathematical foundations of measurement science for information systems, mathematical knowledge management, visual data analysis, verification and validation of computer models, computational biology, semantic data integration, software testing, biometrics, human language technology, interactive systems, multimedia technology, human factors/security/core requirements/ testing of voting systems, information visualization, systems biology, grid computing, service oriented architecture and complex systems, security for the IPv6 transition from and coexistence with IPv4, and device mobility among heterogeneous networks. For details on these various activities, please *see* the Information Technology Laboratory Web site at *http://www.itl.nist.gov*. Specific information regarding program objectives can be found in the corresponding Federal Funding Opportunity for this announcement. Financial support may be provided for conferences, workshops, or other technical research meetings that are relevant to the mission of the Information Technology Laboratory.

Dates: Applications will be considered on a continuing basis. Applications received after June 1, 2010 may be processed and considered for funding under this solicitation in the current fiscal year or in the next fiscal year, subject to the availability of funds. All applications, paper and electronic, must be received prior to the publication date in the **Federal Register** of the FY 2011 solicitation for the NIST Measurement, Science and Engineering Research Grants Programs in order to be processed under this solicitation.

Addresses: Paper applications must be submitted to: Gerlinde Harr, Information Technology Laboratory (ITL), National Institute of Standards and Technology, 100 Bureau Drive, Stop 8900, Gaithersburg, Maryland 20899–8900. Electronic applications and associated proposal information should be uploaded to *http://www.grants.gov.*

For Further Information Contact: Program questions should be addressed to Gerlinde Harr, Information Technology Laboratory (ITL), National Institute of Standards and Technology, 100 Bureau Drive, Stop 8900, Gaithersburg, MD 20899–8900, Tel.: (301) 975–2901, e-mail *gharr@nist.gov,* Fax: (301) 975–2378, Web site: *http://www.itl.nist.gov.* It is strongly suggested to first confirm the program objectives with the Program Manager prior to preparing a detailed proposal. Contact the *Information Technology Laboratory Grant Program Manager:* Kamie Roberts, (301) 975–2901, *kroberts@nist.gov* for clarification of the program objectives. Grants administration questions concerning this program should be addressed to: Christopher Hunton, NIST Grants and Agreements Management Division, (301) 975–5718; *christopher.hunton@nist.gov.* For assistance with using *http://www.grants.gov,* contact *support@grants.gov* or (800) 518–4726.

Electronic Access: Applicants are strongly encouraged to read the Federal Funding Opportunity (FFO) available at *http://www.grants.gov* for complete information about this program, all program requirements, and instructions for applying by paper or electronically. A paper copy of the FFO may be obtained by calling (301) 975–6328.

Funding Availability: In fiscal year 2009, the *Information Technology Laboratory* funded 8 new awards, totaling $797,226. No funds have been set aside specifically for the *Information Technology Laboratory Grants Program.* The availability of funds depends upon actual authorization of funds and other costs expected to be incurred by the individual divisions. The amount available each year fluctuates considerably based on programmatic needs. For FY 2010 individual awards are expected to range between $10,000 and $500,000.

For the *Information Technology Laboratory Grants Program,* proposals will be considered for research projects from one to five years. When a proposal for a multi-year award is approved, funding will generally be provided for only the first year of the program. If an application is selected for funding, NIST has no obligation to provide any additional funding in connection with that award. Continuation of an award to increase funding or extend the period of performance is at the total discretion of NIST. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress, continued relevance to the mission of the *Information Technology Laboratory Grants Program,* and the availability of funds. The multi-year awards must have scopes of work that can be easily separated into annual increments of meaningful work that represent solid accomplishments if prospective funding is not made available to the applicant (*i.e.,* the scopes of work for each funding period must produce identifiable and meaningful results in and of themselves).

Statutory Authority: As authorized under 15 U.S.C. 272(b) and (c) and 42 U.S.C. 15361(e), the ITL conducts a basic and applied research program directly and through grants and cooperative agreements to eligible recipients.

Eligibility: The *ITL Grants Program* is open to institutions of higher education; hospitals; non-profit organizations; commercial organizations; State, local, and Indian Tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; and international organizations.

Review and Selection Process: For the *Information Technology Laboratory (ITL) Grants Program,* proposals will be reviewed in a three-step process. First, the ITL Grants Coordinator, the Deputy Director of ITL, or the corresponding Division Chief will determine the compatibility of the applicant's proposal with ITL Program Areas and the relevance to the objectives of the *ITL Grants Program,* described in the Program Description section of this announcement and the FFO. If a proposal is determined to be incomplete or non-responsive, or if it is determined that all available funds have been exhausted, the proposal will not be reviewed for technical merit. One copy of any such proposal will be retained for record keeping purposes for three years and all remaining copies will be destroyed. Proposers may contact ITL at 301–975–2901 to find out if funds have been exhausted for the fiscal year. ITL will also post a notice on its Web site, *http://www.itl.nist.gov,* when funds are exhausted for the fiscal year. ITL will notify proposers in writing if their proposals are not reviewed for technical merit.

Second, at least three independent, objective individuals knowledgeable about the particular measurement science area described in the section above that the proposal addresses will conduct a technical review of each proposal, based on the published evaluation criteria. Reviews will be conducted on a rolling basis as proposals are received. If non-Federal reviewers are used, the reviewers may discuss the proposals with each other, but scores will be determined on an individual basis, not as a consensus.

Third, the Division Chief, in accord with the Director of ITL, will make application selections, taking into consideration the results of the reviewers' evaluations, the availability of funds, and relevance to the objectives or research areas described in the Program Description section above.

The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice and the FFO, compliance with applicable legal and regulatory requirements, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The decisions of the Grants Officer are final.

Unsuccessful applicants will be notified in writing. The Program will retain one copy of each unsuccessful application for three years for record keeping purposes. The remaining copies will be destroyed.

Evaluation Criteria: For the *ITL Grants Program,* the evaluation criteria the technical reviewers will use in evaluating the proposals are as follows:

1. *Rationality.* Reviewers will consider the coherence of the applicant's approach and the extent to which the proposal effectively addresses scientific and technical issues.

2. *Technical Merit of Contribution.* Reviewers will consider the potential technical effectiveness of the proposal and the value it would contribute to the field of information technology research.

3. *Qualifications of Technical Personnel.* Reviewers will consider the professional accomplishments, skills, and training of the proposed personnel to perform the work in the project.

4. *Resources Availability.* Reviewers will consider the extent to which the proposer has access to the necessary facilities and overall support to accomplish project objectives. Each of these factors will be given equal weight in the evaluation process.

Cost Share Requirements: The *ITL Grants Program* does not require any cost sharing or matching funds.

NIST Center for Neutron Research (NCNR) Grants Program

Program Description: The *NIST Center for Neutron Research (NCNR) Grants Program* will provide grants and cooperative agreements for research involving neutron scattering and the development of innovative technologies that advance the state-of-the-art in neutron research. Specific information regarding program objectives can be found in the corresponding Federal Funding Opportunity to this announcement. Financial support may be provided for conferences, workshops, or other technical research meetings that are relevant to the mission of the NCNR.

All proposals submitted to the *NCNR Grants Program* must be in accordance with the program objectives. These are to create novel approaches to advance high resolution cold and thermal neutron scattering research; to develop new applications of neutron scattering to physics, chemistry, and macromolecular and materials research; and to support the development of innovative technologies relevant to neutron research, including, for example, high resolution two-dimensional neutron detectors, neutron monochromators, and neutron focusing and polarizing devices. Awards to universities to help to promote research by university students at the NIST/NSF Center for High Resolution Scattering are also funded under this program.

Dates: Applications will be considered on a continuing basis. Applications received after June 1, 2010 may be processed and considered for funding under this solicitation in the current fiscal year or in the next fiscal year, subject to the availability of funds. All applications, paper and electronic, must be received prior to the publication date in the **Federal Register** of the FY 2011 solicitation for the NIST Measurement, Science and Engineering Research Grants Programs in order to be processed under this solicitation.

Addresses: Paper applications must be submitted to: Ms. Tanya Burke, NIST Center for Neutron Research, National Institute of Standards and Technology, 100 Bureau Drive, Stop 6100, Gaithersburg, Maryland 20899–6100. Electronic applications and associated proposal information should be uploaded to *http://www.grants.gov.*

For Further Information Contact: Program questions should be addressed to Dr. Dan Neumann, NIST Center for Neutron Research, National Institute of Standards and Technology, 100 Bureau Drive, Stop 6102, Gaithersburg, Maryland 20899–6102, Tel: (301) 975–5252, E-mail: *dan.neumann@nist.gov.* Grants administration questions concerning this program should be addressed to: Christopher Hunton, NIST Grants and Agreements Management Division, (301) 975–5718; *christopher.hunton@nist.gov.* For assistance with using *http://www.grants.gov,* contact *support@grants.gov* or (800) 518–4726.

Electronic Access: Applicants are strongly encouraged to read the Federal Funding Opportunity (FFO) available at *http://www.grants.gov* for complete information about this program, all program requirements, and instructions for applying by paper or electronically. A paper copy of the FFO may be obtained by calling (301) 975–6328.

Funding Availability: In fiscal year 2009, the *NCNR Grants Program* made one award in the amount of $25,000. In fiscal year 2010, the Program anticipates funding of approximately $300,000, including new awards and continuing projects. For FY 2010 individual awards are expected to range from approximately $25,000 to $100,000 per year.

The *NCNR Grants Program* will consider proposals lasting from one to five years. When a proposal for a multi-year award is approved, funding will generally be provided for only the first year of the program. If an application is selected for funding, NIST has no obligation to provide any additional funding in connection with that award. Continuation of an award to increase funding or extend the period of performance is at the total discretion of NIST. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress, continued relevance to the mission of the *NCNR Grants Program,* and the availability of funds. The multi-year awards must have scopes of work that can be easily separated into annual increments of meaningful work that represent solid accomplishments if prospective funding is not made available to the applicant (*i.e.,* the scopes of work for each funding period must produce identifiable and meaningful results in and of themselves).

Statutory Authority: As authorized under 15 U.S.C. 272(b) and (c), the NCNR conducts a basic and applied research program directly and through grants and cooperative agreements to eligible recipients.

Eligibility: The *NCNR Grants Program* is open to institutions of higher education; hospitals; non-profit organizations; commercial organizations; State, local, and Indian Tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; and international organizations.

Review and Selection Process: Proposals submitted to the *NCNR Grants Program* will be reviewed in a two-step process. If a preliminary review determines that the proposal is incomplete or non-responsive to the scope of the stated objectives, the

proposal will not be reviewed for technical merit. One copy of any such proposal will be retained for record keeping purposes for three years and all remaining copies will be destroyed. All applications that are complete and responsive to the solicitation will be reviewed for technical merit using the following process.

First, at least three independent, objective individuals knowledgeable about the particular scientific area described in the Program Description section above that the proposal addresses will conduct a technical review of proposals, as they are received on a rolling basis, based on the evaluation criteria. If non-Federal reviewers are used, the reviewers may discuss the proposals with each other, but scores will be determined on an individual basis, not as a consensus.

Second, the Center Director will make application selections. In making application selections, the Center Director will take into consideration the results of the reviewers' evaluations, the availability of funds, and relevance to the objectives of the *NCNR Grants Program,* described in the Program Description section and the FFO. The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice and the FFO, compliance with applicable legal and regulatory requirements, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The decision of the Grants Officer is final.

Unsuccessful applicants will be notified in writing. The Program will retain one copy of each unsuccessful application for three years for record keeping purposes. The remaining copies will be destroyed.

Evaluation Criteria: The *NCNR Grants Program* evaluation criteria that the technical reviewers will use in evaluating the proposals are as follows:

1. *Rationality.* Reviewers will assess the innovation, rationality, and coherence of the applicant's approach and the extent to which the proposal effectively addresses important scientific and technical issues using neutron methods and/or the development of innovative devices for neutron research. (0 to 35 points).

2. *Qualifications of Technical Personnel.* Reviewers will consider the professional accomplishments, skills, and training of the proposed personnel to perform the work in the project. (0 to 20 points).

3. *Resources.* Reviewers will consider the extent to which the proposer has access to the necessary resources, facilities, and overall support to accomplish project objectives, and will assess the budget against the proposed work to ascertain the reasonableness of the request. (0 to 20 points).

4. *Technical Merit of Contribution.* Reviewers will consider the potential technical effectiveness of the proposal and the value it would contribute to neutron research. (0 to 25 points).

Cost Share Requirements: The *NCNR Grants Program* does not require any cost sharing or matching funds.

Center for Nanoscale Science and Technology (CNST) Grants and Cooperative Agreements Program

Program Description: The Center for Nanoscale Science and Technology (CNST) Grants and Cooperative Agreements Program will offer financial assistance in the field of nanotechnology specifically aimed at developing essential measurement and fabrication methods, standards, and technology in support of all phases of nanotechnology development, from discovery to production, conducting collaborative research with NIST scientists, including research at the CNST Nanofab, a national shared-use facility for nanofabrication and measurement; and supporting researchers visiting the CNST. Financial support may be provided for conferences, workshops, or other technical research meetings, or fellowships that are relevant to the mission of the CNST. In proposals for fellowships, applicants and team members must possess the education, experience, and training to effectively pursue and advance the proposed field of research. In some cases one or more scientific staff members, including undergraduate or graduate students, may be stationed at NIST in order to work in collaboration with NIST and other visiting scientists.

The primary program objectives of the financial assistance program in CNST are to develop new measurement and fabrication methods, instrumentation, and standards for nanotechnology; and to explore a variety of new areas of nanoscale science and technology. Broad areas of interest include post complementary metal oxide semiconductor electronics; nanofabrication and nanomanufacturing; energy transport, storage, and conversion; and bionanotechnology. Specific areas of interest include atomic-scale characterization and manipulation; scanning and transmission electron microscopy; focused ion beams; laser-atom manipulation; nanophotonic; nanoplasmonics; optical micro- and nanoelectromechanical systems (MEMS and NEMS); nanomagnetic imaging and dynamics; nanolithography; nanofabrication process development; directed self-assembly; nanoscale properties of soft matter; nanoscale stochastic processes; nanoscale control theory; nanoscale electronic and ionic transport; light-matter interaction, charge and energy transfer processes, catalytic activity, and interfacial structure in energy-related devices (including photovoltaics, thermoelectric, photoanodes, fuel cells, batteries, supercapacitors, and field emitters); nanobiosensors; nanofluidics; nanomedicine; and theory, modeling, and simulation of nanostructures. Additional objectives of this program are to assist and train CNST collaborators and NanoFab users in their research; and to conduct other outreach and educational activities that advance the development of nanotechnology by U.S. university and industrial scientists. Additional objectives of this program are to assist and train CNST collaborators and Nanofab users in their research; and to conduct other outreach and educational activities that advance the development of nanotechnology by U.S. university and industrial scientists. These objectives will entail collaborative research among the selected financial assistance recipients and CNST research staff. Specific information regarding program objectives can be found in the corresponding Federal Funding Opportunity to this announcement.

Dates: Applications will be considered on a continuing basis. Applications received after June 1, 2010 may be processed and considered for funding under this solicitation in the current fiscal year or in the next fiscal year, subject to the availability of funds. All applications, paper and electronic, must be received prior to the publication date in the **Federal Register** of the FY 2011 solicitation for the NIST Measurement, Science and Engineering Research Grants Programs in order to be processed under this solicitation.

Addresses: Paper applications must be submitted to: Donna Lauren, Center for Nanoscale Science and Technology, National Institute of Standards and Technology, 100 Bureau Drive, Stop 6200, Gaithersburg, Maryland 20899–6200. Electronic applications and associated proposal information should be uploaded to grants.gov.

For Further Information Contact: Program questions should be addressed to Donna Lauren, Center for Nanoscale Science and Technology, National Institute of Standards and Technology, 100 Bureau Drive, Stop 6200, Gaithersburg, Maryland 20899–6200. Tel (301) 975–3729, E–Mail: *donna.lauren@nist.gov.* Grants administration questions concerning this program should be addressed to: Christopher Hunton, NIST Grants and Agreements Management Division, (301) 975–5718; *christopher.hunton@nist.gov.* For assistance with using Grants.gov contact *support@grants.gov* or (800) 518–4726.

Electronic Access: Applicants are strongly encouraged to read the Federal Funding Opportunity (FFO) available at *http://www.grants.gov* for complete information about this program, all program requirements, and instructions for applying by paper or electronically. A paper copy of the FFO may be obtained by calling (301) 975–6328.

Funding Availability: In fiscal year 2009, the *CNST Grants and Cooperative Agreements Program* made no new awards. In fiscal year 2010, the *CNST Grants and Cooperative Agreements Program* anticipates funding of approximately $1,200,000, including new awards and continuing projects. For FY 2010 individual awards are expected to range from approximately $250,000 to $1,500,000 per year.

For the *Center for Nanoscale and Science and Technology Grants and Cooperative Agreements Program,* proposals will be considered for research projects from one to five years. When a proposal for a multi-year award is approved, funding will generally be provided for only the first year of the program. If an application is selected for funding, NIST has no obligation to provide any additional funding in connection with that award. Continuation of an award to increase funding or extend the period of performance is at the total discretion of NIST. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress, continued relevance to the mission of the *Center for Nanoscale Science and Technology Grants and Cooperative Agreements Program,* and the availability of funds. The multi-year awards must have scopes of work that can be easily separated into annual increments of meaningful work that represent solid accomplishments if prospective funding is not made available to the applicant (*i.e.,* the scopes of work for each funding period must produce identifiable and meaningful results in and of themselves).

Statutory Authority: .As authorized under 15 U.S.C. 272(b) and (c) and 15 U.S.C. 7501 *et seq.,* the CNST conducts a basic and applied research program directly and through grants and cooperative agreements to eligible recipients.

Eligibility: The *Center for Nanoscale Science and Technology Grants and Cooperative Agreements Program* is open to institutions of higher education; hospitals; non-profit organizations; commercial organizations; State, local, and Indian Tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; and international organizations.

Review and Selection Process: For the *Center for Nanoscale Science and Technology (CNST) Grants and Cooperative Agreements Program,* responsive proposals will be assigned, as received on a rolling basis, to the most appropriate area for review. Proposals will be reviewed on a rolling basis in a two-step process. First, the CNST Deputy Director will determine the applicability of the proposal with regard to CNST programs and the relevance of the proposal's objectives to current CNST research. If it is determined that the proposal is incomplete or nonresponsive to the scope of the stated objectives, the proposal will not be reviewed for technical merit. One copy of any such proposal will be retained for record keeping purposes for three years and all remaining copies will be destroyed. CNST will notify proposers in writing if their proposals are not reviewed for technical merit. Second, if the proposal passes the first step, at least three independent, objective individuals knowledgeable about the particular scientific area addressed by the proposal will conduct a technical review based on the evaluation criteria. If non-Federal reviewers are used, the reviewers may discuss the proposal with each other, but scores will be determined on an individual basis, not as a consensus.

The CNST Director will make application selections from the grants and cooperative agreement proposals submitted. In making the application selections, the CNST Director will take into consideration the results of the reviewers' evaluations, the availability of funds, and relevance to the objectives of the *CNST Grants and Cooperative Agreements Program.* These objectives are described above in the Program Description section.

The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice and the FFO, compliance with applicable legal and regulatory requirements, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The decision of the Grants Officer is final.

Unsuccessful applicants will be notified in writing. The Program will retain one copy of each unsuccessful application for three years for record keeping purposes. The remaining copies will be destroyed.

Evaluation Criteria: For the *Center for Nanoscale Science and Technology (CNST) Grants and Cooperative Agreements Program,* the technical reviewers will use the following evaluation criteria in evaluating the proposals:

1. *Rationality.* Reviewers will consider the coherence of the applicant's approach and the extent to which the proposal effectively addresses scientific and technical issues.

2. *Qualifications of Technical Personnel.* Reviewers will consider the professional accomplishments, skills, and training of the proposed personnel to perform the work in this project.

3. *Resources Availability.* Reviewers will consider the extent to which the proposer has access to the necessary facilities and overall support to accomplish project objectives.

4. *Technical Merit of Contribution.* Reviewers will consider the potential technical effectiveness of the proposal and the value it would contribute to the field of nanotechnology.

All factors will be weighed equally.

Cost Share Requirements: The *Center for Nanoscale Science and Technology (CNST) Grants and Cooperative Agreements Program* does not require any cost sharing or matching funds.

Technology Services (TS) Grants Program

Program Description: The Technology Services Grants Program will provide grants and cooperative agreements in the broad areas of documentary standards and legal metrology. Specific objectives of interest in these areas include: evaluation of the impact of documentary standards on U.S. competitiveness and innovation as well as on topics related to health, safety and the environment as well as support for specific standards related activities, including development of Web-based information systems. Support for legal metrology will include grants to the

States for: Purchase of specialized equipment required to conduct inspections and tests; purchase of specialized metrology laboratory equipment; purchase of software/hardware needed to collect data of inspection records/results; and conducting training schools for weights and measures field inspectors. For details on these various activities, please *see* the Technology Services Web site at *http://www.ts.nist.gov.* Financial support may be provided for conferences, workshops, or other technical research meetings that are relevant to the mission of Technology Services.

Dates: Applications will be considered on a continuing basis. Applications received after June 1, 2010 may be processed and considered for funding under this solicitation in the current fiscal year or in the next fiscal year, subject to the availability of funds. All applications, paper and electronic, must be received prior to the publication date in the **Federal Register** of the FY 2011 solicitation for the NIST Measurement, Science and Engineering Research Grants Programs in order to be processed under this solicitation.

Addresses: Paper applications must be submitted to: Deborah Anderson, Technology Services, National Institute of Standards and Technology, 100 Bureau Drive, Stop 2000, Gaithersburg, MD 20899–2000. Electronic applications and associated proposal information should be uploaded to grants.gov.

For Further Information Contact: Program questions should be addressed to Deborah Anderson, Technology Services, National Institute of Standards and Technology, 100 Bureau Drive, Stop 2000, Gaithersburg, MD 20899–2000, Tel.: (301) 975–5654, *deborah.anderson@nist.gov,* Fax: (301) 975–2183, and Web site *http://www.ts.nist.gov.* Grants administration questions concerning this program should be addressed to: Christopher Hunton, NIST Grants and Agreements Management Division, (301) 975–5718; *christopher.hunton@nist.gov.* For assistance with using Grants.gov contact *support@grants.gov* or (800) 518–4726.

Electronic Access: Applicants are strongly encouraged to read the Federal Funding Opportunity (FFO) available at *http://www.grants.gov* for complete information about this program, all program requirements, and instructions for applying by paper or electronically. A paper copy of the FFO may be obtained by calling (301) 975–6328.

Funding Availability: No funds have been set aside specifically for the *Technology Services Grants and Cooperative Agreements Program.* The availability of funds depends upon actual authorization of funds and other costs expected to be incurred by the individual divisions. The amount available each year fluctuates considerably based on programmatic needs. For FY 2010 individual awards are expected to range between $5,000 and $25,000.

For the *Technology Services Grants and Cooperative Agreements Program,* proposals will be considered for research projects with a duration of one to three years. When a proposal for a multi-year award is approved, funding will generally be provided for only the first year of the program. If an application is selected for funding, NIST has no obligation to provide any additional funding in connection with that award. Continuation of an award to increase funding or extend the period of performance is at the total discretion of NIST. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress, continued relevance to the mission of the *Technology Services Grants and Cooperative Agreements Program,* and the availability of funds. The multi-year awards must have scopes of work that can be easily separated into annual increments of meaningful work that represent solid accomplishments if prospective funding is not made available to the applicant (*i.e.,* the scopes of work for each funding period must produce identifiable and meaningful results in and of themselves).

Statutory Authority: 15 U.S.C. 272(b) and (c) and 15 U.S.C. 272a.

Eligibility: The *Technology Services Grants and Cooperative Agreements Program* is open to institutions of higher education; hospitals; non-profit organizations; commercial organizations; State, local, and Indian Tribal governments; foreign governments; organizations under the jurisdiction of foreign governments; and international organizations.

Review and Selection Process: For the *Technology Services Grants and Cooperative Agreements Program* proposals will be reviewed in a two-step process. If a preliminary review determines that the proposal is incomplete or non-responsive to the scope of the stated objectives, the proposal will not be reviewed for technical merit. One copy of any such proposal will be retained for record keeping purposes for three years and all remaining copies will be destroyed. All applications that are complete and responsive to the solicitation will be reviewed for technical merit. First, at least three independent and objective individuals knowledgeable in the particular area addressed by the proposal will conduct a technical review. Proposals are received and will be reviewed on a rolling basis based on the evaluation criteria listed in the Evaluation Criteria section below. If non-Federal reviewers are used, the reviewers may discuss the proposals with each other, but scores will be determined on an individual basis, not as a consensus. Second, the Division Chief or OU Director or OU Deputy Director will make funding recommendations, taking into consideration the results of the reviewers' evaluation, the availability of funds, and relevance to the objectives described in the Program Description section of the FFO.

The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice and the FFO, compliance with applicable legal and regulatory requirements, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The award decision of the Grants Officer is final. Applicants should allow up to 90 days processing time.

Unsuccessful applicants will be notified in writing. The Program will retain one copy of each unsuccessful application for three years for record keeping purposes. The remaining copies will be destroyed.

Evaluation Criteria: For the *Technology Services Grants and Cooperative Agreements Program,* the technical reviewers will score proposals based on the following criteria and weights:

1. Technical quality of the research. Reviewers will assess the rationality, innovation and imagination of the proposal and the fit to NIST's documentary standards and legal metrology programs. (0–35 points).

2. Potential impact of the results. Reviewers will assess the potential impact and the technical application of the results to NIST's in-house programs and the documentary standards and legal metrology communities. (0–25 points).

3. Staff and institution capability to do the work. Reviewers will evaluate the quality of the facilities and experience of the staff to assess the likelihood of achieving the objective of the proposal. (0–20 points).

4. Match of budget to proposed work. Reviewers will assess the budget against the proposed work to ascertain the reasonableness of the request. (0–20 points).

Cost Share Requirements: The *Technology Services Grants and Cooperative Agreements Program* does not require any cost sharing or matching funds.

The following information applies to all programs announced in this notice:

Initial Screening of all Applications: All applications received in response to this announcement will be reviewed to determine whether or not they are complete and responsive to the scope of the stated objectives for each program. Incomplete or non-responsive applications will not be reviewed for technical merit. The Program will retain one copy of each non-responsive application for three years for record keeping purposes. The remaining copies will be destroyed.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements, which are contained in the **Federal Register** Notice of February 11, 2008 (73 FR 7696), are applicable to this notice. On the form SF–424 items 8.b. and 8.c., the applicant's 9-digit Employer/Taxpayer Identification Number (EIN/TIN) and 9-digit Dun and Bradstreet Data Universal Numbering System (DUNS) number must be consistent with the information on the Central Contractor Registration (CCR) (*http://www.ccr.gov*) and Automated Standard Application for Payment System (ASAP). For complex organizations with multiple EIN/TIN and DUNS numbers, the EIN/TIN and DUNS numbers MUST be the numbers for the applying organization. Organizations that provide incorrect/inconsistent EIN/TIN and DUNS numbers may experience significant delays in receiving funds if their proposal is selected for funding. Please confirm that the EIN/TIN and DUNS number are consistent with the information on the CCR and ASAP.

Collaborations with NIST Employees: All applications should include a description of any work proposed to be performed by an entity other than the applicant, and the cost of such work should ordinarily be included in the budget.

If an applicant proposes collaboration with NIST, the statement of work should include a statement of this intention, a description of the collaboration, and prominently identify the NIST employee(s) involved, if known. Any collaboration by a NIST employee must be approved by appropriate NIST management and is at the sole discretion of NIST. Prior to beginning the merit review process, NIST will verify the approval of the proposed collaboration. Any unapproved collaboration will be stricken from the proposal prior to the merit review.

Use of NIST Intellectual Property: If the applicant anticipates using any NIST-owned intellectual property to carry out the work proposed, the applicant should identify such intellectual property. This information will be used to ensure that no NIST employee involved in the development of the intellectual property will participate in the review process for that competition. In addition, if the applicant intends to use NIST-owned intellectual property, the applicant must comply with all statutes and regulations governing the licensing of Federal government patents and inventions, described at 35 U.S.C. 200–212, 37 CFR part 401, 15 CFR 14.36, and in section B.21 of the Department of Commerce Pre-Award Notification Requirements 73 FR 7696 (Feb. 11, 2008). Questions about these requirements may be directed to the Chief Counsel for NIST, 301–975–2803.

Any use of NIST-owned intellectual property by a proposer is at the sole discretion of NIST and will be negotiated on a case-by-case basis if a project is deemed meritorious. The applicant should indicate within the statement of work whether it already has a license to use such intellectual property or whether it intends to seek one.

If any inventions made in whole or in part by a NIST employee arise in the course of an award made pursuant to this notice, the United States government may retain its ownership rights in any such invention. Licensing or other disposition of NIST's rights in such inventions will be determined solely by NIST, and include the possibility of NIST putting the intellectual property into the public domain.

Collaborations Making Use of Federal Facilities: All applications should include a description of any work proposed to be performed using Federal Facilities. If an applicant proposes use of NIST facilities, the statement of work should include a statement of this intention and a description of the facilities. Any use of NIST facilities must be approved by appropriate NIST management and is at the sole discretion of NIST. Prior to beginning the merit review process, NIST will verify the availability of the facilities and approval of the proposed usage. Any unapproved facility use will be stricken from the proposal prior to the merit review. Examples of some facilities that may be available for collaborations are listed on the NIST Technology Services Web site, *http://ts.nist.gov/*.

Paperwork Reduction Act: The standard forms in the application kit involve a collection of information subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 have been approved by the Office of Management and Budget (OMB) under the respective Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

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 Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Research Projects Involving Human Subjects, Human Tissue, Data or Recordings Involving Human Subjects: Any proposal that includes research involving human subjects, human tissue, data or recordings involving human subjects must meet the requirements of the Common Rule for the Protection of Human Subjects, codified for the Department of Commerce at 15 CFR part 27. In addition, any proposal that includes research on these topics must be in compliance with any statutory requirements imposed upon the Department of Health and Human Services (DHHS) and other Federal agencies regarding these topics, all regulatory policies and guidance adopted by DHHS, the Food and Drug Administration, and other Federal agencies on these topics, and all Presidential statements of policy on these topics.

NIST will accept the submission of human subjects protocols that have been approved by Institutional Review Boards (IRBs) possessing a current registration filed with DHHS and to be performed by institutions possessing a current registration filed with DHHS and to be performed by institutions possessing a current, valid Federal-wide Assurance (FWA) from DHHS. NIST will not issue a single project assurance (SPA) for any IRB reviewing any human subjects protocol proposed to NIST.

President Obama has issued Executive Order No. 13,505 (74 FR. 10667, March 9, 2009), revoking previous Executive

Orders and Presidential statements regarding the use of human embryonic stem cells in research. On July 30, 2009, President Obama issued a memorandum directing that agencies that support and conduct stem cell research adopt the ''National Institutes of Health Guidelines for Human Stem Cell Research'' (NIH Guidelines), which became effective on July 7, 2009, ''to the fullest extent practicable in light of legal authorities and obligations.'' On September 21, 2009, the Department of Commerce submitted to the Office of Management and Budget a statement of compliance with the NIH Guidelines. In accordance with the President's memorandum, the NIH Guidelines, and the Department of Commerce statement of compliance, NIST will support and conduct research using only human embryonic stem cell lines that have been approved by NIH in accordance with the NIH Guidelines and will review such research in accordance with the Common Rule and NIST implementing procedures, as appropriate. NIST will not support or conduct any type of research that the NIH Guidelines prohibit NIH from funding. NIST will follow any additional polices or guidance issued by the current Administration on this topic.

Research Projects Involving Vertebrate Animals: Any proposal that includes research involving vertebrate animals must be in compliance with the National Research Council's ''Guide for the Care and Use of Laboratory Animals'' which can be obtained from National Academy Press, 2101 Constitution Avenue, NW., Washington, DC 20055. In addition, such proposals must meet the requirements of the Animal Welfare Act (7 U.S.C. 2131 *et seq.*), 9 CFR parts 1, 2, and 3, and if appropriate, 21 CFR part 58. These regulations do not apply to proposed research using pre-existing images of animals or to research plans that do not include live animals that are being cared for, euthanized, or used by the project participants to accomplish research goals, teaching, or testing. These regulations also do not apply to obtaining animal materials from commercial processors of animal products or to animal cell lines or tissues from tissue banks.

Limitation of Liability: Funding for the programs listed in this notice is contingent upon the availability of Fiscal Year 2010 appropriations. NIST issues this notice subject to the appropriations made available under the current continuing resolution, H.R. 2918, ''Continuing Appropriations Resolution, 2010,'' Public Law 111–68, as amended by H.R. 2996, ''Further Continuing Appropriations, 2010,'' Public Law 111–88. NIST anticipates making awards for the programs listed in this notice provided that funding for the programs is continued beyond December 18, 2009, the expiration of the current continuing resolution. In no event will NIST or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of agency priorities. Publication of this announcement does not oblige NIST or the Department of Commerce to award any specific project or to obligate any available funds.

Additional Consideration of Applications: NIST programs are often cross-cutting and multi-disciplinary. If a NIST program official believes an application that is not selected for funding may be of interest to another NIST program(s), the official may forward the application to any other NIST program(s) that the program official believes may have an interest in the project, for potential consideration under the other NIST program(s) procedures. If, upon initial screening, the other NIST program(s) finds the application may be of programmatic interest, the application will proceed through the review and selection procedures described in this Notice for the program(s). If not, the application will be returned to the original program for final processing. Any applicant that does not wish for its application to be considered by other NIST programs should indicate on its application that it would like consideration of the project to be limited to the program to which it originally submitted the application. Applicants will be notified if their applications have been forwarded to another NIST program(s) for potential consideration.

Executive Order 12866: This funding notice was determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Executive Order 12372: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Administrative Procedure Act/ Regulatory Flexibility Act: Notice and comment are not required under the Administrative Procedure Act (5 U.S.C. 553) or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553 (a)). Because notice and comment are not required under 5 U.S.C. 553, or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

Dated: December 10, 2009.

Jason Boehm,

Acting Director, NIST Program Office.

[FR Doc. E9–29825 Filed 12–14–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number 0911121400–91403–01]

Summer Undergraduate Research Fellowships (SURF) NIST Gaithersburg and Boulder Programs; Availability of Funds

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the following programs are soliciting applications for financial assistance for FY 2010: (1) The NIST Gaithersburg Summer Undergraduate Research Fellowship Programs, and (2) the NIST Boulder Summer Undergraduate Research Fellowship Programs. Each program will only consider applications that are within the scientific scope of the program as described in this notice and in the detailed program descriptions found in the Federal Funding Opportunity (FFO) announcement for these programs.

DATES: *See* below.

ADDRESSES: *See* below.

SUPPLEMENTARY INFORMATION:

Catalog of Federal Domestic Assistance Name and Number: Measurement and Engineering Research and Standards—11.609.

Summer Undergraduate Research Fellowships (SURF) NIST Gaithersburg and Boulder Programs

Program Description: The SURF NIST Gaithersburg Programs are soliciting applications in the areas of Electronics and Electrical Engineering, Manufacturing Engineering, Nanoscale Science and Technology, Chemical Science and Technology, Physics, Materials Science and Engineering/ Neutron Research, Building and Fire Research, and Information Technology as described in the Federal Funding Opportunity.

The *SURF NIST Boulder Programs* are soliciting applications in the areas of Electronics and Electrical Engineering, Chemical Science and Technology, Physics, Materials Science and Engineering, and Information Technology as described in the Federal Funding Opportunity.

Applications for the Gaithersburg and Boulder programs are separate. Application to one program does not constitute application to the other, and applications will not be exchanged between the Gaithersburg and Boulder programs. If applicants wish to be considered at both sites, two separate applications must be submitted.

Both SURF programs provide an opportunity for the NIST laboratories and the National Science Foundation (NSF) to join in a partnership to encourage outstanding undergraduate students to pursue careers in science and engineering. The programs provide research opportunities for students to work with internationally known NIST scientists, to expose them to cutting-edge research and promote the pursuit of graduate degrees in science and engineering.

The *SURF NIST Gaithersburg and Boulder Program* Directors will work with appropriate department chairs, outreach coordinators, and directors of multi-disciplinary academic organizations to identify outstanding undergraduates (including graduating seniors) who would benefit from off-campus summer research in a world-class scientific environment.

The objective of the SURF programs is to build a mutually beneficial relationship among the student, the institution, and NIST. NIST is one of the nation's premiere research institutions for the physical and engineering sciences and, as the lead Federal agency for technology transfer, it provides a strong interface between government, industry and academia. NIST's mission is to promote U.S. innovation and industrial competitiveness by advancing measurement science, standards, and technology in ways that enhance economic security and improve our quality of life. NIST embodies a science culture, developed from a large and well-equipped research staff that enthusiastically blends programs that address the immediate needs of industry with longer-term research that anticipates future needs. This occurs in few other places and enables the Electronics and Electrical Engineering Lab (EEEL), Manufacturing Engineering Lab (MEL), Center for Nanoscale Science and Technology (CNST), Chemical Science and Technology Lab (CSTL), Physics Lab (PL), Materials Science and Engineering Lab (MSEL)/ NIST Center for Neutron Research (NCNR), Building and Fire Research Lab (BFRL), and Information Technology Lab (ITL) to offer unique research and training opportunities for undergraduates, providing them a research-rich environment and exposure to state of the art equipment.

EEEL, MEL, CNST, CSTL, PL, MSEL/ NCNR, BFRL, and ITL SURF NIST Gaithersburg Programs

DATES: All *SURF NIST Gaithersburg Program* applications, paper and electronic, must be received no later than 5 p.m. Eastern Standard Time on February 16, 2010.

ADDRESSES: For all *SURF NIST Gaithersburg Programs,* paper applications must be submitted to: Ms. Anita Sweigert, Administrative Coordinator, SURF NIST Gaithersburg Programs, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8400, Gaithersburg, MD 20899–8400.

FOR FURTHER INFORMATION CONTACT: Program questions should be addressed to Ms. Anita Sweigert, Administrative Coordinator, SURF NIST Gaithersburg Programs, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8400, Gaithersburg, MD 20899–8400, *Tel:* (301) 975–4200, E-mail: *anita.sweigert@nist.gov*. The *SURF NIST Gaithersburg Program* Web site is: *http://www.surf.nist.gov/surf2.htm*. All grants related administration questions concerning this program should be directed to Hope Snowden, NIST Grants and Agreements Management Division at (301) 975–6002 or *hope.snowden@nist.gov*, or for assistance with using Grants.gov contact *support@grants.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access: NIST strongly encourages all applicants to read the Federal Funding Opportunity Notice (FFO) available at *http://www.grants.gov* for complete information about this program and its requirements, and instructions for applying by paper or electronically. A paper copy of the FFO may be obtained by calling (301) 975–6328. The Gaithersburg and Boulder SURF programs will publish separate FFOs on *http://www.grants.gov*.

Funding Availability: Funds budgeted for payments to students under these programs are stipends, not salary. The stipend is an amount that is expected to be provided to the participating student to help defray the cost of living, for the duration of the program, in the Washington National Capital Region. The *SURF NIST Gaithersburg Programs* will not authorize funds for indirect costs or fringe benefits. The table below summarizes the anticipated annual funding levels from the NSF to operate our REU (Research Experience for Undergraduates) programs, subject to program renewals and availability of funds. In some programs, anticipated NIST co-funding will supplement the number of awards supported. Program funding will be available to provide for the costs of stipends ($409.09 per week per student), travel, and lodging (up to $3,400 per student).

Program	Anticipated NSF funding	Anticipated NIST funding	Total program funding	Anticipated No. of awards
EEEL	$72,960	$40,000	$112,960	~13
MEL	87,000	0	87,000	~10
CNST	47,400	0	47,400	~6
CSTL	0	105,000	105,000	~13
PL	116,000	65,000	181,000	~22
MSEL/NCNR	130,000	0	130,000	~16
BFRL	81,000	0	81,000	~9
ITL	0	40,000	40,000	~5

The actual number of awards made under this announcement will depend on the proposed budgets and the availability of funding. For all *SURF NIST Gaithersburg Programs* described in this notice, it is expected that awards to institutions will range from approximately $3,000 to $70,000. Funding for student housing will be included in cooperative agreements awarded as a result of this notice.

The *SURF NIST Gaithersburg Program* is anticipated to run from May 24, 2010 through August 6, 2010; adjustments may be made to accommodate specific academic schedules (e.g., a limited number of 9-week cooperative agreements may be shifted in order to accommodate institutions operating on quarter systems).

Statutory Authority: The authority for the *SURF NIST Gaithersburg Program* is 15 U.S.C. 278g–l, which authorizes NIST to fund financial assistance awards to students at institutions of higher learning within the United States who show promise as present or future contributors to the mission of the Institute.

Eligibility: NIST's *SURF Gaithersburg Programs* are open to colleges and universities in the United States and its territories with degree granting programs in materials science, chemistry, nanoscale science, neutron research, engineering, computer science, mathematics, or physics. Participating students must be U.S. citizens or permanent U.S. residents.

Cost Sharing or Matching: The *SURF NIST Gaithersburg Programs* do not require any cost sharing or matching funds.

Review and Selection Process: All *SURF NIST Gaithersburg Program* proposals must be submitted to the Administrative Coordinator listed in the **ADDRESSES** section above. Each proposal is examined for completeness and responsiveness. Incomplete or non-responsive proposals will not be considered for funding, and the applicant will be notified in writing. The Program will retain one copy of each non-responsive application for three years for record keeping purposes. The remaining copies will be destroyed. Proposals should include the required forms listed in the FFO. Proposals must also include the following information:

(A) Student Information (student's name and university should appear on all of these documents):

(1) Student application information cover sheet;

(2) Academic transcript for each student nominated for participation (it is recommended that students have a G.P.A. of 3.0 or better, out of a possible 4.0);

(3) A statement of motivation and commitment from each student to participate in the 2010 SURF program, including a description of the student's prioritized research interests;

(4) A resume for each student;

(5) Two letters of recommendation for each student that should address paragraph (A) of the evaluation criteria below; and

(6) Copy of passport, green card, or birth certificate as confirmation of U.S. citizenship or permanent legal resident status for each student.

(B) Information About the Applicant Institution:

(1) Description of the institution's education and research programs; and

(2) A summary list of the student(s) being nominated.

Institution proposals will be separated into student/institution packets. Each student/institution packet will be comprised of the required application forms, including a complete copy of the student information and a complete copy of the institution information. The student/institution packets will be directed to the *SURF NIST Gaithersburg Program* designated by the student as his/her first choice.

The selection process occurs in three rounds. Each *SURF NIST Gaithersburg Program* will have three independent, objective NIST employees, who are knowledgeable in the scientific areas of the program, conduct a technical review of each student/institution packet based on the Evaluation Criteria for the *SURF NIST Gaithersburg Programs* described in this notice. For the first round of evaluations and placement, each technical reviewer will evaluate according to the Evaluation Criteria listed below and provide a score for each student/institution packet. Based on the average of the reviewers' scores, a rank order of the student/institution packets will be prepared within each laboratory.

The SURF Program Director (Selecting Official) for each laboratory, who is a NIST program official who did not participate in the technical evaluations, will then apply the following Selection Factors, which may result in revisions to the rank order: relevance of the student's course of study to the program objectives of the NIST laboratory in which that *SURF NIST Gaithersburg Program* resides as described in the Program Description section of this notice and the corresponding Federal Funding Opportunity, the relevance of the student's statement of commitment to the goals of the *SURF NIST Gaithersburg Program,* fit of the student's interests and abilities to the available projects in that laboratory program, compatibility of the student with the research environment in that laboratory, assessment of whether the laboratory experience is a new opportunity for the student which may encourage future postgraduate training, and the availability of funding.

Based on these results, the Program Director (Selecting Official) for each laboratory will divide the rank ordered student/institution packets into three categories: Priority Funding; Fund if Possible; and Do Not Fund. Student/institution packets placed in the Priority Funding category will be selected for funding in that *SURF NIST Gaithersburg Program,* contingent upon availability of funds. Student/institution packets placed in the Do Not Fund category will not be considered for funding by any other NIST laboratory.

Student/institution packets placed in the Fund if Possible Category may be considered for funding at a later time by the category-designating SURF Program (The ''category-designating'' program is that Laboratory Program whose Program Director first categorized the applicant packet as ''Priority Funding'', ''Fund if Possible'', or ''Do Not Fund.'' This is the same Laboratory Program which was designated by the student in the application cover sheet as his/her first choice); in the interim period these students will be released for consideration for funding by the *SURF NIST Gaithersburg Program* designated by the student as his/her second choice. The student's second choice laboratory's SURF Program Director will take into consideration the recommendations of the reviewers who conducted the technical reviews for the student's first choice *SURF NIST Gaithersburg Program,* apply the selection factors noted above as applied to that laboratory and arrive at a final rank order of the students available for the second round of selections and placements. Any *SURF NIST Gaithersburg Program* may choose not to participate in the second round, if the Program Director does not see suitable students in the second round appropriate for the available projects. Students not selected during the first or second round are available for the third round of selections.

Students not selected for funding by their first or second choice *SURF NIST Gaithersburg Program,* and students who did not designate a second choice, will then be considered for funding from all *SURF NIST Gaithersburg Programs* that still have slots available in a third round, conducted using the same process as the second round. In making selections for the third round of selections and placement, each *SURF NIST Gaithersburg Program* Director (Selecting Official) will take into consideration the recommendations of the reviewers who conducted the technical reviews for the student's first choice *SURF NIST Gaithersburg Program,* the selection factors noted

above as applied to that laboratory and rank order the students in this selection round. Any *SURF NIST Gaithersburg Program* may choose not to participate in the third round if there are no slots available. Substitutions for students who decline offers will be made from the remaining pool of ranked students consistent with the program review process.

The final approval of selected applications and award of cooperative agreements will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice and other applicable legal and regulatory requirements. NIST also reserves the right to reject an application where information is uncovered that reflects adversely on an applicant's business integrity, resulting in a determination by the Grants Officer that an applicant is not presently responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The decision of the Grants Officer is final.

The *SURF NIST Gaithersburg Programs* will retain one copy of each unsuccessful application for three years for record keeping purposes, and unsuccessful applicants will be notified in writing. The remaining copies will be destroyed.

Evaluation Criteria: For the *SURF NIST Gaithersburg Programs,* the evaluation criteria are:

(A) Evaluation of Student's Interest in Participating in the Program, Academic Ability, Laboratory Experience and Advanced Degree Interest: Evaluation of completed course work, English proficiency, writing proficiency, safety consciousness, research skills, social skills, leadership potential, innovativeness, independence, honesty, grade point average in courses relevant to the *SURF NIST Gaithersburg Programs,* career goals, honors and awards, commitment of the student to working in a laboratory environment, and interest in pursuing graduate school.

(B) Institution's Commitment to Program Goals: Evaluation of the institution's academic department(s) relevant to the discipline(s) of the student(s).

Each of these factors is given equal weight in the evaluation process.

SURF NIST Boulder Programs

DATES: All *SURF NIST Boulder Program* applications, paper and electronic, must be received no later than 5 p.m. Mountain Standard Time on February 16, 2010.

ADDRESSES: Paper applications for the *SURF NIST Boulder Program* must be submitted to: Ms. Cynthia Kotary, Administrative Coordinator, SURF NIST Boulder Programs, National Institute of Standards and Technology, 325 Broadway, Mail Stop 104, Boulder, CO 80305–3337.

FOR FURTHER INFORMATION CONTACT: Program questions should be addressed to Ms. Cynthia Kotary, Administrative Coordinator, SURF NIST Boulder Programs, National Institute of Standards and Technology, 325 Broadway, Mail Stop 104, Boulder, CO 80305–3337, Tel: (303) 497–3319, E-mail: *kotary@boulder.nist.gov*; Web site: *http://www.nist.gov/surfboulder/*. All grants related administration questions concerning this program should be directed to Hope Snowden, NIST Grants and Agreements Management Division at (301) 975–6002, or *hope.snowden@nist.gov* or for assistance with using Grants.gov contact *support@grants.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access: NIST strongly encourages all applicants to read the Federal Funding Opportunity Notice (FFO) available at *http://www.grants.gov* for complete information about this program and its requirements, and instructions for applying by paper or electronically. A paper copy of the FFO may be obtained by calling (301) 975–6328. The Gaithersburg and Boulder SURF programs will publish separate FFOs on *http://www.grants.gov*.

Funding Availability: Funds budgeted for payments to students under this program are stipends, not salaries. The *SURF NIST Boulder Programs* will not authorize funds for indirect costs or fringe benefits. The stipend of $8000 includes a fellowship of $4500 plus $3500 for all expenses associated with travel and subsistence. Once they receive their awards, college and university grant recipients are expected to provide the full stipend to participating students in one lump sum before May 24, 2009, the start of the *SURF NIST Boulder Programs.* NIST will disburse funds to college and university awardees via the Automated Standard Application for Payments (ASAP) system.

The table below summarizes the anticipated funding from NSF and NIST to operate the *SURF NIST Boulder Programs,* broken out by Laboratory, subject to program approval and availability of NIST and/or NSF funding.

Laboratory	Anticipated NSF funding	Anticipated NIST funding	Total program funding	Anticipated number of awards
EEEL	$40,000	$40,000	$80,000	10
PL	20,000	20,000	40,000	5
CSTL	8,000	8,000	16,000	2
MSEL	16,000	16,000	32,000	4
ITL	4,000	4,000	8,000	1

The actual number of awards made under this announcement will depend on the proposed budgets and the availability of funding. For the *SURF NIST Boulder Programs* described in this notice, it is expected that awards to institutions will total $8000 multiplied by the number of participating students from that institution.

The *SURF NIST Boulder Programs* are anticipated to run from May 24, 2010 through August 6, 2010; adjustments may be made to accommodate specific academic schedules (e.g., some 11-week cooperative agreements may be shifted in order to accommodate institutions operating on quarter systems).

Statutory Authority: The authority for the *SURF NIST Boulder Program* is 15 U.S.C. 278g–l, which authorizes NIST to fund financial assistance awards to students at institutions of higher learning within the United States who show promise as present or future contributors to the mission of the Institute.

Eligibility: The *SURF NIST Boulder Programs* are open to colleges and universities in the United States and its territories with degree granting programs in materials science, chemistry, engineering, computer science, mathematics, or physics. Participating students must be U.S. citizens or permanent U.S. residents. The *SURF NIST Boulder Programs* focus

on undergraduate fellows. Graduating seniors are eligible to participate but the likelihood of funds for their possible participation is extremely limited. Up to approximately three such participants might be considered if funds become available. If so, NIST will give priority to previous SURF participants.

Cost Sharing or Matching: The *SURF NIST Boulder Program* does not require any cost sharing or matching funds.

Review and Selection Process: All *SURF NIST Boulder Programs* proposals must be submitted to the Administrative Coordinator listed in the Addresses section above. Proposals should include the required forms listed in the FFO. Proposals must also include the following information:

(A) Student Information (student's name and university should appear on all of these documents):

(1) Student application information cover sheet;

(2) Academic transcript for each student nominated for participation (it is recommended that students have a G.P.A. of 3.0 or better, out of a possible 4.0);

(3) A statement of motivation and commitment from each student to participate in the *SURF NIST Boulder Program,* including a description of the student's prioritized research interests;

(4) A resume for each student;

(5) Two letters of recommendation for each student; and

(6) Confirmation of U.S. citizenship or permanent legal resident status for each student (copy of passport, green card, or birth certificate).

(B) Information About the Applicant Institution:

(1) Description of the institution's education and research programs; and

(2) A summary list of the student(s) being nominated, with one paragraph of commentary about each student from a dean or department chair that describes why the students would be successful in the SURF program.

Institution proposals will be separated into student/institution packets. Each student/institution packet will be comprised of the required application forms, including a complete copy of the student information and a complete copy of the institution information. The student/institution packets will be directed to a review committee of NIST staff appointed by the SURF NIST Boulder Directors.

First, all applications received in response to this announcement will be reviewed to determine whether or not they are complete and responsive to the scope of the stated program objectives. Incomplete or non-responsive proposals will not be reviewed for technical merit, and the applicant will be so notified. The Program will retain one copy of each non-responsive application for three years for record keeping purposes.

Second, each SURF student/university packet will be reviewed by at least three independent, objective NIST employees, who are knowledgeable in the scientific areas of the program and are able to conduct a technical review of each student/university packet based on the Evaluation Criteria described in this notice. The normalized scores based on this merit review will be averaged for each student/institution applicant packet, creating a rank order. The Selecting Official, the Acting Director of NIST Electronics and Electrical Engineering Laboratory, shall award in the rank order unless a proposal is justified to be selected out of rank order based upon one or more of the following factors: availability of funding, and balance or distribution of funds by research or technical disciplines.

The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The decisions of the Grants Officer are final.

Unsuccessful applicants will be notified in writing. The Programs will retain one copy of each unsuccessful application for three years for record keeping purposes.

Evaluation Criteria: For the *SURF NIST Boulder Programs* the evaluation criteria are as follows:

(A) Evaluation of Student's Academic Ability and Commitment to Program Goals (80%): Includes evaluation of completed course work; expressed research interest; compatibility of the expressed research interest with SURF NIST Boulder research areas; research skills; grade point average in courses relevant to the *SURF NIST Boulder Program;* career goals; honors and activities;

(B) Evaluation of Applicant Institution's Commitment to Program Goals (20%): Includes evaluation of the institution's academic department(s) relevant to the discipline(s) of the student(s).

The following information applies to all programs announced in this notice:

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements, which are contained in the **Federal Register** Notice of February 11, 2008 (73 FR 7696) are applicable to this notice. On the form SF–424 items 8.b. and 8.c., the applicant's 9-digit Employer/Taxpayer Identification Number (EIN/TIN) and 9-digit Dun and Bradstreet Data Universal Numbering System (DUNS) number must be consistent with the information on the Central Contractor Registration (CCR) (*http://www.ccr.gov*) and Automated Standards Application for Payment System (ASAP). For complex organizations with multiple EIN/TIN and DUNS numbers, the EIN/TIN and DUNS numbers MUST be the numbers for the applying organization. Organizations that provide incorrect/inconsistent EIN/TIN and DUNS numbers may experience significant delays in receiving funds if their proposal is selected for funding. Please confirm that the EIN/TIN and DUNS number are consistent with the information on the CCR and ASAP.

Use of NIST Intellectual Property: If the applicant anticipates using any NIST-owned intellectual property to carry out the work proposed, the applicant should identify such intellectual property. This information will be used to ensure that no NIST employee involved in the development of the intellectual property will participate in the review process for that competition. In addition, if the applicant intends to use NIST-owned intellectual property, the applicant must comply with all statutes and regulations governing the licensing of Federal government patents and inventions, described at 35 U.S.C. 200–212, 37 CFR part 401, 15 CFR 14.36, and in section B.21 of the Department of Commerce Pre-Award Notification Requirements, 73 FR 7696 (February 11, 2008). Questions about these requirements may be directed to the Chief Counsel for NIST, 301–975–2803.

Any use of NIST-owned intellectual property by a proposer is at the sole discretion of NIST and will be negotiated on a case-by-case basis if a project is deemed meritorious. The applicant should indicate within the statement of work whether it already has a license to use such intellectual property or whether it intends to seek one.

If any inventions made in whole or in part by a NIST employee arise in the course of an award made pursuant to this notice, the United States government may retain its ownership rights in any such invention. Licensing

or other disposition of NIST's rights in such inventions will be determined solely by NIST, and include the possibility of NIST putting the intellectual property into the public domain.

Initial Screening of all Applications: All applications received in response to this announcement will be reviewed to determine whether or not they are complete and responsive to the scope of the stated objectives for each program. Incomplete or non-responsive applications will not be reviewed for technical merit. The Program will retain one copy of each non-responsive application for three years for record keeping purposes. The remaining copies will be destroyed.

Paperwork Reduction Act: The standard forms in the application kit involve a collection of information subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF–LLL, CD–346, and SURF Program Student Applicant Information have been approved by the Office of Management and Budget (OMB) under the respective Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, 0605–0001, and 0693–0042. 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 Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Research Projects Involving Human Subjects, Human Tissue, Data or Recordings Involving Human Subjects: Any proposal that includes research involving human subjects, human tissue, data or recordings involving human subjects must meet the requirements of the Common Rule for the Protection of Human Subjects, codified for the Department of Commerce at 15 CFR part 27. In addition, any proposal that includes research on these topics must be in compliance with any statutory requirements imposed upon the Department of Health and Human Services (DHHS) and other Federal agencies regarding these topics, all regulatory policies and guidance adopted by DHHS, the Food and Drug Administration, and other Federal agencies on these topics, and all Presidential statements of policy on these topics.

NIST will accept the submission of human subjects protocols that have been approved by Institutional Review Boards (IRBs) possessing a current registration filed with DHHS and to be performed by entities possessing a current, valid Federal-wide Assurance (FWA) from DHHS. NIST will not issue a single project assurance (SPA) for any IRB reviewing any human subjects protocol proposed to NIST.

President Obama has issued Executive Order No. 13,505 (74 FR 10667, March 9, 2009), revoking previous Executive Orders and Presidential statements regarding the use of human embryonic stem cells in research. On July 30, 2009, President Obama issued a memorandum directing that agencies that support and conduct stem cell research adopt the ''National Institutes of Health Guidelines for Human Stem Cell Research'' (NIH Guidelines), which became effective on July 7, 2009, ''to the fullest extent practicable in light of legal authorities and obligations.'' On September 21, 2009, the Department of Commerce submitted to the Office of Management and Budget a statement of compliance with the NIH Guidelines. In accordance with the President's memorandum, the NIH Guidelines, and the Department of Commerce statement of compliance, NIST will support and conduct research using only human embryonic stem cell lines that have been approved by NIH in accordance with the NIH Guidelines and will review such research in accordance with the Common Rule and NIST implementing procedures, as appropriate. NIST will not support or conduct any type of research that the NIH Guidelines prohibit NIH from funding. NIST will follow any additional polices or guidance issued by the current Administration on this topic.

Research Projects Involving Vertebrate Animals: Any proposal that includes research involving vertebrate animals must be in compliance with the National Research Council's ''Guide for the Care and Use of Laboratory Animals'' which can be obtained from National Academy Press, 2101 Constitution Avenue, NW., Washington, DC 20055. In addition, such proposals must meet the requirements of the Animal Welfare Act (7 U.S.C. 2131 *et seq.*), 9 CFR parts 1, 2, and 3, and if appropriate, 21 CFR part 58. These regulations do not apply to proposed research using pre-existing images of animals or to research plans that do not include live animals that are being cared for, euthanized, or used by the project participants to accomplish research goals, teaching, or testing. These regulations also do not apply to obtaining animal materials from commercial processors of animal products or to animal cell lines or tissues from tissue banks.

Limitation of Liability: Funding for the programs listed in this notice is contingent upon the availability of Fiscal Year 2010 appropriations. NIST issues this notice subject to the appropriations made available under the current continuing resolution, H.R. 2918, ''Continuing Appropriations Resolution, 2010,'' Public Law 111–68, as amended by H.R. 2996, ''Further Continuing Appropriations, 2010,'' Public Law 111–88. NIST anticipates making awards for the programs listed in this notice provided that funding for the programs is continued beyond December 18, 2009, the expiration of the current continuing resolution. In no event will NIST or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of agency priorities. Publication of this announcement does not oblige NIST or the Department of Commerce to award any specific project or to obligate any available funds.

Executive Order 12866: This funding notice was determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Executive Order 12372: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Administrative Procedure Act/ Regulatory Flexibility Act: Notice and comment are not required under the Administrative Procedure Act (5 U.S.C. 553) or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)). Because notice and comment are not required under 5 U.S.C. 553, or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

Dated: December 10, 2009.

Jason Boehm,

Acting Director, NIST Program Office.

[FR Doc. E9–29823 Filed 12–14–09; 8:45 am]

BILLING CODE 3510–13–P

COORDINATING COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION

[OJP (OJJDP) Docket No. 1511]

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

AGENCY: Coordinating Council on Juvenile Justice and Delinquency Prevention.

ACTION: Notice of meeting.

SUMMARY: The Coordinating Council on Juvenile Justice and Delinquency Prevention (Council) announces its January 2010 meeting.

DATES: Monday, January 25, 2010 from 3:15 to 4 p.m.

ADDRESSES: The meeting will take place in the third floor main conference room at the U.S. Department of Justice, Office of Justice Programs, 810 7th St., NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Visit the Web site for the Coordinating Council at *http://www.juvenilecouncil.gov* or contact Robin Delany-Shabazz, Designated Federal Official, by telephone at 202–307–9963 [**Note:** this is not a toll-free telephone number], or by e-mail at *Robin.Delany-Shabazz@usdoj.gov.* The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The Coordinating Council on Juvenile Justice and Delinquency Prevention, established pursuant to Section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App. 2) will meet to carry out its advisory functions under Section 206 of the Juvenile Justice and Delinquency Prevention Act of 2002, 42 U.S.C. 5601, *et seq.* Documents such as meeting announcements, agendas, minutes, and reports will be available on the Council's Web page, *http://www.JuvenileCouncil.gov.,* where you may also obtain information on the meeting.

Although designated agency representatives may attend, the Council membership is composed of the Attorney General (Chair), the Administrator of the Office of Juvenile Justice and Delinquency Prevention (Vice Chair), the Secretary of Health and Human Services (HHS), the Secretary of Labor, the Secretary of Education, the Secretary of Housing and Urban Development, the Director of the Office of National Drug Control Policy, the Chief Executive Officer of the Corporation for National and Community Service, and the Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement. Up to nine additional members are appointed by the Speaker of the House of Representatives, the Senate Majority Leader, and the President of the United States. Other federal agencies take part in Council activities including the Departments of Defense, the Interior, and Agriculture and the Substance and Mental Health Services Administration of HHS.

Meeting Agenda

The agenda for this meeting will include: (a) Remarks from the Attorney General, Council Chair; (b) report out of discussion of the Council's Executive and Operations Committees on work process and identification of Council priorities for 2010; (c) discussion and voting on priorities; and (d) summary of next steps.

Registration

For security purposes, members of the public who wish to attend the meeting must pre-register online at *http://www.juvenilecouncil.gov* no later than Tuesday, January 19, 2010. Should problems arise with Web registration, call Daryel Dunston at 240–221–4343 or send a request to register for the January 25, 2010 Council meeting to Mr. Dunston. Include name, title, organization or other affiliation, full address and phone, fax and e-mail information and send to his attention either by fax to 301–945–4295, or by e-mail to *ddunston@edjassociates.com.* [**Note:** these are not toll-free telephone numbers.] Additional identification documents may be required. Space is limited.

Note: Photo identification will be required for admission to the meeting.

Written Comments

Interested parties may submit written comments and questions by Tuesday, January 19, 2010, to Robin Delany-Shabazz, Designated Federal Official for the Coordinating Council on Juvenile Justice and Delinquency Prevention, at *Robin.Delany-Shabazz@usdoj.gov.* The Coordinating Council on Juvenile Justice and Delinquency Prevention expects that the public statements presented will not repeat previously submitted statements.

Jeff Slowikowski,

Acting Administrator.

[FR Doc. E9–29813 Filed 12–14–09; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Regents of the Uniformed Services University of the Health Sciences

AGENCY: Department of Defense (DoD).

ACTION: Federal advisory committee charter modification.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.65, the Department of Defense gives notice that it is amending the charter for the Board of Regents of the Uniformed Services University of the Health Sciences (hereafter referred to as the Board of Regents).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Committee Management Officer, 703–601–6128.

SUPPLEMENTARY INFORMATION: The Board of Regents charter is being modified as a result of the Fiscal Year 2010 National Defense Authorization Act. Specifically, the Act amends the membership criteria in 10 U.S.C. 2113a(b)(1) from people with qualifications in ''health and health education'' to ''health care, higher education administration, or public policy.''

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Board of Regents, Uniformed Services University of the Health Sciences about its mission and functions. Written statements should be submitted to the advisory committee's Designated Federal Officer for consideration by the membership of the Board of Regents. The advisory committee's Designated Federal Officer contact information can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Board of Regents, Uniformed Services University of the Health Sciences. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: December 10, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–29784 Filed 12–14–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors for the National Defense Intelligence College; Charter Renewal

AGENCY: Department of Defense (DoD).

ACTION: Federal advisory committee charter.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.65, the Department of Defense gives notice that it intends to renew the charter for the Board of Visitors for the National Defense Intelligence College (hereafter referred to as the Board).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, DoD Committee Management Office, 703–601–6128.

SUPPLEMENTARY INFORMATION: The Board, pursuant to 41 CFR 102–3.50(d), is a discretionary Federal advisory committee established to provide the Secretary of Defense through the Under Secretary of Defense for Intelligence and the Director, Defense Intelligence Agency, independent advice on matters related to mission, policy, accreditation, faculty, student facilities, curricula, educational methods, research, and administration of the National Defense Intelligence College.

The Director, Defense Intelligence Agency may act upon the Board's advice and recommendations.

The Board shall be comprised of no more than 12 members, who are distinguished members of the national intelligence community, defense, and academia and shall be appointed on an annual basis by the Secretary of Defense. The Director, Defense Intelligence Agency shall select the Board's Chairperson.

Board members appointed by the Secretary of Defense, who are not full-time or permanent part-time employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109, and serve as Special Government Employees. In addition, they shall serve without compensation except for travel and per diem for official Board-related travel.

The Board shall meet at the call of the Board's Designated Federal Officer, in consultation with the Chairperson and the Director, Defense Intelligence Agency. The estimated number of Board meetings is two per year.

The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with DoD policies and procedures. In addition, the Designated Federal Officer is required to attend all Board and subcommittee meetings. In the absence of the Designated Federal Officer the Alternate Designated Federal Officer shall attend the meeting.

With DoD approval, the Board is authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Act of 1976 (5 U.S.C. 552b, as amended), and other appropriate Federal regulations.

Such subcommittees or workgroups shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board of Visitors for the National Defense Intelligence College for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Board nor can they report directly to the Department of Defense or any Federal officers or employees who are not Board members.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Board of Visitors for the National Defense Intelligence College membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Board of Visitors for the National Defense Intelligence College.

All written statements shall be submitted to the Designated Federal Officer for the Board of Visitors for the National Defense Intelligence College, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Board of Visitors for the National Defense Intelligence College. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: December 9, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–29713 Filed 12–14–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2009–OS–0179]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense.

ACTION: Notice to add a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to add 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 January 14, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: 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: Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on June 29, 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: December 3, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

System Identifier:

DHRA 06 DoD

SYSTEM NAME:

Defense Sexual Assault Incident Database

SYSTEM LOCATION:

Primary location: Washington Headquarters Services, Information Technology Management Directorate, WHS–Supported Organizations Division, 2521 South Clark Street, Suite 640, Arlington, Virginia 22209–2328.

Secondary locations: The Department of the Army, Sexual Assault Data Management System, Army G–1, DAPE–HR–HF, Room 300 Army Pentagon, Washington, DC 20310–0300.

The Department of the Navy, Consolidated Law Enforcement Operations Center, Naval Criminal Investigative Service, 716 Sicard Street, SE., Washington Navy Yard, DC 20388–5380.

The Department of the Navy, Criminal Justice Information System, Naval Criminal Investigative Service, 716 Sicard Street, SE., Washington Navy Yard, DC 20388–5380.

The Department of the Navy, Sexual Assault Victim Intervention, Navy Installations Command, N911, Sexual Assault Victim Intervention Program Manager, 716 Sicard Street, SE., Suite 1000, Washington Navy Yard, DC 20374–5140.

The U.S. Marine Corps, Sexual Assault Information Reporting Database, Manpower and Reserve Affairs, Headquarters United States Marine Corps, 3280 Russell Road, Quantico, Virginia 22134–5143.

The Department of the Air Force, Investigative Information Management System, Headquarters United States Air Force, Air Force Office of Special Investigations, 1535 Command Drive, Room AA301, Andrews Air Force Base, Maryland 20762–7002.

The Department of the Air Force, Automated Military Justice Analysis and Management System, The Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330–1420.

The National Guard Bureau, Sexual Assault Prevention and Response Office, ATTN: Defense Sexual Assault Incident Database Program Manager, 1401 Wilson Boulevard, Suite 402, Arlington, Virginia 22209–2318.

Decentralized locations include the Services staff and field operating agencies, major commands, installations, and activities. Official mailing addresses are published as an appendix to each Service's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel, DoD civilians, or contractors who may be victims and/or alleged perpetrators in a sexual assault involving a member of the Armed Forces.

CATEGORIES OF RECORDS IN THE SYSTEM:

Victim information includes last, first, and middle name, victim case number (*i.e.,* system generated unique control number), identification type (*i.e.,* Social Security Number (SSN), passport, U.S. Permanent Residence Card, foreign identification), identification number for identification provided, birth date, age at the time of incident, gender, race, ethnicity, and victim category (*i.e.,* military, DoD civilian/contractor).

Alleged perpetrator information includes last, first, and middle name, identification type (*i.e.,* Social Security Number (SSN), passport, U.S. Permanent Residence Card, foreign identification), identification number for identification provided, birth date, age at the time of incident, gender, race, ethnicity, and alleged perpetrator category (*i.e.,* military, DoD civilian/contractor).

However, if a victim of a sexual assault involving a member of the Armed Forces makes a restricted report of sexual assault, no personal identifying information for the victim and/or alleged perpetrator is collected.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 113 note, Department of Defense Policy and Procedures on Prevention and Response to Sexual Assaults Involving Members of the Armed Forces; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; DoD Directive 6495.01, Sexual Assault Prevention and Response (SAPR) Program; DoD Instruction 6495.02, Sexual Assault Prevention and Response (SAPR) Program Procedures; 10 U.S.C. 3013, Secretary of the Army; Army Regulation 600–20, Sexual Assault Prevention and Response (SAPR) Program; 10 U.S.C. 5013, Secretary of the Navy; Secretary of the Navy Instruction 1752.4A, Sexual Assault Prevention and Response; Marine Corps Order 1752.5A, Sexual Assault Prevention and Response (SAPR) Program; 10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 36–6001, Sexual Assault Prevention and Response (SAPR) Program; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To facilitate the reporting requirements found in 10 U.S.C. 113 note, Department of Defense Policy and Procedures on Prevention and Response to Sexual Assaults Involving Members of the Armed Forces by centralizing case-level sexual assault data involving a member of the Armed Forces and ensuring uniform collection of data on the incidence of sexual assaults. To measure compliance and the effectiveness of sexual assault prevention and response training and awareness objectives. Information on DoD civilians or contractors is collected only if they are a victim or alleged perpetrator of a sexual assault involving a member of the Armed Forces such information is collected only for statistical purposes. At the local level, Sexual Assault Response Coordinators and Victim Advocates work with victims to ensure that they are aware of services available, and that they have contact with medical treatment personnel and DoD law enforcement entities. At the DoD level, only de-identified data is used to respond to mandated reporting requirements. The DoD Sexual Assault Prevention and Response Office has access to identified closed case information and de-identified, aggregate open case information for study, research, and analysis purposes.

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 Office of the Secretary of Defense 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 files and electronic media.

RETRIEVABILITY:

Victim records are retrieved by first name, last name, Social Security Number (SSN), identification number and type of identification provided, and Defense Sexual Assault Incident Database control number assigned to the incident.

Alleged perpetrator records are retrieved by first name, last name, and identification number and type of identification provided.

SAFEGUARDS:

Primary location: Records are maintained in a controlled facility. Physical entry is restricted by the use of alarms, cipher and locks and armed guards. Access to case files in the system is role-based and requires the use of a Common Access Card and password. Further, at the DoD-level, only de-identified data can be accessed.

Secondary location: Each Service ensures that all paper and electronic records are collected, retained, and destroyed IAW DoD Directive 5015.2, ''Department of Defense Records Management Program'' and DoD Directive 5015.2–STD, ''Design Criteria Standard for Electronic Records Management Software Applications.''

These are ''For Official Use Only'' records and are maintained in controlled facilities that employ physical restrictions and safeguards such as security guards, identification badges, key cards, and locks.''

RETENTION AND DISPOSAL:

Records are cut off two years after inactivity and destroyed sixty years after cut off.

''For Official Use Only'' records are destroyed in a way that precludes recognition or reconstruction that includes but are not limited to the following methods: burning, cross-cut shredding, wet-pulping, mutilation, chemical decomposition or destroyed IAW DoD 5200.1–R, ''Information Security Program.''

SYSTEM MANAGER(S) AND ADDRESS:

Sexual Assault Prevention and Response Office, *Attn:* Defense Sexual Assault Incident Database Program Manager, 1401 Wilson Boulevard, Suite 402, Arlington, Virginia 22209–2318.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the appropriate Service office listed below:

The Department of the Army, Sexual Assault Data Management System, Army G–1, *Attn:* DAPE–HR–HF, 300 Army Pentagon, Washington, DC 20310–0300.

The Department of the Navy and the Marine Corps, Naval Criminal Investigative Service, 716 Sicard Street, SE., Washington Navy Yard, DC 20388–5380.

The Department of the Air Force, ATTN: Sexual Assault Prevention and Response Program Manager, 201 12th Street South, Suite 411, Arlington, Virginia 22202–5408.

The National Guard Bureau, Sexual Assault Prevention and Response Office, *Attn:* Defense Sexual Assault Incident Database Program Manager, 1401 Wilson Boulevard, Suite 402, Arlington, Virginia 22209–2318.

Requests should contain first and last name, Social Security Number (SSN), and identification number for type of identification type referenced. Requests must be signed and include the name, identification number, form of identification, indicate whether the individual is a victim or alleged perpetrator, and the number of this system of records notice.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the following as appropriate:

The Department of the Army, Sexual Assault Data Management System, Army G–1, *Attn:* DAPE–HR–HF, 300 Army Pentagon, Washington, DC 20310–0300.

The Department of the Navy and the Marine Corps, Naval Criminal Investigative Service, 716 Sicard Street, SE., Washington Navy Yard, DC 20388–5380.

The Department of the Air Force, *Attn:* Sexual Assault Prevention and Response Program Manager, 201 12th Street South, Suite 411, Arlington, Virginia 22202–5408.

The National Guard Bureau, Sexual Assault Prevention and Response Office, *Attn:* Defense Sexual Assault Incident Database Program Manager, 1401 Wilson Boulevard, Suite 402, Arlington, Virginia 22209–2318.

Requests should contain first and last name, Social Security Number (SSN), and identification number for type of identification type referenced. Requests must be signed and include the name, identification number, form of identification, indicate whether the individual is a victim or alleged perpetrator, and the number of this system of records notice.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense rules for accessing records for contesting contents and appealing initial agency determinations are contained in Office of the Secretary of Defense Administrative Instruction 81; 32 Code of Federal Regulations part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual, Sexual Assault Response Coordinators, Service Military Criminal Investigative Organizations, and Offices of the Judge Advocate Generals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–29220 Filed 12–14–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information; College Assistance Migrant Program (CAMP); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.149A.

Dates: Applications Available: December 15, 2009.

Deadline for Transmittal of Applications: February 16, 2010.

Deadline for Intergovernmental Review: April 14, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of CAMP is to provide academic and financial support to help migrant and seasonal farmworkers and their children complete their first year of college.

Priorities: This competition includes two competitive preference priorities and one invitational priority. In accordance with 34 CFR 75.105(b)(2)(ii), the competitive preference priority for ''novice applicant'' is from the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.225). In accordance with 34 CFR 75.105(b)(2)(iv), the competitive preference priority for ''prior experience of service delivery'' is from section 418A(e) of the Higher Education Act of 1965, as amended by the Higher Education Opportunity Act (20 U.S.C. 1070d–2(e)).

Competitive Preference Priorities: For FY 2010, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award an additional five points to an application that meets the ''novice applicant'' competitive preference priority, and up to a

maximum of 15 additional points to an application that meets the ''prior experience of service delivery'' competitive preference priority.

These priorities are:

Novice Applicant

The applicant must be a ''novice applicant'' as defined in 34 CFR 75.225(a).

Prior Experience of Service Delivery

With respect to applicants with an expiring CAMP project, the Secretary will consider the applicant's prior experience in implementing its expiring CAMP project based on information contained in documents previously provided to the Department, such as annual performance reports, project evaluation reports, site visit reports, and the previously approved CAMP application.

Under this competition, we are particularly interested in applications that address the following priority.

Invitational Priority: For FY 2010, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Applications that propose to engage faith-based and community organizations in the delivery of services under this program.

Program Authority: 20 U.S.C. 1070d–2, the Higher Education Act of 1965, as reauthorized by the Higher Education Opportunity Act (HEOA) (Pub. L. 110–315).

Applicable Regulations: (a) EDGAR in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations in 34 CFR part 206. (c) The definitions of a *migratory agricultural worker* in 34 CFR 200.81(d), *migratory child* in 34 CFR 200.81(e), and *migratory fisher* in 34 CFR 200.81(f). (d) The regulations in 20 CFR 669.110 and 669.320.

Note: The regulations in 34 CFR part 79 apply to all applicants except Federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

Note: The definition of terms in 34 CFR 200.81(d), (e), and (f) were published in the **Federal Register** on July 29, 2008 at 73 FR 44102, 44123–24.

Note: The regulations in 34 CFR part 206 were issued prior to the enactment of the HEOA. The application package identifies any provisions in part 206 that have been superseded by enactment of the HEOA.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $4,082,057 for new awards for this program for FY 2010. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $180,000–$425,000.

Estimated Average Size of Awards: $405,000.

Maximum Award: We will reject any application that proposes a CAMP award exceeding $425,000 for any of the five single budget periods of 12 months. The Assistant Secretary for Elementary and Secondary Education may change the maximum amount through a notice published in the **Federal Register**.

Minimum Award: We will reject any application that proposes a CAMP award that is less than $180,000 for any of the five single budget periods of 12 months. The Assistant Secretary for Elementary and Secondary Education may change the minimum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education (IHEs) or private non-profit organizations (including faith-based organizations) that plan their projects in cooperation with an IHE and propose to operate some aspects of the project with the facilities of the IHE.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* David De Soto, U.S. Department of Education, Office of Migrant Education, 400 Maryland Avenue, SW., Room 3E344, Washington, DC 20202–6135. Telephone: (202) 260–8103 or by e-mail: *david.de.soto@ed.gov.*

The application package content also can be viewed electronically at the following address: *http://www.ed.gov/programs/CAMP/applicant.html.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to no more than 25 pages using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative (Part 4), including titles, headings, footnotes, quotations, references, and captions. However, you may single space all text in charts, tables, figures, and graphs. Charts, tables, figures, and graphs presented in the application narrative count toward the page limit.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch) throughout the entire application package.
- Appendices must be limited to 20 pages and must include the following: resumes, job descriptions of key personnel. Job descriptions must include duties and minimum qualifications. Items in the appendices will only be used by the program office for the purpose of approving any future personnel changes.

The 25-page limit for the project narrative does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract. However, the page limit does apply to all of the application narrative section.

Our reviewers will not read any pages of your application that exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: December 15, 2009.

Deadline for Transmittal of Applications: February 16, 2010.

Deadline for Intergovernmental Review: April 14, 2010.

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including

dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* of this notice. We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the College Assistance Migrant Program, CFDA number 84.149A, must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us. We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.* While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: David De Soto, U.S. Department of Education, 400 Maryland Avenue, SW., 3E344, Washington, DC 20202–6135. *FAX:* (202) 205–0089.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.149A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.149A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary in 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department developed the following performance measures to evaluate the overall effectiveness of the CAMP: (1) The percentage of CAMP participants completing the first academic year of their postsecondary program, and (2) the percentage of CAMP participants who, after completing the first academic year of college, continue their postsecondary education.

Applicants will need to address the GPRA measures by establishing their projects'targets on these measures in their application. The CAMP GPRA 1 and GPRA 2 measures for the five years of this grant are: GPRA 1, a target of 86% is projected for all five years; GPRA 2), a target between 84–86% is projected for each of the five years. The panel readers will score related selection criteria on the basis of how well an applicant addresses these GPRA measures. Therefore, applicants will want to consider how they will make demonstration of a sound capacity to provide reliable data on GPRA measures, including the project's annual performance targets for addressing the GPRA performance measures, as is required by the OMB approved annual performance report that is included in the application package.

All grantees will be required to submit, as part of their annual performance report, information with respect to these performance measures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: David De Soto, U.S. Department of Education, Office of Migrant Education, 400 Maryland Avenue, SW., Room 3E344, Washington, DC 20202–6135. *Telephone Number:* (202) 260–8103, or

by *e-mail: david.de.soto@ed.gov,* or Tara Ramsey, U.S. Department of Education, Office of Migrant Education, 400 Maryland Avenue, SW., room 3E323, Washington, DC 20202–6135. *Telephone Number:* (202) 260–2063, or by *e-mail: tara.ramsey@ed.gov.*

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to this Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: December 10, 2009.

Thelma Melendez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E9–29810 Filed 12–14–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information; High School Equivalency Program (HEP); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.141A.

Dates: Applications Available: December 15, 2009.

Deadline for Transmittal of Applications: February 16, 2010.

Deadline for Intergovernmental Review: April 14, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of HEP is to help migrant and seasonal farmworkers and members of their immediate family obtain a general education diploma (GED) that meets the guidelines for high school equivalency established by the State in which the HEP project is conducted, and to gain employment or be placed in an institution of higher education (IHE) or other postsecondary education or training.

Priorities: This competition includes two competitive preference priorities and one invitational priority. In accordance with 34 CFR 75.105(b)(2)(ii), the competitive preference priority for ''novice applicant'' is from the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.225). In accordance with 34 CFR 75.105(b)(2)(iv), the competitive preference priority for ''prior experience of service delivery'' is from section 418A(e) of the Higher Education Act of 1965, as amended by section 408(3) of the Higher Education Opportunity Act (20 U.S.C. 1070d–2(e)).

Competitive Preference Priorities: For FY 2010, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award an additional five points to an application that meets the ''novice applicant'' competitive preference priority, and up to a maximum of 15 additional points to an application that meets the ''prior experience of service delivery'' competitive preference priority.

These priorities are:

Novice Applicant

The applicant must be a ''novice applicant'' as defined in 34 CFR 75.225(a).

Prior Experience of Service Delivery

With respect to applicants with an expiring HEP project, the Secretary will consider the applicant's prior experience in implementing its expiring HEP project based on information contained in documents previously provided to the Department, such as annual performance reports, project evaluation reports, site visit reports, and the previously approved HEP application.

Under this competition, we are particularly interested in applications that address the following priority.

Invitational Priority: For FY 2010, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Applications that propose to engage faith-based and community organizations in the delivery of services under this program.

Program Authority: 20 U.S.C. 1070d–2, the Higher Education Act of 1965, as reauthorized by the Higher Education Opportunity Act (HEOA) (Pub. L. 110–315).

Applicable Regulations: (a) EDGAR in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, and 99. (b) The regulations in 34 CFR part 206. (c) The definitions in 34 CFR 200.81. (d) The regulations in 20 CFR 669.110 and 669.320.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Note: The regulations in 34 CFR part 206 were issued prior to the enactment of the HEOA. The application package identifies any provisions in part 206 that have been superseded by enactment of the HEOA.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $6,153,000 for new awards for this program for FY 2010. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $180,000–$475,000.

Estimated Average Size of Awards: $473,000.

Maximum Award: We will reject any application that proposes a HEP award exceeding $475,000 for any of the five single budget periods of 12 months. The Assistant Secretary for Elementary and Secondary Education may change the maximum amount through a notice published in the **Federal Register**.

Minimum Award: We will reject any application that proposes a HEP award that is less than $180,000 for any of the five single budget periods of 12 months. The Assistant Secretary for Elementary and Secondary Education may change the minimum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 13.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs or private non-profit organizations (including faith-based organizations) that plan their

projects in cooperation with an IHE and propose to operate some aspects of the project with the facilities of the IHE.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Annual Meeting Attendance:* Projects funded under this competition are encouraged to budget for a two-day OME Annual Meeting for HEP and CAMP Directors in the Washington, DC area during each year of the project period.

IV. Application and Submission Information

1. *Address to Request Application Package:* David De Soto, U.S. Department of Education, Office of Migrant Education, 400 Maryland Avenue, SW., Room 3E344, Washington, DC 20202–6135. Telephone: (202) 260–8103 or by e-mail: *david.de.soto@ed.gov.*

The application package content also can be viewed electronically at the following address: *http://www.ed.gov/programs/hep/applicant.html.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Panel readers will award points only for an applicant's response to a given selection criterion that is contained within the section of the application designated to address that particular selection criterion. Readers will not review, or award points for responses to a given selection criterion that are in any other section of the application or appendices. You must limit the application narrative to no more than 25 pages, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1'' margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions. However, you may single space all text in charts, tables, figures, and graphs. Charts, tables, figures, and graphs presented in the application narrative count toward the page limit.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch) throughout the entire application package.

• Appendices must be limited to 20 pages and must include the following: resumes and job descriptions of key personnel. Job descriptions must include duties and minimum qualifications. Items in the appendices will only be used by the program office for the purpose of approving any future personnel changes.

The 25-page limit for the project narrative does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract. However, the page limit does apply to all of the application narrative section.

Our reviewers will not read any pages of your application that exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: December 15, 2009.

Deadline for Transmittal of Applications: February 16, 2010.

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: April 14, 2010.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the High School Equivalency Program—CFDA Number 84.141A, must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington,

DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: David De Soto, U.S. Department of Education, 400 Maryland Avenue, SW., 3E344, Washington, DC 20202–6135. FAX: (202) 205–0089.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.141A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center *Attention:* (CFDA Number 84.141A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260. The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department developed the following performance measures to evaluate the overall effectiveness of the HEP: (1) The percentage of HEP program exiters receiving a General Education Development (GED) credential (GPRA 1), and (2) the percentage of HEP GED recipients who enter postsecondary education or training programs, upgraded employment, or the military (GPRA 2).

Applicants must propose annual targets for these measures in their applications. The national target for GPRA 1 for FY 2010 is that 69 percent of HEP program exiters will receive a GED credential. The national target for GPRA 2 for FY 2010 is that 80 percent of HEP GED recipients will enter postsecondary education or training programs, upgraded employment, or the military. The panel readers will score related selection criteria for applicants, in part, on the basis of how well an applicant addresses these GPRA measures. Therefore, applicants should consider how they will demonstrate their capacity to provide reliable data on these measures, including the project's annual performance targets for the GPRA measures, as required by the OMB approved annual performance report that is included in the application package. All grantees will be required to submit, as part of their annual performance report, information with respect to these GPRA measures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: David De Soto, U.S. Department of Education, Office of Migrant Education, 400 Maryland Avenue, SW., Room 3E344, Washington, DC 20202–6135. Telephone: (202) 260–8103, or by e-mail: *david.de.soto@ed.gov,* or Tara Ramsey, U.S. Department of Education, Office of Migrant Education, 400 Maryland Avenue, SW., Room 3E323, Washington, DC 20202–6135. Telephone: (202) 260–2063, or by e-mail: *tara.ramsey@ed.gov.* If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to this Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: December 10, 2009.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E9–29807 Filed 12–14–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Project (DRRP)—Reducing Obesity and Obesity-Related Secondary Health Conditions Among Adolescents and Young Adults With Disabilities From Diverse Race and Ethnic Backgrounds

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–7.

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority for a DRRP.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for the Disability and Rehabilitation Research Projects and Centers Program administered by NIDRR. Specifically, this notice proposes a priority for a DRRP. The Assistant Secretary may use this priority for a competition in fiscal year (FY) 2010 and later years. We take this action to focus research attention on areas of national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before January 14, 2010.

ADDRESSES: Address all comments about this proposed priority to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6029, Potomac Center Plaza (PCP), Washington, DC 20202–2700.

If you prefer to send your comments by e-mail, use the following address: *donna.nangle@ed.gov.* You must include the term ''Proposed Priority for a DRRP on Reducing Obesity'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. *Telephone:* (202) 245–7462 or by *e-mail: donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: This notice of proposed priority is in concert with NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

This notice proposes a priority that NIDRR intends to use for DRRP competitions in FY 2010 and possibly later years. However, nothing precludes NIDRR from publishing additional priorities, if needed. Furthermore, NIDRR is under no obligation to make an award for this priority. The decision to make an award will be based on the quality of applications received and available funding.

Invitation to Comment: We invite you to submit comments regarding this proposed priority. To ensure that your comments have maximum effect in developing the notice of final priority, we urge you to identify clearly the specific topic that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this proposed priority in room 6029, 550 12th Street, SW., Potomac Center Plaza, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC, time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology, that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Program Regulations: 34 CFR part 350.

Proposed Priority:

This notice contains one proposed priority.

Reducing Obesity and Obesity-Related Secondary Conditions Among Adolescents and Young Adults with Disabilities from Diverse Race and Ethnic Backgrounds.

Background: Obesity continues to be a major public health concern in the United States (U.S.). Overall, the prevalence of obesity in the U.S. doubled among adults between 1980 and 2004. More than a third of adults in the U.S. meet the criteria for obesity (Ogden, *et al.,* 2007). Rates of obesity also increased among children and adolescents from 11 to 17 percent during roughly the same time period (Ogden, *et al.,* 2007).

Recent epidemiological studies indicate significant differences in obesity rates among individuals with and without disabilities (Altman & Bernstein, 2008; Rimmer, Rowland, & Yamaki, 2007; Rimmer & Rowland, 2008a). Approximately one-third of all adults with disabilities were obese compared with only 19 percent of adults without disabilities (Altman & Bernstein, 2008). Children and adolescents with disabilities are also more likely than their non-disabled counterparts to be classified as being overweight. Approximately 30 percent of children between the ages of 6 and 18 who have limitations in walking, crawling, running, and playing are overweight, compared to about 16 percent of children in the same age group who do not have those limitations (Bandini, *et al.,* 2005).

There are also significant and well-documented disparities in obesity prevalence based on race and ethnicity (Altman & Bernstein, 2008; Steinmetz, 2006). For example, in general, a greater percentage of non-Hispanic blacks and Mexican-Americans of all ages are obese compared to non-Hispanic whites (Ogden, *et al.,* 2006).

Despite these documented disparities in obesity prevalence between individuals with and without disabilities, and by race and ethnicity, only a few national studies have examined variations in obesity by the intersection of both disability and minority group status. According to these studies, adults with both disability and race/ethnic minority status have significantly higher rates of obesity compared to individuals with disability or minority group status only, and compared to those with neither disability nor minority status (Jones & Sinclair, 2008). However, none of these studies report data specifically for the cohort of transition-age adolescents and young adults, approximately 15 to 25 years of age. New analyses of extant data are needed to determine whether the patterns that exist for adults similarly exist for adolescents and young adults who have disabilities and are from diverse race/ethnic backgrounds. Filling this knowledge gap, as well as identifying other risk factors for obesity in this population, will allow services and interventions to be targeted to youth with disabilities who are most at risk of obesity or overweight status. Targeting such services and interventions is critical for these adolescents and young adults, as obesity and overweight status generally continue into adulthood where they can restrict health-enhancing activities and jeopardize opportunities for community participation and employment (Rimmer, Rowland, & Yamaki, 2007).

Obesity and overweight status can also have serious health consequences for adolescents and adults with disabilities because they can be precursors to secondary conditions that can complicate treatment of the original disabling condition and undermine functional abilities (Rimmer & Rowland, 2008a; Kinne, Patrick, & Doyle, 2004). Secondary conditions consist of additional physical or mental health

conditions that are directly or indirectly related to the primary impairment, and are generally considered preventable (IOM, 2007). Although numerous studies have examined the secondary conditions experienced by adults with disabilities (Kinne *et al.,* 2004; Drum *et al.*, 2005; Rimmer, Rowland & Yamaki, 2007), new research is needed to identify the obesity-related secondary conditions that are most commonly experienced by adolescents and young adults with disabilities, especially those from minority race/ethnic backgrounds. New research on this target population is also needed to highlight variations in risk factors for obesity and obesity-related secondary conditions.

To date, NIDRR's investments in this area have increased awareness of the disparities in obesity and obesity-related secondary conditions between adolescents and adults with and without disabilities (Rimmer, Rowland & Yamaki, 2007; Rimmer & Rowland, 2008b). NIDRR-sponsored researchers have also piloted a new screening tool based on total body fat instead of body mass index (BMI), that more accurately identifies obesity and overweight status (Rimmer & Rowland, 2008a; Rimmer, 2008). The work to be conducted by the DRRP under this priority will build upon these earlier studies by providing more detailed information about the prevalence of obesity, the risk factors for obesity, and the obesity-related secondary conditions that are commonly experienced by adolescents with disabilities from minority race/ethnic backgrounds.

The majority of obesity intervention studies that exist were conducted in controlled, rather than community-based, settings where most or all of the common barriers to participation in health-promoting activities were eliminated (Rimmer & Rowland, 2008a). However, the American Recovery and Reinvestment Act of 2009 provided $650 million to the Centers for Disease Control (CDC), ''to carry out evidence-based clinical and community-based prevention and wellness strategies authorized by the Public Health Service Act that deliver specific, measurable health outcomes that address chronic disease rates.'' The Department of Health and Human Services (HHS) has developed an initiative in response to the Act. The goal of this initiative—Communities Putting Prevention to Work—is to reduce risk factors and prevent/delay chronic disease and promote wellness in both children and adults. It is not clear to what extent models or practices being implemented by projects such as these have implications for individuals with disabilities. Adequate research is not available related to this area.

New research is needed to identify promising, community-based strategies that are culturally competent and have potential to be effective in reducing obesity and obesity-related secondary conditions among adolescents and young adults with disabilities from minority race/ethnic backgrounds.

References:

Altman, B. & Bernstein, A. (2008). Disability and health in the United States, 2001–2005. Hyattsville, MD., National Center for Health Statistics.

Bandini, L.G., Curtin, C., Hamad, C., Tybor, D.J., & Must, A. (2005). Prevalence of overweight in children with developmental disorders in the continuous national health and nutrition examination survey (NHANES) 1999–2002. Journal of Pediatrics, 146, 738–743.

Drum, C.E., Krahn, G., Culley, C., & Hammond, L. (2005). Recognizing and responding to the health disparities of people with disabilities. Californian Journal of Health Promotion, 3(3), 29–42.

Institute of Medicine (IOM). (2007). The Future of Disability in America. Chapter 5, Secondary Conditions and Aging with Disability. Washington, DC: The National Academies Press.

Jones, G.C. & Sinclair, L.B. (2008). Multiple health disparities among minority adults with mobility limitations: An application of the ICF framework and codes. Disability and Rehabilitation, 30(12–13), 901–915.

Kinne, S., Patrick, D.L., & Doyle, D.L. (2004). Prevalence of Health Disparities among People with Disabilities. American Journal of Public Health, 94(3), 443–445.

Ogden, C.L., Carroll, M.D., McDowell, M.A., & Flegal, K.M. (2007). Obesity among adults in the United States—no change since 2003–2004. NCHS Data Brief No. 1. Hyattsville, MD: National Center for Health Statistics.

Ogden C.L., Carroll, M.D., Curtin, L.R., McDowell, M.A., Tabak, C.J., & Flegal, K.M. (2006). Prevalence of overweight and obesity in the United States, 1999–2004. JAMA 295(13), 1549–1555. Retrieved from www.jama.com.

Rimmer, J.H., Rowland, J.L., & Yamaki, K. (2007). Obesity and Secondary Conditions in Adolescents with Disabilities: Addressing the Needs of an Underserved Population. Journal of Adolescent Health; 41, 224–229.

Rimmer, J.H. & Rowland, J.L. (2008a). Health promotion for people with disabilities: Implications for empowering the person and promoting disability-friendly environments. American Journal of Lifestyle Medicine; 2, 409–420, originally published by Sage online May 22, 2008. Retrieved from *http://aji.sagepub.com.*

Rimmer, J.H. & Rowland, J.L. (2008b). Physical Activity for youth with disabilities: A critical need in an underserved population. Developmental Neurorehabilitation, April–June, 11(2), 141–148.

Rimmer, J.H. (2008). Promoting inclusive physical activity communities for people with disabilities. President's Council on Physical Fitness and Sports, Research Digest, June/July; Series 9(2).

Steinmetz, E. (2004). Americans with Disabilities: 2002. Current Population Reports, P70–107, U.S. Census Bureau, Washington, DC.

Thorpe, K.E., Florence, C.S., Howard, D.H., and Joski, P. (2004). The Impact of Obesity on the Rise in Medical Spending. Health Affairs, July–December (suppl. web excl.), W4–480–86.

Wolf, A.M., Manson, J.E., Colditz, G.A. (2002). The Economic Impact of Overweight, Obesity and Weight Loss. In: Eckel, R (Editor). Obesity: Mechanisms and Clinical Management. Lippincott, Williams and Wilkins.

Proposed Priority:

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Disability Rehabilitation Research Project (DRRP) on Reducing Obesity and Obesity-Related Secondary Conditions among Adolescents and Young Adults with Disabilities from Diverse Race and Ethnic Backgrounds. The DRRP must build upon the current research literature on obesity and secondary conditions and examine existing community-based obesity prevention programs such as the programs being implemented by the Centers for Disease Control (CDC) in order to determine whether practices they are implementing hold promise for individuals with disabilities, what modifications to these practices may be necessary, and how individuals with disabilities might be incorporated into community-based programs serving the wider community. Applicants must identify the specific sub-populations of adolescents and young adults they

propose to study by type of disability (*e.g.,* physical, sensory, mental) and by race/ethnic background. Under this priority, NIDRR is interested in obesity as a condition that is experienced concomitantly with other disabling conditions, but not as a primary disabling condition. When identifying the specific sub-populations by race/ethnic background, the DRRP must select from three or more of the following categories: non-Hispanic whites, non-Hispanic blacks, American Indians or Alaskan Natives, Asians or Pacific Islanders, and individuals of Hispanic origin.

Under this priority, the DRRP must be designed to contribute to the following outcomes:

(a) Enhanced understanding of the risk factors and health consequences of obesity and overweight status for adolescents and young adults with pre-existing disabilities from diverse race/ethnic backgrounds. The DRRP must contribute to this outcome by conducting analyses of extant data sources to identify variations in rates of obesity and overweight status by race/ethnicity and other risk factors among adolescents and young adults with disabilities approximately 15 to 25 years of age, as well as variations in obesity-related secondary conditions.

(b) New knowledge of promising, community-based and culturally competent practices for reducing obesity and obesity-related secondary conditions among adolescents and young adults with pre-existing disabilities. The DRRP must contribute to this outcome by conducting research to identify the key elements of culturally competent, community-based strategies and programs that show promise toward reducing obesity and overweight status for the specific target populations selected. The DRRP's work in this area is intended to identify potential interventions that can be tested and implemented in the future in community-based settings. Applicants must propose, in their applications, the specific criteria and methods they will use to identify culturally competent and promising community-based strategies and programs.

(c) Increased translation of research findings into practice or policy. The DRRP must contribute to this outcome by:

(1) Collaborating with stakeholder groups (*e.g.,* youth and young adults with disabilities, families, family surrogates, rehabilitation professionals, and public health professionals) to develop, evaluate, or implement strategies to increase utilization of the DRRP's research findings in programs targeted to youth with disabilities; and

(2) Coordinating with existing programs such as those being implemented by the CDC to obtain and share information regarding the applicability of promising practices for individuals with disabilities.

(2) Conducting dissemination activities to increase utilization of the DRRP's research findings.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register.** The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priority: We will announce the final priority in a notice in the **Federal Register.** We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register.**

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this proposed regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this proposed regulatory action, we have determined that the benefits of the proposed priority justify the costs.

Discussion of costs and benefits:

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. This proposed priority will generate new knowledge through research and development. Another benefit of this proposed priority is that the establishment of a new DRRP will improve the lives of individuals with disabilities. The new DRRP will generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to perform regular activities in the community.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: December 10, 2009.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E9–29809 Filed 12–14–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Case No. CAC–015]

Energy Conservation Program for Certain Industrial Equipment: Decision and Order Granting a Waiver to Mitsubishi Electric and Electronics USA, Inc. From the Department of Energy Commercial Package Water-Source Heat Pump Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: This notice publishes the U.S. Department of Energy's (DOE) Decision and Order in Case No. CAC–015, which grants a waiver to Mitsubishi Electric and Electronics USA, Inc. (Mitsubishi) from the existing DOE test procedure for commercial package water-source heat pumps. DOE is granting this waiver because these water-source multi-split heat pumps, like the air-source multi-split heat pumps that have been granted similar waivers, are too complex to test using the DOE test procedure. As a condition of this waiver, Mitsubishi must test and rate the energy consumption of the water-source WR2 and WY series models (from its CITY MULTI Variable Refrigerant Flow Zoning line of commercial package heat pump equipment) according to the alternate test procedure set forth in this notice.

DATES: This Decision and Order is effective December 15, 2009.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611. *E-mail: Michael.Raymond@ee.doe.gov.*

Francine Pinto or Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103. *Telephone:* (202) 586–9507. *E-mail: Francine.Pinto@hq.doe.gov* or *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR) 431.401(f)(4), DOE gives notice of the issuance of its Decision and Order, as set forth below. In this Decision and Order, DOE grants Mitsubishi a waiver for specified models of its WR2 and WY series water-source multi-split products from the existing commercial package water-source heat pump test procedure under 10 CFR 431.96 (the International Organization for Standardization (ISO) Standard 13256–1 (1998) that is incorporated by reference in 10 CFR 431.95(b)(3)). The waiver is subject to a condition requiring Mitsubishi to test and rate the specified models from its CITY MULTI Variable Refrigerant Flow Zoning (VRFZ) line of commercial package water-source heat pump equipment according to the alternate test procedure described in this notice. Today's Decision and Order prohibits Mitsubishi from making any representations concerning the energy efficiency of these products unless such products have been tested consistent with the provisions and restrictions in the alternate test procedure as set forth in the Decision and Order below, and such representations fairly disclose the results of such testing. Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. (42 U.S.C. 6314(d))

Issued in Washington, DC, on December 8, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Mitsubishi Electric and Electronics USA, Inc. (Mitsubishi). (Case No. CAC–015).

Background

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency, including Part A–1, which establishes an energy efficiency program titled ''Certain Industrial Equipment,'' which includes commercial air-conditioning equipment, packaged boilers, water heaters, and other types of commercial equipment. (42 U.S.C. 6311–6317) The statute specifically includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part A–1 authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

Section 343(a)(4)(A) of EPCA provides that the test procedures for commercial package air-conditioning and heating equipment shall be those generally accepted industry testing or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute (ARI) or by the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE), as referenced in ASHRAE/Illuminating Engineering Society (IES) Standard 90.1 and in effect on June 30, 1992. (42 U.S.C. 6314(a)(4)(A)) Further, under section 343(a)(4)(B) of EPCA, if the industry test procedure or rating procedure is amended, the Secretary must amend the test procedure for the product as necessary to be consistent with the amended industry procedure, unless the Secretary determines that the amended test procedure would not meet the statutory requirements set forth in 42 U.S.C. 6314(a)(2) and (3). (42 U.S.C. 6314(a)(4)(B))

The test procedures for commercial central air conditioners and heat pumps are codified in DOE's regulations at 10 CFR 431.96, Table 1, which directs manufacturers of commercial package water-source air-conditioning and heating equipment to use the appropriate procedure when measuring the energy efficiency of those products. The appropriate standard for Mitsubishi's WR2 and WY series water-source multi-split equipment is ISO Standard 13256–1 (1998), ''Water-source heat pumps—Testing and rating for performance—Part 1: Water-to-air and brine-to-air heat pumps,'' for measuring the energy efficiency of small commercial package water-source heat pumps with capacities <135,000 British thermal units/hour (Btu/hr). (The cooling capacity of Mitsubishi's WR2 and WY series models of its CITY MULTI VRFZ line of commercial package water-source heat pump equipment fall within the range of 65,000 Btu/hr to 135,000 Btu/hr and are, therefore, covered under 10 CFR 431.96, which requires testing under ISO Standard 13256–1 (1998)). This standard is incorporated by reference at 10 CFR 431.95(b)(3).

DOE notes that these products also have the ability to connect multiple outdoor units together to create larger capacity systems, up to 240,000 Btu/hr. Connecting two of the smallest capacity (72,000 Btu/h) outdoor units results in a system capacity of 144,000 Btu/h, which is above the maximum 135,000 Btu/h covered by the DOE test procedure. Multiple-outdoor-unit equipment is therefore not covered by this waiver because the resulting system capacities are outside the capacity range of the DOE test procedure for water-source central air conditioners and central air conditioning heat pumps. This waiver only covers systems with nominal cooling capacities less than

135,000 Btu/hr, which does not include any combined units.

DOE's regulations allow a person to seek a waiver for a particular basic model from the test procedure requirements for covered commercial equipment, when the petitioner's basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). A waiver petition must include any alternate test procedures known to the petitioner to evaluate characteristics of the basic model in a manner representative of its energy consumption. 10 CFR 431.401(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). Waivers remain in effect pursuant to the provisions of 10 CFR 431.401(g).

The waiver process also allows any interested person who has submitted a petition for waiver to file an application for interim waiver of the applicable test procedure requirements. 10 CFR 431.401(a)(2). The Assistant Secretary will grant an interim waiver if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 431.401(e)(3). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever occurs first, and may be extended by DOE for an additional 180 days, if necessary. 10 CFR 431.401(e)(4).

On October 30, 2006, Mitsubishi submitted a Petition for Waiver and an Application for Interim Waiver from the above test procedures applicable to its water-source WR2 and WY series models from its CITY MULTI VRFZ line of commercial package heat pump equipment. Mitsubishi seeks a waiver from the applicable test procedures because the design characteristics of these models prevent testing according to the currently prescribed test procedures. Like the air-source multi-splits, this equipment can connect more indoor units than test laboratories can physically test at one time, and it is not practical to test all of the potentially available combinations.

On April 9, 2007, DOE published Mitsubishi's Petition for Waiver for commercial package water-source heat pumps in the **Federal Register**. 72 FR 17533 (April 9, 2007). In the April 9, 2007 notice, DOE also granted Mitsubishi's Application for Interim Waiver, because DOE determined that the conditions required for grant of an interim waiver had been satisfied. DOE had already granted waivers to Mitsubishi for its lines of R22 CITY MULTI VRFZ and R410A CITY MULTI VRFZ products, which are similar to the water-source CITY MULTI VRFZ products at issue here. 69 FR 52660 (August 27, 2004); 72 FR 17528 (April 9, 2007). As DOE has stated in the past, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis. In the April 9, 2007 notice, DOE also published for comment an alternate test procedure for the Mitsubishi products that are the subject of its waiver request.

On July 30, 2008, Mitsubishi submitted an updated list of models and a request for an extension of the Interim Waiver for the City Multi VRFZ water-source heat pumps that are the subject of this waiver. Since Mitsubishi's submission of its petition for waiver in October 2006, it developed additional basic models in the WR2 and WY product lines. These are similar to the basic models listed in Mitsubishi's Petition for Waiver, but they have different capacities and the ability to connect multiple outdoor units to create larger capacity systems. Mitsubishi's July 30, 2008 petition to extend its Interim Waiver also contains a modification to the alternate test procedure published April 9, 2007. 72 FR 17533. It contains a proposed, new definition of the term ''tested combination.'' This proposed definition is the same as the one in AHRI 1230–2009, ''Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment,'' which is incorporated in the alternate test procedure specified in this Decision and Order.

DOE received one comment on the Mitsubishi petition from Daikin AC (Americas), Inc. (Daikin), which supported Mitsubishi's waiver request.

Assertions and Determinations

Mitsubishi's Petition for Waiver

As noted above, DOE granted to Mitsubishi waivers from test procedures for its air-source CITY MULTI VRFZ models of residential and commercial package air-conditioning and heating equipment in 2004 and 2007. 69 FR 52660 (August 27, 2004); 72 FR 17528 (April 9, 2007). Due to equipment modifications to accommodate its water-source models, Mitsubishi submitted a Petition for Waiver and Application for Interim Waiver that requested a similar waiver from the existing test procedures for its WR2 and WY Series models of CITY MULTI VRFZ line of commercial package heat pump equipment with a rated capacity from 65,000 Btu/hr to <135,000 Btu/hr.

Mitsubishi provided several assertions to substantiate its Petition for Waiver. Mitsubishi asserted that the design characteristics of its WR2 and WY series models of CITY MULTI VRFZ line of commercial package heat pump equipment, which use water as a heat source and heat sink, preclude testing according to the test procedures currently prescribed at 10 CFR 431.96 for the same reasons that its R22 and R410A models of air-source commercial package heat pump equipment were granted waivers at 69 FR 52660 (August 27, 2004) and 72 FR 17528 (April 9, 2007), respectively. The water-source CITY MULTI VRFZ systems, like the air-source systems, can connect more indoor units (up to 19) than the test laboratories can physically test at one time; in addition, there are 58 different indoor models that can be used in the different combinations. As a result, Mitsubishi asserted that it is not practical to test all of the potentially available combinations of indoor and outdoor units, which could number ''well over 1,000,000 combinations for each outdoor unit.'' 72 FR 17533, 17535 (April 9, 2007). Because of the inability to test products with so many indoor units, testing laboratories will not be able to test many of the system combinations. Mitsubishi also asserted that the test procedures at 10 CFR 431.96 do not provide (1) direction for determining what combinations of outdoor and indoor units should be tested in the circumstance where a multitude of different combinations are possible; and (2) a mechanism for sampling component combinations.

Mitsubishi also stated that many of the benefits of its water-source CITY MULTI VRFZ systems (*e.g.,* variable refrigerant control and distribution, zoning diversity, part-load operation, and simultaneous heating and cooling)

are not credited under the current test procedures. Thus, Mitsubishi asserted that the current test procedure for the energy efficiency ratio (EER) does not capture the energy savings of VRFZ equipment. The same issue was raised by Mitsubishi in its Petition for Waiver for its R22 CITY MULTI systems. In response, DOE stated that ''[w]hile this assertion is true * * * the full load EER energy efficiency descriptor is the one mandated by EPCA for these products (42 U.S.C. 6313(a)(1)(c)), and the relevant energy performance is the peak load efficiency, not the seasonal energy savings.'' 69 FR 52660, 52662 (August 27, 2004). A waiver can only be granted if a test procedure does not fairly represent the peak load energy consumption characteristics which EER measures.

In summary, the bases for today's Decision and Order are: (1) The inability of a laboratory to test the multitude of CITY MULTI VRFZ systems, and (2) the lack of a method for predicting the performance of untested combinations. DOE finds, as it did in the 2004 and 2007 decisions, that ''the basic model contains one or more design characteristics which * * * prevent testing of the basic model according to the prescribed test procedures.'' 69 FR 52660 (August 27, 2004); 72 FR 17528 (April 9, 2007). DOE believes that given the similarities of these products and the problems associated with testing under the applicable test procedure, the same reasoning underlying DOE's granting of these two earlier waivers is applicable to the water-source systems that are the subject of today's Decision and Order. Therefore, DOE finds that a waiver of the test procedures at 10 CFR 431.96 is appropriate.

To enable Mitsubishi to make energy efficiency representations for its specified water-source WR2 and WY series models from its CITY MULTI VRFZ line of commercial package heat pump equipment, DOE also requires use of the alternate test procedure described below as a condition of Mitsubishi's waiver.

DOE's Alternate Test Procedure

Under EPCA, a manufacturer may not make any representation with respect to the energy consumption or cost of energy consumed by its equipment, unless such equipment has been tested in accordance with the applicable test procedure and the representation fairly discloses the results of such testing. (42 U.S.C. 6314(d)) Therefore, to provide a basis from which Mitsubishi, or any manufacturer covered by a test procedure waiver for multi-split central air-conditioning equipment, can make valid and comparable energy efficiency representations, DOE provided an alternate test procedure in an earlier Mitsubishi Decision & Order which was published in the **Federal Register** at 72 FR 17528 (April 9, 2007).

Mitsubishi's July 30, 2008 petition to extend its Interim Waiver contains a modification to the alternate test procedure published in the April 9, 2007 petition. 72 FR 17533. It contains a proposed, new definition of the term ''tested combination.'' This proposed definition is the same as the one in AHRI 1230–2009, ''Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment.'' This definition allows for systems with multiple outdoor units and has other differences for systems with nominal cooling capacities greater than 150,000 Btu/h. For the waiver under consideration here, however, which does not apply to systems with multiple outdoor units, nor to systems with cooling capacities greater than 135,000 Btu/h, the only necessary change in the definition of ''tested combination'' is the reference to ''capacity,'' which DOE changes for purposes of this waiver to ''nominal cooling capacity.''

The alternate test procedure permits Mitsubishi to designate a ''tested combination'' for each model of water-source WR2 and WY CITY MULTI VRFZ outdoor unit. In addition, the indoor unit that is designated as part of the tested combination must meet certain requirements. For example, the tested combination must have from two to five indoor units, so that the system can be tested in available test facilities.

The alternate test procedure also permits Mitsubishi to represent the energy efficiency for a non-tested combination in two ways: (1) At an energy efficiency level determined under a DOE-approved alternative rating method; or (2) at the efficiency level of the tested combination using the same outdoor unit.

DOE believes that permitting Mitsubishi to make energy efficiency representations for non-tested combinations through use of this alternate test procedure is reasonable because the outdoor unit is the principal efficiency driver. Further, DOE believes that the applicable test procedure at 10 CFR 431.96 tends to rate such equipment conservatively, because it does not account for the simultaneous heating and cooling capability of variable refrigerant flow zoning, which is more efficient than requiring all zones either to be heated or cooled. Further, the multi-zoning feature of such equipment, which enables it to cool only those sections of a building that require cooling, will use less energy than if the unit is operated to cool the entire building or a comparatively large area within a building in response to a single thermostat. Additionally, the current test procedure for commercial equipment requires full load testing, which creates an artificial disadvantage for such products, because they are optimized for best efficiency when operating at less than full load. In fact, these products normally operate at part-load conditions. In view of the foregoing, DOE believes the alternate test procedure will provide a conservative basis for assessing the energy efficiency for such equipment.

With regard to laboratory testing, some of the difficulties associated with the existing test procedure are avoided by the alternate test procedure's requirements for choosing the indoor units to be used in the manufacturer-specified tested combination. For example, in addition to limiting the number of indoor units, another requirement is that all of the indoor units must be subject to meeting the same minimum external static pressure. This requirement allows the test laboratory to manifold the outlets from each indoor unit into a common plenum that supplies air to a single airflow measuring apparatus. This requirement eliminates situations in which some of the indoor units are ducted and some are non-ducted. Without this requirement, the laboratory must evaluate the capacity of a subgroup of indoor coils separately, and then sum the separate capacities to obtain the overall system capacity. This would require that the test laboratory be equipped with multiple airflow measuring apparatuses (which is unlikely), or that the test laboratory connect its one airflow measuring apparatus to one or more common indoor units until the contribution of each indoor unit has been measured.

Based on the discussion above, DOE believe that the testing problems described above would prevent testing of Mitsubishi's WR2 and WY series models from its CITY MULTI VRFZ water-source line according to the test procedures prescribed in 10 CFR Part 431.

Consultations With Other Agencies

DOE consulted with Federal Trade Commission (FTC) staff concerning the Mitsubishi Petition for Waiver. The FTC staff had no objections to issuing a waiver to Mitsubishi.

Conclusion

After careful consideration of all the material that Mitsubishi submitted, the comment received from Daikin, and consultation with FTC staff, it is ordered that:

(1) The Petition for Waiver submitted by Mitsubishi Electric and Electronics USA, Inc. (Mitsubishi) (Case No. CAC–015) is hereby granted as set forth in the paragraphs below.

(2) Mitsubishi shall not be required to test or rate the below-listed water-source WR2 and WY series models of its CITY MULTI Variable Refrigerant Flow Zoning (VRFZ) line of commercial package heat pump equipment on the basis of the applicable test procedure at 10 CFR 431.96, which incorporates by reference ISO 13256–1 (1998).

(3) Mitsubishi shall be required to test and rate the below-listed water-source WR2 and WY series models of its CITY MULTI VRFZ equipment according to the alternate test procedure as set forth in section (4), ''Alternate test procedure.''

CITY MULTI Variable Refrigerant Flow Zoning System Outdoor Equipment

WY–Series (PQHY) 208/230–3–60 and 460–3–60 split-system, water-sourced, variable-speed heat pumps with individual model nominal cooling capacities of 72,000, 96,000, 108,000 and 120,000 Btu/h.

WR2–Series (PQRY) 208/230–3–60 and 460–3–60 split-system, water-sourced, variable-speed heat pumps with heat recovery and with individual model nominal cooling capacities of 72,000, 96,000, 108,000 and 120,000 Btu/h.

CITY MULTI Variable Refrigerant Flow Zoning System Indoor Equipment

P*FY models, ranging from 6,000 to 48,000 Btu/h, 208/230–1–60 and from 72,000 to 120,000 Btu/h, 208/230–3–60 split system variable-capacity air conditioner or heat pump.

PCFY Series—Ceiling Suspended—with capacities of 12/18/24/30/36 MBtu/h.

PDFY Series—Ceiling Concealed Ducted—with capacities of 06/08/12/15/18/24/27/30/36/48 MBtu/h.

PEFY Series—Ceiling Concealed Ducted (Low Profile)—with capacities of 06/08/12/18/24 MBtu/h.

PEFY Series—Ceiling Concealed Ducted (Alternate High Static Option)—with capacities of 15/18/24/27/30/36/48/54/72/96 MBtu/h.

PEFY–F Series—Ceiling Concealed Ducted (100% OA Option)—with capacities of 30/54/72/96/120 MBtu/h.

PFFY Series—Floor Standing (Concealed)—with capacities of 06/08/12/15/18/24 MBtu/h.

PFFY Series—Floor Standing (Exposed)—with capacities of 06/08/12/15/18/24 MBtu/h.

PKFY Series—Wall-Mounted—with capacities of 06/08/12/18/24/30 MBtu/h.

PLFY Series—4–Way Airflow Ceiling Cassette—with capacities of 12/18/24/30/36 MBtu/h.

PMFY Series—1–Way Airflow Ceiling Cassette—with capacities of 06/08/12/15 MBtu/h.

(4) *Alternate test procedure.*

(A) Mitsubishi shall be required to test its water-source WR2 and WY series models of its CITY MULTI VRFZ equipment according to those test procedures for commercial package air conditioners and heat pumps prescribed at 10 CFR Part 431.96, except that:

(i) Mitsubishi shall test a ''tested combination'' selected in accordance with the provisions of subparagraph (B) of this paragraph. For every other system combination using the same outdoor unit as the tested combination, Mitsubishi shall make representations concerning the WR2 and WY CITY MULTI equipment covered in this waiver according to the provisions of subparagraph (C) below.

(B) *Tested combination.* The term ''tested combination'' means a sample basic model comprised of units that are production units, or are representative of production units, of the basic model being tested. For the purposes of this waiver, the tested combination shall have the following features:

(1) The basic model of a variable refrigerant flow system used as a tested combination shall consist of an outdoor unit that is matched with between two and five indoor units.

(2) The indoor units shall—

(i) Represent the highest sales model family, or another indoor model family if the highest sales model family does not provide sufficient capacity (see ii);

(ii) Together, have a nominal cooling capacity between 95 percent and 105 percent of the nominal cooling capacity of the outdoor unit;

(iii) Not, individually, have a nominal cooling capacity that is greater than 50 percent of the nominal cooling capacity of the outdoor unit;

(iv) Operate at fan speeds that are consistent with the manufacturer's specifications; and

(v) All be subject to the same minimum external static pressure requirement while being configurable to produce the same static pressure at the exit of each outlet plenum when manifolded as per section 2.4.1 of 10 CFR Part 430, Subpart B, Appendix M.

(C) *Representations.* In making representations about the energy efficiency of its WR2 and WY CITY MULTI VRFZ equipment, for compliance, marketing, or other purposes, Mitsubishi must fairly disclose the results of testing under the DOE test procedure, doing so in a manner consistent with the provisions outlined below:

(i) For WR2 and WY CITY MULTI VRFZ combinations tested in accordance with this alternate test procedure, Mitsubishi may make representations based on these test results.

(ii) For WR2 and WY CITY MULTI VRFZ combinations that are not tested, Mitsubishi may make representations based on the testing results for the tested combination and which are consistent with either of the two following methods:

(a) Representation of non-tested combinations according to an Alternative Rating Method (ARM) approved by DOE; or

(b) Representation of non-tested combinations at the same energy efficiency level as the tested combination with the same outdoor unit.

(5) This waiver shall remain in effect from the date of issuance of this Decision and Order consistent with the provisions of 10 CFR 431.401(g).

(6) This waiver is conditioned upon the presumed validity of statements, representations, and documentary materials provided by the petitioner. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect, or DOE determines that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on December 8, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

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DEPARTMENT OF ENERGY

[Case No. CAC–020]

Energy Conservation Program for Certain Industrial Equipment: Decision and Order Granting a Waiver to Mitsubishi Electric & Electronics USA, Inc. From the Department of Energy Commercial Package Air Conditioner and Heat Pump Test Procedures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: This notice publishes the U.S. Department of Energy's (DOE) Decision and Order in Case No. CAC–020, which grants a waiver to Mitsubishi Electric & Electronics USA, Inc. (MEUS) from the existing DOE test procedure applicable to commercial package central air conditioners and heat pumps. The waiver is specific to the MEUS variable speed and variable refrigerant volume S&L Class (commercial) multi-split heat pumps and heat recovery systems. As a condition of this waiver, MEUS must test and rate its S&L Class multi-split products according to the alternate test procedure set forth in this notice.

DATES: This Decision and Order is effective December 15, 2009.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611. *E-mail: Michael.Raymond@ee.doe.gov*.

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SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR 431.401(f)(4), DOE gives notice of the issuance of its Decision and Order as set forth below. In this Decision and Order, DOE grants MEUS a waiver from the existing DOE commercial package air conditioner and heat pump test procedures [1] for its S&L Class multi-split products, subject to a condition requiring MEUS to test and rate its S&L Class multi-split products pursuant to the alternate test procedure provided in this notice. Further, today's decision requires that MEUS may not make any representations concerning the energy efficiency of these products unless such product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the Decision and Order below, and such representations fairly disclose the results of such testing. Consistent with the statute, distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. (42 U.S.C. 6314(d))

Issued in Washington, DC, on December 8, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Mitsubishi Electric & Electronics USA, Inc. (MEUS) (Case No. CAC–020).

Background

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency, including Part A [2] of Title III which establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' (42 U.S.C. 6291–6309) Similar to the program in Part A, Part A–1 [3] of Title III provides for an energy efficiency program titled, ''Certain Industrial Equipment,'' which includes large and small commercial air conditioning equipment, package boilers, storage water heaters, and other types of commercial equipment. (42 U.S.C. 6311–6317)

Today's notice involves commercial equipment under Part A–1. The statute specifically includes definitions, test procedures, labeling provisions, and energy conservation standards, and provides the Secretary of Energy (the Secretary) with the authority to require information and reports from manufacturers. 42 U.S.C. 6311–6317. With respect to test procedures, the statute generally authorizes the Secretary to prescribe test procedures that are reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

For commercial package air-conditioning and heating equipment, EPCA provides that ''the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute (ARI) or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.'' (42 U.S.C. 6314(a)(4)(A)) Under 42 U.S.C. 6314(a)(4)(B), the Secretary must amend the test procedure for a covered commercial product if the applicable industry test procedure is amended, unless the Secretary determines, by rule and based on clear and convincing evidence, that such a modified test procedure does not meet the statutory criteria set forth in 42 U.S.C. 6314(a)(2) and (3).

On December 8, 2006, DOE published a final rule adopting test procedures for commercial package air-conditioning and heating equipment, effective January 8, 2007. 71 FR 71340. DOE adopted ARI Standard 210/240–2003 for small commercial package air-cooled air conditioning and heating equipment with capacities <65,000 British thermal units per hour (Btu/h) and ARI Standard 340/360–2004 for large commercial package air-cooled air conditioning and heating equipment with capacities ≥65,000 Btu/h and <760,000 Btu/h. *Id.* at 71371. Pursuant to this final rule, DOE's regulations at 10 CFR 431.95(b)(1)–(2) incorporate by reference the relevant ARI standards, and 10 CFR 431.96 directs manufacturers of commercial package air conditioning and heating equipment to use the appropriate procedure when measuring energy efficiency of those products. The cooling capacities of MEUS's S&L Class commercial multi-split products, which have capacities between 72,000 Btu/hr to 360,000 Btu/hr, fall in the range covered by ARI Standard 340/360–2004.

In addition, DOE's regulations contain provisions allowing a person to seek a waiver for a particular basic model from the test procedure requirements for covered commercial equipment, for which the petitioner's basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). A waiver petition must include any alternate test procedures

[1] The applicable test procedure is the Air-Conditioning and Refrigeration Institute (ARI) Standard 340/360–2004, ''Performance Rating of Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment'' (incorporated by reference at 10 CFR 431.95(b)(2)).

[2] Part B of Title III of EPCA was redesignated Part A by Public Law 109–58 for editorial reasons.

[3] Part C of Title III of EPCA was redesignated Part A–1 by Public Law 109–58 for editorial reasons.

known to the petitioner to evaluate characteristics of the basic model in a manner representative of its energy consumption. 10 CFR 431.401(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). Waivers remain effective pursuant to the provisions of 10 CFR 431.401(g).

The waiver process also allows any interested person who has submitted a petition for waiver to file an application for interim waiver from the applicable test procedure requirements. 10 CFR 431.401(a)(2). An interim waiver will terminate 180 days after issuance or upon the issuance of DOE's determination on the petition for waiver, whichever occurs first, which may be extended by DOE for an additional 180 days. 10 CFR 431.401(e)(4).

On March 28, 2008, MEUS filed a petition for waiver and an application for interim waiver from the test procedures applicable to small and large commercial package air-cooled air-conditioning and heating equipment. The applicable test procedure is ARI 340/360–2004, specified in Tables 1 and 2 to 10 CFR 431.96. MEUS asserted that the two primary factors that prevent testing of multi-split variable speed products are the same factors stated in the waivers that DOE granted previously to MEUS, and also to Fujitsu General Ltd. (Fujitsu), and Samsung Air Conditioning (Samsung) for similar lines of commercial multi-split air-conditioning systems: (1) Testing laboratories cannot test products with so many indoor units; and (2) There are too many possible combinations of indoor and outdoor unit to test. On December 11, 2008, DOE published MEUS's Petition for Waiver in the **Federal Register**, asking for public comment thereon, and granted the Application for Interim Waiver. 73 FR 75408. DOE received no comments on the MEUS petition.

In a similar case, DOE published a Petition for Waiver from MEUS for products very similar to the S&L Class multi-split products. 71 FR 14858 (March 24, 2006). In the March 24, 2006, **Federal Register** notice, DOE also published and requested comment on an alternate test procedure for the MEUS products at issue. DOE stated that if it specified an alternate test procedure for MEUS in the subsequent Decision and Order, DOE would consider applying the same procedure to similar waivers for residential and commercial central air conditioners and heat pumps, including such products for which waivers had previously been granted. *Id.* at 14861. Comments were published along with the MEUS Decision and Order in the **Federal Register** on April 9, 2007. 72 FR 17528 (April 9, 2007). Most of the comments responded favorably to DOE's proposed alternate test procedure; while one commenter did not believe a waiver was necessary, the commenter did not provide a solution to the testing difficulties that led to the grant of previous waivers for similar products. *Id.* at 17529. Also, there was general agreement that an alternate test procedure is necessary while a final test procedure for these types of products is being developed. *Id.* The MEUS Decision and Order included the alternate test procedure adopted by DOE. *Id*

Assertions and Determinations

MEUS's Petition for Waiver

MEUS seeks a waiver from the DOE test procedures for this product class on the grounds that its S&L Class multi-split heat pump and heat recovery systems contain design characteristics that prevent testing according to the current DOE test procedures. As stated above, MEUS asserts that the two primary factors that prevent testing of multi-split variable speed products, regardless of manufacturer, are the same factors stated in the waivers that DOE granted previously to MEUS, and also to Fujitsu General Ltd. (Fujitsu), and Samsung Air Conditioning (Samsung) for similar lines of commercial multi-split air-conditioning systems:

- Testing laboratories cannot test products with so many [4] indoor units.
- There are too many possible combinations of indoor and outdoor unit to test.

Mitsubishi (72 FR 17528, April 9, 2007); Samsung (72 FR 71387, Dec. 17, 2007); Fujitsu (72 FR 71383, Dec. 17, 2007); Daikin (73 FR 39680, July 10, 2008); Daikin (74 FR 15955, April 8, 2009); Sanyo (74 FR 16193, April 9, 2009); and Daikin (74 FR 16373, April 10, 2009).

The S&L Class has operational characteristics similar to Mitsubishi's R22 and R410A models, which have already been granted waivers, and the WR2 and WY products, which have been granted an interim waiver. Each of the S&L Class indoor units is designed to be used with up to 50 other indoor units, which need not be the same models. There are 64 different indoor models. Unlike other multi-split products, Mitsubishi's S&L Class has the capability to combine outdoor units to create a larger capacity system. MEUS further states that its S&L Class products' capability to perform simultaneous heating and cooling is not captured by the DOE test procedure. Notwithstanding this fact, DOE is required by EPCA to use the full-load descriptor Energy Efficiency Ratio (EER) for these products, and simultaneous heating and cooling does not occur when operating at full load.

Accordingly, MEUS requests that DOE grant a waiver from the applicable test procedures for its S&L Class product designs, until a suitable test procedure can be prescribed. DOE believes that the S&L Class MEUS equipment and equipment for which waivers have previously been granted are alike with respect to the factors that make them eligible for test procedure waivers. DOE is therefore granting to MEUS an S&L Class product waiver similar to the previous MEUS multi-split waivers. Mitsubishi is requesting one modification to the alternate test procedure granted in previous waivers made necessary to account for the ability of S&L Class products to connect multiple outdoor units. This modification would allow representation of non-tested combinations based on the capacity-weighted average of the efficiency ratings of tested combinations of the outdoor units used in the system. DOE is adopting this modification, which enables testing of products with multiple outdoor units.

Previously, in addressing MEUS's R410A CITY MULTI VRFZ products, which are similar to the MEUS products at issue here, DOE stated:

> To provide a test procedure from which manufacturers can make valid representations, the Department is considering setting an alternate test procedure for MEUS in the subsequent Decision and Order. Furthermore, if DOE specifies an alternate test procedure for MEUS, DOE is considering applying the alternate test procedure to similar waivers for residential and commercial central air conditioners and heat pumps. Such cases include Samsung's petition for its DVM products (70 FR 9629, February 28, 2005), Fujitsu's petition for its Airstage variable refrigerant flow (VRF) products (70 FR 5980, February 4, 2005), and MEUS's petition for its R22 CITY MULTI VRFZ products. (69 FR 52660, August 27, 2004).
>
> 71 FR 14861.

[4] According to the MEUS petition, up to 50 indoor units of its commercial package multi-split air conditioners may be connected in a single system. However, DOE believes that, based on communications with multi-split manufacturers and commercial testing laboratories, test room limitations at laboratory testing facilities make testing this number of indoor units extremely difficult.

MEUS requested that DOE apply the alternate test procedure provided in the R410A Waiver to the S&L Class. This alternate test procedure was published in the **Federal Register** on April 9, 2007. 72 FR 17528; 72 FR 17533.

To enable MEUS to make energy efficiency representations for its specified S&L Class multi-split products, DOE has decided to require use of the alternate test procedure described below, as a condition of MEUS's waiver. With the exception of the modification for testing multiple outdoor units, this alternate test procedure is the same as the one that DOE applied to the waiver for MEUS's R22 and R410A products, which was published at 72 FR 17528.

DOE understands that existing testing facilities have a limited ability to test multiple indoor units at one time, and the number of possible combinations of indoor and outdoor units for some variable refrigerant flow zoned systems is impractical to test. We further note that subsequent to the waiver that DOE granted for MEUS's R22 multi-split products, ARI formed a committee to discuss the issue and to work on developing an appropriate testing protocol for variable refrigerant flow systems. However, to date, no additional test methodologies have been adopted by the committee or submitted to DOE.

DOE issues today's Decision and Order granting MEUS a test procedure waiver for its commercial S&L Class multi-split heat pumps. MEUS must use the alternate test procedure described below as a condition of the waiver. With the exception of the modification for testing multiple outdoor units, this alternate test procedure is the same as the one that DOE applied to the previous MEUS waivers.

Alternate Test Procedure

The alternate test procedure developed in conjunction with the MEUS waiver permits MEUS to designate a ''tested combination'' for each model of outdoor unit. The indoor units designated as part of the tested combination must meet specific requirements. For example, the tested combination must have from two to eight [5] indoor units so that it can be tested in available test facilities. The tested combination must be tested consistent with the provisions of the alternate test procedure as set forth below.

The alternate DOE test procedure also allows MEUS to represent the energy efficiency of that product. These representations must fairly disclose the results of such testing. The DOE test procedure, as modified by the alternate test procedure set forth in this Decision and Order, provides for efficiency rating of a non-tested combination in one of two ways: (1) At an energy efficiency level determined under a DOE-approved alternative rating method; or (2) at the efficiency level of the tested combination utilizing the same outdoor unit.

As in the MEUS matter, DOE believes that allowing MEUS to make energy efficiency representations for non-tested combinations by adopting this alternative test procedure as described above is reasonable because the outdoor unit is the principal efficiency driver. The current DOE test procedure for commercial products tends to rate these products conservatively. The multi-zoning feature of these products, which enables them to cool only those portions of the building that require cooling, would be expected to use less energy than if the unit is operated to cool the entire home or a comparatively larger area of a commercial building in response to a single thermostat. This feature would not be captured by the current test procedure, which requires full-load testing. Full load testing, under which the entire building would require cooling, disadvantages these products because they are optimized for their highest efficiency when operating with less than full loads. Therefore, the alternate test procedure will provide a conservative basis for assessing the energy efficiency for such products.

With regard to the laboratory testing of commercial products, some of the difficulties associated with the existing test procedure are avoided by the alternate test procedure's requirements for choosing the indoor units to be used in the manufacturer-specified tested combination. For example, in addition to limiting the number of indoor units, another requirement is that all of the indoor units must be subject to meeting the same minimum external static pressure. This requirement allows the test lab to manifold the outlets from each indoor unit into a common plenum that supplies air to a single airflow measuring apparatus. This requirement eliminates situations in which some of the indoor units are ducted and some are non-ducted. Without this requirement, the laboratory must evaluate the capacity of a subgroup of indoor coils separately, and then sum the separate capacities to obtain the overall system capacity. This would require that the test laboratory be equipped with multiple airflow measuring apparatuses (which is unlikely), or that the test laboratory connect its one airflow measuring apparatus to one or more common indoor units until the contribution of each indoor unit has been measured.

Furthermore, DOE stated in the notice publishing the MEUS Petition for Waiver that if the Department decided to specify an alternate test procedure for MEUS, it would consider applying the procedure to waivers for similar residential and commercial central air conditioners and heat pumps produced by other manufacturers. 71 FR 14858, 14861 (March 24, 2006). Most of the comments received by DOE in response to the March 2006 notice supported the proposed alternate test procedure. 72 FR 17529. Comments generally agreed that an alternate test procedure is appropriate for an interim period while a final test procedure for these products is being developed. *Id.*

Based on the discussion above, DOE believes that the testing problems described above would prevent testing of MEUS's S&L Class multi-split products according to the test procedure currently prescribed in 10 CFR 431.96 (ARI Standard 340/360–2004) and incorporated by reference in DOE's regulations at 10 CFR 431.95(b)(2). After careful consideration, DOE has decided to adopt the proposed alternate test procedure for MEUS's S&L Class multi-split products, with the clarifications discussed above.

Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the MEUS Petition for Waiver. The FTC staff did not have any objections to the issuance of a waiver to MEUS.

Conclusion

After careful consideration of all the materials submitted by MEUS, the absence of any comments, and consultation with the FTC staff, it is ordered that:

(1) The ''Petition for Waiver'' filed by MEUS AC (Americas), Inc., (MEUS) (Case No. CAC–019) is hereby granted as set forth in the paragraphs below.

(2) MEUS shall not be required to test or rate its S&L Class multi-split air conditioner and heat pump models listed below on the basis of the currently applicable test procedure cited in 10 CFR 431.96, specifically, ARI Standard 340/360–2004 (incorporated by reference in 10 CFR 431.95(b)(2)), but shall be required to test and rate such

[5] The ''tested combination'' was originally defined to consist of one outdoor unit matched with between 2 and 5 indoor units. The maximum number of indoor units in a tested combination is here increased from 5 to 8 to account for the fact that these larger-capacity products can accommodate a greater number of indoor units.

products according to the alternate test procedure as set forth in paragraph (3).

CITY MULTI Variable Refrigerant Flow Zoning System Outdoor Equipment:

- Y–Series (PUHY) 208/230–3–60 and 460–3–60 split-system variable-speed heat pumps with individual model nominal capacities ranging from 65,000 to 144,000 Btu/h, and combined model nominal capacities ranging from 130,000, to 480,000 Btu/h.
- H2I–Series (PUHY–HP) 208/230–3–60 and 460–3–60 split-system variable-speed heat pumps with hyper-heat technology, with individual model nominal capacities ranging from 65,000 to 120,000 Btu/h, and combined model nominal capacities ranging from 130,000 to 300,000 Btu/h.
- R2–Series (PURY) 208/230–3–60 and 460–3–60 split-system variable-speed heat pumps with heat recovery and with individual model nominal capacities ranging from 65,000 to 144,000 Btu/h, and combined model nominal capacities ranging from 130,000 to 300,000 Btu/h. CITY MULTI Variable Refrigerant Flow Zoning System Indoor Equipment: P*FY models, ranging from 6,000 to 48,000 Btu/h, 208/230–1–60 and from 72,000 to 120,000 Btu/h, 208/230–3–60 split system variable-capacity air conditioner or heat pump:
- PCFY Series—Ceiling Suspended—with capacities of 12/18/24/30/36 MBtu/h.
- PDFY Series—Ceiling Concealed Ducted—with capacities of 06/08/12/15/18/24/27/30/36/48 MBtu/h.
- PEFY Series—Ceiling Concealed Ducted (Low Profile)—with capacities of 06/08/12/18/24 MBtu/h.
- PEFY Series—Ceiling Concealed Ducted (Alternate High Static Option)—with capacities of 15/18/24/27/30/36/48/54/72/96 MBtu/h.
- PEFY–F Series—Ceiling Concealed Ducted (100% OA Option)—with capacities of 30/54/72/96/120 MBtu/h.
- PFFY Series—Floor Standing (Concealed)—with capacities of 06/08/12/15/18/24 MBtu/h.
- PFFY Series—Floor Standing (Exposed)—with capacities of 06/08/12/15/18/24 MBtu/h.
- PKFY Series—Wall-Mounted—with capacities of 06/08/12/18/24/30 MBtu/h.
- PLFY Series—4–Way Airflow Ceiling Cassette—with capacities of 12/18/24/30/36 MBtu/h.
- PMFY Series—1–Way Airflow Ceiling Cassette—with capacities of 06/08/12/15 MBtu/h.

(3) *Alternate test procedure.*

(A) MEUS shall be required to test the products listed in paragraph (2) above according to the test procedure for central air conditioners and heat pumps prescribed by DOE at 10 CFR Part 431 (ARI 340/360–2004, (incorporated by reference in 10 CFR 431.95(b)(2)), except that MEUS shall test a ''tested combination'' selected in accordance with the provisions of subparagraph (B) of this paragraph. For every other system combination using the same outdoor unit as the tested combination, MEUS shall make representations concerning the S&L Class products covered in this waiver according to the provisions of subparagraph (C) below.

(B) *Tested combination.* The term ''tested combination'' means a sample basic model comprised of units that are production units, or are representative of production units, of the basic model being tested. For the purposes of this waiver, the tested combination shall have the following features:

(i) The basic model of a variable refrigerant flow system used as a tested combination shall consist an outdoor unit (an outdoor unit can include multiple outdoor units that have been manifolded into a single refrigeration system, with a specific model number) that is matched with between 2 and 8 indoor units in total; for multi-split systems, each of these indoor units shall be designed for individual operation.

(ii) The indoor units shall—

(a) Represent the highest sales model family, or another indoor model family if the highest sales model family does not provide sufficient capacity (see ii);

(b) Together, have a nominal cooling capacity that is between 95% and 105% of the nominal cooling capacity of the outdoor unit;

(c) Not, individually, have a nominal cooling capacity that is greater than 50% of the nominal cooling capacity of the outdoor unit;

(d) Operate at fan speeds that are consistent with the manufacturer's specifications; and

(e) Be subject to the same minimum external static pressure requirement while being configurable to produce the same static pressure at the exit of each outlet plenum when manifolded as per section 2.4.1 of 10 CFR Part 430, Subpart B, Appendix M.

(C) *Representations.* In making representations about the energy efficiency of its S&L Class variable speed and variable refrigerant volume air-cooled multi-split heat pump and heat recovery system products, for compliance, marketing, or other purposes, Mitsubishi must fairly disclose the results of testing under the DOE test procedure, doing so in a manner consistent with the provisions outlined below:

(i) For S&L Class combinations using a single outdoor unit tested in accordance with this alternate test procedure, Mitsubishi may make representations based on these test results.

(ii) For S&L Class combinations using a single outdoor unit that have not been tested, Mitsubishi may make representations based on the testing results for the tested combination and which are consistent with either of the two following methods:

(a) Representation of non-tested combinations according to an Alternative Rating Method (ARM) approved by DOE; or

(b) Representation of non-tested combinations at the same energy efficiency level as the tested combination with the same outdoor unit.

(iii) For S&L Class combinations utilizing multiple outdoor units that have been tested in accordance with this alternate test procedure, MEUS may make representations based on those test results.

(iv) For S&L Class combinations utilizing multiple outdoor units that have not been tested, MEUS may make representations which are consistent with any of the three following methods:

(a) Representation of non-tested combinations according to an Alternative Rating Method (''ARM'') approved by DOE.

(b) Representation of non-tested combinations at the same energy efficiency level as the tested combination with the same combination of outdoor units.

(c) Representation of non-tested combinations based on the capacity-weighted average of the efficiency ratings for the tested combinations for each of the individual outdoor units used in the system, as determined in accordance with the provisions of this alternate test procedure.

(4) This waiver shall remain in effect from the date of issuance of this Order consistent with the provisions of 10 CFR 431.401(g).

(5) This waiver is conditioned upon the presumed validity of statements, representations, and documentary materials provided by the petitioner. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the Petition for Waiver is incorrect, or DOE determines that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on December 8, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E9–29775 Filed 12–14–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Case No. CAC–024]

Energy Conservation Program for Certain Industrial Equipment: Publication of the Petition for Waiver From Daikin AC (Americas), Inc. and Granting of the Application for Interim Waiver From the Department of Energy Residential Central Air Conditioner and Heat Pump Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver, granting of application for interim waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes a petition for waiver from Daikin AC (Americas), Inc. (Daikin). The petition for waiver (hereafter ''Daikin Petition'') requests a waiver from the U.S. Department of Energy (DOE) test procedure applicable to residential central air conditioners and heat pumps. The waiver request is specific to the Daikin Altherma air-to-water heat pump with integrated domestic water heating. Through this document, DOE is: (1) Soliciting comments, data, and information with respect to the Daikin Petition; and (2) granting an interim waiver to Daikin from the applicable DOE test procedure for the subject residential central air conditioning heat pump.

DATES: DOE will accept comments, data, and information with respect to the Daikin Petition until, but no later than January 14, 2010.

ADDRESSES: You may submit comments, identified by case number ''CAC–024,'' by any of the following methods:

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

• *E-mail: AS_Waiver_Requests@ee.doe.gov.* Include either the case number [CAC–024], and/or ''Daikin Petition'' in the subject line of the message.

• *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–2945. Please submit one signed original paper copy.

• *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Instructions: All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Any person submitting written comments must also send a copy of such comments to the petitioner, pursuant to Title 10 of the Code of Federal Regulations (10 CFR) 431.401(d). The contact information for the petitioner is: Mr. Lee Smith, Director of Product Marketing, Daikin AC (Americas), Inc., 1645 Wallace Drive, Suite 110, Carrollton, Texas 75006.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza, SW., (Resource Room of the Building Technologies Program), Washington, DC 20024; (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE rulemakings regarding similar central air conditioning and heat pump equipment. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611. *E-mail: AS_Waiver_Requests@ee.doe.gov.*

Ms. Francine Pinto or Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. *Telephone:* (202) 586–9507. *E-mail: Francine.Pinto@hq.doe.gov* or *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III of the Energy Policy and Conservation Act, as amended (''EPCA'') sets forth a variety of provisions concerning energy efficiency. Part A of Title III provides for the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' (42 U.S.C. 6291–6309) Part A includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part A authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for residential central air conditioners is contained in 10 CFR part 430, subpart B, appendix M.

The regulations set forth in 10 CFR 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered consumer products. A waiver will be granted by the Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR part 430.27(l). Petitioners must include in their petition any alternate test procedures known to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii). The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR part 430.27(m).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. (10 CFR 430.27(a)(2)) An interim waiver remains in effect for a period of 180 days or until DOE issues its determination on the petition for waiver, whichever is sooner, and may be extended for an additionally 180 days, if necessary. (10 CFR 430.27(h))

II. Petition for Waiver

On August 27, 2009, Daikin filed a petition for waiver from the test procedures at 10 CFR part 430, subpart B, appendix M, which are applicable to residential central air conditioners and heat pumps, and an application for interim waiver. The Daikin Altherma system consists of an air-to-water heat pump providing hydronic heating and cooling with the added ability to provide domestic hot water functions. It operates either as a split system with the compressor unit outside and the hydronic components in an inside unit, or as a single package configuration where all system components are combined in a single outdoor unit. In both the single package and the split system configurations, the system can include a domestic hot water supply tank that is located inside.

The test method for central air conditioners and heat pumps contained in 10 CFR subpart B, appendix M does not include any provisions to account for the operational characteristics of an air-to-water heat pump with an integrated domestic hot water component. The domestic hot water portion of the Daikin Altherma system is an integral component of the system, and it cannot operate independently. The applicable DOE test method does not account for the Daikin Altherma system's energy performance because the test method does not accurately evaluate the integrated domestic hot water portion of the system, nor does it have any provisions for air-to-water heat pumps. Daikin proposes using the European standards that are used for testing and rating the Altherma products in Europe, using energy efficiency ratio (EER) to measure the full load performance of the cooling subsystem, coefficient of performance (COP) to measure the full load performance of the heating subsystem, and SPF to measure the seasonal performance of the combined heating and hot water subsystems. The test procedures are EN 14511 ''Air conditioners, liquid chilling packages and heat pumps with electrically driven compressors for space heating and cooling'' and EN 15316 ''Heating systems in buildings—Methods for calculation of system energy requirements and system efficiencies''. Daikin did not petition for including the performance of the combined cooling and hot water functions in the waiver.

III. Application for Interim Waiver

On August 27, 2009, in addition to its petition for waiver, Daikin submitted to DOE an application for interim waiver. DOE determined that Daikin's application for interim waiver does not provide sufficient market, equipment price, shipments, and other manufacturer impact information to permit DOE to evaluate the economic hardship Daikin might experience absent a favorable determination on its application for interim waiver. However, DOE understands that absent an interim waiver, Daikin's products would not otherwise be tested and rated for energy consumption on a comparable basis with equivalent products where DOE previously granted waivers. In other words, there would not be a level playing field and thus Daikin would be placed at a competitive disadvantage. Furthermore, DOE has determined that it appears likely that Daikin's Petition for Waiver will be granted and that is desirable for public policy reasons to grant Daikin immediate relief pending a determination on the petition for waiver. In those instances where the likely success of the petition for waiver has been demonstrated, based upon DOE having granted a waiver for similar product designs, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis. DOE has previously granted waivers to Carrier (55 FR 13607, April 11, 1990) and Nordyne (61 FR 11395, March 20, 1996) for comparable heat pumps with integrated domestic water heating. Although the heat pumps for which DOE has previously granted waivers were air-to-air systems rather than air-to-water systems, like the Daikin Altherma system, the essential bases, rationale, and comparable matters-of-fact used to substantiate similar waivers are consistent throughout.

The principal reason supporting the granting of these waivers also applies to Daikin's Altherma product, *i.e.,* the DOE test procedure has no provisions for heat pumps that integrate domestic water heating. Thus, DOE has determined that it is likely that Daikin's petition for waiver will be granted for its new Altherma models. Therefore, *it is ordered that:*

The Application for interim waiver filed by Daikin is hereby granted for Daikin's Altherma heat pumps, subject to the specifications and conditions below.

1. Daikin shall not be required to test or rate its Altherma heat pump products on the basis of the test procedure under 10 CFR part 430 subpart B, appendix M.

2. Daikin shall be required to test and rate its Altherma heat pump products according to the alternate test procedure as set forth in section IV, ''Alternate test procedure.''

The interim waiver applies to the following basic model groups:

Type	Description	U.S. model name	E.U. equivalent model name
Split Altherma	OD Unit (Split, 3-Ton or 11kW)	ERLQ036BAVJU	ERLQ011BAV3
	OD Unit (Split, 4-Ton or 14kW)	ERLQ048BAVJU	ERLQ014BAV3
	OD Unit (Split, 4.5-Ton or 16kW)	ERLQ054BAVJU	ERLQ016BAV3
Monobloc Altherma	OD Unit (Heat Only, 3-Ton or 11kW)	EDLQ036BA6VJU	EDLQ011BA6V3
	OD Unit (Heat Only, 4-Ton or 14kW)	EDLQ048BA6VJU	EDLQ014BA6V3
	OD Unit (Heat Only, 4.5-Ton or 16kW)	EDLQ054BA6VJU	EDLQ016BA6V3
	OD Unit (Heat Pump, 3-Ton or 11kW)	EBLQ036BA6VJU	EBLQ011BA6V3
	OD Unit (Heat Pump, 4-Ton or 14kW)	EBLQ048BA6VJU	EBLQ014BA6V3
	OD Unit (Heat Pump, 4.5-Ton or 16kW)	EBLQ054BA6VJU	EBLQ016BA6V3
Hydrobox	HB (Heating Only, BUH 3kW)	EKHBH054BA3VJU	EKHBH016BA3V3
	HB (Heating Only, BUH 6kW)	EKHBH054BA6VJU	EKHBH016BA6V3
	HB (Heat Pump, BUH 3kW)	EKHBX054BA3VJU	EKHBX016BA3V3
	HB (Heat Pump, BUH 6kW)	EKHBX054BA6VJU	EKHBX016BA6V3
DHW	Hot Water Tank (50Gallon or 200L)	EKHWS050BA3VJU	EKHWS200B3V3
	Hot Water Tank (80Gallon or 300L)	EKHWS080BA3VJU	EKHWS300B3V3

Type	Description	U.S. model name	E.U. equivalent model name
Options	Digital I/O PCB	EKRP1HBAAU	EKRP1HBAA
	Solar Pump Kit	EKSOLHWBAVJU	EKSOLHAV1
	Wired Room Thermostat	EKRTWA	EKRTWA
	Condensate Kit	EKHBDP	EKHBDP

This interim waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify this interim waiver at any time upon a determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

IV. Alternate Test Procedure

DOE is not aware of an alternate test procedure that is applicable within the United States to test and rate the performance of air-to-water heat pump systems that provide heating and that can also perform domestic hot water and cooling functions such as Daikin's Altherma. However, Daikin Europe N.V. (DENV) is currently marketing Daikin Altherma systems in Europe, using European Standards. Daikin shall be required to test and rate its Altherma heat pumps using these European Standards as follows:

(1) Full Load Performance and Efficiency:—Daikin Altherma shall be tested and rated according to Standard EN 14511, *Air conditioners, liquid chilling packages and heat pumps with electrically driven compressors for space heating and cooling.* Daikin shall rate the Altherma full load heating and cooling performance (no domestic hot water, or DHW, contribution) using COP and EER.

(2) Annual Performance and Efficiency:—Daikin Altherma shall be rated according to EN 15316, *Heating systems in buildings—Method for calculation of system energy requirements and system efficiencies.* Under Section 4.2 of the Standard EN 15316–1, the calculation period is established to evaluate the annual energy use of the space heating and domestic hot water system. Using Section 4.3 of the Standard, the calculation methods in the standard determine operating conditions, such as heat demand and water temperatures, and energy performance for given operating conditions, including system thermal losses and recoverable losses. Standard EN 15316–4–2 provides the full energy calculation method used under the standard for seasonal performance of space heating and an integrated domestic hot water system. Daikin shall rate the combined seasonal performance factor of the Altherma using the Seasonal Performance Factor (SPF) according to EN 15316–4–2. The cooling operation shall not be accounted for in the SPF.

In making representations about the energy efficiency of its Altherma heat pump products, for compliance, marketing, or other purposes, Daikin must fairly disclose the results of testing under the alternate DOE test procedure described above.

V. Summary and Request for Comments

Through today's notice, DOE announces receipt of the Daikin petition for waiver from the test procedures applicable to Daikin's Altherma heat pump products, and for the reasons articulated above, DOE grants Daikin an interim waiver from those procedures. As part of this notice, DOE is publishing Daikin's petition for waiver in its entirety. The petition contains no confidential information. Furthermore, today's notice includes an alternate test procedure that Daikin is required to follow as a condition of its interim waiver and that DOE is considering including in its subsequent Decision and Order. In this alternate test procedure, DOE prescribes the European test procedures described above to measure the full load COP and EER to characterize the Altherma's heating and cooling performance, and to measure the SPF to characterize the Altherma's combined seasonal performance of the heating and domestic hot water functions.

DOE is interested in receiving comments on the issues addressed in this notice. Pursuant to 10 CFR 430.27(d), any person submitting written comments must also send a copy of such comments to the petitioner, whose contact information is included in the section entitled **ADDRESSES** above.

Issued in Washington, DC, on December 8, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

August 27, 2009

Ms. Catherine Zoi, Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–0121

Re: Petition for Waiver of Test Procedure

Dear Assistant Secretary Zoi: Daikin AC (Americas) Inc. (DACA) respectfully petitions the Department of Energy (DOE) pursuant to 10 C.F.R. § 430.27(a)(1) (2009) for a waiver of the test procedures applicable to central air conditioners and heat pumps, as established in 10 C.F.R. Part 430, Subpart B, Appendix M (2009),[1] for the Daikin Altherma system, an air-to-water heat pump system that performs a hydronic heating function but can also be configured to serve domestic hot water requirements and also cooling as necessary. The particular systems and the specific models for which DACA requests this waiver in the Daikin Altherma product class are listed below in this Petition. DACA seeks a waiver from the existing central air conditioner and central air conditioning heat pump test procedure for the Daikin Altherma line of air-to-water heat pumps because the integrated water-heating feature causes the prescribed test procedures to evaluate the Daikin Altherma in a manner that is unrepresentative of the system's true energy consumption characteristics. We are simultaneously requesting an interim waiver for the same systems pursuant to 10 C.F.R. § 430.27(a)(2) (2009).

General Characteristics of Daikin Altherma

The Daikin Altherma system has the following characteristics and applications:

- Daikin Altherma is an air-to-water heat pump that performs a space heating function and can be configured to provide Domestic Hot Water and

[1] Detailed citations to the test procedures for which DACA is requesting a waiver are included on page 3 of this petition.

additionally include the provision for space cooling.

• Daikin Altherma can be installed as a two-unit split system consisting of an outdoor compressor unit and an indoor unit or ''Hydrobox'' containing the hydronic parts. Alternatively, the system can be installed as a monobloc system with a single outdoor unit combining the compressor and hydronic parts.

• The split system includes R–410A refrigerant piping between the outdoor unit and the Hydrobox, and water piping between the indoor unit and the indoor heating appliances. The monobloc system includes water piping between the outdoor unit and the heat emitters/DHW tank.

• Both the Daikin Altherma monobloc system and split system can be combined with under floor heating, fan coil units, and low temperature radiators.

• Depending on the model and the conditions, a Daikin Altherma air/water heat pump delivers between 3 and 5 kWh of usable heat for every kWh of electricity used.

• The Daikin Altherma system heat pump compressor incorporates inverter technology, with an integrated frequency-converter that adjusts the rotational speed of the compressor to meet the heating or cooling demand. Therefore, the system seldom operates at full capacity.

• The domestic hot water tank includes a supplemental electrical heating element to boost the Domestic Hot Water temperature if necessary.

• The Altherma system also can be tied into a solar thermal collector system that supports the production of domestic hot water.

• The Hydrobox for the split system and contained in the outdoor unit in the monobloc system both include a built-in electric back-up heater to provide additional heating during extremely cold weather.

Particular Basic Models for Which DACA Requests a Waiver

DACA requests a waiver from the test procedures for the following basic model groups:

Type	Description	U.S. model name	E.U. equivalent model name
Split Altherma	OD Unit (Split, 3-Ton or 11kW)	ERLQ036BAVJU	ERLQ011BAV3
	OD Unit (Split, 4-Ton or 14kW)	ERLQ048BAVJU	ERLQ014BAV3
	OD Unit (Split, 4.5-Ton or 16kW)	ERLQ054BAVJU	ERLQ016BAV3
Monobloc Altherma	OD Unit (Heat Only, 3-Ton or 11kW)	EDLQ036BA6VJU	EDLQ011BA6V3
	OD Unit (Heat Only, 4-Ton or 14kW)	EDLQ048BA6VJU	EDLQ014BA6V3
	OD Unit (Heat Only, 4.5-Ton or 16kW)	EDLQ054BA6VJU	EDLQ016BA6V3
	OD Unit (Heat Pump, 3-Ton or 11kW)	EBLQ036BA6VJU	EBLQ011BA6V3
	OD Unit (Heat Pump, 4-Ton or 14kW)	EBLQ048BA6VJU	EBLQ014BA6V3
	OD Unit (Heat Pump, 4.5-Ton or 16kW)	EBLQ054BA6VJU	EBLQ016BA6V3
Hydrobox	HB (Heating Only, BUH 3kW)	EKHBH054BA3VJU	EKHBH016BA3V3
	HB (Heating Only, BUH 6kW)	EKHBH054BA6VJU	EKHBH016BA6V3
	HB (Heat Pump, BUH 3kW)	EKHBX054BA3VJU	EKHBX016BA3V3
	HB (Heat Pump, BUH 6kW)	EKHBX054BA6VJU	EKHBX016BA6V3
DHW	Hot Water Tank (50Gallon or 200L)	EKHWS050BA3VJU	EKHWS200B3V3
	Hot Water Tank (80Gallon or 300L)	EKHWS080BA3VJU	EKHWS300B3V3
Options	Digital I/O PCB	EKRP1HBAAU	EKRP1HBAA
	Solar Pump Kit	EKSOLHWBAVJU	EKSOLHAV1
	Wired Room Thermostat	EKRTWA	EKRTWA
	Condensate Kit	EKHBDP	EKHBDP

Daikin Altherma System Characteristics Constituting the Grounds for DACA's Petition

The Daikin Altherma system consists of an air-to-water heat pump providing hydronic heating with the added availability to provide domestic hot water and cooling functions that operates either as a split system with the compressor unit outside and the hydronic components in an inside unit, or as a monobloc configuration where all system components are combined in a single outdoor unit. In both the monobloc and the split system configurations, the system can include a domestic hot water supply tank that is located inside.

The test method for central air conditioners and heat pumps contained in 10 CFR Part 430, Subpart B, Appendix M does not include any provision to account for the operation characteristics of an air-to-water heat pump of the function and energy consumption characteristics of a domestic hot water component that is integrated into an air-to-water heat pump system. The domestic hot water tank portion of the Daikin Altherma system is a regular element of the complete system, and it cannot operate independent of the rest of the system. Therefore, the currently applicable test method does not accurately account for the Daikin Altherma system's energy performance because the test method does not accurately evaluate the integrated domestic hot water portion of the system.

Daikin Altherma products share the design characteristics and basic features of two other products for which DOE has previously granted waivers. One product was Carrier's Hydrotech system,[2] and the other product was Nordyne's Powermiser system.[3] The Carrier and Nordyne systems that previously received waivers from DOE were both air source heat pump systems providing both heating and cooling functions. Both of these systems also included a domestic hot water supply tank as an integral part of the system. The same energy consumption calculation constraints apply equally to all of these products.

DOE stated the following in its March 20, 1996 approval notice issuing the Nordyne: ''DOE agrees [with Nordyne] that, using the current central air conditioning test procedure, the company cannot account for the energy savings associated with integrated water heating.'' 61 *Fed. Reg.* at 11,396.

Based on this conclusion, the DOE granted the Nordyne Powermiser system waiver petition (*Id.*), and based on a similar analysis DOE granted the Carrier Hydrotech system waiver petition. (55 *Fed. Reg.* at 13,607).

The rationale for DACA's Petition for a waiver from testing standards for the Daikin Altherma system is virtually

[2] 55 *Fed. Reg.* 13,607 (April 11, 1990).

[3] 61 *Fed. Reg.* 11,395 (March 20, 1996).

identical to the basis for the other manufacturers' previous requests for waivers noted above. DACA requests that DOE apply the same rationale to DACA's Petition for waiver for the Daikin Altherma system that DOE used to grant the previous Carrier and Nordyne waiver petitions for their similar systems.

Specific Testing Requirements Sought To Be Waived

The test procedures from which DACA is requesting a waiver are contained in 10 C.F.R. Part 430, Subpart B, Appendix M, which is incorporated by reference into 10 C.F.R. § 430.23(m), and which is applicable to central air conditioner and heat pump equipment with a capacity of <65,000 Btu/hr.

Detailed Discussion of Need for Requested Waiver

Although the capacity of the Daikin Altherma product class is within the scope of 10 C.F.R. Part 430, Subpart B, Appendix M, the design characteristics of the Daikin Altherma product class prevent testing of the system according to the prescribed test procedures in a manner that represents the system's true energy consumption characteristics. Specifically, application of the existing prescribed test method does not define Air-to-water Heat Pump operating characteristics and also cannot account for energy savings associated with the system's integrated water heating.

The absence of a waiver from the required testing procedure will restrict the availability to consumers in the United States of the Daikin Altherma system's energy savings benefits that result from integrating domestic hot water production into the system.

Manufacturers of Other Basic Models Incorporating Similar Design Characteristics

DACA is aware of no other manufacturers that currently produce products incorporating similar design characteristics to the Daikin Altherma system in the United States market.[4]

Alternative Test Procedures

To our knowledge, there is no alternative test procedure that is applicable within the United States to test accurately and to rate the performance of air-to-water heat pump systems that provide both heating and that can also serve domestic hot water and cooling functions such as Daikin Altherma. However, DACA's sister division, Daikin Europe N.V. (DENV) is currently marketing Daikin Altherma systems in Europe. To address the local EU requirements regarding testing and rating of the Daikin Altherma system, DENV has approached the matter in two ways as follows:

Full Load Performance and Efficiency:

Daikin Altherma is tested and rated to EN14511

Annual Performance and Efficiency:

Daikin Altherma is rated to EN15316

Standard EN14511, *Air conditioners, liquid chilling packages and heat pumps with electrically driven compressors for space heating and cooling,* is an internationally recognized standard that is used throughout Europe.

Standard EN14511 is published in 4 sections and clearly defines Terms and Conditions (–1), Test Conditions (–2), Test Methods (–3) and Requirements (–4). The overall scope of the standard is stated in EN14511–1:2004(E), Section 1, Scope, which states that the standard:

Specifies the terms and definitions for the rating and performance of air and water cooled air conditioners, liquid chilling packages, air-to-air, water-to-air, air-to-water and water-to-water heat pumps with electrically driven compressors when used for space heating and/or cooling. This European Standard does not specifically apply to heat pumps for sanitary hot water, although certain definitions can be applied to these.

Standard EN14511, which is attached, provides the full criteria to establish full load performance ratings for Air-to-water Heat Pump Systems.

Standard EN15316, *Heating systems in buildings—Method for calculation of system energy requirements and system efficiencies,* is an internationally recognized standard that is also used throughout Europe.

The portion of the standard that is relevant to Daikin Altherma is Standard EN15316–4–2, which is attached. A brief conceptual summary of Standard EN15316–4–2 follows:

The Scope of Standard EN15316–1 (Section 1) states that this standard ''*specifies the structure for calculation of energy use for space heating systems and domestic hot water systems in buildings.*'' *The standard's calculation method enables the energy analysis of the various sub-systems of the heating system,* ''*including control (emission, distribution, storage, generation), through determination of the system energy losses and the system performance factors. This performance analysis permits the comparison between sub-systems and makes it possible to monitor the impact of each sub-system on the energy performance of the building.*'' *Id.*

Under Section 4.2 of the Standard EN15316–1, the calculation period is established to evaluate the annual energy use of the space heating and domestic hot water system.

Pursuant to Section 4.3 of the Standard, the calculation methods in the standard determine operating conditions, such as heat demand and water temperatures, and energy performance for given operating conditions, including system thermal losses and recoverable losses.

The full attached Standard EN15316–4–2 provides the full energy calculation method used under the standard for seasonal performance of space heating and an integrated domestic hot water system. No methodology exists for determining the seasonal performance of space cooling and an integrated domestic hot water system, as the air-to-water heat pump systems are primarily focused as being a ''heating'' solution. Cooling is deemed as an added optional benefit.

DACA aims to utilize the performance and efficiency characteristics of the Daikin Altherma system as tested and determined by the EN testing and rating standards, as an alternate rating method for Daikin Altherma in lieu of an applicable U.S. testing and rating standard being available at this time. This utilization specifically means that DACA would promote the following characteristics:

Full Load Heating Capacity and COP

(Per EN Std 14511—Test Conditions and Methods defined in section 2 and section 3 of std 14511 respectively).

Full Load Cooling Capacity and EER

(Per EN Std 14511—Test Conditions and Methods defined in section 2 and section 3 of std 14511 respectively).

Seasonal Performance Factor (SPF)

(Per EN15316–4–2—Full energy calculation method is defined).

No representation will be made to any Seasonal Performance Factor for the cooling operation.

Application for Interim Waiver

DACA also hereby applies pursuant to 10 C.F.R. § 430.27(a)(2) for an interim waiver of the applicable test procedure requirements for the Daikin Altherma product class models listed above. The basis for DACA's Application for Interim Waiver follows.

DACA is likely to succeed in its Petition for Waiver because there is no reasonable argument that the test method contained in 10 C.F.R. Part 430,

[4] DACA believes that Carrier is no longer marketing its Hydrotech system for which DOE previously granted a waiver, and DACA believes that Nordyne is no longer marketing its Powermiser system for which DOE also previously granted a waiver.

Subpart B, Appendix M can be accurately applied to the Daikin Altherma product class. As explained above in the DACA's Petition for Waiver, the design characteristics of the Daikin Altherma product class clearly prevent testing the Daikin Altherma system with the prescribed test procedures and obtaining a representative result of the system's true energy consumption characteristics.

The likelihood of DOE approving DACA's Petition for Waiver is supported by the DOE's history of approving previous waiver requests from other manufacturers for products that are similar to the Daikin Altherma product class, based on the same rationale offered by DACA in this Petition for Waiver.

Additionally, DACA is likely to suffer economic hardship and competitive disadvantage if DOE does not grant its interim waiver request. DACA is now preparing to introduce its Daikin Altherma product class in a matter of months. If we must wait for completion of the normal waiver consideration and issuance process, DACA will be forced to delay the opportunity to begin recouping through product sales its production and marketing costs associated with introducing the Daikin Altherma product class into the United States market.

DOE approval of DACA's interim waiver application is also supported by sound public policy reasons. As DOE stated in its January 7, 2008 approval of DACA's interim waiver for the VRV–WII product classes:

[I]n those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for similar products design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

73 *Fed. Reg.* at 1215. The Daikin Altherma product class will provide superior comfort to the end user, and will incorporate state of the art technology such as variable speed compressors and a solar kit to enhance the energy efficiency performance of the integrated domestic hot water production system component. The Daikin Altherma product class will introduce technologies that will increase system efficiency and reduce national energy consumption, and that will also offer a new level of comfort and control to end users.

DACA requests that DOE grant our Application for Interim Waiver so we can bring the new highly energy efficient technology represented by the Daikin Altherma product class to the market as soon as possible, thereby allowing the U.S. consumer to benefit from our high technology and high efficiency product.

Confidential Information

DACA makes no request to DOE for confidential treatment of any information contained in this Petition for Waiver and Application for Interim Waiver.

Conclusion

Daikin AC (Americas), Inc. respectfully requests DOE to grant its Petition for Waiver of the applicable test procedure to DACA for specified models of the Altherma system, and to grant its Application for Interim Waiver. DOE's failure to issue an interim waiver from test standards would cause significant economic hardship to DACA by preventing DACA from marketing these products even though DOE has previously granted a waiver to other products that were offered in the market with similar design characteristics.

We would be pleased to respond to any questions you may have regarding this Petition for Waiver and Application for Interim Waiver. Please contact Lee Smith, Director of Product of Product Marketing at 972–245–1510 or by email at *Lee.smith@daikinac.com*.

Sincerely,

Akinori Atarashi
President
Daikin AC (Americas), Inc.
1645 Wallace Drive, Suite 110
Carrollton, Texas 75006
(Submitted in triplicate)

Encls: Copy of Daikin Altherma Brochure, Engineering Data, EN Testing & Rating Standards

[FR Doc. E9–29785 Filed 12–14–09; 8:45 am]
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DEPARTMENT OF ENERGY

[Case No. CAC–025]

Energy Conservation Program for Certain Industrial Equipment: Publication of the Petition for Waiver From Daikin AC (Americas), Inc. and Granting of the Interim Waiver From the Department of Energy Commercial Package Air Conditioner and Heat Pump Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver, granting of application for interim waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes a petition for waiver from Daikin AC (Americas), Inc. (Daikin). The petition for waiver (hereafter ''petition'') requests a waiver from the U.S. Department of Energy (DOE) test procedure applicable to commercial package air-cooled central air conditioners and heat pumps. The petition is specific to the Daikin variable capacity VRV–III–C (commercial) multi-split heat pumps. Through this document, DOE: (1) Solicits comments, data, and information with respect to the Daikin Petition; and (2) announces the grant of an interim waiver to Daikin from the applicable DOE test procedure for the subject commercial air-cooled, multi-split air conditioners and heat pumps.

DATES: DOE will accept comments, data, and information with respect to the Daikin Petition until, but no later than January 14, 2010.

ADDRESSES: You may submit comments, identified by case number ''CAC–025,'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: AS_Waiver_Requests@ee.doe.gov.* Include either the case number [CAC–025], and/or ''Daikin Petition'' in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Instructions: All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Any person submitting written comments must also send a copy of such comments to the petitioner, pursuant to 10 CFR 431.401(d). The contact information for the petitioner is: Mr. Lee Smith, Director of Product Marketing, Daikin AC (Americas), Inc.,

1645 Wallace Drive, Suite 110, Carrollton, Texas 75006.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., (Resource Room of the Building Technologies Program), Washington, DC, 20024; (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE rulemakings regarding similar central air conditioning and heat pump equipment. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611. *E-mail: AS_Waiver_Requests@ee.doe.gov.*

Ms. Francine Pinto or Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. *Telephone:* (202) 586–7432 or (202) 586–5827, respectively. *E-mail: Francine.Pinto@hq.doe.gov* or *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency, including Part A of Title III, which establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' (42 U.S.C. 6291–6309) Similar to the program in Part A, Part A–1 of Title III provides for an energy efficiency program titled, ''Certain Industrial Equipment,'' which includes commercial air conditioning equipment, package boilers, water heaters, and other types of commercial equipment. (42 U.S.C. 6311–6317)

Today's notice involves commercial equipment under Part A–1. Part A–1 specifically includes definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316). With respect to test procedures, Part A–1 authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)).

For commercial package air-conditioning and heating equipment, EPCA provides that ''the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute [ARI] or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers [ASHRAE], as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.'' (42 U.S.C. 6314(a)(4)(A)) Under 42 U.S.C. 6314(a)(4)(B), the statute further directs the Secretary to amend the test procedure for a covered commercial product if the industry test procedure is amended, unless the Secretary determines, by rule and based on clear and convincing evidence, that such a modified test procedure does not meet the statutory criteria set forth in 42 U.S.C. 6314(a)(2) and (3).

On December 8, 2006, DOE published a final rule adopting test procedures for commercial package air-conditioning and heating equipment, effective January 8, 2007. 71 FR 71340. DOE adopted ARI Standard 340/360–2004, ''Performance Rating of Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment,'' for small and large commercial package air-cooled heat pumps with capacities ≥ 65,000 Btu/h and <760,000 British thermal units per hour (Btu/h). *Id.* at 71371. Pursuant to this rulemaking, DOE's regulations at 10 CFR 431.95(b)(2) incorporate by reference ARI Standard 340/360–2004, and Table 1 to 10 CFR 431.96 directs manufacturers of commercial package air-cooled air conditioning and heating equipment to use the appropriate procedure when measuring energy efficiency of those products. (The cooling capacities of Daikin's commercial VRV–III–C multi-split heat pump products, which are at issue in the waiver petition filed by Daikin, range from 6 tons (72,000 Btu/hr) to 16 tons (192,000 Btu/hr), thereby resulting in these products falling within the range of ARI Standard 340/360–2004, which covers products with capacities greater than 65,000 Btu/hour.)

DOE's regulations for covered products permit a person to seek a waiver from the test procedure requirements for covered commercial equipment if at least one of the following conditions is met: (1) The petitioner's basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures; or (2) the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 431.401(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). Waivers remain in effect pursuant to the provisions of 10 CFR 431.401(g).

The waiver process also permits parties submitting a petition for waiver to file an application for interim waiver of the applicable test procedure requirements. 10 CFR 431.401(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 431.401(e)(3). An interim waiver remains in effect for a period of 180 days or until DOE issues its determination on the petition for waiver, whichever occurs first, and it may be extended by DOE for an additional 180 days, if necessary. 10 CFR 431.401(e)(4).

II. Petition for Waiver

On September 9, 2009, Daikin filed a petition for waiver from the test procedures at 10 CFR 431.96, which are applicable to commercial package air-cooled central air conditioners and heat pumps, and an application for interim

waiver. The capacities of the Daikin VRV–III–C multi-split heat pumps range from 72,000 Btu/hr to 192,000 Btu/hr, making the applicable test procedure for Daikin's commercial VRV–III–C multi-split heat pumps ARI Standard 340/360–2004, which manufacturers are directed to use pursuant to Table 1 of 10 CFR 431.96.

Daikin seeks a waiver from the applicable test procedures under 10 CFR 431.96 on the grounds that its VRV–III–C multi-split heat pumps contain design characteristics that prevent testing according to the current DOE test procedures. Specifically, Daikin asserts that the two primary factors that prevent testing of its multi-split variable speed products are the same factors stated in the waivers that DOE granted to Mitsubishi Electric & Electronics USA, Inc. (Mitsubishi) for a similar line of commercial multi-split air-conditioning systems:

- Testing laboratories cannot test products with so many indoor units; and
- There are too many possible combinations of indoor and outdoor unit to test. 69 FR 52660 (August 27, 2004) (Mitsubishi waiver); 72 FR 17528 (April 9, 2007) (Mitsubishi waiver); 72 FR 71387 (Dec. 17, 2007) (Samsung waiver); 72 FR 71383 (Dec. 17, 2007) (Fujitsu waiver); 73 FR 39680 (July 10, 2008) (Daikin waiver); 74 FR 15955 (April 8, 2009) (Daikin waiver); 74 FR 16193 (April 9, 2009) (Sanyo waiver); 74 FR 16373 (April 10, 2009) (Daikin waiver).

The VRV–III–C systems have operational characteristics similar to other commercial multi-split products manufactured by Mitsubishi, Samsung, Fujitsu and Sanyo, all of which have already been granted waivers. The VRV–III–C system can be connected to the complete range of Daikin ceiling mounted, concealed, ducted, corner, cassette, wall-mounted and floor-mounted and other indoor fan coil units. Each of these units has nine different indoor static pressure ratings as standard, with addition pressure ratings available. In certain high-capacity applications, Daikin's VRV–III–C systems have the capability to combine two outdoor units to create a larger capacity system. There are over one million combinations possible with the DACA VRV–III–C system. Accordingly, Daikin requested that DOE grant a waiver from the applicable test procedures for its VRV–III–C product designs, until a suitable test method can be prescribed.

III. Application for Interim Waiver

On September 9, 2009, in addition to its petition for waiver, Daikin submitted to DOE an application for interim waiver. DOE determined that Daikin's application for interim waiver does not provide sufficient market, equipment price, shipments, and other manufacturer impact information to permit DOE to evaluate the economic hardship Daikin might experience absent a favorable determination on its application for interim waiver. However, DOE understands that absent an interim waiver, Daikin's products would not otherwise be tested and rated for energy consumption on a comparable basis with equivalent products where DOE previously granted waivers. In other words, there would not be a level playing field and thus Daikin would be placed at a competitive disadvantage. Furthermore, DOE has determined that it appears likely that Daikin's Petition for Waiver will be granted and that is desirable for public policy reasons to grant Daikin immediate relief pending a determination on the petition for waiver. DOE believes that it is likely Daikin's petition for waiver for the new VRV–III–C multi-split models will be granted because, as noted above, DOE has previously granted a number of waivers for similar product designs.[1] The two principal reasons supporting the grant of the previous waivers also apply to Daikin's VRV–III–C products: (1) Test laboratories cannot test products with so many indoor units; and (2) it is impractical to test so many combinations of indoor units with each outdoor unit. In addition, DOE believes that similar products should be tested and rated for energy consumption on a comparable basis. For these same reasons, DOE also determined that it is desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver.

Therefore, *it is ordered that:*

The application for interim waiver filed by Daikin is hereby granted for Daikin's VRV–III–C air-cooled multi-split heat pumps, subject to the specifications and conditions below.

1. Daikin shall not be required to test or rate its VRV–III–C commercial air-cooled multi-split products on the basis of the existing test procedure under 10 CFR 431.96, which incorporates by reference ARI Standard 340/360–2004.

2. Daikin shall be required to test and rate its VRV–III–C commercial air-cooled multi-split products according to the alternate test procedure as set forth in section IV(3), ''Alternate test procedure.''

The interim waiver applies to the following basic model groups:

Type	Size	Model No.	Combination	
			8-Ton	16-Ton
Condensing Unit	6-Ton	RTSQ72PTJU		1
	8-Ton	RTSQ96PTJU	1	
	10-Ton	RTSQ120PTJU		1
2nd Stage Function Unit	Up to 16-Ton	BTSQ192PTJU	1	1
Outdoor Piping Kit		BHFP30A56		1

This interim waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify this interim waiver at any time upon a determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

[1] DOE notes that it has also previously granted interim waivers to Fujitsu (70 FR 5980 (Feb. 4, 2005)), Samsung (70 FR 9629 (Feb. 28, 2005)), Mitsubishi (72 FR 17533 (April 9, 2007)), and Daikin (72 FR 35986 (July 2, 2007)), for comparable commercial multi-split air conditioners and heat pumps.

IV. Alternate Test Procedure

Responding to two recent petitions for waiver from Mitsubishi, DOE specified an alternate test procedure to provide a basis from which Mitsubishi could test and make valid energy efficiency representations for its R410A CITY MULTI products, as well as for its R22 multi-split products. Alternate test procedures related to the Mitsubishi petitions were published in the **Federal Register** on April 9, 2007. *See* 72 FR 17528 and 72 FR 17533. For reasons similar to those published in these prior notices, DOE believes that an alternate test procedure is appropriate in this instance.

DOE understands that existing testing facilities have a limited ability to test multiple indoor units simultaneously, and the large number of possible combinations of indoor and outdoor units for some variable refrigerant flow zoned systems makes it impractical for manufacturers to test. We further note that subsequent to the waiver that DOE granted for Mitsubishi's R22 multi-split products, ARI formed a committee to discuss the issue and to work on developing an appropriate testing protocol for variable refrigerant flow systems. However, to date, no additional test methodologies have been adopted by the committee or submitted to DOE.

Therefore, as discussed below, as a condition for granting this interim waiver to Daikin, DOE is including an alternate test procedure similar to those granted to Mitsubishi for its R22 and R410A products. DOE plans to consider the same alternate test procedure in the context of the subsequent Decision and Order pertaining to Daikin's petition for waiver. Utilization of this alternate test procedure will allow Daikin to test and make energy efficiency representations for its VRV–III–C products. More broadly, DOE has applied a similar alternate test procedure to other waivers for similar residential and commercial central air conditioners and heat pumps. Such cases include petitions for waiver involving multi-split products manufactured by Mitsubishi (72 FR 17528, April 9, 2007); Samsung (72 FR 71387, Dec. 17, 2007); Fujitsu (72 FR 71383, Dec. 17, 2007); Daikin (73 FR 39680, July 10, 2008); Daikin (74 FR 15955, April 8, 2009); Sanyo (74 FR 16193, April 9, 2009); and Daikin (74 FR 16373, April 10, 2009).

The alternate test procedure developed in conjunction with the Mitsubishi waiver permits Daikin to designate a ''tested combination'' for each model of outdoor unit. The indoor units designated as part of the tested combination must meet specific requirements. For example, the tested combination must have from two to eight indoor units so that it can be tested in available test facilities. (The ''tested combination'' was originally defined to consist of one outdoor unit matched with between 2 and 5 indoor units. The maximum number of indoor units in a tested combination is increased in this instance from 5 to 8 to account for the fact that these larger-capacity products can accommodate a greater number of indoor units.) The tested combination must be tested according to the applicable DOE test procedure, as modified by the provisions of the alternate test procedure as set forth below. The alternate test procedure also allows manufacturers of such products to make valid and consistent representations of energy efficiency for their air-conditioning and heat pump products.

In the present case, DOE is modifying the alternate test procedure taken from the above-referenced waiver granted to Mitsubishi for its R410A and R22 CITY MULTI products to revise the definition of a ''tested combination.'' The ''tested combination'' was originally defined to consist of one outdoor unit matched with between 2 and 5 indoor units. The maximum number of indoor units in a tested combination is here increased from 5 to 8 to account for the fact that these larger-capacity products (>150,000 Btu/h) can accommodate a greater number of indoor units. DOE plans to consider inclusion of the following waiver language in the Decision and Order for Daikin's VRV–III–C commercial multi-split air-cooled heat pump models:

(1) The ''Petition for Waiver'' filed by Daikin Electronics, Inc. is hereby granted as set forth in the paragraphs below.

(2) Daikin shall not be required to test or rate its VRV–III–C variable capacity multi-split heat pump products listed above in section III, on the basis of the existing test procedures, but shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3).

(3) *Alternate test procedure.*

(A) Daikin shall be required to test the products listed in section III above according to the test procedures for central air conditioners and heat pumps prescribed by DOE at 10 CFR 431.96, except that Daikin shall test a ''tested combination'' selected in accordance with the provisions of subparagraph (B) of this paragraph. For every other system combination using the same outdoor unit as the tested combination, Daikin shall make representations concerning the VRV–III–C products covered in this waiver according to the provisions of subparagraph (C) below.

(B) Tested combination. The term ''tested combination'' means a sample basic model comprised of units that are production units, or are representative of production units, of the basic model being tested. For the purposes of this waiver, the tested combination shall have the following features:

(1) The basic model of a variable refrigerant flow system used as a tested combination shall consist of one outdoor unit, with one or more compressors, that is matched with between 2 and 8 indoor units; for multi-split systems, each of these indoor units shall be designed for individual operation.

(2) The indoor units shall—

(i) Represent the highest sales model family or another indoor model family if the highest sales model family does not provide sufficient capacity (*see* ii);

(ii) Together, have a nominal cooling capacity that is between 95% and 105% of the nominal cooling capacity of the outdoor unit;

(iii) Not, individually, have a nominal cooling capacity that is greater than 50% of the nominal cooling capacity of the outdoor unit;

(iv) Operate at fan speeds that are consistent with the manufacturer's specifications; and

(v) Be subject to the same minimum external static pressure requirement while being configurable to produce the same static pressure at the exit of each outlet plenum when manifolded as per section 2.4.1 of 10 CFR Part 430, subpart B, appendix M.

(C) *Representations.* In making representations about the energy efficiency of its VRV–III–C variable capacity air-cooled multi-split heat pump products, for compliance, marketing, or other purposes, Daikin must fairly disclose the results of testing under the DOE test procedure, doing so in a manner consistent with the provisions outlined below:

(1) For VRV–III–C combinations tested in accordance with this alternate test procedure, Daikin may make representations based on these test results.

(2) For VRV–III–C combinations that are not tested, Daikin may make representations based on the testing results for the tested combination at the same energy efficiency level as the tested combination with the same outdoor unit and which is consistent with either of the two following methods:

(i) Representation of non-tested combinations according to an

Alternative Rating Method (ARM) approved by DOE; or

(ii) Representation of non-tested combinations at the same energy efficiency level as the tested combination with the same outdoor unit.

V. Summary and Request for Comments

Through today's notice, DOE announces receipt of the Daikin petition for waiver from the test procedures applicable to Daikin's VRV–III–C commercial multi-split heat pump products, and for the reasons articulated above, DOE grants Daikin an interim waiver from those procedures. As part of this notice, DOE is publishing Daikin's petition for waiver in its entirety. The petition contains no confidential information. Furthermore, today's notice includes an alternate test procedure that Daikin is required to follow as a condition of its interim waiver and that DOE is considering including in its subsequent Decision and Order. In this alternate test procedure, DOE is defining a ''tested combination'' which Daikin could use in lieu of testing all retail combinations of its VRV–III–C multi-split heat pump products.

DOE is interested in receiving comments on the issues addressed in this notice. Pursuant to 10 CFR 431.401(d), any person submitting written comments must also send a copy of such comments to the petitioner, whose contact information is included in the section entitled **ADDRESSES** section above.

Issued in Washington, DC, on December 8, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

September 9, 2009.

Ms. Catherine Zoi
Assistant Secretary for Energy Efficiency and Renewable Energy
U.S. Department of Energy
1000 Independence Ave, SW.,
Washington, DC 20585–0121

Re: Petition for Waiver of Test Procedure

Dear Assistant Secretary Zoi:

Daikin AC (Americas) Inc. (DACA) respectfully petitions the Department of Energy (DOE) pursuant to 10 CFR § 431.401(a)(1) (2009) for a waiver of the test procedures applicable to central air conditioners and heat pumps, as established in 10 C.F.R. § 431.96 (2009) and ARI Standard 340/360–20041, for the Daikin VRV–III–C system (also called Cold Climate VRV), an air source heat pump system that incorporates a unique second stage refrigeration cycle to deliver improved heating performance and efficiency at lower ambient conditions. The specific models for which DACA requests this waiver in the Daikin VRV–III–C product class are listed below in this Petition. DACA seeks a waiver from the existing central air conditioner and central air conditioning heat pump test procedure for the Daikin VRV–III–C line of heat pumps because the basic models contain design criteria that prevent testing of the basic models according to the prescribed test procedures. We are simultaneously requesting an interim waiver for the same systems pursuant to 10 CFR § 431.401(a)(2) (2009).

General Characteristics of DACA's VRV–III–C Products

The Daikin VRV–III–C system has the following characteristics and applications:

- The VRV–III–C operates as a heat pump system only (as an 8-ton or a 16-ton system).
- The VRV–III–C is an inverter controlled heat pump system that can provide year round heating in very low outdoor temperatures. In low ambient conditions, the VRV–III–C offers 30% more heating capacity than a standard Daikin VRV–III heat pump.
- The VRV–III–C can provide cooling in ambient temperatures down to 23 °F.
- The VRV–III–C includes a proprietary 2-stage refrigeration cycle technology to ensure improved heating effect.
- The VRV–III–C delivers nominal (rated) heating capacity at 5 °F (−15 °C) (rated condition is 47 °F).
- The VRV–III–C delivers 87% of nominal (rated) heating capacity at −4 °F (−20 °C), and the system delivers 75% of nominal (rated) heating capacity at −13 °F (−25 °C).
- The VRV–III–C provides an enhanced heating ''warm up'' function.
- The VRV–III–C minimizes heating downtime from defrost operation.
- The VRV–III–C system eliminates the need to use supplemental ''resistance type'' strip heating elements.
- The VRV–III–C system heat pump compressor's inverter technology includes an integrated frequency-converter that adjusts the rotational speed of the compressor to meet the heating or cooling demand. Therefore, the system seldom operates at full capacity.
- The VRV–III–C system can be linked to the complete range of Daikin Ceiling-Mounted, Concealed, Ducted, Corner, Cassette, Wall-Mounted, Floor-Mounted and other indoor fan coil units, providing the same connection flexibility as Daikin's standard VRV systems. The amount of piping, and the number, diversity and range of indoor units that can be connected to the VRV–III–C is comparable to the Daikin VRV–II, VRV–II–S and VRV–III systems for which DOE has previously issued waivers.

Particular Basic Models for Which DACA Requests a Waiver

DACA requests a waiver from the test procedures for the following basic model groups:

Type	Size	Model Number	Combination	
			8-Ton	16-Ton
Condensing Unit	6-Ton	RTSQ72PTJU		1
	8-Ton	RTSQ96PTJU	1	
	10-Ton	RTSQ120PTJU		1
2nd Stage Function Unit	Up to 16-Ton	BTSQ192PTJU	1	1
Outdoor Piping Kit		BHFP30A56		1

[1] Detailed citations to the test procedures for which DACA is requesting a waiver are included on page 3 of this petition.

VRV–III–C System Characteristics Constituting the Grounds for DACA's Petition

The Daikin VRV–III–C system consists of a heat pump that comprises a newly designed outdoor unit and ''function unit'' featuring two-stage compression technology. This design feature gives the VRV–III–C its outstanding performance characteristics by creating the higher pressures necessary for efficient system operation under low ambient conditions.

The Daikin VRV–III–C system can be connected to the complete range of Daikin Ceiling Mounted, Concealed, Ducted, Corner, Cassette, Wall-Mounted and Floor-Mounted and other indoor fan coil units. Each of these units has nine different indoor static pressure ratings as standard, with addition pressure ratings available. There are over one million combinations possible with the DACA VRV–III–C product offerings. It is completely impractical for testing laboratories to test a product such as the VRV–III–C with multiple indoor units because of the huge number of potential system configurations.

The test method for central air conditioners and heat pumps contained in 10 C.F.R. § 431.96, Subpart B, Appendix M does not account for the extremely large number of potential system configurations possible with the VRV–III–C system. Therefore, the currently applicable test method cannot accurately account for the Daikin VRV–III–C system's energy performance across the range of possible system configurations.

DACA's VRV–III products share many of the design characteristics and features of similar equipment for which DOE has already approved either interim waivers or waivers, including DACA's VRV, VRV–S and VRV–III product lines, and Mitsubishi Electric and Electronics USA, Inc.'s (MEUS) CITY MULTI and S&L product classes.[2] The same testing constraints and limitations apply to all of these products.

The rationale for DACA's Petition for a waiver from testing standards for the Daikin VRV–III–C system is virtually identical to basis for the other manufacturers' previous requests for waivers noted above. DACA requests that DOE apply the same rationale to DACA's Petition for waiver for the Daikin VRV–III–C system that DOE used to grant the previous waiver petitions for their similar systems.

Specific Testing Requirements Sought to be Waived

The test procedures from which DACA is requesting a waiver are contained in 10 C.F.R. § 431.96(b), Table 1, which incorporates ARI Standard 340/360–2004 by reference into 10 C.F.R. Part 431, and which is applicable to central air conditioner and heat pump equipment with a capacity of >65,000 Btu/hr.

Discussion of Need for Requested Waiver

Although the capacity of the Daikin VRV–III–C product class is within the scope of 10 C.F.R. *Part* § 431.96, the design characteristics of the Daikin VRV–III–C product class prevent testing of the system according to the prescribed test procedures in a manner that represents the system's true energy consumption characteristics. Specifically, application of the existing prescribed test method cannot account for the large number of possible combinations of indoor and outdoor units that would be subject to testing. Also, it is impossible for testing laboratories to test products with such a large number of possible combinations.

The absence of a waiver from the required testing procedure will restrict the availability to consumers in the United States of the Daikin VRV–III–C system's energy savings benefits that result from integrating domestic hot water production into the system.

Manufacturers of Other Basic Models Incorporating Similar Design Characteristics

DACA is aware of the following manufacturer that produces a basic model incorporating similar design characteristics to the VRV–III–C in the United States market:

- Mitsubishi Electric & Electronics USA, Inc.[3]

Alternative Test Procedure

DACA proposes that DOE apply the same alternate test procedure to the covered VRV–III–C products as DOE applied to DACA's VRV–III products in the waiver that DOE granted for those products on April 8, 2009 (74 *Fed. Reg.* 15,955). The alternate test method appears in Section 3 of the VRV–III waiver. 74 *Fed. Reg.* at 15,958.

Application for Interim Waiver

DACA also hereby applies pursuant to 10 C.F.R. § 431.401(a)(2) for an interim waiver of the applicable test procedure requirements for the Daikin VRV–III–C product class models listed above. The basis for DACA's Application for Interim Waiver follows.

DACA is likely to succeed in its Petition for Waiver because there is no reasonable argument that the test method contained in 10 C.F.R. § 431.96 can be accurately applied to the Daikin VRV–III–C product class. As explained above in the DACA's Petition for Waiver, the design characteristics of the Daikin VRV–III–C product class clearly prevent testing the Daikin VRV–III–C system with the prescribed test procedures because of the large number of possible system combinations and the limitations of existing testing facilities.

The likelihood of DOE approving DACA's Petition for Waiver is supported by the DOE's history of approving previous waiver requests from other manufacturers for products that are similar to the Daikin VRV–III–C product class, based on the same rationale offered by DACA in this Petition for Waiver.

Additionally, DACA is likely to suffer economic hardship and competitive disadvantage if DOE does not grant its interim waiver request. DACA is now preparing to introduce its Daikin VRV–III–C product class in a matter of months. If we must wait for completion of the normal waiver consideration and issuance process, DACA will be forced to delay the opportunity to begin recouping through product sales its production and marketing costs associated with introducing the Daikin VRV–III–C product class into the United States market.

DOE approval of DACA's interim waiver application is also supported by sound public policy reasons. As DOE stated in its January 7, 2008 approval of DACA's interim waiver for the VRV–WII product classes:

[I]n those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for similar products design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

73 *Fed. Reg.* at 1215. The Daikin VRV–III–C product class will provide superior comfort to the end user, and will incorporate state of the art technology such as an advanced inverter drive and two-stage compression that

[2] DOE granted DACA an interim waiver for its VRV and VRV–S product lines in a letter dated August 14, 2006, and DOE renewed this interim waiver on July 2, 2007 (72 *Fed. Reg.* 35,986). DOE granted MEUS a waiver for its CITY MULTI VRFZ class of products. 69 *Fed. Reg.* 52,660 (August 27, 2004). DOE granted DACA a waiver for its VRV–III product lines on April 8, 2009 (74 *Fed. Reg.* 15,955). DOE has recently granted MEUS an interim waiver for its S&L Class multi-split heat pumps and heat recovery systems.

[3] MEUS's Hyper Heating VRF system has similar design characteristics to the VRV–III–C system, offering year-round heating in low ambient temperatures.

enable the system to provide year round heating in very low ambient temperatures. The Daikin VRV–III–C product class will introduce technologies that will increase system efficiency and reduce national energy consumption, and that will also offer a new level of comfort and control to end users.

DACA requests that DOE grant our Application for Interim Waiver so we can bring the new highly energy efficient technology represented by the Daikin VRV–III–C product class to the market as soon as possible, thereby allowing the U.S. consumer to benefit from our high technology and high efficiency product.

Confidential Information

DACA makes no request to DOE for confidential treatment of any information contained in this Petition for Waiver and Application for Interim Waiver.

- Conclusion

Daikin AC (Americas), Inc. Corporation respectfully requests DOE to grant its Petition for Waiver of the applicable test procedure to DACA for specified models of the VRV–III–C system, and to grant its Application for Interim Waiver. DOE's failure to issue an interim waiver from test standards would cause significant economic hardship to DACA by preventing DACA from marketing these products even though DOE has previously granted waivers to other products that were offered in the market with similar design characteristics.

We would be pleased to respond to any questions you may have regarding this Petition for Waiver and Application for Interim Waiver. Please contact Lee Smith, Director of Product Marketing at 972–245–1510 or by email at *Lee.smith@daikinac.com*.

Sincerely,

Akinori Atarashi,
President

Daikin AC (Americas), Inc.
1645 Wallace Drive
Suite 110
Carrollton, Texas 75006
(Submitted in triplicate)
Encls.
cc:
Mitsubishi Electric & Electronics USA, Inc
4300 Lawrenceville-Suwanee Road
Suwanee, GA 30024
Attn: William Rau, Senior Vice President and General Manager

[FR Doc. E9–29795 Filed 12–14–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Case No. CAC–021]

Energy Conservation Program for Commercial Equipment: Decision and Order Granting a Waiver to LG Electronics, Inc. (LG) From the Department of Energy Commercial Package Air Conditioner and Heat Pump Test Procedures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: This notice publishes the U.S. Department of Energy's (DOE) Decision and Order in Case No. CAC–021, which grants a waiver to LG from the existing DOE test procedure applicable to commercial package central air conditioners and heat pumps. The waiver is specific to the LG variable speed and variable refrigerant volume Multi V (commercial) multi-split heat pumps and heat recovery systems. As a condition of this waiver, LG must test and rate its Multi V multi-split products according to the alternate test procedure set forth in this notice.

DATES: This Decision and Order is effective December 15, 2009.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611. *E-mail: Michael.Raymond@ee.doe.gov.*

Francine Pinto or Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103. *Telephone:* (202) 586–9507. *E-mail: Francine.Pinto@hq.doe.gov or Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 431.401(f)(4), DOE gives notice of the issuance of its Decision and Order as set forth below. In this Decision and Order, DOE grants LG a Waiver from the existing DOE commercial package air conditioner and heat pump test procedures for its Multi V multi-split products, subject to a condition requiring LG to test and rate the specified models from its Multi V multi-split product line pursuant to the alternate test procedure provided in this notice. The current test procedure is the Air-Conditioning and Refrigeration Institute (ARI) Standard 340/360–2004, ''Performance Rating of Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment'' (incorporated by reference at 10 CFR 431.95(b)(2)). Further, today's decision requires that LG may not make any representations concerning the energy efficiency of these products unless such product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the Decision and Order below, and such representations fairly disclose the results of such testing. (42 U.S.C. 6314(d)) Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. (42 U.S.C. 6293(c)).

Issued in Washington, DC, on December 8, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: LG Electronics, Inc. (LG) (Case No. CAC–021).

Background

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency, including Part A of Title III which establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' (42 U.S.C. 6291–6309) Similar to the program in Part A, Part A–1 of Title III provides for an energy efficiency program titled, ''Certain Industrial Equipment,'' which includes large and small commercial air conditioning equipment, package boilers, storage water heaters, and other types of commercial equipment. (42 U.S.C. 6311–6317).

Today's notice involves commercial equipment under Part A–1. The statute specifically includes definitions, test procedures, labeling provisions, energy conservation standards, and provides the Secretary of Energy (the Secretary) with the authority to require information and reports from manufacturers. 42 U.S.C. 6311–6317. With respect to test procedures, the statute generally authorizes the Secretary to prescribe test procedures that are reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)).

For commercial package air-conditioning and heating equipment, EPCA provides that ''the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by

the Air-Conditioning and Refrigeration Institute or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.'' (42 U.S.C. 6314(a)(4)(A)) Under 42 U.S.C. 6314(a)(4)(B), the Secretary must amend the test procedure for a covered commercial product if the applicable industry test procedure is amended, unless the Secretary determines, by rule and based on clear and convincing evidence, that such a modified test procedure does not meet the statutory criteria set forth in 42 U.S.C. 6314(a)(2) and (3).

On December 8, 2006, DOE published a final rule adopting test procedures for commercial package air-conditioning and heating equipment, effective January 8, 2007. 71 FR 71340. DOE adopted Air-Conditioning and Refrigeration Institute (ARI) Standard 210/240–2003 for small commercial package air-cooled air conditioning and heating equipment with capacities <65,000 British thermal units per hour (Btu/h) and ARI Standard 340/360–2004 for large and very large commercial package air-cooled air conditioning and heating equipment with capacities ≥ 65,000 Btu/h and <760,000 Btu/h. *Id.* at 71371. Pursuant to this final rule, DOE's regulations at 10 CFR 431.95(b)(1)–(2) incorporate by reference the relevant ARI standards, and 10 CFR 431.96 directs manufacturers of commercial package air conditioning and heating equipment to use the appropriate procedure when measuring energy efficiency of those products. The cooling capacities of LG's Multi V commercial multi-split products, which have capacities between 76,400 Btu/hr and 310,000 Btu/hr, fall in the range covered by ARI Standard 340/360–2004.

In addition, DOE's regulations contain provisions allowing a person to seek a waiver for a particular basic model from the test procedure requirements for covered commercial equipment if that basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). A waiver petition must include any alternate test procedures known to the petitioner to evaluate characteristics of the basic model in a manner representative of its energy consumption. 10 CFR 431.401(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). Waivers remain in effect pursuant to the provisions of 10 CFR 431.401(g).

The waiver process also allows any interested person who has submitted a petition for waiver to file an application for interim waiver from the applicable test procedure requirements. 10 CFR 431.401(a)(2). An interim waiver may be granted if the Assistant Secretary for Energy Efficiency and Renewable Energy determines that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or if the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 431,401(e)(3). An interim waiver will terminate 180 days after issuance or upon the issuance of DOE's determination on the petition for waiver, whichever occurs first, which may be extended by DOE for an additional 180 days. 10 CFR 431.401(e)(4).

On April 16, 2008, LG filed a Petition for Waiver and an Application for Interim Waiver from the test procedures applicable to small and large commercial package air-cooled air-conditioning and heating equipment. The applicable test procedure is ARI 340/360–2004, specified in Tables 1 and 2 to 10 CFR 431.96. LG asserted that the two primary factors that prevent testing of multi-split variable speed products, regardless of manufacturer, are the same factors stated in the waivers that DOE granted to Mitsubishi Electric & Electronics USA, Inc. (Mitsubishi) for a similar line of commercial multi-split air-conditioning systems: (1) Testing laboratories cannot test products with so many indoor units; and (2) There are too many possible combinations of indoor and outdoor units to test. Mitsubishi (72 FR 17528, April 9, 2007); Samsung (72 FR 71387, Dec. 17, 2007); Fujitsu (72 FR 71383, Dec. 17, 2007); Daikin (73 FR 39680, July 10, 2008); Daikin (74 FR 15955, April 8, 2009); Sanyo (74 FR 16193, April 9, 2009); and Daikin (74 FR 16373, April 10, 2009). On May 5, 2009, DOE published LG's Petition for Waiver in the **Federal Register,** seeking public comment pursuant to 431.3401(b)(1)(iv), and granted the Application for Interim Waiver. 74 FR 20688. DOE received no comments on the LG petition.

In a similar case, DOE published a Petition for Waiver from Mitsubishi Electric and Electronics USA, Inc. (MEUS) for products very similar to LG's multi-split products. 71 FR 14858 (March 24, 2006). In the March 24, 2006, **Federal Register** notice, DOE also published and requested comment on an alternate test procedure for the MEUS products at issue. DOE stated that if it specified an alternate test procedure for MEUS in the subsequent Decision and Order, DOE would consider applying the same procedure to similar waivers for residential and commercial central air conditioners and heat pumps, including such products for which waivers had previously been granted. *Id.* at 14861. Comments were published along with the MEUS Decision and Order in the **Federal Register** on April 9, 2007. 72 FR 17528 (April 9, 2007). Most of the comments responded favorably to DOE's proposed alternate test procedure; while one commenter indicated that a waiver was unnecessary, the commenter did not present a satisfactory way to test the products at issue with the DOE test procedure. *Id.* at 17529. Also, there was general agreement that an alternate test procedure is necessary while a final test procedure for these types of products is being developed. *Id.* The MEUS Decision and Order included the alternate test procedure adopted by DOE. *Id.*

Assertions and Determinations

LG's Petition for Waiver

LG seeks a waiver from the DOE test procedures for this product class on the grounds that its Multi V multi-split heat pump and heat recovery systems contain design characteristics that prevent testing according to the current DOE test procedures. As stated above, LG asserts that the two primary factors that prevent testing of multi-split variable speed products, regardless of manufacturer, are the same factors stated in the waivers that DOE granted to MEUS, Fujitsu General Ltd. (Fujitsu), and Samsung Air Conditioning (Samsung) for similar lines of commercial multi-split air-conditioning systems:

- Testing laboratories cannot test products with so many indoor units.
- There are too many possible combinations of indoor and outdoor units to test. Mitsubishi (72 FR 17528, April 9, 2007); Samsung (72 FR 71387, Dec. 17, 2007); Fujitsu (72 FR 71383, Dec. 17, 2007); Daikin (73 FR 39680, July 10, 2008); Daikin (74 FR 15955, April 8, 2009); Sanyo (74 FR 16193, April 9, 2009); and Daikin (74 FR 16373, April 10, 2009).

The Multi V systems have operational characteristics similar to other commercial multi-split products

manufactured by Mitsubishi, Samsung, Sanyo, Fujitsu and Daikin, all of which have already been granted waivers. Each of the Multi V system indoor units is designed to be used with up to 52 other indoor units, which need not be the same models. There are 70 different indoor models. In certain high-capacity applications, LG's Multi V systems have the capability to combine two outdoor units to create a larger capacity system. Accordingly, LG requests that DOE grant a waiver from the applicable test procedures for its Multi V product designs, until a suitable test method can be prescribed. DOE believes that the LG Multi V equipment and equipment for which waivers have previously been granted are alike with respect to the factors that make them eligible for test procedure waivers. DOE therefore grants to LG a Multi V multi-split product waiver similar to the previous multi-split waivers.

Previously, in addressing MEUS's R410A CITY MULTI VRFZ products, which are similar to the LG products at issue here, DOE stated:

To provide a test procedure from which manufacturers can make valid representations, the Department is considering setting an alternate test procedure for MEUS in the subsequent Decision and Order. Furthermore, if DOE specifies an alternate test procedure for MEUS, DOE is considering applying the alternate test procedure to similar waivers for residential and commercial central air conditioners and heat pumps. Such cases include Samsung's petition for its DVM products (70 FR 9629, February 28, 2005), Fujitsu's petition for its Airstage variable refrigerant flow (VRF) products (70 FR 5980, February 4, 2005), and MEUS's petition for its R22 CITY MULTI VRFZ products. (69 FR 52660, August 27, 2004).

71 FR 14861.

LG did not include an alternate test procedure in its Petition for Waiver. However, in response to two recent Petitions for Waiver from MEUS, DOE specified an alternate test procedure to provide a basis from which MEUS could test and make valid energy efficiency representations for its R410A CITY MULTI products, as well as for its R22 multi-split products. Alternate test procedures related to the MEUS petitions were published in the **Federal Register** on April 9, 2007. 72 FR 17528; 72 FR 17533.

DOE understands that existing testing facilities have a limited ability to test multiple indoor units at one time, and the number of possible combinations of indoor and outdoor units for some variable refrigerant flow zoned systems is impractical to test. We further note that subsequent to the waiver that DOE granted for MEUS's R22 multi-split products, ARI formed a committee to discuss the issue and to work on developing an appropriate testing protocol for variable refrigerant flow systems. However, to date, no additional test methodologies have been adopted by the committee or submitted to DOE.

DOE issues today's Decision and Order granting LG a test procedure waiver for its commercial Multi V multi-split heat pumps. As a condition of this waiver, LG must use the alternate test procedure described below. This alternate test procedure is the same in all relevant particulars as the one that DOE applied to the MEUS waiver.

Alternate Test Procedure

The alternate test procedure developed in conjunction with the MEUS waiver permits LG to designate a ''tested combination'' for each model of outdoor unit. The indoor units designated as part of the tested combination must meet specific requirements. For example, the tested combination must have from two to eight indoor units so that it can be tested in available test facilities. The tested combination was originally defined to consist of one outdoor unit matched with between 2 and 5 indoor units. The maximum number of indoor units in a tested combination is here increased from 5 to 8 to account for the fact that these larger-capacity products can accommodate a greater number of indoor units. The tested combination must be tested according to the applicable DOE test procedure, as modified by the provisions of the alternate test procedure as set forth below.

The alternate DOE test procedure also allows LG to represent the energy efficiency of that product. These representations must fairly disclose the results of such testing. The DOE test procedure, as modified by the alternate test procedure set forth in this Decision and Order, provides for efficiency rating of a non-tested combination in one of two ways: (1) At an energy efficiency level determined under a DOE-approved alternative rating method; or (2) at the efficiency level of the tested combination utilizing the same outdoor unit.

As in the MEUS matter, DOE believes that allowing LG to make energy efficiency representations for non-tested combinations by adopting this alternative test procedure as described above is reasonable because the outdoor unit is the principal efficiency driver. The current DOE test procedure for commercial products tends to rate these products conservatively. The multi-zoning feature of these products, which enables them to cool only those portions of the building that require cooling, would be expected to use less energy than if the unit is operated to cool the entire home or a comparatively larger area of a commercial building in response to a single thermostat. This feature would not be captured by the current test procedure, which requires full-load testing. Full-load testing, under which the entire building would require cooling, disadvantages these products because they are optimized for their highest efficiency when operating with less than full loads. Therefore, the alternate test procedure will provide a conservative basis for assessing the energy efficiency for such products.

With regard to the laboratory testing of commercial products, some of the difficulties associated with the existing test procedure are avoided by the alternate test procedure's requirements for choosing the indoor units to be used in the manufacturer-specified tested combination. For example, in addition to limiting the number of indoor units, another requirement is that all of the indoor units must be subject to meeting the same minimum external static pressure. This requirement allows the test lab to manifold the outlets from each indoor unit into a common plenum that supplies air to a single airflow measuring apparatus and eliminates situations in which some of the indoor units are ducted and some are non-ducted. Without this requirement, the laboratory must evaluate the capacity of a subgroup of indoor coils separately, and then sum the separate capacities to obtain the overall system capacity. This would require that the test laboratory be equipped with multiple airflow measuring apparatuses (which is unlikely), or that the test laboratory connect its one airflow measuring apparatus to one or more common indoor units until the contribution of each indoor unit has been measured.

Furthermore, DOE stated in the notice publishing the MEUS Petition for Waiver that if the Department decided to specify an alternate test procedure for MEUS, it would consider applying the procedure to waivers for similar residential and commercial central air conditioners and heat pumps produced by other manufacturers. 71 FR 14858, 14861 (March 24, 2006). As noted above, most of the comments received by DOE in response to the March 2006 notice supported the proposed alternate test procedure. 72 FR 17529. Commenters responding to that prior

notice generally agreed that an alternate test procedure is appropriate for an interim period while a final test procedure for these products is being developed. Id.

Based on the discussion above, DOE believes that the testing problems described above would prevent testing of LG's Multi V multi-split products according to the test procedure currently prescribed in 10 CFR 431.96 (ARI Standard 340/360–2004) and incorporated by reference in DOE's regulations at 10 CFR 431.95(b)(2). After careful consideration, DOE has decided to adopt the proposed alternate test procedure for LG's commercial multi-split products, with the clarifications discussed above.

Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the LG Petition for Waiver. The FTC staff did not have any objections to the issuance of a waiver to LG.

Conclusion

After careful consideration of all the materials submitted by LG, the absence of any comments, and consultation with the FTC staff, it is ordered that:

(1) The ''Petition for Waiver'' filed by LG Electronics, Inc., (LG) (Case No. CAC–021) is hereby granted as set forth in the paragraphs below.

(2) LG shall not be required to test or rate its Multi V multi-split air conditioner and heat pump models listed below on the basis of the currently applicable test procedure cited in 10 CFR 431.96, specifically, ARI Standard 340/360–2004 (incorporated by reference in 10 CFR 431.95(b)(2)), but shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3).

Multi V Series Outdoor Units

Plus II 3Ø 460V 60 Hz models: ARUN076DT2, ARUN096DT2, ARUN115DT2, ARUN134DT2, ARUN154DT2, ARUN173DT2, ARUN192DT2, ARUN211DT2, ARUN230DT2, ARUN250DT2, ARUN270DT2, ARUN290DT2, and ARUN310DT2 with nominally rated cooling capacities of 76,400, 95,900, 114,700, 133,800, 152,900, 172,000, 191,100, 211,000, 230,000, 250,000, 270,000, 290,000, and 310,000 Btu/h respectively. The maximum number of connectable indoor units is 13, 16, 20, 23, 26, 29, 32, 35, 39, 42, 49, and 52 respectively.

Plus II 3Ø 230/208V 60 Hz models: ARUN076BT2, ARUN096BT2, ARUN115BT2, ARUN154BT2, ARUN173BT2, ARUN192BT2, ARUN211BT2, and ARUN230BT2 with nominally rated cooling capacities of 76,400, 95,900, 114,700, 152,900, 172,000, 191,100, 211,000, and 230,000 Btu/h respectively. The maximum number of connectable indoor units is 13, 16, 20, 26, 29, 32, 35, and 39 respectively.

Sync II 3Ø 230/208V 60 Hz models: ARUB076BT2, ARUB096BT2, ARUB115BT2, ARUB154BT2, ARUB173BT2, ARUB192BT2, ARUB211BT2, and ARUB230BT2 with nominally rated cooling capacities of 76,400, 95,900, 114,700, 152,900, 172,000, 191,000, 211,000, and 230,000 Btu/h respectively. The maximum number of connectable indoor units is 13, 16, 20, 26, 29, 32, 35, and 39 respectively.

Compatible Indoor Units for the Above-Listed Outdoor Units:

Wall Mounted: ARNU073SEL2, ARNU093SEL2, ARNU123SEL2, ARNU153SEL2, ARNU183S5L2, and ARNU243S5L2 with nominally rated cooling capacities of 7,500, 9,600, 12,300, 15,400, 19,100, and 24,200 Btu/h respectively.

Art Cool Gallery: ARNU073SF*2, ARNU093SF*2, and ARNU123SF*2 with nominally rated cooling capacities of 7,500, 9,600, and 12,300 Btu/h respectively.

Art Cool Mirror: ARNU073SE*2, ARNU093SE*2, ARNU123SE*2, ARNU153SE*2, ARNU183S3*2, and ARNU243S3*2 with nominally rated cooling capacities of 7,500, 9,600, 12,300, 15,400, 19,100, and 24,200 Btu/h respectively.

4 Way Cassette: ARNU073TEC2, ARNU093TEC2, ARNU123TEC2, ARNU153TEC2, ARNU183TEC2, ARNU243TPC2, ARNU283TPC2, ARNU363TNC2, ARNU423TMC2, and ARNU483TMC2 with nominally rated cooling capacities of 7,500, 9,600, 12,300, 15,400, 19,100, 24,200, 28,000, 36,200, 42,000, and 48,100 Btu/h respectively.

2 Way Cassette: ARNU183TLC2 and ARNU243TLC2 with nominally rated capacities of 19,100 and 24,200 Btu/h respectively.

1 Way Cassette: ARNU073TJC2, ARNU093TJC2, and ARNU123TJC2 with nominally rated capacities of 7,500, 9,600, and 12,300 Btu/h respectively.

Ceiling Concealed Duct—Low Static: ARNU073B1G2, ARNU093B1G2, ARNU123B1G2, ARNU153B1G2, ARNU183B2G2, and ARNU243B2G2 with nominally rated capacities of 7,500, 9,600, 12,300, 15,400, 19,100, and 24,200 Btu/h respectively.

Ceiling Concealed Duct—Built-in: ARNU073B3G2, ARNU093B3G2, ARNU123B3G2, ARNU153B3G2, ARNU183B4G2, and ARNU243B4G2 with nominally rated capacities of 7,500, 9,600, 12,300, 15,400, 19,100, and 24,200 Btu/h respectively.

Ceiling Concealed Duct—High Static: ARNU073BHA2, ARNU093BHA2, ARNU123BHA2, ARNU153BHA2, ARNU183BHA2, ARNU243BHA2, ARNU283BGA2, ARNU363BGA2, ARNU423BGA2, ARNU483BRA2, URNU763B8A2, and URNU963B8A2 with nominally rated capacities of 7,500, 9,600, 12,300, 15,400, 19,100, 24,200, 28,000, 36,200, 42,000, 48,100, 76,400, and 95,500 Btu/h respectively.

Ceiling & Floor: ARNU093VEA2 and ARNU123VEA2 with nominally rated capacities of 9,600 and 12,300 Btu/h respectively.

Ceiling Suspended: ARNU183VJA2 and ARNU243VJA2 with nominally rated capacities of 19,100 and 24,200 Btu/h respectively.

Floor Standing with Case: ARNU073CEA2, ARNU093CEA2, ARNU123CEA2, ARNU153CEA2, ARNU183CFA2, and ARNU243CFA2 with nominally rated capacities of 7,500, 9,600, 12,300, 15,400, 19,100, and 24,200 Btu/h respectively.

Floor Standing without Case: ARNU073CEU2, ARNU093CEU2, ARNU123CEU2, ARNU153CEU2, ARNU183CFU2, and ARNU243CFU2 with nominally rated capacities of 7,500, 9,600, 12,300, 15,400, 19,100, and 24,200 Btu/h respectively.

(3) *Alternate test procedure.*

(A) LG shall be required to test the products listed in paragraph (2) above according to the test procedure for central air conditioners and heat pumps prescribed by DOE at 10 CFR Part 431 (ARI 340/360–2004, (incorporated by reference in 10 CFR 431.95(b)(2)), except that LG shall test a ''tested combination'' selected in accordance with the provisions of subparagraph (B) of this paragraph. For every other system combination using the same outdoor unit as the tested combination, LG shall make representations concerning the Multi V products covered in this waiver according to the provisions of subparagraph (C) below.

(B) *Tested combination.* The term ''tested combination'' means a sample basic model comprised of units that are production units, or are representative of production units, of the basic model being tested. For the purposes of this waiver, the tested combination shall have the following features:

(i) The basic model of a variable refrigerant flow system used as a tested combination shall consist of an outdoor

unit that is matched with between two and eight indoor units; for multi-split systems, each of these indoor units shall be designed for individual operation.

(ii) The indoor units shall:

(a) Represent the highest sales model family, or another indoor model family if the highest sales model family does not provide sufficient capacity (see b);
(b) Together, have a nominal cooling capacity that is between 95 percent and 105 percent of the nominal cooling capacity of the outdoor unit;
(c) Not, individually, have a nominal cooling capacity greater than 50 percent of the nominal cooling capacity of the outdoor unit;
(d) Operate at fan speeds that are consistent with the manufacturer's specifications; and
(e) Be subject to the same minimum external static pressure requirement.

(C) *Representations.* In making representations about the energy efficiency of its Multi V multi-split products, for compliance, marketing, or other purposes, LG must fairly disclose the results of testing under the DOE test procedure, doing so in a manner consistent with the provisions outlined below:

(i) For Multi V multi-split combinations tested in accordance with this alternate test procedure, LG may make representations based on these test results.

(ii) For Multi V multi-split combinations that are not tested, LG may make representations based on the testing results for the tested combination and which are consistent with either of the two following methods:

(a) Representation of non-tested combinations according to an alternative rating method approved by DOE; or

(b) Representation of non-tested combinations at the same energy efficiency level as the tested combination with the same outdoor unit.

(4) This waiver shall remain in effect from the date of issuance of this Order consistent with the provisions of 10 CFR 431.401(g).

(5) This waiver is conditioned upon the presumed validity of statements, representations, and documentary materials provided by the petitioner. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the Petition for Waiver is incorrect, or DOE determines that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on December 8, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E9–29808 Filed 12–14–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Case No. CD–003]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to Whirlpool Corporation From the Department of Energy Residential Clothes Dryer Test Procedure (Case No. CD–003)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of the Decision and Order (Case No. CD–003) that grants to the Whirlpool Corporation (Whirlpool) a waiver from the DOE clothes dryer test procedure. The waiver request pertains to Whirlpool's specified single model of condensing residential clothes dryer. The existing test procedure does not apply to condensing clothes dryers. Under today's Decision and Order, Whirlpool shall be not be required to test and rate its specified single model of condensing residential clothes dryer.

DATES: This Decision and Order is effective December 15, 2009.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611, *e-mail: AS_Waiver_Requests@ee.doe.gov.*

Francine Pinto, or Michael Kido, U.S. Department of Energy, Office of General Counsel, Mail Stop GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–9507; *e-mail: Francine.Pinto@hq.doe.gov* or *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR) 430.27(l), DOE gives notice of the issuance of its Decision and Order as set forth below. The Decision and Order grants Whirlpool a Waiver from the applicable residential clothes dryer test procedure at 10 CFR part 430 subpart B, appendix D, for its single model of condensing clothes dryer.

Issued in Washington, DC, on December 8, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Whirlpool Corporation. (Case No. CD–003)

Background

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part A of Title III provides for the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' (42 U.S.C. 6291–6309) Part A includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part A authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)).

Today's notice involves residential products under Part A. Relevant to the current Petition for Waiver, the test procedure for residential clothes dryers is contained in 10 CFR Part 430, subpart B, appendix D.

DOE's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered consumer products, when the petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedure, or when they may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii).

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows any interested person who has submitted a petition for waiver to file an application

for interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

On May 12, 2008, Whirlpool filed a petition for waiver from the test procedures applicable to its single model (WCD7500VW) of condensing clothes dryer. The applicable test procedures are contained in 10 CFR Part 430, subpart B, appendix D—Uniform Test Method for Measuring the Energy Consumption of Clothes Dryers. Whirlpool seeks a waiver from the applicable test procedures for its WCD7500VW basic product model because, Whirlpool asserts, design characteristics of this model prevent testing according to the currently prescribed test procedures. DOE previously granted Miele Appliance, Inc. (Miele), a waiver from test procedures for two similar condenser clothes dryer models (T1565CA and T1570C). (60 FR 9330 (Feb. 17, 1995)) Whirlpool claims that its condenser clothes dryers cannot be tested pursuant to the DOE procedure and requests that the same waiver granted to Miele in 1995 be granted for Whirlpool's WCD7500VW model.

In support of its petition, Whirlpool claims that the current clothes dryer test procedures apply only to vented clothes dryers because the test procedures require the use of an exhaust restrictor on the exhaust port of the clothes dryer during testing. Because condenser clothes dryers operate by blowing air through the wet clothes, condensing the water vapor in the airstream, and pumping the collected water into either a drain line or an in-unit container, these products do not use an exhaust port like a vented dryer does. Whirlpool plans to market a condensing clothes dryer for situations in which a conventional vented clothes dryer cannot be used, such as high-rise apartments and condominiums, neither of whose construction permits the use of external venting.

Assertions and Determinations

Whirlpool's Petition for Waiver

On May 12, 2008, Whirlpool filed a Petition for Waiver from the test procedure applicable to residential clothes dryers set forth in 10 CFR Part 430, subpart B, appendix D for a particular model of condensing clothes dryer. On April 8, 2009, DOE published Whirlpool's Petition for Waiver and granted Whirlpool an interim waiver from the current test procedure. 74 FR 15959. DOE did not receive any comments on the Whirlpool petition.

DOE previously granted Miele a waiver from test procedures for condensing clothes dryers after determining that the clothes dryer test procedure was not applicable to the company's condenser clothes dryers because of the lack of an exhaust port for mounting the required exhaust restrictor, which is an element of the test procedure. 60 FR 9332 (February 17, 1995). Subsequently, in 2008, DOE granted LG a similar waiver for its DLEC733W condenser clothes dryer. 73 FR 66641 (Nov. 10, 2008).

Therefore, for the reasons discussed above and in light of the long-standing waiver granted to Miele, and the recent waiver to LG, DOE grants Whirlpool's Petition for Waiver from testing of its condenser clothes dryers.

Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the Whirlpool Petition for waiver. The FTC staff did not have any objections to granting a waiver to Whirlpool.

Conclusion

After careful consideration of all the material that was submitted by Whirlpool and consultation with the FTC staff, it is ordered that:

(1) The ''Petition for Waiver'' submitted by Whirlpool Corporation (Case No. CD–003) is hereby granted as set forth in the paragraphs below.

(2) Whirlpool shall not be required to test or rate its WCD7500VW condensing clothes dryer product on the basis of the test procedures at 10 CFR Part 430, subpart B, appendix D.

(3) This waiver shall remain in effect from the date of this Decision and Order consistent with the provisions of 10 CFR 430.27(m).

(4) This waiver is conditioned upon the presumed validity of statements, representations, and documentary materials provided by the petitioner. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the Petition for Waiver is incorrect.

Issued in Washington, DC, on December 8, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E9–29777 Filed 12–14–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Case No. CD–004]

Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver and Granting of the Application for Interim Waiver of the General Electric Company From the Department of Energy Clothes Dryer Test Procedures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver, granting of application for interim waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes the General Electric Company's (GE's) Petition for Waiver (hereafter, ''petition'') from the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of residential clothes dryers. The waiver request pertains to GE's specified single model line of condensing residential clothes dryers. The existing test procedure does not apply to condensing clothes dryers. In addition, today's notice grants GE an interim waiver from the DOE test procedures applicable to residential clothes dryers. DOE solicits comments, data, and information with respect to GE's petition.

DATES: DOE will accept comments, data, and information with respect to GE's Petition until, but no later than January 14, 2010.

ADDRESSES: You may submit comments, identified by case number CD–004, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: AS_Waiver_Requests@ee.doe.gov.* Include either the case number [CD–004], and/or ''GE Clothes Dryer Petition'' in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Petition for Waiver Case No. CD–004, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy,

Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Instructions: All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Exchange (ASCII)) file format. Avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Pursuant to section 430.27(b)(1)(iv) of 10 CFR part 430, any person submitting written comments must also send a copy of the comments to the petitioner. The contact information for the petitioner is: Mr. Earl F. Jones, Senior Counsel, GE Consumer & Industrial, Appliance Park 2–225, Louisville, KY 40225.

Under 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Docket: For access to the docket to review the documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza, SW., (Resource Room of the Building Technologies Program), Washington, DC 20024, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at (202) 586–2945 for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9611; *e-mail: AS_Waiver_Requests@ee.doe.gov;* Francine Pinto or Michael Kido, U.S. Department of Energy, Office of General Counsel, Mail Stop GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9507; e-mail: *Francine.Pinto@hq.doe.gov* or *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III of the Energy Policy and Conservation Act, as amended (''EPCA'') sets forth a variety of provisions concerning energy efficiency. Part A of Title III provides for the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' (42 U.S.C. 6291–6309) Part A includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part A authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for residential clothes dryers is contained in Title 10 of the Code of Federal Regulations (10 CFR) part 430, subpart B, appendix D.

The regulations set forth in 10 CFR 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered consumer products. A waiver will be granted by the Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(l). Petitioners must include in their petition any alternate test procedures known to the petitioner evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii). The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. (10 CFR 430.27(a)(2)) An interim waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additionally 180 days, if necessary. (10 CFR 430.27(h))

II. Petition for Waiver

On July 14, 2009, GE filed a petition for waiver and an application for interim waiver from the test procedures applicable to its residential clothes dryers set forth in 10 CFR part 430, subpart B, appendix D. GE seeks a waiver from the applicable test procedures for its DCVH480E* and DCVH485E* product models (the two models differ only in color) because, GE asserts, design characteristics of this model prevent testing according to the currently prescribed test procedures, as described in more detail in the following paragraph. DOE previously granted Miele Appliance, Inc. (Miele), a waiver from test procedures for two similar condenser clothes dryer models (T1565CA and T1570C). (60 FR 9330 (Feb. 17, 1995)) DOE also granted waivers for the same type of clothes dryers to LG Electronics (73 FR 66641, November 10, 2008) and Whirlpool Corporation (74 FR 15959, April 8, 2009). GE claims that its condenser clothes dryers cannot be tested pursuant to the DOE procedure and requests that the same waiver granted to other manufacturers be granted for GE's DCVH480E* and DCVH485E* models.

In support of its petition, GE claims that the current clothes dryer test procedures apply only to vented clothes dryers because the test procedures require the use of an exhaust restrictor on the exhaust port of the clothes dryer during testing. Because condenser clothes dryers operate by blowing air through the wet clothes, condensing the water vapor in the airstream, and pumping the collected water into either a drain line or an in-unit container, these products do not use an exhaust port like a vented dryer does. GE plans to market a condensing clothes dryer for situations in which a conventional vented clothes dryer cannot be used, such as high-rise apartments and condominiums; the construction of these types of buildings does not permit the use of external venting.

The GE Petition requests that DOE grant a waiver from existing test procedures to allow the sale of two models (DCVH480E* and DCVH485E*) without testing until DOE prescribes final test procedures and minimum energy conservation standards appropriate to condenser clothes dryers. Similar to the other manufacturers, GE

did not include an alternate test procedure in its petition.

III. Application for Interim Waiver

The GE petition also requests an interim waiver for immediate relief. Under 10 CFR 430.27(b)(2) each application for interim waiver ''shall demonstrate likely success of the Petition for Waiver and shall address what economic hardship and/or competitive disadvantage is likely to result absent a favorable determination on the Application for Interim Waiver.'' An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. 10 CFR 430.27(g).

DOE determined that GE's application for interim waiver does not provide sufficient market, equipment price, shipments, and other manufacturer impact information to permit DOE to evaluate the economic hardship GE might experience absent a favorable determination on its application for interim waiver. However, DOE understands that absent an interim waiver, GE's products would not otherwise be tested and rated for energy consumption on a comparable basis with equivalent products for which DOE previously granted waivers. In other words, there would not be a level playing field and thus GE would be placed at a competitive disadvantage. Furthermore, DOE has determined that GE is likely to succeed on the merits of its petition for waiver and that it is desirable for policy reasons to grant immediate relief. DOE has concluded that it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis, where possible. In addition, DOE has previously granted a number of waivers for similar products. DOE previously granted Miele a waiver from the clothes dryer test procedure after determining that it was not applicable to the company's condenser clothes dryers because they lack an exhaust port for mounting the required exhaust restrictor, which is an element of the test procedure. DOE also granted LG a similar waiver for its DLEC733W condenser clothes dryer. (73 FR 66641 (Nov. 10, 2008)) Still more recently, on April 8, 2009, DOE granted an interim waiver to Whirlpool Corporation for a very similar condenser clothes dryer (74 FR 15959).

Therefore, in light of the long-standing waiver granted to Miele, and the recent waivers to LG and Whirlpool, DOE has decided to grant GE's application for Interim Waiver from testing of its condenser clothes dryers. This interim waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify this interim waiver at any time upon a determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

IV. Summary and Request for Comments

Through today's notice, DOE announces receipt of GE's petition for waiver and grants GE an interim waiver from the test procedures applicable to GE's DCVH480E* and DCVH485E* condensing clothes dryer models. DOE is publishing the GE Petition for Waiver pursuant to 10 CFR 430.27(b)(1)(iv). The petition as published contains no confidential information. DOE is interested in receiving comments on all aspects of the Petition. Pursuant to 10 CFR 430.27(b)(1)(iv), any person submitting written comments to DOE must also send a copy of such comments to the petitioner, whose contact information is included in the **ADDRESSES** section above.

Issued in Washington, DC on December 8, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

U.S. Department of Energy

Application for Interim Waiver and Petition for Waiver, 10CFR430, Subpart B, Appendix D—Uniform Test Method for Measuring the Energy Consumption of Clothes Dryers

Case No.

Non-Confidential Version

Submitted by:

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U.S. Department of Energy Application for Interim Waiver and Petition for Waiver, 10CFR430, Subpart B, Appendix D—Uniform Test Method for Measuring the Energy Consumption of Clothes Dryers

Introduction

GE Consumer & Industrial, an operating division of General Electric Co., (''GE'') is a leading manufacturer and marketer of household appliances, including, as relevant to this proceeding, clothes dryers, files this Application for Interim Waiver and Petition for Waiver (''Petition''). GE requests that the Assistant Secretary grant it a waiver from certain parts of the test procedure promulgated by the U.S. Department of Energy (''DOE'' or ''the Department'') for determining clothes dryer energy consumption on the grounds that the basic design of the product prevents testing in accordance with the prescribed test procedure. This request is filed pursuant to 10 C.F.R. § 430.27.

GE plans to market a clothes dryer to U.S. consumers whose homes cannot accommodate externally vented clothes dryer, e.g., high-rise apartments and condominiums among others. In 2008, the U.S. Market for such products was approximately 50,000.

GE plans to import a 24″ wide compact (4.0 cubic feet) condensing dryer manufactured by [redacted]. This clothes dryer will comply with all recognized United States safety standards. Our marketing plans call for this product to be launched not later than the fourth quarter of 2009.

Need for Relief

The existing test procedure, 10CFR430, Subpart B, Appendix D, was developed for externally vented clothes dryers. The requirement that a specific exhaust restriction be placed on the exhaust port of the dryer during the test cannot be complied with during the testing of condensing clothes dryers, which do not have an exhaust port. Therefore, the existing test procedure is not applicable. Indeed, the Department recognized this lack of applicability in the decision to grant a similar waiver to Miele Appliances, Incorporated (60FR930) and most recently Whirlpool Corp. (75FR15959).

GE hereby requests an Interim Waiver and Waiver that will allow sale of one model without testing under 10 C.F.R., Subpart B. Appendix D until such time as that test procedure has language applicable to condensing clothes dryers. That model will be General Electric

brand clothes dryer models DCVH480E*, and DCVH485E*[1].

Additionally, GE commits to actively support the inclusion of a test procedure applicable to condensing dryers in future versions of 10CFR430, Subpart B, Appendix D and is working with the appliance trade association, the Association of Home Appliance Manufacturers, on a proposal for inclusion in the Department's current clothes dryer energy standards rulemaking.

Thank you for your timely attention to this request for Interim Waiver and Waiver.

Respectfully submitted,

Earl F. Jones, Authorized Representative of GE Consumer & Industrial

CERTIFICATION

I hereby certify that GE has notified all clothes dryer manufacturers listed below known to GE to sell products in the United States and forwarded them a copy of this application:

Alliance Laundry Systems, Inc., BSH Home Appliances Corp. (Bosch-Siemens Hausgerate GmbH), Electrolux Home Products, Fisher & Paykel Appliances, Inc., Haier America Trading, L.L.C., LG Electronics USA INC., Miele Appliances, Inc., Samsung Electronics America, Inc. and Whirlpool Corporation.

In addition, GE has provided courtesy copies to: The Association of Home Appliance Manufacturers (AHAM), which is generally interested in DOE proceedings affecting the industry. ACEEE, NRDC and Alliance to Save Energy are not manufacturers but have an interest in energy efficiency requirements for appliances.

Earl F. Jones

[FR Doc. E9–29782 Filed 12–14–09; 8:45 am]

BILLING CODE 6450–01–P

[1] In the above models, the 0 in model DCVH480E* represents the color white, and the 5 in model DCVH485E represents the color silver. The * would be replaced by a letter depending on the year of manufacture and the other non-energy related identifiers.

DEPARTMENT OF ENERGY

[Case No. RF–009]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to Electrolux Home Products, Inc. From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure (Case No. RF–009)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of the Decision and Order (Case No. RF–009) that grants to Electrolux Home Products, Inc. (Electrolux) a Waiver from the DOE electric refrigerator and refrigerator-freezer test procedure, for certain basic models containing relative humidity sensors and adaptive control anti-sweat heaters. Under today's Decision and Order, Electrolux shall be required to test and rate its refrigerator-freezers with adaptive control anti-sweat heaters according to an alternate test procedure that takes this technology into account when measuring energy consumption.

DATES: This Decision and Order is effective December 15, 2009.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611, *E-mail: AS_Waiver_Requests@ee.doe.gov*. Francine Pinto, or Michael Kido, U.S. Department of Energy, Office of General Counsel, Mail Stop GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–9507; E-mail: *Francine.Pinto@hq.doe.gov* or *Michael.Kido@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR) 430.27(l), DOE gives notice of the issuance of its Decision and Order as set forth below. The Decision and Order grants Electrolux a Waiver from the applicable residential refrigerator and refrigerator-freezer test procedures at 10 CFR Part 430 subpart B, appendix A1, for certain basic models of refrigerator-freezers with relative humidity sensors and adaptive control anti-sweat heaters, provided that Electrolux tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits Electrolux from making representations concerning the energy efficiency of these products unless such product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the Decision and Order below, and such representation fairly discloses the results of such testing. Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. (42 U.S.C. 6293(c))

Issued in Washington, DC, on December 8, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Electrolux Home Products, Inc. (Case No. RF–009).

Background

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part A of Title III provides for the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' (42 U.S.C. 6291–6309) Part A includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part A authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

Today's notice involves residential products under Part A. Relevant to the current Petition for Waiver, the test procedure for residential electric refrigerator-freezers is contained in 10 CFR Part 430, subpart B, appendix A1.

DOE's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered consumer products, when the petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedure, or when they may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii).

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows any interested person who has submitted a petition for waiver to file an application for interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

On November 5, 2008, Electrolux filed a Petition for Waiver from the test procedures applicable to its product line of refrigerator-freezers with relative humidity sensors and adaptive control anti-sweat heaters. The applicable test procedures are contained in 10 CFR Part 430, subpart B, appendix A1–Uniform Test Method for Measuring the Energy Consumption of Electric Refrigerators and Electric Refrigerator-Freezers. Because the existing test procedure under 10 CFR Part 430 takes neither ambient humidity nor adaptive technology into account, it does not accurately measure the energy consumption of Electrolux's new refrigerator-freezers that feature humidity sensors and adaptive control anti-sweat heaters. Consequently, Electrolux has submitted an alternate test to DOE for approval to ensure that it is correctly calculating the energy consumption of this new product line.

On June 4, 2009, DOE granted Electrolux an interim waiver and published Electrolux's petition for waiver. 74 FR 26853. DOE did not receive any comments on the Electrolux petition.

Assertions and Determinations

Electrolux's Petition for Waiver

On November 5, 2008, Electrolux filed a Petition for Waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR Part 430, subpart B, appendix A1. Electrolux filed its petition because it is designing new refrigerators and refrigerator-freezers that contain variable anti-sweat heater controls that detect a broad range of temperature and humidity conditions, and respond by activating adaptive heaters, as needed, to evaporate excess moisture. According to the petitioner, Electrolux's technology is similar to that used by the General Electric Company (GE) and Whirlpool Corporation (Whirlpool) for refrigerator-freezers, which were the subject of Decision and Orders published at 73 FR 10425 (February 27, 2008) and 74 FR 20695 (May 5, 2009), respectively. Electrolux seeks a waiver from the existing DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR Part 430 because it takes neither ambient humidity nor adaptive technology into account. Electrolux stated that the DOE test procedure does not accurately measure the energy consumption of its new refrigerators and refrigerator-freezers that feature variable anti-sweat heater controls and adaptive heaters. Consequently, Electrolux has submitted for DOE approval an alternate test procedure that would allow it to correctly calculate the energy consumption of this new product line.

Electrolux requested that it be permitted to use an alternate test procedure that is the same as that DOE prescribed for GE and Whirlpool refrigerators and refrigerator-freezers that are equipped with a similar technology. The alternate test procedure applicable to the GE and Whirlpool (and now Electrolux) products simulates the energy used by the adaptive heaters in a typical consumer household, as explained in the GE Decision and Order referenced above. As DOE has stated in the past, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the Electrolux Petition for waiver. The FTC staff did not have any objections to granting a waiver to Electrolux.

Conclusion

After careful consideration of all the material that was submitted by Electrolux and consultation with the FTC staff, it is ordered that:

(1) The ''Petition for Waiver'' submitted by Electrolux Home Products, Inc. (Case No. RF–009) is hereby granted as set forth in the paragraphs below.

(2) Electrolux shall not be required to test or rate the following Electrolux models on the basis of the current test procedures contained in 10 CFR Part 430, subpart B, appendix A1, but shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3) below: EI28BS55IW, EI28BS55IB, EI28BS55IS, EW28BS70IW, EW28BS70IB, EW28BS70IS, EI23BC55IW, EI23BC55IB, EI23BC55IS, EW23BC70IW, EW23BC70IB, EW23BC70IS, E23BC78ISS, E23BC78PIS

(3) Electrolux shall be required to test the products listed in paragraph (2) above according to the test procedures for electric refrigerator-freezers prescribed by DOE at 10 CFR Part 430, appendix A1, except that, for the Electrolux products listed in paragraph (2) only:

(A) The following definition is added at the end of Section 1:

1.13 ''Variable anti-sweat heater control'' means an anti-sweat heater where power supplied to the device is determined by an operating condition variable(s) and/or ambient condition variable(s).

(B) Section 2.2 is revised to read as follows:

2.2 Operational conditions. The electric refrigerator or electric refrigerator-freezer shall be installed and its operating conditions maintained in accordance with HRF–1–1979, section 7.2 through section 7.4.3.3. except that the vertical ambient temperature gradient at locations 10 inches (25.4 cm) out from the centers of the two sides of the unit being tested is to be maintained during the test. Unless shields or baffles obstruct the area, the gradient is to be maintained from 2 inches (5.1 cm) above the floor or supporting platform to a height one foot (30.5 cm) above the unit under test. Defrost controls are to be operative. The anti-sweat heater switch is to be ''off'' during one test and ''on'' during the second test. In the case of an electric refrigerator-freezer equipped with variable anti-sweat heater control, the ''on'' test will be the result of the calculation described in 6.2.3. Other exceptions are noted in 2.3, 2.4, and 5.1 below.

(C) New section 6.2.3 is inserted after section 6.2.2.2.

6.2.3 Variable anti-sweat heater control test. The energy consumption of an electric refrigerator-freezer with a variable anti-sweat heater control in the ''on'' position (E_{on}), expressed in kilowatt-hours per day, shall be calculated equivalent to:

E_{ON} = E + (Heater Contribution[1])

Where E is determined by 6.2.1.1, 6.2.1.2, 6.2.2.1, or 6.2.2.2, whichever is appropriate, with the anti-sweat heater switch in the ''off'' position.

Heater Contribution = (Anti-sweat Heater Power × System-loss Factor) × (24 hrs/1 day) × (1 kW/1000 W)

Where:

Anti-sweat Heater Power
= A1 * (Heater Watts at 5%RH)
+ A2 * (Heater Watts at 15%RH)
+ A3 * (Heater Watts at 25%RH)
+ A4 * (Heater Watts at 35%RH)
+ A5 * (Heater Watts at 45%RH)
+ A6 * (Heater Watts at 55%RH)
+ A7 * (Heater Watts at 65%RH)
+ A8 * (Heater Watts at 75%RH)

[1] Called ''correction factor'' by GE.

+ A9 * (Heater Watts at 85%RH)
+ A10 * (Heater Watts at 95%RH)

Where A1–A10 are from the following table:

A1 = 0.034	A6 = 0.119
A2 = 0.211	A7 = 0.069
A3 = 0.204	A8 = 0.047
A4 = 0.166	A9 = 0.008
A5 = 0.126	A10 = 0.015

Heater Watts at a specific relative humidity = the nominal watts used by all heaters at that specific relative humidity, 72 °F ambient, and DOE reference temperatures of fresh food (FF) average temperature of 45 °F and freezer (FZ) average temperature of 5 °F.

System-loss Factor = 1.3

(4) Representations. Electrolux may make representations about the energy use of its adaptive control anti-sweat heater refrigerator-freezer products, for compliance, marketing, or other purposes, only to the extent that such products have been tested in accordance with the provisions outlined above, and such representations fairly disclose the results of such testing.

(5) This waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(m).

(6) This waiver is conditioned upon the presumed validity of statements, representations, and documentary materials provided by the petitioner. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the Petition for Waiver is incorrect, or DOE determines that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on December 8, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E9–29779 Filed 12–14–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Case No. RF–011]

Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver and Notice of Granting the Application for Interim Waiver of Samsung From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver, notice of granting application for interim waiver, and request for public comments.

SUMMARY: This notice announces receipt of and publishes the Samsung Electronics America, Inc. (Samsung) petition for waiver (hereafter, ''Petition'') from specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of electric refrigerators and refrigerator-freezers. The waiver request pertains to Samsung's French door bottom-mount residential refrigerators and refrigerator-freezers, a product line that utilizes a control logic that changes the wattage of the anti-sweat heaters based upon the ambient relative humidity conditions in order to prevent condensation. The existing test procedure does not take humidity or adaptive control technology into account. Therefore, Samsung has suggested an alternate test procedure that takes adaptive control technology into account when measuring energy consumption. DOE solicits comments, data, and information concerning Samsung's Petition and the suggested alternate test procedure. DOE also publishes notice of the grant of an interim waiver to Samsung.

DATES: DOE will accept comments, data, and information with respect to Samsung's Petition until, but no later than January 14, 2010.

ADDRESSES: You may submit comments, identified by case number [RF–011], by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: AS_Waiver_Requests@ee.doe.gov.* Include either the case number [RF–011], and/or ''Samsung Petition'' in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Petition for Waiver Case No. RF–011, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Instructions: All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Exchange (ASCII)) file format. Avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Pursuant to section 430.27(b)(1)(iv) of Title 10 of the Code of Federal Regulations (10 CFR), Part 430, any person submitting written comments must also send a copy of the comments to the petitioner. The contact information for the petitioner is: Mr. Michael Moss, Samsung Electronics America, Inc., 18600 Broadwick St., Rancho Dominguez, CA 90220, *Phone:* (310) 900–5245, *E-mail: mikem@sea.samsung.com.*

Under 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Docket: For access to the docket to review the documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza, SW., (Resource Room of the Building Technologies Program), Washington, DC 20024, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at (202) 586–2945 for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9611. *E-mail: Michael.Raymond@ee.doe.gov.*

Ms. Francine Pinto or Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, Mailstop GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103. *Telephone:* (202) 586–7432 or (202) 586–5827, respectively. *E-mail: Francine.Pinto@hq.doe.gov* or *Eric.Stas@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III of the Energy Policy and Conservation Act (''EPCA'') sets forth a

variety of provisions concerning energy efficiency. Part A of Title III provides for the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' (42 U.S.C. 6291–6309) Part A includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part A authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for residential refrigerators and refrigerator-freezers is contained in 10 CFR part 430, subpart B, appendix A1.

The regulations set forth in 10 CFR 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered consumer products. A waiver will be granted by the Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR part 430.27(l). Petitioners must include in their petition any alternate test procedures known to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii). The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR part 430.27(m).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. (10 CFR 430.27(a)(2)) An interim waiver remains in effect for a period of 180 days or until DOE issues its determination on the petition for waiver, whichever is sooner, and may be extended for an additionally 180 days, if necessary. (10 CFR 430.27(h))

II. Petition for Waiver

On September 9, 2009, Samsung filed a petition for waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR part 430, subpart B, appendix A1. Samsung is designing new refrigerators and refrigerator-freezers that contain variable anti-sweat heater controls that detect a broad range of temperature and humidity conditions, and respond by activating adaptive heaters, as needed, to evaporate excess moisture. According to the petitioner, Samsung's technology is similar to that used by General Electric Company (GE) and Whirlpool Corporation (Whirlpool) for refrigerator-freezers which were the subject of petitions for waiver published April 17, 2007 (72 FR 19189) and July 10, 2008, respectively (73 FR 39684). GE's waiver was granted on February 27, 2008 (73 FR 10425). Whirlpool's waiver was granted on May 5, 2009 (74 FR 20695). Samsung seeks a waiver from the existing DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR Part 430 because it takes neither ambient humidity nor adaptive technology into account. Therefore, Samsung stated that the test procedure does not accurately measure the energy consumption of Samsung's new refrigerators and refrigerator-freezers that feature variable anti-sweat heater controls and adaptive heaters. Consequently, Samsung has submitted to DOE for approval an alternate test procedure that would allow it to correctly calculate the energy consumption of this new product line. Samsung's alternate test procedure is the same in all relevant particulars as that prescribed for GE and Whirlpool refrigerators and refrigerator-freezers (and petitioned for by Electrolux) that are equipped with the same type of technology. The alternate test procedure applicable to the GE and Whirlpool products simulates the energy used by the adaptive heaters in a typical consumer household, as explained in the Decision and Order that DOE published in the **Federal Register** on February 27, 2008. 73 FR 10425. DOE believes that it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

III. Application for Interim Waiver

The Samsung Petition also requests an interim waiver. Under 10 CFR 430.27(b)(2) each Application for Interim Waiver ''shall demonstrate likely success of the Petition for Waiver and shall address what economic hardship and/or competitive disadvantage is likely to result absent a favorable determination on the Application for Interim Waiver.'' An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the Application for interim waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the Petition for Waiver. (10 CFR 430.27(g))

DOE determined that Samsung's application for interim waiver does not provide sufficient market, equipment price, shipments, and other manufacturer impact information to permit DOE to evaluate the economic hardship Samsung might experience absent a favorable determination on its application for interim waiver. However, DOE understands that absent an Interim Waiver, Samsung's products would not otherwise be tested and rated for energy consumption on a comparable basis with equivalent GE and Whirlpool products where DOE previously granted waivers, and would be required to represent a higher energy consumption for essentially the same product. Furthermore, it appears likely that Samsung's Petition for Waiver will be granted and that is desirable for public policy reasons to grant Samsung immediate relief pending a determination on the petition for waiver. As stated above, DOE has already granted similar waivers to GE and Whirlpool because the test procedure does not accurately represent the energy consumption of refrigerator-freezers containing relative humidity sensors and adaptive control anti-sweat heaters. (For those same reasons, DOE has also granted an interim waiver to Electrolux on June 4, 2009 (74 FR 26853)). The rationale for granting these waivers is equally applicable to Samsung, which has products containing similar relative humidity sensors and anti-sweat heaters. DOE has also concluded that it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

For the reasons stated above, DOE grants Samsung's application for interim waiver from testing of its refrigerator-freezer product line containing relative humidity sensors and adaptive control anti-sweat heaters. Therefore, *it is ordered that:*

The Application for interim waiver filed by Samsung is hereby granted for Samsung's refrigerator-freezer product line containing relative humidity sensors and adaptive control anti-sweat heaters, subject to the specifications and conditions below.

1. Samsung shall not be required to test or rate its refrigerator-freezer product line containing relative humidity sensors and adaptive control anti-sweat heaters on the basis of the test procedure under 10 CFR part 430 subpart B, appendix A1.

2. Samsung shall be required to test and rate its refrigerator-freezer product line containing relative humidity sensors and adaptive control anti-sweat heaters according to the alternate test procedure as set forth in section IV, ''Alternate test procedure.''

The interim waiver applies to the following basic model groups:

RB19*AC**
RB21*AC**
RF19*AC**
RF21*AC**
RF26*AF**
RFG23*AC**
RFG29*AC**
RFM28*AA**

This interim waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify this interim waiver at any time upon a determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

IV. Alternate Test Procedure

Samsung's new line of refrigerators and refrigerator-freezers contains sensors that detect ambient humidity and interact with controls that vary the effective wattage of anti-sweat heaters to evaporate excess moisture. The existing DOE test procedure cannot be used to calculate the energy consumption of these features. The variable anti-sweat heater contribution to the refrigerator's energy consumption is entirely dependent on the ambient humidity of the test chamber, which the DOE test procedure does not specify. The energy consumption of the anti-sweat heaters will be modeled and added to the energy consumption measured with the anti-sweat heaters disabled. The anti-sweat contribution to the product's total energy consumption will be calculated by the same methodology that was set forth in the GE Petition. For units with an energy saver switch, the energy test results with and without the added heater contribution would be averaged to produce the final energy number for the product. For those units that do not include an energy saver switch, the final energy number would be equal to the test result of the heater-disabled test plus the added heater contribution. The objective of this approach is to simulate the average energy used by the adaptive anti-sweat heaters as activated in refrigerators and refrigerator-freezers of typical consumer households across the United States.

To determine the conditions in a typical consumer household, GE compiled historical data on the monthly average outdoor temperatures and humidities for the top 50 metropolitan areas of the U.S. over approximately the last 30 years. In light of the similarity of technologies at issue, Samsung is using the same data compiled by GE for its determination of the anti-sweat heater energy use. Like GE and Whirlpool, Samsung includes in its test procedure a ''system-loss factor'' to calculate system losses attributed to operating anti-sweat heaters, controls, and related components.

Samsung shall be required to test the products listed in Section II above according to the test procedures for electric refrigerator-freezers prescribed by DOE at 10 CFR part 430, appendix A1, except that, for the Samsung products listed in Section II above only:

(A) The following definition is added at the end of Section 1:

1.13 *''Variable anti-sweat heater control''* means an anti-sweat heater where power supplied to the device is determined by an operating condition variable(s) and/or ambient condition variable(s).

(B) Section 2.2 is revised to read as follows:

2.2 Operational conditions. The electric refrigerator or electric refrigerator-freezer shall be installed and its operating conditions maintained in accordance with HRF–1–1979, section 7.2 through section 7.4.3.3. except that the vertical ambient temperature gradient at locations 10 inches (25.4 cm) out from the centers of the two sides of the unit being tested is to be maintained during the test. Unless shields or baffles obstruct the area, the gradient is to be maintained from 2 inches (5.1 cm) above the floor or supporting platform to a height one foot (30.5 cm) above the unit under test. Defrost controls are to be operative. The anti-sweat heater switch is to be ''off'' during one test and ''on'' during the second test. In the case of an electric refrigerator-freezer equipped with variable anti-sweat heater control, the ''on'' test will be the result of the calculation described in 6.2.3. Other exceptions are noted in 2.3, 2.4, and 5.1 below.

(C) New section 6.2.3 is inserted after section 6.2.2.2.

6.2.3 Variable anti-sweat heater control test. The energy consumption of an electric refrigerator-freezer with a variable anti-sweat heater control in the ''on'' position (E_{on}), expressed in kilowatt-hours per day, shall be calculated equivalent to:

$E_{ON} = E + (\text{Heater Contribution})$

where E is determined by 6.2.1.1, 6.2.1.2, 6.2.2.1, or 6.2.2.2, whichever is appropriate, with the anti-sweat heater switch in the ''off'' position.

Heater Contribution [1] = (Anti-sweat Heater Power × System-loss Factor) × (24 hrs/1 day) × (1 kW/1000 W)

Where:

Anti-sweat Heater Power =
A1 * (Heater Watts at 5%RH)
+ A2 * (Heater Watts at 15%RH)
+ A3 * (Heater Watts at 25%RH)
+ A4 * (Heater Watts at 35%RH)
+ A5 * (Heater Watts at 45%RH)
+ A6 * (Heater Watts at 55%RH)
+ A7 * (Heater Watts at 65%RH)
+ A8 * (Heater Watts at 75%RH)
+ A9 * (Heater Watts at 85%RH)
v+ A10 * (Heater Watts at 95%RH)

where A1–A10 are from the following table:

A1 = 0.034	A6 = 0.119
A2 = 0.211	A7 = 0.069
A3 = 0.204	A8 = 0.047
A4 = 0.166	A9 = 0.008
A5 = 0.126	A10 = 0.015

Heater Watts at a specific relative humidity = the nominal watts used by all heaters at that specific relative humidity, 72°F ambient, and DOE reference temperatures of fresh food average temperature of 45 °F and freezer average temperature of 5 °F.

System-loss Factor = 1.3

In making representations about the energy efficiency of the products listed in Section II above, for compliance, marketing, or other purposes, Samsung must fairly disclose the results of testing under the alternate DOE test procedure described above.

V. Summary and Request for Comments

Through today's notice, DOE grants Samsung an interim waiver from the specified portions of the test procedure applicable to Samsung's new line of refrigerators and refrigerator-freezers with variable anti-sweat heater controls and adaptive heaters and announces receipt of Samsung's petition for waiver from those same portions of the test procedure. DOE publishes Samsung's petition for waiver in its entirety pursuant to 10 CFR 430.27(b)(1)(iv). The petition contains no confidential information. The petition includes a suggested alternate test procedure and calculation methodology to determine the energy consumption of Samsung's specified refrigerators and refrigerator-freezers with adaptive anti-sweat heaters. Samsung is required to follow this alternate procedure as a condition of its interim waiver, and DOE is

[1] Called ''correction factor'' by GE.

considering including this alternate procedure in its subsequent Decision and Order. DOE solicits comments from interested parties on all aspects of the petition, including the suggested alternate test procedure and calculation methodology. Pursuant to 10 CFR 430.27(b)(1)(iv), any person submitting written comments to DOE must also send a copy of such comments to the petitioner, whose contact information is included in the **ADDRESSES** section above.

Issued in Washington, DC, on December 8, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

September 9, 2009

Catherine Zoi
Energy Efficiency and Renewable Energy
Department of Energy
1000 Independence Avenue, SW.
Washington, DC 20585

Dear Assistant Secretary:

Samsung Electronics America, Inc., a subsidiary of Samsung Electronics Co., Ltd. (Samsung), respectfully submits this Petition for Waiver and Petition for Interim Waiver to the Department of Energy (DOE) for refrigerator-freezer models incorporating adaptive anti-sweat heater technologies, pursuant to 10 CFR Part 430.27.

The 10 CFR Part 430.27(a)(1) allows a person to submit a petition to waive for a particular basic model any requirements of § 430.23 upon the grounds that the basic model contains one or more design characteristics which either prevent testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. Additionally, 10 CFR Part 430.27(b)(2) allows an applicant to request an Interim Waiver if economic hardship and/or competitive disadvantage is likely to result absent a favorable determination on the Application for Interim Waiver.

Reasoning

Samsung is designing refrigerator-freezers with anti-sweat heater technologies that react according to different ambient conditions such as humidity and temperature. This anti-sweat technology allows the heater to variably activate depending on relative ambient humidity levels. Samsung believes that the current test procedure, Appendix A1 to Subpart B of Part 430, prevents Samsung from accurately evaluating its refrigerator-freezers that feature this adaptive anti-sweat heater technology.

Samsung's adaptive anti-sweat heater technology is similar to that used by General Electric Company (GE) and Whirlpool Corporation (Whirlpool) for refrigerator-freezers which were the subject of Petitions for Waiver published April 17, 2007 and July 10, 2008, respectively. 72 FR 19189; 73 FR 39684. GE's waiver was granted on February 27, 2008. 73 FR 10425. Whirlpool's waiver was granted on May 5, 2009. 74 FR 20695. In a market where energy efficiency is one of the crucial factors in a consumer's purchasing decision, Samsung will be placed at a competitive disadvantage if an Interim Waiver is not granted to Samsung by the Department of Energy, as the energy consumption data will not be comparable to that of other manufacturers' which waivers were previously granted. Samsung has invested 12 months toward the development of this technology, and would like to be able to test them accordingly at time of introduction.

Current testing method prescribes that the refrigerator-freezer be tested without any prescription for humidity levels. Lacking the prescription of a humidity level, current refrigerator-freezers employ an anti-sweat technology that engages at predetermined intervals to prevent moisture build-up according to an assumed, fixed algorithm. Lacking the proper sensors to effectively detect and engage the heater at specific dew points, a general assumption is made for the scheduled activation of anti-sweat heaters. General assumptions and timed action sequences are inefficient methods to control condensation; the adaptive anti-sweat heater technology will take the guesswork out of anti-sweat heater activation and will base activation on real-time environment conditions for the purpose of energy efficiency.

Since adaptive anti-sweat heater technology was not available during the development stage of the current DOE requirements, and since the existing requirements do not fairly represent energy consumption for refrigerator-freezers containing this technology, an exception relief is warranted.

Test Method

In a manner similar to GE in their Petition [2], Samsung proposes to run the energy-consumption test with the anti-sweat heater switch in the ''off'' position and then, because the test chamber is not humidity-controlled, to add to that result the kilowatt hours per day derived by calculating the energy used when the anti-sweat heater is in the ''on'' position.

''[GE] in an effort to establish a national average of energy used by a variably controlled anti-sweat heater, the population-weighted humidity values were grouped into 10 bands, each with a range of 10% relative humidity. The table below sets out the percent probability that any U.S. household will experience the listed average humidity conditions during any month of the year.'' [3] Those 10 bands are as follows:

% RH	Probability (%)	Constant designation
1. 0–10	3.4	A1
2. 10–20	21.1	A2
3.2 0–30	20.4	A3
4. 30–40	16.6	A4
5. 40–50	12.6	A5
6. 50–60	11.9	A6
7. 60–70	6.9	A7
8. 70–80	4.7	A8
9. 80–90	0.8	A9
10. 90–100	1.5	A10

Similar to GE, Samsung determined that additional energy required to operate the anti-sweat heater control and related components, and the additional energy required to increase compressor run time to remove heat introduced into the refrigerator compartments by the anti-sweat heater have a ''system-loss factor''. Samsung has also determined that this ''system-loss factor'' is 1.3. Therefore, Samsung proposes that the energy consumption results should be calculated with the anti-sweat heater switch in the ''off'' position and with the correction factor taken into account. The correction factor should be as follows:

Correction Factor = (Anti-sweat Heater Power × System-loss Factor) × (24 hours/1 day) × (1 kW/1000 W)

The national average power in watts used by the anti-sweat heaters is then calculated by totaling the product of constants A1–A10 multiplied by the respective heater watts used by a refrigerator operating in the median percent relative humidity for that band and standard refrigerator conditions: ambient temperature of 72 °F, fresh food (FF) average temperature of 45 °F, and freezer (FZ) average temperature of 5 °F. Anti-sweat Heater Power = A1 * (Heater Watts at 5% RH) + A2 * (Heater Watts at 15% RH) + A3 * (Heater Watts at 25% RH) + A4 * (Heater Watts at 35% RH) + A5 * (Heater Watts at 45% RH) + A6 * (Heater Watts at 55% RH) + A7 * (Heater Watts at 65% RH) + A8 * (Heater Watts at 75% RH) + A9 *

[2] 72 FR 19189

(Heater Watts at 85% RH) + A10 * (Heater Watts at 95% RH)

Samsung requests that DOE prescribe an alternate test procedure, whereby the test procedure were modified to calculate the energy of the unit by testing the unit with the anti-sweat heaters in the ''on'' position as equal to the energy of the unit tested with the anti-sweat heaters in the ''off'' position plus the Anti-Sweat Heater Power times 1.3, similar to those prescribed within waivers granted to GE [3] and Whirlpool [4], to allow Samsung to accurately evaluate the energy consumption for the following Samsung refrigerator-freezer models:

RB19*AC**
RB21*AC**
RF19*AC**
RF21*AC**
RF26*AF**
RFG23*AC**
RFG29*AC**
RFM28*AA**

Conclusion

On the grounds that current test methods for refrigerator-freezers will result in inaccurate evaluation of energy consumption, Samsung requests that, until a final rule prescribing a test method for adaptive anti-sweat heater technologies, a waiver is granted for Samsung refrigerator-freezer models which utilize adaptive anti-sweat heater technologies. By granting Samsung the requested waiver and interim waiver, DOE will ensure that advancements in technologies are not hindered by regulations, and that similar products are tested in similar manners.

Affected Persons

Primarily affected persons in the refrigerator-freezer category include BSH Home Appliances Corp. (Bosch-Siemens Hausgerate GmbH), Electrolux Home Products, Equator, Fisher & Paykel Appliances Inc., GE Appliances, Gorenje USA, Haier America Trading, L.L.C., Heartland Appliances, Inc., Kelon Electrical Holdings Co., Ltd., Liebherr Hausgerate, LG Electronics Inc., Northland Corporation, Sanyo Fisher Company, Sears, Sub-Zero Freezer Company, ULine, Viking Range, W. C. Wood Company, and Whirlpool Corporation. The Association of Home Appliance Manufacturers is also generally interested in energy efficiency requirements for appliances, including refrigerator-freezers. Samsung will notify all these entities as required by the Department's rules and provide them with a version of this Petition.

[3] 73 FR 10425

[4] 74 FR 20695

Sincerely,
Michael Moss
Senior Manager

[FR Doc. E9–29778 Filed 12–14–09; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Case No. RF–010]

Energy Conservation Program for Consumer Products: Notice of Petition for Waiver of Electrolux Home Products, Inc. From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure, and Modification of Interim Waiver

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver, notice of modification of interim waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes the Electrolux Home Products, Inc. (Electrolux) Petition for Waiver (hereafter, ''Petition'') from parts of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of electric refrigerators and refrigerator-freezers. Today's notice also modifies an interim waiver of the test procedures applicable to residential refrigerator-freezers by extending it to additional Electrolux basic models. Through this document, DOE is soliciting comments with respect to the Electrolux Petition.

DATES: DOE will accept comments, data, and information with respect to the Electrolux Petition until, but no later than January 14, 2010.

ADDRESSES: You may submit comments, identified by case number ''RF–010,'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: AS_Waiver_Requests@ee.doe.gov* Include either the case number [Case No. RF–010], and/or ''Electrolux Petition'' in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Instructions: All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Any person submitting written comments must also send a copy of such comments to the petitioner, pursuant to 10 CFR 431.401(d). The contact information for the petitioner is: Ms. Sheila A. Millar, Keller and Heckman, LLP, 1001 G Street, NW., Washington, DC 20001. *Telephone:* (202) 434–4100.

E-mail: millar@khlaw.com.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies to DOE: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza, SW, (Resource Room of the Building Technologies Program), Washington, DC 20024; (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the Petition for Waiver and Application for Interim Waiver; and (4) prior DOE rulemakings regarding similar central air conditioning and heat pump equipment. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611. *E-mail: Michael.Raymond@ee.doe.gov.*

Ms. Francine Pinto or Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000

Independence Avenue, SW., Washington, DC 20585–0103. *Telephone:* (202) 586–8145. *E-mail: Francine.Pinto@hq.doe.gov or Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 6, 2008, Electrolux filed a Petition for Waiver and Application for Interim Waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR Part 430, subpart B, appendix A1. The products covered by the petition employ adaptive anti-sweat heaters, which detect and respond to temperature and humidity conditions, and then activate adaptive heaters as needed to evaporate excess moisture. DOE granted Electrolux's Application for Interim Waiver on March 3, 2009. On June 4, 2009, DOE published Electrolux's Petition for Waiver for residential refrigerator-freezers with adaptive anti-sweat heaters in the **Federal Register**. 74 FR 26853. Following a March 24, 2009, request from Electrolux, the June 4, 2009, **Federal Register** notice also expanded the Interim Waiver to cover four additional models.

II. Petition for Waiver of Test Procedure and Modified Interim Waiver

On July 13, 2009, Electrolux informed DOE that after it filed its Petition for Waiver in November 2008, it developed additional basic models with adaptive anti-sweat heater technology. Electrolux asserted that these new products are identical in function and operation to the basic models listed in Electrolux's November 2008 petition with respect to the properties that made those products eligible for a waiver. Therefore, Electrolux requested that DOE add these models to the list of basic models for which the interim waiver was granted. In addition, Electrolux requested that DOE grant a new Waiver for these additional basic models. The following additional products are covered by the July 2009 waiver request:

EI28BS36IW	EI28BS36IB	EI28BS36IS	EI28BS51IW	EI28BS51IB
EI28BS51IS	EI23BC36IW	EI23BC36IB	EI23BC36IS	EI23BC51IW
EI23BC51IB	EI23BC51IS	E23BC58JSS	E23BC58JPS	E23BC78ISS
E23BC78IPS	FGHB2844LP	FGHB2844LE	FGHB2844LM	FGHB2844LF
FGHB2846LM	FGHN2844LP	FGHN2844LE	FGHN2844LM	FGHN2844LF
FGHB2869LP	FGHB2869LE	FGHB2879LF	FGHN2869LP	FGHN2869LE
FGHN2879LF	FPHB2899LF	FPHN2899LF		

DOE notes that Electrolux's July 2009 petition to extend its Interim Waiver and Petition for Waiver also contains an alternate test procedure that addresses the treatment of products equipped with adaptive anti-sweat heaters. The alternate test procedure submitted in the July 2009 petition is identical to the one contained in Electrolux's November 6, 2008 Petition. Accordingly, for the same reasons cited in its grant of the November 2008 interim waiver request—i.e. similarity between the type of products covered by the Electrolux petitions and the type addressed in a waiver previously granted to General Electric Company—DOE is extending that interim waiver to cover the new products addressed in Electrolux's July 2009 petition. *See also* 74 FR 26854 (citing 72 FR 10425 (Feb. 27, 2008)).

III. Alternate Test Procedure

During the duration of the interim waiver, Electrolux shall be required to test the products listed above according to the test procedures for electric refrigerator-freezers prescribed by DOE at 10 CFR Part 430, Appendix A1, except that, for the Electrolux products listed above only:

(A) The following definition is added at the end of Section 1:

1.13 ''*Variable anti-sweat heater control*'' means an anti-sweat heater where power supplied to the device is determined by an operating condition variable(s) and/or ambient condition variable(s).

(B) Section 2.2 is revised to read as follows:

2.2 Operational conditions. The electric refrigerator or electric refrigerator-freezer shall be installed and its operating conditions maintained in accordance with HRF–1–1979, section 7.2 through section 7.4.3.3. except that the vertical ambient temperature gradient at locations 10 inches (25.4 cm) out from the centers of the two sides of the unit being tested is to be maintained during the test. Unless shields or baffles obstruct the area, the gradient is to be maintained from 2 inches (5.1 cm) above the floor or supporting platform to a height one foot (30.5 cm) above the unit under test. Defrost controls are to be operative. The anti-sweat heater switch is to be ''off'' during one test and ''on'' during the second test. In the case of an electric refrigerator-freezer equipped with variable anti-sweat heater control, the ''on'' test will be the result of the calculation described in 6.2.3. Other exceptions are noted in 2.3, 2.4, and 5.1 below.

(C) New section 6.2.3 is inserted after section 6.2.2.2.

6.2.3 Variable anti-sweat heater control test. The energy consumption of an electric refrigerator-freezer with a variable anti-sweat heater control in the ''on'' position (E_{on}), expressed in kilowatt-hours per day, shall be calculated equivalent to:

$E_{ON} = E + (\text{Correction Factor})$

Where E is determined by 6.2.1.1, 6.2.1.2, 6.2.2.1, or 6.2.2.2, whichever is appropriate, with the anti-sweat heater switch in the ''off'' position.

Correction Factor = (Anti-sweat Heater Power × System-loss Factor) × (24 hrs/1 day) × (1 kW/1000 W)

Where:

Anti-sweat Heater Power
= A1 * (Heater Watts at 5%RH)
+ A2 * (Heater Watts at 15%RH)
+ A3 * (Heater Watts at 25%RH)
+ A4 * (Heater Watts at 35%RH)
+ A5 * (Heater Watts at 45%RH)
+ A6 * (Heater Watts at 55%RH)
+ A7 * (Heater Watts at 65%RH)
+ A8 * (Heater Watts at 75%RH)
+ A9 * (Heater Watts at 85%RH)
+ A10 * (Heater Watts at 95%RH)

Where A1–A10 are from the following table:

A1 = 0.034	A6 = 0.119
A2 = 0.211	A7 = 0.069
A3 = 0.204	A8 = 0.047
A4 = 0.166	A9 = 0.008
A5 = 0.126	A10 = 0.015

Heater Watts at a specific relative humidity = the nominal watts used by all heaters at that specific relative humidity, 72 °F ambient, and DOE reference temperatures of fresh food (FF) average temperature of 45 °F and freezer (FZ) average temperature of 5 °F. System-loss Factor = 1.3

IV. Summary and Request for Comments

The Department has reviewed Electrolux's Petition and its request to extend its Interim Waiver to additional models. The list of additional models does not reflect any changes to the models listed in Electrolux's November

2008 Petition with respect to the properties making them eligible for a waiver, which involved the accuracy of the test procedure as applied to this new technology. Given that the modified list does not change in any way the basis for granting the interim waiver, DOE finds that it is appropriate that the Interim Waiver granted on March 3 and extended on June 4, 2009, apply to the additional models listed in this Petition. Accordingly, DOE extends these prior grants of Interim Waivers to the models listed in this Petition.

Through today's notice, DOE announces receipt of Electrolux's Petition for Waiver from certain parts of the test procedure that apply to additional basic models of refrigerators and refrigerator-freezers with variable anti-sweat heater controls and adaptive heaters manufactured by Electrolux. DOE is publishing Electrolux's Petition for Waiver in its entirety pursuant to 10 CFR 430.27(b)(1)(iv). The Petition contains no confidential information. The Petition includes a suggested alternate test procedure and calculation methodology to determine the energy consumption of Electrolux's specified refrigerators and refrigerator-freezers with adaptive anti-sweat heaters. DOE is interested in receiving comments from interested parties on all aspects of the Petition, including the suggested alternate test procedure and calculation methodology. Pursuant to 10 CFR 430.27(b)(1)(iv), any person submitting written comments to DOE must also send a copy of such comments to the petitioner, whose contact information is included in the **ADDRESSES** section above.

Issued in Washington, DC, on December 8, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Writer's Direct Access

Sheila A. Millar

(202) 434–4143

millar@khlaw.com

July 13, 2009

Via Overnight Delivery

The Honorable Catherine Zoi

Assistant Secretary

Office of Energy Efficiency and Renewable Energy

U.S. Department of Energy

Mail Station EE–10

Forrestal Building

1000 Independence Avenue, SW

Washington, DC 20585–0121

Re: Petition for Waiver and Application for Interim Waiver from the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedures by Electrolux Home Products, Inc.

Dear Secretary Zoi:

On behalf of our client, Electrolux Home Products, Inc. (''Electrolux''), we respectfully submit this Petition for Waiver and Application for Interim Waiver requesting exemption by the Department of Energy from certain parts of the test procedure for determining refrigerator-freezer energy consumption under 10 C.F.R. § 430.27. The requested waiver will allow Electrolux to test its refrigerator-freezer to the amended procedure set out by this petition.

This petition for waiver contains no confidential business information and may be released pursuant to Freedom of Information Act requests.

I. Petition for Waiver

Electrolux seeks the Department's approval of this proposed amendment to the refrigerator test procedure to be assured of properly calculating the energy consumption and properly labeling its new refrigerator. On February 27, 2008 and May 5, 2009, the Department granted Petitions for Waiver filed respectively by General Electric Corporation (''GE'') and Whirlpool Corporation (''Whirlpool'') to establish a new methodology to calculate the energy consumption of a refrigerator-freezer when such a product contains adaptive anti-sweat heaters.[1]

Electrolux has developed its own adaptive anti-sweat system that uses a humidity sensor to operate the anti-sweat heaters. On November 6, 2008, Electrolux filed a Petition for Waiver and Application for Interim Waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers. Having determined that Electrolux is seeking a waiver similar to the one granted to GE, and that the Electrolux Petition is likely to be granted, the Department on March 3, 2009, granted Electrolux an Interim Waiver, which was expanded on June 4, 2009, to cover four additional models.[2]

Department regulations make clear that once a waiver has been granted, the Department must take steps to incorporate the new procedure and eliminate the need for continuing waivers:

Within one year of the granting of any waiver, the Department of Energy will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, the Department of Energy will publish in the **Federal Register** a final rule. Such waiver will terminate on the effective date of such final rule.[3]

In the interim, however, Electrolux is developing and planning to shortly introduce into the marketplace new models that use the identical adaptive anti-sweat system addressed by the March 3, 2009 Interim Waiver. Accordingly, Electrolux is filing this Petition for Waiver and Application for Interim Waiver to address these new models.

The Department's regulations provide that the Assistant Secretary will grant a petition for waiver upon ''determination that the basic model for which the waiver was requested contains a design characteristic which either prevents testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.'' [4]

Electrolux respectfully submits that sufficient grounds exist for the Assistant Secretary to grant this Petition on both points. First, the refrigerator energy test procedure does not allow the energy used by Electrolux's new refrigerator to be accurately calculated. The new refrigerator contains adaptive anti-sweat heaters (*i.e.,* anti-sweat heaters that respond to humidity conditions found in consumers' homes). Since the test conditions specified by the test procedure neither define required humidity conditions nor otherwise take ambient humidity conditions into account in calculating energy consumption, the adaptive feature of Electrolux's new refrigerator models cannot be properly tested.

Second, testing Electrolux's new refrigerator models according to the test procedure would provide results that do

[1] *Decision and Order Granting a Waiver to the General Electric Company From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure (Case No. RF–007), 73 Fed. Reg. 10,425; Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to Whirlpool Corporation From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure,* 74 Fed. Reg. 20,695.

[2] *See Publication of the Petition for Waiver and Notice of Granting the Application for Interim Waiver of Electrolux From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedures,* 74 Fed. Reg. 26,853 (June 4, 2009).

[3] 10 CFR § 430.27(m).

[4] 10 CFR § 430.27(l).

not accurately measure the energy used by the new refrigerator.

A. The Refrigerator Energy Test Procedure

The test procedure for calculating energy consumption specifies that the test chamber must be maintained at 90° Fahrenheit (''F'').[5] This ambient temperature is not typical of conditions in most consumers' homes. Rather, it is intended to simulate the heat load of a refrigerator in a 70 °F ambient with typical usage by the consumer. But the test procedure does not specify test chamber humidity conditions. Sweat occurs on refrigerators when specific areas on the unit are below the local dew point. Higher relative humidity levels result in an increase of the dew point. Sweat has been addressed by installing anti-sweat heaters on mullions and other locations where sweat accumulates. Previous anti-sweat heaters operated at a fixed amount of power, and turned on or off regardless of the humidity or amount of sweat on the unit.

B. Electrolux's Proposed Modifications

The circumstances of this petition are similar to those in the Department's earlier decisions granting waiver petitions, including the 2001 waiver granted in *In the Matter of Electrolux Home Appliances*.[6] The test procedure at issue in Electrolux's 2001 waiver request was originally developed when simple mechanical defrost timers were the norm. Accordingly, Electrolux sought a test procedure waiver to accommodate its advanced defrost timer. The Assistant Secretary, in granting the waiver, acknowledged the role of technology advances in evaluating the need for test procedure waivers. With this current petition, Electrolux again seeks to change how it tests its new models to take into account advances in sensing technology, *i.e.,* sensors that detect temperature and humidity conditions and interact with controls to vary the effective wattage of anti-sweat heaters to evaporate excess sweat.

The Electrolux models, with the anti-sweat technology, subject to this Petition are:

EI28BS36IW	EI28BS36IB	EI28BS36IS	EI28BS51IW	EI28BS51IB
EI28BS51IS	EI23BC36IW	EI23BC36IB	EI23BC36IS	EI23BC51IW
EI23BC51IB	EI23BC51IS	E23BC58JSS	E23BC58JPS	E23BC78ISS
E23BC78IPS	FGHB2844LP	FGHB2844LE	FGHB2844LM	FGHB2844LF
FGHB2846LM	FGHN2844LP	FGHN2844LE	FGHN2844LM	FGHN2844LF
FGHB2869LP	FGHB2869LE	FGHB2879LF	FGHN2869LP	FGHN2869LE
FGHN2879LF	FPHB2899LF	FPHN2899LF		

As with the models covered by the prior petition, Electrolux proposes to run the energy-consumption test with the anti-sweat heater switch in the ''off'' position and then, because the test chamber is not humidity-controlled, to add to that result the kilowatt hours per day derived by calculating the energy used when the anti-sweat heater is in the ''on'' position. This contribution will be calculated by the same method that was proposed by GE and Whirlpool in their Petitions for Waiver.[7] The objective of the proposed approach is to simulate the average energy used by the adaptive anti-sweat heaters as activated in typical consumer households across the United States.

In formulating its Petition, GE conducted research to determine the average humidity level experienced across the United States. The result of this research was that GE was able to determine the probability that any U.S. household would experience certain humidity conditions during any month of the year. This data was consolidated into 10 bands each representing a 10% range of relative humidity. In submitting this Petition, Electrolux is confirming the validity of using such bands to represent the average humidity experienced across the United States and will adopt the same population weighting as proposed by GE. The bands proposed by GE are as follows:

	% Relative humidity	Probability (percent)	Constant designation
1	0–10	3.4	A1
2	10–20	21.1	A2
3	20–30	20.4	A3
4	30–40	16.6	A4
5	40–50	12.6	A5
6	50–60	11.9	A6
7	60–70	6.9	A7
8	70–60	4.7	A8
9	80–90	0.8	A9
10	90–100	1.5	A10

Since system losses are involved with operating anti-sweat heaters, Electrolux proposes to include in the calculation a factor to account for such energy. This additional energy includes the electrical energy required to operate the anti-sweat heater control and related components, and the additional energy required to increase compressor run time to remove heat introduced into the refrigerator compartments by the anti-sweat heater. Based on Electrolux's experience, this ''System-loss Factor'' is 1.3. Simply stated, the Correction Factor that Electrolux proposes to add to the energy-consumption test results obtained with the anti-sweat heater switch in the ''off'' position is calculated as follows:

[5] 10 CFR Part 430, Subpart B, App. A1.

[6] *Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of Electrolux Home Products from the DOE Refrigerator and Refrigerator-Freezer Test Procedure (Case No. RF–005),* 66 Fed. Reg. 40,689 (Aug. 3, 2001).

[7] *Publication of the Petition for Waiver of General Electric Company From the Department of Energy Refrigerator and Refrigerator/Freezer Test Procedures,* 72 Fed. Reg. 19,189 (Apr. 17, 2007); *Publication of the Petition for Waiver of Whirlpool Corporation From the Department of Energy Refrigerator and Refrigerator/Freezer Test Procedures,* 73 Fed. Reg. 39,684 (July 10, 2008).

Correction Factor = (Anti-sweat Heater Power × System-loss Factor) × (24 hours/1 day) × (1 kW/1000 W)

Continue by calculating the national average power in watts used by the anti-sweat heaters. This is done by totaling the product of constants A1–A10 multiplied by the respective heater watts used by a refrigerator operating in the median percent relative humidity for that band and the following standard refrigerator conditions:

- ambient temperature of 72 °F;
- fresh food (FF) average temperature of 45 °F; and
- freezer (FZ) average temperature of 5 °F.

Anti-sweat Heater Power = A1 * (Heater Watts at 5% RH) + A2 * (Heater Watts at 15% RH) + A3 * (Heater Watts at 25% RH) + A4 * (Heater Watts at 35% RH) + A5 * (Heater Watts at 45% RH) + A6 * (Heater Watts at 55% RH) + A7 * (Heater Watts at 65% RH) + A8 * (Heater Watts at 75% RH) + A9 * (Heater Watts at 85% RH) + A10 * (Heater Watts at 95% RH)

As explained above, bands A1–A10 were selected as representative of humidity conditions in all U.S. households. Utilizing such weighed bands will allow the calculation of the national average energy consumption for each product.

Based on the above, Electrolux proposes to test its new models as if the test procedure were modified to calculate the energy of the unit with the anti-sweat heaters in the on position as equal to the energy of the unit tested with the anti-sweat heaters in the off position plus the Anti-Sweat Heater Power times the System Loss Factor (expressed in KWH/YR).

II. Application for Interim Waiver

Pursuant to Department regulations, the Assistant Secretary will grant an Interim Waiver ''if it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver.'' [8]

Although Electrolux would not experience economic hardship without a waiver of the test procedures—indeed, the alternate test procedure imposes an energy penalty—the DOE letter granting the Electrolux Interim Waiver recognized that:

* * * public policy would favor granting Electrolux an Interim Waiver, pending determination of the Petition for Waiver. On February 27, 2008, DOE granted the General Electric Company (''GE'') a waiver from the refrigerator-freezer test procedure because it takes neither ambient humidity nor adaptive technology into account. 73 FR 10425. The test procedure would not accurately represent the energy consumption of refrigerator-freezers containing relative humidity sensors and adaptive control anti-sweat heaters. This argument is equally applicable to Electrolux, which has products containing similar relative humidity sensors and anti-sweat heaters. Electrolux is seeking a very similar waiver to the one DOE granted to GE, with the same alternate test procedure, and it is very likely Electrolux's Petition for Waiver will be granted.

As Electrolux noted in its November 6, 2008, Petition for Waiver and Application for Interim Waiver, the Company could have designed its adaptive anti-sweat system so that the anti-sweat heaters showed no impact during energy testing. However, like GE and Whirlpool Corporation, Electrolux is following the intent of the regulations to more accurately represent the energy consumed by the new refrigerators when used in the home. Moreover, the adaptive anti-sweat system in the Electrolux models referenced above is identical or similar to those addressed by the March 3, 2009 Interim Waiver granted to Electrolux by the Department, and June 4, 2009, Federal Register notice.[9] Accordingly, Electrolux respectfully submits that sufficient grounds exist for the Assistant Secretary to grant the Electrolux Application for Interim Waiver.

III. Conclusion

Electrolux urges the Assistant Secretary to grant its Petition for Waiver and Application for Interim Waiver to allow Electrolux to test its new refrigerator models as noted above. Granting Electrolux's Petition for Waiver will encourage the introduction of advanced technologies while providing proper consideration of energy consumption.

IV. Affected Persons

Primarily affected persons in the refrigerator-freezer category include BSH Home Appliances Corp. (Bosch-Siemens Hausgerate GmbH), Equator, Fisher & Paykel Appliances Inc., GE Appliances, Haier America Trading, L.L.C., Heartland Appliances, Inc., Liebherr Hausgerate, LG Electronics Inc., Northland Corporation, Samsung Electronics America, Inc., Sanyo Fisher Company, Sears, Sub-Zero Freezer Company, U-Line, Viking Range, W. C. Wood Company, and Whirlpool Corporation. The Association of Home Appliance Manufacturers is also generally interested in energy efficiency requirements for appliances. Electrolux will notify all these entities as required by the Department's rules and provide them with a version of this Petition.

Sincerely,

Sheila A. Millar

cc: Michael Raymond, DOE Office of Energy Efficiency and Renewable Energy

[FR Doc. E9–29787 Filed 12–14–09; 8:45 am]

BILLING CODE 6450–01–P

[8] 10 CFR. § 430.27(g).

[9] *See supra* note 2.

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, January 7, 2010, 6 p.m.

ADDRESSES: Ohio State University, South Center Auditorium, 1864 Shyville Road, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: Joel Bradburne, Deputy Designated Federal Officer, Department of Energy, Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–3822, *Joel.Bradburne@lex.doe.gov.*

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda:

- Call to Order, Introductions, Review of Agenda
- Approval of November Minutes
- Deputy Designated Federal Officer's Comments
- Federal Coordinator's Comments
- Liaisons' Comments
- Administrative Issues—Actions:
  - Subcommittee Updates
  - Request an End Use Study for Portsmouth Gaseous Diffusion Plant

- Public Comments
- Final Comments
- Adjourn

Breaks taken as appropriate.

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Joel Bradburne at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Joel Bradburne at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Joel Bradburne at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.ports-ssab.org/publicmeetings.html.*

Issued at Washington, DC on December 9, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–29789 Filed 12–14–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

December 10, 2009.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: December 17, 2009; 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*** Note:** Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400. For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed online at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

954TH—MEETING

[Regular meeting, December 17, 2009]

Item No.	Docket No.	Company
	Administrative	
A–1	AD02–1–000	Agency Administrative Matters—FERC Strategic Plan.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD06–3–000	2009 Report on Enforcement.
	Electric	
E–1	ER99–1773–009	AES Creative Resources, L.P.
	ER99–2284–009	AEE 2, L.L.C.
	ER99–1761–005	AES Eastern Energy, L.P.
	ER00–1026–016	Indianapolis Power & Light Company.
	ER01–1315–005	AES Ironwood, L.L.C.
	ER01–2401–011	AES Red Oak, L.L.C.
	ER98–2184–014	AES Huntington Beach, L.L.C.
	ER98–2816–015	AES Redondo Beach, L.L.C.
	ER00–33–011	AES Placertia, Inc.
	ER05–442–003	Condon Wind Power, LLC.
	ER98–2185–014	AES Alamitos, Inc.
	ER99–1228–007	Storm Lake Power Partners II, LLC.
	ER97–2904–008	Lake Benton Power Partners, LLC.
	ER01–751–010, ER01–751–012	Mountain View Power Partners, LLC.
E–2	ER09–1589–000, EL10–6–000	FirstEnergy Service Company. FirstEnergy Service Company v. PJM Interconnection, L.L.C.
E–3	ER09–1063–000, ER09–1063–001	PJM Interconnection, L.L.C.
E–4	EL09–72–000	Pacific Gas and Electric Company.
E–5	EL10–3–000	Citizens Energy Corporation.
E–6	RM09–8–000	Revised Mandatory Reliability Standards for Interchange Scheduling and Coordination.
E–7	RM07–19–002	Wholesale Competition in Regions with Organized Electric Markets.
E–8	RM06–22–010	Mandatory Reliability Standards for Critical Infrastructure Protection.
E–9	RD09–7–001	North American Electric Reliability Corporation.
E–10	ER10–116–000	Trans Bay Cable LLC.
E–11	ER08–1113–004, ER08–1113–005, ER06–615–046.	California Independent System Operator Corporation.
E–12	ER09–1254–001	Southwest Power Pool, Inc.
E–13	OMITTED	
E–14	OMITTED	

954TH—MEETING—Continued

[Regular meeting, December 17, 2009]

Item No.	Docket No.	Company
E–15	OMITTED	
E–16	EL10–2–000	San Diego Gas & Electric Company.
E–17	EL00–66–013	Louisiana Public Service Commission and the City Council of New Orleans v. Entergy Corporation.
	EL95–33–009	Louisiana Public Service Commission v. Entergy Services, Inc.
E–18	EL01–88–007	Louisiana Public Service Commission v. Federal Energy Regulatory Commission.
E–19	EL08–59–001	ConocoPhillips Company v. Entergy Services, Inc.
E–20	ER09–88–003	Southern Company Services, Inc.
E–21	EL09–68–000	PJM Interconnection, L.L.C.
E–22	ER09–635–000, ER09–635–001, ER09–635–002.	Southern Company Services, Inc.
	Miscellaneous	
M–1	PL10–2–000	Enforcement of Statutes, Regulations, and Orders.
M–2	PL10–1–000	Enforcement of Statutes, Regulations, and Orders.
M–3	RM09–21–000	Revised Filing Requirements for Centralized Service Companies Under the Public Utility Holding Company Act of 2005, the Federal Power Act, and the Natural Gas Act.
	Gas	
G–1	RP04–274–015, RP04–274–008, RP04–274–016, RP04–274–017, RP04–274–018, RP04–274–019.	Kern River Gas Transmission Company.
G–2	IS08–302–003	SFPP, L.P.
	OR08–15–001	ExxonMobil Oil Corporation and BP West Coast Products LLC v. SFPP, LP.
	OR09–8–000	Chevron Products Company v. SFPP, L.P.
	OR09–18–000	Tesoro Refining and Marketing Company v. SFPP, L.P.
	Hydro	
H–1	P–2153–015	United Water Conservation District.
H–2	P–13443–001, P–13448–001, P–13454–001.	McGinnis, Inc.
H–3	P–184–196	El Dorado Irrigation District (CA).
H–4	HB131–08–1–000	PPL Maine, LLC, PPL Great Works, LLC, and Bangor Pacific Hydro Associates.
	Certificates	
C–1	CP07–441–000, CP07–442–000, CP07–443–000.	Pacific Connector Gas Pipeline, LP.
	CP07–444–000	Jordan Cove Energy Project, L.P.
C–2	CP07–62–001	AES Sparrows Point LNG, LLC.
	CP07–63–001, CP07–64–001, CP07–65–001.	Mid-Atlantic Express, LLC.
C–3	CP09–433–000	Fayetteville Express Pipeline LLC.
C–4	CP09–38–000	Transcontinental Gas Pipe Line Company, LLC and Copano Field Services/Central Gulf Coast, L.P.
C–5	CP02–48–000, CP02–53–000	National Fuel Gas Supply Corporation.

Kimberly D. Bose,

Secretary.

A free Web cast of this event is available through *http://www.ferc.gov*. Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its Web cast. The Capitol Connection provides technical support for the free Web casts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. E9–29903 Filed 12–11–09; 4:15 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0524; FRL–9092–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Fossil-Fuel-Fired Steam Generating Units, EPA ICR Number 1052.09, OMB Control Number 2060–0026

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before January 14, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–OECA–2009–0524, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2801T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert C. Marshall, Jr., Office of Enforcement Compliance Assurance, 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7021; e-mail address: *marshall.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 30, 2009 (74 FR 38006), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2009–0524, which is available for public viewing online at *http://www.regulations.gov*, in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, 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 Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NSPS for the Fossil-Fuel-Fired Steam Generating Units.

ICR Numbers: EPA ICR Number 1052.09, OMB Control Number 2060–0026.

ICR Status: This ICR is scheduled to expire on January 31, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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 CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and 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 in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Entities potentially affected by this action are the owners or operators of fossil fuel fired steam generating units. The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart D. Owners or operators of the affected facilities must: Make one-time-only notification of occurrences such as construction/reconstruction and startup; submit reports containing information such as monitoring system performance and excess emissions; and maintain records of occurrences such as startups and shutdowns. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 47 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.

Respondents/Affected Entities: Fossil-fuel-fired steam generating units.

Estimated Number of Respondents: 660.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 61,545.

Estimated Total Annual Cost: $15,688,147, which includes $5,788,147 in labor costs, no annualized capital/startup costs, and O&M costs of $9,900,000.

Changes in the Estimates: There is no change in the labor hours in this ICR compared to the previous ICR. This is due to two considerations. First, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Secondly, the growth rate for respondents is very low, negative, or non-existent. Therefore, the labor hours in the previous ICR reflect the current burden to the respondents and are reiterated in this ICR. There is a minor change to the cost figures, since the previous ICR used a technical labor rate only. The updated labor categories and associated rates result in an increase to total labor cost. Additionally, the previous ICR rounded to the nearest $1,000; this ICR presents cost figures which differ by less than $500 from the previous ICR due to using exact figures instead of rounding.

Dated: December 9, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–29803 Filed 12–14–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0533; FRL–9092–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for the Secondary Lead Smelter Industry, EPA ICR Number 1686.07, OMB Control Number 2060–0296

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before January 14, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2009–0533, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert C. Marshall, Jr., Office of Compliance, Mail code: 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 564–7021; *fax number:* (202) 564–0050; *e-mail address: marshall.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 30, 2009 (74 *FR* 38004), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2009–0533, which is available for public viewing online at *http://www.regulations.gov,* in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, 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 Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NESHAP for the Secondary Lead Smelter Industry.

ICR Numbers: EPA ICR Number 1686.07, OMB Control Number 2060–0296.

ICR Status: This ICR is scheduled to expire on January 31, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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 CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and 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 in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This standard applies to owners and operators of secondary lead smelter industry. The provisions of this subpart (40 CFR part 63, subpart X) apply to secondary lead smelters that use blast, reverberatory, rotary, or electric smelting furnaces to recover lead metal from scrap lead, primarily from used lead-acid automotive-type batteries. Consistent with the NESHAP General Provisions (40 CFR part 63, subpart A), owners and operators must comply with recordkeeping, monitoring and reporting requirements including control device parameter monitoring, conduct performance tests and submittal of initial and periodic reports such as semiannual compliance reports and an operation, maintenance and monitoring plan.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 229 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.

Respondents/Affected Entities: Secondary lead smelters.

Estimated Number of Respondents: 23.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 16,034.

Estimated Total Annual Cost: $1,125,913, which includes $975,913 in labor costs, no annualized capital/startup costs, and operation and maintenance (O&M) costs of $150,000.

Changes in the Estimates: There is no change in the labor hours or cost to the respondents in this ICR compared to the previous ICR. This is due to two considerations. First, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Second, the growth rate for respondents is very low, negative, or non-existent. Therefore, the labor hours and cost figures in the previous ICR reflect the current burden to the respondents and are reiterated in this ICR.

Dated: December 7, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–29806 Filed 12–14–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0855; FRL–8800–3]

Citric Acid Registration Review Final Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's final registration review decision for the pesticide citric acid, case 4024. Registration Review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, that the pesticide can perform its intended function without causing unreasonable adverse effects on human health or the environment. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information, contact*: K. Avivah Jakob, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–1328; fax number: (703) 308–8090; e-mail address: *jakob.kathryn@epa.gov*.

For general information on the registration review program, contact: Lance Wormell, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 603–0523; fax number: (703) 308–8090; e-mail address: *wormell.lance@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the pesticide specific contact person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0855. 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.

II. Background

A. What Action is the Agency Taking?

Pursuant to 40 CFR 155.58(c), this notice announces the availability of EPA's final registration review decision for citric acid, case 4024. Citric acid is a food-contact and non-food contact antimicrobial pesticide used in many products for residential and public access premises (e.g. kitchen counter tops, bathroom shower stalls, toilets, utensils, kitchen cutting boards, diaper pails, changing tables, garbage cans, pet area, cafeterias and doctor's offices) and as a disinfectant, fruit and vegetable wash, sanitizer, virucide, and germicide. It is also an inert ingredient in other pesticide products. In addition, citric acid is characterized by low toxicity, is biodegradable, and is found extensively in nature.

Pursuant to 40 CFR 155.57, a registration review decision is the Agency's determination whether a pesticide meets, or does not meet, the standard for registration in FIFRA. EPA has considered citric acid in light of the FIFRA standard for registration. The citric acid Final Decision document in the docket describes the Agency's rationale for issuing a registration review final decision for this pesticide.

In addition to the final registration review decision document, the registration review docket for citric acid also includes other relevant documents related to the registration review of this case. The proposed registration review decision was posted to the docket and the public was invited to submit any comments or new information. During the 60–day comment period, no public comments were received.

Pursuant to 40 CFR 155.58(c), the registration review case docket for citric acid will remain open until all actions required in the final decision have been completed.

Background on the registration review program is provided at: *http://www.epa.gov/oppsrrd1/registration_review*. Links to earlier documents related to the registration review of this pesticide are provided at: *http://www.epa.gov/oppsrrd1/registration_review/citric_acid/index.htm*.

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

Section 3(g) of FIFRA and 40 CFR part 155, subpart C, provide authority for this action.

List of Subjects

Environmental protection, Antimicrobials, Citric acid, Pesticides and pests, Registration review.

Dated: November 19, 2009.

Betty Shackleford,

Acting Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E9–29593 Filed 12–14–09; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9090–9; Docket ID No. EPA–HQ–ORD–2007–0517]

Integrated Science Assessment for Particulate Matter

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of a final document titled, ''Integrated Science Assessment for Particulate Matter'' (EPA/600/R–08/139F) and the supplementary annexes (EPA/600/R–08/139FA). The document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development as part of the review of the national ambient air quality standards (NAAQS) for particulate matter.

DATES: The document will be available on or about December 15, 2009.

ADDRESSES: The ''Integrated Science Assessment for Particulate Matter'' will be available primarily via the Internet

on the National Center for Environmental Assessment's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of CD–ROM or paper copies will be available. Contact Ms. Deborah Wales by phone (919–541–4731), fax (919–541–5078), or e-mail (*wales.deborah@epa.gov*) to request either of these, and please provide your name, your mailing address, and the document title, ''Integrated Science Assessment for Particulate Matter'' (EPA/600/R–08/139F and EPA/600/R–08/139FA) to facilitate processing of your request.

FOR FURTHER INFORMATION CONTACT

For technical information, contact Dr. Lindsay Wichers Stanek, NCEA; telephone: 919–541–7792; facsimile: 919–541–2985; or e-mail: *stanek.lindsay@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Document

Section 108(a) of the Clean Air Act directs the Administrator to identify certain pollutants which, among other things, ''cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare'' and to issue air quality criteria for them. These air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air * * *.'' Under section 109 of the Act, EPA is then to establish national ambient air quality standards (NAAQS) for each pollutant for which EPA has issued criteria. Section 109(d) of the Act subsequently requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. EPA is also to revise the NAAQS, if appropriate, based on the revised air quality criteria.

Particulate matter (PM) is one of six principal (or ''criteria'') pollutants for which EPA has established NAAQS. Periodically, EPA reviews the scientific basis for these standards by preparing an Integrated Science Assessment (ISA) (formerly called an Air Quality Criteria Document). The ISA and supplementary annexes, in conjunction with additional technical and policy assessments, provide the scientific basis for EPA decisions on the adequacy of the current NAAQS and the appropriateness of possible alternative standards. The Clean Air Scientific Advisory Committee (CASAC), an independent science advisory committee whose existence and whose review and advisory functions are mandated by Section 109(d)(2) of the Act, is charged (among other things) with independent scientific review of EPA's air quality criteria.

On June 28, 2007 (72 FR 35462), EPA formally initiated its current review of the air quality criteria for PM, requesting the submission of recent scientific information on specified topics. A draft of EPA's ''Integrated Review Plan for the National Ambient Air Quality Standard for Particulate Matter'' (EPA/452/P–08–006) was made available in October 2007 for public comment and was discussed by the CASAC PM Review Panel via a publicly accessible teleconference consultation on November 30, 2007 (72 FR 63177). EPA finalized the plan and made it available in March 2008 (EPA/452/R–08–004; *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_pd.html*). In June 2008 (73 FR 30391), EPA held a workshop to discuss, with invited scientific experts, initial draft materials prepared in the development of the PM ISA and its supplementary annexes.

The First External Review Draft ISA for PM (EPA/600/R–08/139 and EPA/600/R–08/139A; *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=201805*) was released on December 22, 2008 (73 FR 77686). This document was reviewed by the CASAC and discussed at a public meeting on April 1 and 2, 2009 (74 FR 7688). The CASAC held a follow-up public teleconference on May 7, 2009 (74 FR 18230) to review and approve the CASAC PM Review Panel's draft letter providing comments to the Agency on the First External Review Draft ISA for PM (*http://yosemite.epa.gov/sab/sabproduct.nsf/73ACCA834AB44A10852575BD0064346B/$File/EPA–CASAC–09–008-unsigned.pdf*).

The Second External Review Draft ISA for PM (EPA/600/R–08/139B and EPA/600/R–08/139BA; *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=210586*) was released on July 31, 2009 (74 FR 38185) and reviewed and discussed by CASAC at a public meeting on October 5 and 6, 2009 (74 FR 46586). The CASAC held a follow-up public teleconference on November 12, 2009 to review and approve the CASAC PM Review Panel's draft letter providing comments to the Agency on the Second External Review Draft ISA for PM (*http://yosemite.epa.gov/sab/sabproduct.nsf/MeetingCal/24CDD0F35DB3EC9F8525762400482B2F?OpenDocument*). EPA has considered comments by CASAC and by the public in preparing this final ISA.

Dated: December 1, 2009.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E9–29591 Filed 12–14–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9092–5]

McClellan Air Force Base Superfund Site; Proposed Notice of Administrative Order on Consent

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: Notice is hereby given that a proposed administrative order on consent concerning portions of the McClellan Air Force Base Superfund Site (''Site'') in McClellan, California has been negotiated by the Agency and the Respondent, McClellan Business Park, LLC, a Delaware limited liability company. The proposed administrative order on consent concerns cleanup of portions of the Site pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9604, 9606 and 9622 (''CERCLA''). Pursuant to a Federal Facilities Agreement (''FFA''), the U.S. Air Force is performing the CERCLA response actions for the Site; however, the FFA will be amended to suspend the obligations of the Air Force to conduct the response actions undertaken by the Respondent. The Air Force has prepared a Finding of Suitability for Early Transfer (''FOSET''), which has been subject to a public comment period. The Air Force will submit the FOSET to the Environmental Protection Agency (''EPA''), Region 9, and the State of California for their approval and upon approval of the FOSET, the Air Force will transfer portions of the Site to the County of Sacramento, which will then transfer those portions to the Respondent. The Air Force and the County of Sacramento have entered into an Environmental Services Cooperative Agreement, which requires the County of Sacramento to perform certain CERCLA response actions on the transferred portions of the Site, using funds supplied by the Air Force. The County of Sacramento has contracted with Respondent to conduct those CERCLA response actions. The proposed administrative order on

consent would require the Respondent to prepare and perform removal actions, one or more remedial investigations and feasibility studies and one or more remedial designs and remedial actions for certain contaminants present on the transferred portions of the Site, under the oversight of EPA and the State of California. The administrative order on consent also commits the Respondent to reimburse direct and indirect future response costs incurred by EPA in connection with actions conducted under CERCLA at the transferred portions of the Site.

For thirty (30) calendar days following the date of publication of this notice, EPA will receive written comments relating to the proposed administrative order on consent. If requested prior to the expiration of this public comment period, EPA will provide an opportunity for a public meeting in the affected area. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Comments must be submitted on or before January 14, 2010.

ADDRESSES: The proposed administrative order on consent may be obtained from Judith Winchell, Docket Clerk, telephone (415) 972–3124. Comments regarding the proposed administrative order on consent should be addressed to Judith Winchell (SFD–7) at United States EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105, and should reference ''FOSET #1 Privatization, McClellan Superfund Site,'' and ''Docket No. R9–2008–08''.

FOR FURTHER INFORMATION CONTACT: Sarah Mueller, Assistant Regional Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; E-mail: *mueller.sarah@epa.gov;* phone: (415) 972–3953.

Dated: December 9, 2009.

Keith Takata,

Director, Superfund Division, Region IX.

[FR Doc. E9–29805 Filed 12–14–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Submitted to the Office of Management and Budget for Review and Approval, Comments Requested

December 8, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by January 14, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to Cathy Williams, Federal Communications Commission (FCC), 445 12th Street, SW, Washington, DC 20554. To submit your comments by e–mail send then to: PRA@fcc.gov and to Cathy.Williams@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to web page: http://www.reginfo.gov/public/do/PRAMain, (2) look for the section of the web page called ''Currently Under Review'', (3) click on the downward–pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the FCC list appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e–mail to PRA@fcc.gov or contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0994.

Title: Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L Band, and the 1.6/2.4 GHz Band.

Form No.: Not Applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for–profit.

Number of Respondents/Responses: 141 respondents; 141 responses.

Estimated Time Per Response: 0.50 – 50 hours.

Frequency of Response: On occasion, one time and annual reporting requirements; third party disclosure and recordkeeping requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 4(i), 7, 302, 303(c), 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. 154(i), 303(c), 303(e), 303(f) and 303(r).

Total Annual Burden: 685 hours.

Annual Cost Burden: $544,560.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) as a revision. The purposes of this information collection are to license commercial satellite services in the U.S.; obtain the legal and technical information required to facilitate the integration of ATCs into MSS networks in the 2 GHz Band, the L–Band, and the 1.6/2.4 GHz Bands; and to ensure that the licensees meet the Commission's legal and technical requirements to develop and maintain MSS networks while conserving limited spectrum for other telecommunications services. This information collection is used by the Commission to license commercial satellite services in the United States. Without the collection of information that would result from these final rules,

the Commission would not have the necessary information to grant entities the authority to operate commercial satellite stations and provide telecommunications services to consumers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. E9-29710 Filed 12–14–09 8:45 am]

BILLING CODE: 6712-01-S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested; Correction

AGENCY: Federal Communications Commission.

ACTION: Notice; correction.

SUMMARY: The Federal Communications Commission published a document in the **Federal Register** on November 30, 2009 concerning a request for comment on an information collection that is going to be submitted to the Office of Management and Budget (OMB). The document had an error in the **DATES** section of the notice.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

Correction

In the **Federal Register** of November 30, 2009, in FR Doc. E9–28460, on page 62570, in the second column, correct the **DATES** caption to read:

DATES: Persons wishing to comment on this information collection should submit comments on or before January 29, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–29817 Filed 12–14–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act System of Records

AGENCY: Federal Communications Commission (FCC or Commission).

ACTION: Notice; one altered Privacy Act system of records; revision of four routine uses; and addition of one new routine use.

SUMMARY: Pursuant to subsection (e)(4) of the Privacy Act of 1974, as amended (Privacy Act), 5 U.S.C. 552a, the FCC proposes to change the name of and alter one system of records, FCC/CGB–1, ''Informal Complaints and Inquiries'' (formerly FCC/CIB–1, ''Informal Complaints and Inquiries''). The altered system of records incorporates a change to the system's name. The FCC also will alter the categories of individuals; the categories of records; the purposes for which the information is maintained; four routine uses (and add a new routine use); the storage, retrievability, access, safeguard, and retention and disposal procedures; and make other edits and revisions as necessary to comply with the requirements of the Privacy Act.

DATES: In accordance with subsections (e)(4) and (e)(11) of the Privacy Act, any interested person may submit written comments concerning the alteration of this system of records on or before January 14, 2010. The Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act to review the system of records, may submit comments on or before January 25, 2010. The proposed system of records will become effective on January 25, 2010 unless the FCC receives comments that require a contrary determination. The Commission will publish a document in the **Federal Register** notifying the public if any changes are necessary. As required by 5 U.S.C. 552a(r) of the Privacy Act, the FCC is submitting reports on this proposed altered system to OMB and to both Houses of Congress.

ADDRESSES: Address comments to Leslie F. Smith, Privacy Analyst, Performance Evaluation and Records Management, Room 1–C216, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, or via the Internet at *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Leslie F. Smith, Performance Evaluation and Records Management, Room 1–C216, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: As required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4) and (e)(11), this document sets forth notice of the proposed alteration of one system of records maintained by the FCC, revision of four routine uses, and addition of one new routine use. The FCC previously gave complete notice of the system of records (FCC/CIB–1, ''Informal Complaints and Inquiries'') covered under this Notice by publication in the **Federal Register** on October 11, 2001 (66 FR 51955). This notice is a summary of the more detailed information about the proposed altered system of records, which may be viewed at the location given above in the **ADDRESSES** section. The purposes for altering FCC/CGB–1, ''Informal Complaints and Inquiries,'' are to change the name of the system; to revise the categories of individuals; to revise the categories of records; to revise the purposes for which the information is maintained; to revise four routine uses and add a new routine use; to revise the storage, retrievability, access, safeguard, and retention and disposal procedures; and to make other edits and revisions as necessary to comply with the requirements of the Privacy Act.

The FCC will achieve these purposes by altering this system of records with these changes:

Revision of the language explaining the Security Classification;

Revision of the language regarding the categories of individuals in the system, for clarity and to add that electronic submissions include e-mail, Internet, and fax, etc.;

Revision of the language regarding the categories of records in the system, for clarity and to add that the categories of records may include submissions that individuals make using fax, voice (telephone calls), Internet e-mails, *etc.,* and via the FCC Web portal at *http://www.fcc.gov*;

Revision of the language regarding the purposes for which the information is maintained, to clarify that the redacted information includes that such as the complainant's name, address, telephone number, fax number, and/or e-mail address;

Revision of Routine Use (1) to expand the list of entities, against whom informal complaints have been filed, to whom the Commission may forward such complaints. Those entities now include telecommunications providers, broadcasters, multi-channel video program distributors, voice-over-Internet-protocol providers, and/or wireless providers. Routine Use (1) also is revised to add Sections 4(i) and 303(r) of the Communications Act of 1934, as amended (Communications Act), as authority:

Routine Use (1) now allows disclosure when a record in this system involves an informal complaint filed against telecommunications providers,

broadcasters, multi-channel video program distributors, voice-over-Internet-protocol providers, and/or wireless providers. The complaint may be forwarded to the subject company for a response, pursuant to Sections 4(i), 208, and 303(r) of the Communications Act.

Revision of Routine Use (2) to expand the list of entities, against whom informal complaints have been filed and concerning whom the Commission has issued an order or other document, to include telecommunications providers, broadcasters, multi-channel video program distributors, voice-over-Internet-protocol providers, and/or wireless providers:

Routine Use (2) allows disclosure when an order or other Commission-issued document that includes consideration of informal complaints filed against telecommunications providers, broadcasters, multi-channel video program distributors, voice-over-Internet-protocol providers, and/or wireless providers is entered by the FCC to implement or enforce the Communications Act, pertinent rule, regulation, or order of the FCC; in such a case, the complainant's name may be made public in that order or document. Where a complainant in filing his or her complaint explicitly requests that the bureau withhold his or her name from public disclosure, such a request will be granted and the complainant's name will not be disclosed in the Commission-issued order or document.

Revision of Routine Use (3) to add Tribal to the list of appropriate agencies to whom a violation or potential violation of a statute, regulation, rule, or order may be referred:

Routine Use (3) allows disclosure where there is an indication of a violation or potential violation of a statute, regulation, rule, or order; in such a case, records from this system may be referred to the appropriate Federal, State, Tribal, or local agency responsible for investigating or prosecuting a violation or for implementing or enforcing the statute, rule, regulation, or order.

Revision of Routine Use (7) to replace the General Services Administration with the Government Accountability Office (GAO) as one of the agencies to whom disclosure may be made for the purpose of records management inspections:

Routine Use (7) allows disclosure to the GAO and the National Archives and Records Administration (NARA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906, and provides that such disclosure shall not be used to make a determination about individuals.

Addition of a new Routine Use (8) to comply with OMB Memorandum M–07–16 (May 22, 2007) governing ''breach notifications'':

Routine Use (8) allows disclosure to appropriate agencies, entities, and persons when (1) the Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

Revision of the response pertaining to the FCC's disclosure of information in the system to consumer reporting agenices to note that there is no disclosure.

Revision of the policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system to make them consistent with the Consumer and Governmental Affairs Bureau's (CGB) current policies and practices and to comport with the requirements of the NARA records control schedule N1–173–07–1, which is approved for this agency;

Revision of, updating, and otherwise changing the language in the system of records notice, as necessary, to make it comply with the requirements for how CGB handles the informal complaints and inquiries that it receives from individuals, groups, and other entities on matters arising under the Communications Act and the Rehabilitation Act; and

Revision or modification of other data elements in FCC/CGB–1, as required to make editorial changes to, update, simplify, or clarify, as necessary, this system of records notice.

CGB will use the records in FCC/CGB–1 to handle and process informal complaints and inquiries received from individuals, groups, and other entities. Records in this system will be available for public inspection after redaction of information that could identify the complainant or correspondent, such as the complainant's name, address, telephone number, fax number, and/or e-mail address.

This notice meets the requirement of documenting the changes to the systems of records that the FCC maintains, and provides the public, Congress, and OMB an opportunity to comment.

FCC/CGB–1

SYSTEM NAME:

Informal Complaints and Inquiries.

SECURITY CLASSIFICATION:

The FCC's Security Operations Center (SOC) has not assigned a security classification to this system of records.

SYSTEM LOCATION:

Consumer and Governmental Affairs Bureau (CGB), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554 and 1270 Fairfield Road, Gettysburg, PA 17325.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals in this system include individuals, groups, and other entities who make or have made informal complaints or inquiries in any format, including, but not limited to, paper, telephone, and electronic submissions, including e-mail, Internet, and fax, etc., on matters arising under the Communications Act of 1934, as amended, and the Rehabilitation Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in this system include both computerized information contained in a database and paper copies of inquiries, informal complaints, and related supporting information made by individuals, groups, or other entities; and company replies to complaints, inquiries, and Commission letters regarding such complaints and inquiries.

The categories of records may also include submissions that individuals make using fax, voice (telephone calls), Internet e-mail, etc., and via the FCC Web portal at: *http://www.fcc.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 151, 154, 206, 208, 225, 226, 227, 228, 255, 258, 301, 303, 309(e), 312, 362, 364, 386, 507 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 206, 208, 225, 226, 227, 228, 255, 258, 301, 303, 309(e), 312, 362, 364, 386, 507; Sections 504 and 508 of the Rehabilitation Act, 29 U.S.C. 794; and 47 CFR 1.711 *et seq.,* 6.15 *et seq.,* 7.15 *et seq.,* and 64.604.

PURPOSES:

The records in this system are used by Commission personnel to handle and process informal complaints received

from individuals, groups, and other entities. Records in this system are available for public inspection after redaction of information that could identify the complainant or correspondent, such as the complainant's name, address, telephone number, fax number, and/or e-mail address.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about individuals in this system of records may routinely be disclosed under the following conditions:

1. When a record in this system involves an informal complaint filed against telecommunications providers, broadcasters, multi-channel video program distributors, voice-over-Internet-protocol providers, and/or wireless providers, the complaint may be forwarded to the subject company for a response, pursuant to Sections 4(i), 208, and 303(r) of the Communications Act of 1934, as amended.

2. When an order or other Commission-issued document that includes consideration of informal complaints filed against telecommunications providers, broadcasters, multi-channel video program distributors, voice-over-Internet-protocol providers, and/or wireless providers is entered by the FCC to implement or enforce the Communications Act, pertinent rule, regulation, or order of the FCC, the complainant's name may be made public in that order or document. Where a complainant in filing his or her complaint explicitly requests that the bureau withhold his or her name from public disclosure, such a request will be granted and the complainant's name will not be disclosed in the Commission-issued order or document.

3. Where there is an indication of a violation or potential violation of a statute, regulation, rule, or order, records from this system may be referred to the appropriate Federal, State, Tribal, or local agency responsible for investigating or prosecuting a violation or for implementing or enforcing the statute, rule, regulation, or order.

4. A record on an individual in this system of records may be disclosed, where pertinent, in any legal proceeding to which the Commission is a party before a court or administrative body.

5. A record from this system of records may be disclosed to the Department of Justice or in a proceeding before a court or adjudicative body when:

(a) The United States, the Commission, a component of the Commission, or, when represented by the government, an employee of the Commission is a party to litigation or anticipated litigation or has an interest in such litigation, and

(b) The Commission determines that the disclosure is relevant or necessary to the litigation.

6. A record on an individual in this system of records may be disclosed to a Congressional office in response to an inquiry the individual has made to the Congressional office.

7. A record from this system of records may be disclosed to the Government Accountability Office (GAO) and the National Archives and Records Administration (NARA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall not be used to make a determination about individuals.

8. A record from this system may be disclosed to appropriate agencies, entities, and persons when (1) the Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Consumer and Governmental Affairs Bureau staff logs consumer informal complaints and inquiries that it receives into its Complaint and Inquiry Management System (CIMS), Consolidated Complaint Management System (CCMS), and other electronic databases and network databases not specifically named here that are used to store consumer informal complaints and inquiries. Each informal submission is automatically assigned a file identification number for future reference when the case is entered into one of the databases. This identification number tracks consumer submissions and assists with identification of duplicate filings, which occur when consumers file multiple submissions. Confidential paper submissions are moved to a locked storage room for safekeeping. All records are kept in accordance with the agency records control schedule approved by NARA.

RETRIEVABILITY:

Information, *e.g.,* records, files, and data, etc., in this system may be retrieved by the individual's personal identifiers, (*i.e.,* name, street address, e-mail address, and phone number), entity name, program name, date received and date closed, problem description field, and/or call sign.

SAFEGUARDS:

Electronic records that emanate from these informal complaint and inquiry submissions are maintained in CIMS, CCMS or other electronic and network computer databases not specifically named here, which are secured through controlled access and passwords restricted to a limited number of FCC employees or contractors working on informal complaints and inquiries. In addition, as an added security measure, the staff in the Consumer and Governmental Affairs Bureau, Enforcement Bureau, and other FCC bureaus and offices who are assigned responsibility for resolution of these records in CIMS are only allowed access to these records via a ''license'' that also tracks their use of the records. Confidential paper submissions are moved to a locked storage room for safekeeping.

RETENTION AND DISPOSAL:

The information in this system is limited to electronic data, paper files, and audio files, *e.g.,* telephone call records, etc. The information is retained at the FCC and then destroyed in accordance with the agency records control schedule N1–173–07–1, approved by NARA, which generally requires that source records are destroyed three years after data is entered into the system, and records in the masterfile are destroyed three years after the case is closed.

SYSTEM MANAGERS AND ADDRESS:

Address inquiries to the Office of Managing Director or the Consumer and

Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the Office of Managing Director or the Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

RECORD ACCESS PROCEDURES:

Address inquiries to the Office of Managing Director or Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

An individual requesting access must follow FCC Privacy Act regulations regarding verification of identity and amendment of records. *See* 47 CFR 0.554–0.557.

CONTESTING RECORD PROCEDURES:

Address inquiries to the Office of Managing Director or Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

RECORD SOURCE CATEGORIES:

The sources for the information in this system include the complainants and subject entities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

[FR Doc. E9–29815 Filed 12–14–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission

DATE & TIME: Tuesday, December 15, 2009, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. E9–29610 Filed 12–14–09; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: *Background.* On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR Part 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements, and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before February 16, 2010.

ADDRESSES: You may submit comments, identified by FR 2034 by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the OMB control number in the subject line of the message.
- *FAX:* 202–452–3819 or 202–452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters should send a copy of their comments to the OMB Desk Officer by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be

requested from the agency clearance officer, whose name appears below.

Michelle Shore, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869).

Proposal to approve under OMB delegated authority the implementation of the following survey:

Report title: Senior Credit Officer Opinion Survey on Dealer Financing Terms.

Agency form number: FR 2034.

OMB control number: 7100-to be assigned.

Frequency: Up to six times a year.

Reporters: U.S. banking institutions and U.S. branches and agencies of foreign banks.

Estimated annual reporting hours: 450 hours.

Estimated average hours per response: 3 hours.

Number of respondents: 25.

General description of report: This information collection would be voluntary (12 U.S.C. 225a, 248(a)(2), 1844(c), and 3105(c)(2)) and would be given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: This voluntary survey would be conducted with a senior credit officer at each respondent financial institution up to six times a year. The proposed reporting panel consists of up to 25 U.S. banking institutions and U.S. branches and agencies of foreign banks, the majority of which are affiliated with a Primary Government Securities Dealer [1]. The purpose of the proposed survey is to provide qualitative and limited quantitative information on (1) stringency of credit terms, (2) credit availability and demand across the entire range of securities financing and over-the-counter derivatives transactions, and (3) the evolution of market conditions and conventions applicable to such activities. The proposed survey is significantly modeled after the long-established Senior Loan Officer Opinion Survey (FR 2018; OMB No. 7100–0058), which provides qualitative information on changes in the supply of, and demand for, bank loans to businesses and households. A portion of the questions in each administration of the new survey would typically cover special topics of timely interest; however, the sample survey form includes 38 core questions.

Although the Federal Reserve seeks the authority to conduct the survey up to six times a year, the survey is expected to be conducted only four times a year consistent with the FR 2018. The estimated maximum annual burden, based on six surveys, is 450 hours. Consistent with the FR 2018, other types of respondents, such as other depository institutions, bank holding companies, or other financial entities, may be surveyed if appropriate.

The respondents' answers are intended to provide information critical to the Federal Reserve's monitoring of credit markets and capital market activity. As is currently the case with FR 2018, aggregate results from this survey are expected to be made available to the public on the Federal Reserve Board website. Selected aggregate information from the surveys may also be published annually in *Federal Reserve Bulletin* articles and in the Monetary Policy Report to the Congress.

Board of Governors of the Federal Reserve System, December 9, 2009.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E9–29734 Filed 12–14–09; 8:45 am]

BILLING CODE 6210–01–P

[1] A list of the current Primary Dealers in Government Securities is available at *http://www.newyorkfed.org/markets/pridealers_current.html.*

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 December 30, 2009.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. James Michael Hattaway, Winter Springs, Florida; James Lewis Hewitt, Orlando, Florida; Vincent Smith Hughes, Orlando, Florida; Richard Terrell McCree, Orlando, Florida; David Gene Powers, Alamonte Springs, Florida; Donald Franklin Wright, Winter Springs, Florida; and David McLeod, Orlando, Florida; to collectively acquire voting shares of Riverside Central Florida Banking Company, and thereby indirectly acquire voting shares of Riverside Bank of Central Florida, both of Winter Park, Florida.

Board of Governors of the Federal Reserve System, December 10, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–29791 Filed 12–14–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 10 a.m. (Eastern Time), December 21, 2009.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC 20005.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the November 16, 2009 Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
   a. Monthly Participant Activity Report.
   b. Monthly Investment Performance Report.
   c. Legislative Report.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: December 11, 2009.

Thomas K. Emswiler,

Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. E9–29965 Filed 12–11–09; 4:15 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the

Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Advanced Education Nursing Traineeship (AENT) and Nurse Anesthetist Traineeship (NAT) (OMB No. 0915–0305) [Extension]

The Health Resources and Services Administration (HRSA) provides training grants to educational institutions to increase the numbers of advanced education nurses through the Advanced Education Nursing Traineeship (AENT) program and the Nurse Anesthetist Traineeship (NAT) program.

HRSA developed the AENT and NAT tables for the application guidances and the Nurse Traineeship Database for the two nursing traineeship programs. The AENT and NAT tables are used annually by grant applicants that are applying for AENT and NAT funding. The funds appropriated for the AENT and NAT programs are distributed among eligible institutions based on a formula. Award amounts are based on enrollment and graduate data reported on the tables and two funding factors (Statutory Funding Preference and Statutory Special Consideration).

The AENT and NAT tables include information on program participants such as the number of enrollees, projected data on enrollees and graduates for the following academic year, number of trainees supported, number of graduates, number of graduates supported and the types of programs they are enrolling into and/or from which they are graduating. AENT and NAT applicants will have a single access point to submit their grant applications including the tables. Applications are submitted in two phases: Grants.gov (Phase 1) and the HRSA Electronic Handbooks (Phase 2). These tables will be available electronically through the HRSA Electronic Handbooks (Phase 2) for applicants to submit their AENT and/or NAT grant application(s). The tables are also used in the Nurse Traineeship Database which is used by Division of Nursing staff and not the applicants.

Data from the tables will be used in the award determination and validation process. Additionally, the data will be used to ensure programmatic compliance, report to Congress and policymakers on the program accomplishments, and formulate and justify future budgets for these activities submitted to OMB and Congress.

The burden estimate for this project is as follows: AENT increased from 1 hour to 1.5 hours due to the revisions of AENT Tables 1, 2, 3 and 4 to capture comprehensive data to provide for more detailed data analysis of the AENT Program.

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
AENT	500	1	500	1.5	750
NAT	100	1	100	1	100
Total	600	.....	600	.....	850

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: December 4, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9–29828 Filed 12–14–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

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.

Proposed Project: The Health Education Assistance Loan (HEAL) Program Regulations (OMB No. 0915–0108) Extension

The Health Education Assistance Loan (HEAL) Program has regulations that contain notification, reporting and recordkeeping requirements to insure that the lenders, holders and schools participating in the HEAL program follow sound management procedures in the administration of federally-insured student loans. While the regulatory requirements are approved under the OMB number referenced above, much of the burden associated with the regulations is cleared under separate OMB numbers for the HEAL forms and electronic submissions used to report required information. The table below provides the estimate of burden for the remaining regulations.

The estimates of burden are as follows:

REPORTING REQUIREMENTS

Number of respondents	Number of transactions	Total transactions	Hours per response	Total burden hours
17 Holders	5	78	12 Min	16
190 Schools	.4	78	10 Min	13
Total Reporting				29

NOTIFICATION REQUIREMENTS

Number of respondents	Number of transactions	Total transactions	Hours per response	Total burden hours
7,930 Borrowers	1	7,930	10 Min	1,322
17 Holders	7,910	134,470	10 Min	22,412
190 Schools	.89	170	14 Min	40
Total Notification				23,774

RECORDKEEPING REQUIREMENTS

Number of respondents	Number of transactions	Total transactions	Hours per response	Total burden hours
17 Holders	3,568	60,657	14 Min	14,153
190 Schools	257	48,822	15 Min	12,206
Total Recordkeeping				26,359
Total				50,162

E-mail comments to *paperwork@hrsa.gov* or mail to the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 4, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9–29827 Filed 12–14–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Opioid Drugs in Maintenance and Detoxification Treatment of Opioid Dependence—42 CFR Part 8 (OMB No. 0930–0206)—Revision

42 CFR part 8 establishes a certification program managed by SAMHSA's Center for Substance Abuse Treatment (CSAT). The regulation requires that Opioid Treatment Programs (OTPs) be certified. ''Certification''' is the process by which SAMHSA determines that an OTP is qualified to provide opioid treatment under the Federal opioid treatment standards established by the Secretary of Health and Human Services. To become certified, an OTP must be accredited by a SAMHSA-approved accreditation body. The regulation also provides standards for such services as individualized treatment planning, increased medical supervision, and assessment of patient outcomes. This submission seeks continued approval of the information collection requirements in the regulation and of the forms used in implementing the regulation.

SAMHSA currently has approval for the Application for Certification to Use Opioid Drugs in a Treatment Program Under 42 CFR 8.11 (Form SMA–162); the Application for Approval as Accreditation Body Under 42 CFR 8.3(b) (Form SMA–163); and the Exception Request and Record of Justification Under 42 CFR 8.12 (Form SMA–168), which may be used on a voluntary basis by physicians when there is a patient care situation in which the physician must make a treatment decision that differs from the treatment regimen required by the regulation. Form SMA–168 is a simplified, standardized form to facilitate the documentation, request, and approval process for exceptions.

The tables that follow summarize the annual reporting burden associated with the regulation, including burden associated with the forms.

ESTIMATED ANNUAL REPORTING REQUIREMENT BURDEN FOR ACCREDITATION BODIES

42 CFR citation	Purpose	Number of respondents	Responses/ respondent	Hours/ response	Total hours
8.3(b)(1–11)	Initial approval (SMA–163)	1	1	6.0	6
8.3(c)	Renewal of approval (SMA–163)	2	1	1.0	2
8.3(e)	Relinquishment notification	1	1	0.5	0.5
8.3(f)(2)	Non-renewal notification to accredited OTPs	1	90	0.1	9

ESTIMATED ANNUAL REPORTING REQUIREMENT BURDEN FOR ACCREDITATION BODIES—Continued

42 CFR citation	Purpose	Number of respondents	Responses/ respondent	Hours/ response	Total hours
8.4(b)(1)(ii)	Notification to SAMHSA for seriously non-compliant OTPs.	2	2	1.0	4
8.4(b)(1)(iii)	Notification to OTP for serious noncompliance	2	10	1.0	20
8.4(d)(1)	General documents and information to SAMHSA upon request.	6	5	0.5	15
8.4(d)(2)	Accreditation survey to SAMHSA upon request	6	75	0.02	9
8.4(d)(3)	List of surveys, surveyors to SAMHSA upon request.	6	6	0.2	7.2
8.4(d)(4)	Report of less than full accreditation to SAMHSA.	6	5	0.5	15
8.4(d)(5)	Summaries of Inspections	6	50	0.5	150
8.4(e)	Notifications of Complaints	12	6	0.5	36
8.6(a)(2) and (b)(3)	Revocation notification to Accredited OTPs	1	185	0.3	55.5
8.6(b)	Submission of 90-day corrective plan to SAMHSA.	1	1	10	10.0
8.6(b)(1)	Notification to accredited OTPs of Probationary Status.	1	185	0.3	55.0
Total		6			394.20

ESTIMATED ANNUAL REPORTING REQUIREMENT BURDEN FOR OPIOID TREATMENT PROGRAMS

42 CFR citation	Purpose	No. of respondents	Responses/ respondent	Hours/response	Total hours
8.11(b)	Renewal of approval (SMA–162)	386	1	0.15	57.9
8.11(b)	Relocation of Program (SMA–162)	35	1	1.17	40.95
8.11(e)(1)	Application for provisional certification	42	1	1	42.00
8.11(e)(2)	Application for extension of provisional certification.	30	1	0.25	7.50
8.11(f)(5)	Notification of sponsor or medical director change (SMA–162).	60	1	0.1	6.00
8.11(g)(2)	Documentation to SAMHSA for interim maintenance.	1	1	1	1.00
8.11(h)	Request to SAMHSA for Exemption from 8.11 and 8.12 (including SMA–168).	1,200	25	0.7	2,135.0
8.11(i)(1)	Notification to SAMHSA Before Establishing Medication Units (SMA–162).	10	1	0.25	2.5
8.12(j)(2)	Notification to State Health Officer When Patient Begins Interim Maintenance.	1	20	0.33	6.6
8.24	Contents of Appellant Request for Review of Suspension.	2	1	0.25	.50
8.25(a)	Informal Review Request	2	1	1.00	2.00
8.26(a)	Appellant's Review File and Written Statement	2	1	5.00	10.00
8.28(a)	Appellant's Request for Expedited Review	2	1	1.00	2.00
8.28(c)	Appellant Review File and Written Statement	2	1	5.00	10.00
Total		1,200			2,323.95

SAMHSA believes that the recordkeeping requirements in the regulation are customary and usual practices within the medical and rehabilitative communities and has not calculated a response burden for them. The recordkeeping requirements set forth in 42 CFR 8.4, 8.11 and 8.12 include maintenance of the following: 5-year retention by accreditation bodies of certain records pertaining to accreditation; documentation by an OTP of the following: A patient's medical examination when admitted to treatment, A patient's history, a treatment plan, any prenatal support provided the patient, justification of unusually large initial doses, changes in a patient's dosage schedule, justification of unusually large daily doses, the rationale for decreasing a patient's clinic attendance, and documentation of physiologic dependence.

The rule also includes requirements that OTPs and accreditation organizations disclose information. For example, 42 CFR 8.12(e)(1) requires that a physician explain the facts concerning the use of opioid drug treatment to each patient. This type of disclosure is considered to be consistent with the common medical practice and is not considered an additional burden. Further, the rule requires, under Sec. 8.4(i)(1) that accreditation organizations shall make public their fee structure; this type of disclosure is standard business practice and is not considered a burden.

Written comments and recommendations concerning the proposed information collection should be sent by January 14, 2010 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to

submit comments by fax to: 202–395–5806.

Dated: December 9, 2009.

Elaine Parry,

Director, Office of Program Services.

[FR Doc. E9–29768 Filed 12–14–09; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[30Day–10–09BK]

Agency Forms Undergoing Paperwork Reduction Act Review

Centers for Disease Control and Prevention (CDC), Agency for Toxic Substances and Disease Registry (ATSDR) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC/ATSDR Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Registration of Individuals Displaced by the Hurricanes Katrina and Rita (Pilot Project)—New—Agency for Toxic Substances and Disease Registry (ATSDR), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

On August 29, 2005, Hurricane Katrina made landfall on the coast of the Gulf of Mexico near New Orleans, Louisiana, and became one of the most deadly and destructive storms in U.S. history. Also occurring in 2005, Hurricane Rita was the fourth-most intense Atlantic hurricane ever recorded and the most intense tropical cyclone ever observed in the Gulf of Mexico. Following the initial phase of the response, the Federal Emergency Management Agency (FEMA) assumed the primary role for housing displaced persons over the intermediate term. To support those needing temporary housing, FEMA provided over 143,000 travel trailers, park homes, and mobile homes for persons displaced by the above mentioned storms. However, some persons living in trailers complained of an odor or of eye or respiratory tract irritation.

FEMA entered into an Interagency Agreement with the Centers for Disease Control and Prevention (CDC)/ATSDR on August 16, 2007 to conduct a comprehensive public health assessment, based on objective and credible research, of air quality conditions present in FEMA housing units to guide FEMA policy makers and inform the public as to the actual conditions in the field and any actions required to better promote a safe and healthful environment for the disaster victims FEMA housed in the units. FEMA's agreement with the CDC includes an initial formaldehyde exposure assessment as well as a subsequent long-term study of the health effects among resident children. Formaldehyde testing conducted and evaluated by the CDC pursuant to the initial exposure assessment has identified the need to evaluate the feasibility of establishing a national registry to identify and monitor the health of disaster victims who occupied FEMA-provided temporary housing units. The establishment of such a registry would complement the long-term health effects study set forth in the FEMA-CDC Interagency Agreement.

The purpose of this study is to assess the feasibility of contacting and enrolling members of the targeted group in a registry; to provide a basis for budgeting and further planning for a comprehensive registry; and to test the acceptance of and response to a questionnaire composed of standardized health questions related to systemic and respiratory symptoms.

A pre-registration dataset will be created before enrollment. This dataset will be populated with contact information of the study population, gathered from two main sources: FEMA datasets (in the case of occupants of temporary housing units) and data provided by self-identified individuals who were displaced by the hurricanes but did not live in the FEMA temporary trailers.

A computer-assisted telephone interview (CATI) system based on a paper questionnaire will be used during all interviews to collect data for this project. The first part will consist of screening questions to determine eligibility for enrollment. The second part will contain contact information of the registrant and other household members, demographics, and health status questions, focusing on respiratory outcomes and cancer.

There will be two types of respondents included the registry: Temporary housing unit occupants and Non-temporary housing unit occupants. The three minute screening questionnaire will be administered to a total of 10,000 respondents (8,000 temporary housing unit occupants and 2,000 non-temporary housing unit occupants). Annualized over a two year period, 4,000 temporary housing unit respondents and 1,000 non-temporary housing unit respondents will be screened. The 45 minute main questionnaire will be administered to a total of 5,000 respondents (4,000 temporary housing unit occupants and 1,000 non-temporary housing unit occupants). Annualized over a two year period, 2,000 temporary housing unit occupants and 500 non-temporary housing unit occupants will complete the main questionnaire.

There are no costs to the respondents other than their time. The total estimated annual burden hours are 2,125.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Temporary housing unit occupant	Screening questionnaire	4,000	1	3/60
	Main questionnaire	2,000	1	45/60
Non-Temporary housing unit occupant	Screening questionnaire	1,000	1	3/60
	Main questionnaire	500	1	45/60

Dated: December 8, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–29754 Filed 12–14–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Survey of Revenues and Expenditures (SRE)—NEW

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS) will conduct the SRE. This national survey represents a survey of mental health and substance abuse treatment facilities. These separate service locations are called facilities, in contrast to mental health and substance abuse organizations, which may include multiple facilities (service locations). This survey will be a sample survey of all known mental health and substance abuse treatment facilities nationwide with a particular focus on revenues and expenditures. The survey will begin with a stratified random sample of 1,500 facilities drawn from other SAMHSA databases. In addition, a control subsample of 100 facilities drawn from the original 1,500 will be drawn and pursued beyond the planned three follow-up attempts with the entire sample. The control sample will provide estimates of non-response bias upon the results of the data analyses.

The SRE will utilize one questionnaire for all mental health and substance abuse treatment facility types including hospitals, residential treatment centers and outpatient clinics. The information collected will include annual revenue and expenditures, staffing, and active caseload size. All treatment facilities will have the option of completing the survey instrument online via the internet, by telephone with an interviewer, or using a paper version of the questionnaire.

The resulting database will be used for national estimates of facility types, their revenues and expenditures, and their patient caseloads. These findings will be used to update SAMHSA's national spending on mental health and substance abuse treatment estimates. The survey results will be published by CMHS in *Data Highlights,* in *Mental Health, United States,* and in professional journals such as *Psychiatric Services* and the *American Journal of Psychiatry.* The publication *Mental Health, United States* is used by the general public, State governments, the U.S. Congress, university researchers, and other health care professionals. The following Table summarizes the estimated response burden for the survey.

	Number of respondents	Responses per respondent	Average hours per response	Total hour burden
Treatment Facilities	1,500	1	2.5	3,750

Written comments and recommendations concerning the proposed information collection should be sent by January 14, 2010 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–5806.

Dated: December 9, 2009.

Elaine Parry,

Director, Office of Program Services.

[FR Doc. E9–29767 Filed 12–14–09; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, Lister Hill National Center for Biomedical Communications.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, Lister Hill National Center for Biomedical Communications.

Date: April 8–9, 2010.

Open: April 8, 2010, 9 a.m. to 12 p.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill Center for Biomedical Communications.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: April 8, 2010, 12 p.m. to 4:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Open: April 9, 2010, 10 a.m. to 11:30 a.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill Center for Biomedical Communications.

Place: National Library of Medicine Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Karen Steely Program Assistant, Lister Hill National Center For Biomedical Communications National Library of Medicine Building 38A, Room 7S709, Bethesda, MD 20892. 301–435–3137. *ksteely@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact

Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 8, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–29679 Filed 12–14–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Nanosensing Platforms for Cancer Detection.

Date: January 26, 2010.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Irina Gordienko, PhD, Scientific Review Officer, Scientific Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Rm. 7073, Bethesda, MD 20892, 301–594–1566, *gordienkoiv@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Nanoimaging Agents for Cancer Detection.

Date: January 26–27, 2010

Time: 3 p.m. to 10 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Irina Gordienko, PhD, Scientific Review Officer, Scientific Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Rm. 7073, Bethesda, MD 20892, 301–594–1566, *gordienkoiv@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Nanotherapeutics in Cancer Research.

Date: January 27–28, 2010.

Time: 10:30 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Irina Gordienko, PhD, Scientific Review Officer, Scientific Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Rm. 7073, Bethesda, MD 20892, 301–594–1566, *gordienkoiv@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Collaborative Research in Integrative Cancer Biology and the TMEN.

Date: March 3, 2010.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: The Legacy Hotel & Meeting Centre, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Savvas C Makrides, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Rm. 8050A, Bethesda, MD 20892, 301–496–7421, *makridessc@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI Cancer Prevention Research.

Date: March 18–19, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance M Street Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Irina Gordienko, PhD, Scientific Review Officer, Scientific Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Rm. 7073, Bethesda, MD 20892, 301–594–1566, *gordienkoiv@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 7, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–29814 Filed 12–14–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: President's Cancer Panel.

Date: February 2, 2010.

Time: 8 a.m. to 4 p.m.

Agenda: America's Demographic and Cultural Transformation: Implications for the Cancer Enterprise.

Place: Marriott Miami Biscayne Bay, 1633 North Bayshore Drive, Miami, FL 33132.

Contact Person: Abby B. Sandler, PhD, Executive Secretary, Chief, Institute Review Office, Office of the Director, 6116 Executive Blvd., Suite 220, MSC 8349, National Cancer Institute, NIH, Bethesda, MD 20892–8349, (301) 451–9399, *sandlera@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/pcp/pcp.htm,* where an agenda and any additional

information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 10, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–29820 Filed 12–14–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Pain.

Date: January 13–14, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John Bishop, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, eQTL Methods Development.

Date: January 15, 2010.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Richard Panniers, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1741, *pannierr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–BST Consolidated Member Conflict Panel.

Date: January 19–20, 2010.

Time: 12 p.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: Steven J. Zullo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7849, Bethesda, MD 20892, 301–435–2810, *zullost@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Instrumentation and Systems Development Study Section.

Date: January 28–29, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Raymond Jacobson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7849, Bethesda, MD 20892, 301–435–0483, *jacobsonrh@csr.nih.gov.*

(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: December 9, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–29818 Filed 12–14–09; 8:45 am]

BILLING CODE 4140–01–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, December 15, 2009, 9:30 a.m. to December 15, 2009, 6 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on December 8, 2009, 74 FR 64702–44703.

The meeting will be held February 24, 2010. The meeting time and location remain the same. The meeting title has been changed to ''Member Conflict: Immune Mechanisms.'' The meeting is closed to the public.

Dated: December 9, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–29816 Filed 12–14–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Education.

Date: January 26, 2010.

Time: 10:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Ilda M. Mckenna, PhD, Scientific Review Administrator, Research Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8111, Bethesda, MD 20892, 301–496–7481, *mckennai@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Centers of Cancer Nanotechnology Excellence I.

Date: February 24–26, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Michael B. Small, PhD, Scientific Review Officer, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., Room 8127, Bethesda, MD 20892–8328, 301–402–0996, *smallm@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI

Centers of Cancer Nanotechnology Excellence II.

Date: February 24–26, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Blvd, Gaithersburg, MD 20878.

Contact Person: Peter J. Wirth, PhD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8131, Bethesda, MD 20892–8328, 301–496–7565, *pw2q@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Support for Human Specimen Banking in NCI-Supported Clinical Trials.

Date: March 2, 2010.

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: Donald L. Coppock, PhD, Scientific Review Officer, Scientific Review and Logistic Branch, Division of Extramural Activities, NCI, National Institutes of Health, 6116 Executive Blvd., Rm. 7151, Bethesda, MD 20892, 301–451–9385, *donald.coppock@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Instruments and Devices for Cancer Diagnosis, Prognosis, and Treatment.

Date: March 16–17, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Adriana Stoica, PhD, Scientific Review Officer, Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Ste. 703, Rm. 7072, Bethesda, MD 20892–8329, 301–594–1408, *Stoicaa2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 7, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–29812 Filed 12–14–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Design and Synthesis of Treatment Agents for Drug Abuse (8892).

Date: January 6, 2010.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Scott Chen, PhD, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6101 Executive Boulevard, Room 220, MSC 8401, Bethesda, MD 20892, 301–443–9511, *chensc@mail.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Marketing Evidence-Based Prevention Intervention for Substance Abuse Prevention (5561).

Date: January 6, 2010.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Scott Chen, PhD, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6101 Executive Boulevard, Room 220, MSC 8401, Bethesda, MD 20892, 301–443–9511, *chensc@mail.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Using Handheld Devices to Support Recovery (5559).

Date: January 8, 2010.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kristen V. Huntley, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, 301–435–1433, *huntleyk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: December 8, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–29678 Filed 12–14–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

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 Advisory Council on Alcohol Abuse and Alcoholism.

Date: February 3–4, 2010.

Open: February 3, 2010, 3 p.m. to 5:30 p.m.

Agenda: Program reports and presentations.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Closed: February 3, 2010, 5:30 p.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Open: February 4, 2010, 9 a.m. to 3:30 p.m.

Agenda: Program reports and presentations.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Abraham P. Bautista, Ph.D., Executive Secretary, National Institute On Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm 2085, Rockville, MD 20852, 301–443–9737, *bautistaa@mail.nih.gov*.

Information is also available on the Institute's/Center's home page: http://silk.nih.gov/silk/niaaa1/about/roster.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: December 9, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–29794 Filed 12–14–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2009–0154]

Assessment Questionnaire—Risk Self-Assessment Tool (R–SAT)

AGENCY: National Protection and Programs Directorate, Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; new information collection request, 1670–NEW.

SUMMARY: The Department of Homeland Security, National Protection and Programs Directorate has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). The National Protection and Programs Directorate is soliciting comments concerning new collection request, Assessment Questionnaire—Risk Self-Assessment Tool (R–SAT). DHS previously published this information collection request (ICR) in the **Federal Register** on September 14, 2009, at 74 FR 47010, for a 60-day public comment period. No comments were received by DHS. The purpose of this notice is to allow additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until January 14, 2010. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, Department of Homeland Security and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: If additional information is required contact: The Department of Homeland Security (DHS), Amanda Norman, Program Analyst, DHS/NPPD/IP/IICD, *Amanda.norman@dhs.gov.*

SUPPLEMENTARY INFORMATION: In order to identify and assess the vulnerabilities and risks pertaining to a specific public assembly venue, such as a stadium or arena, owner-operators and/or security managers often volunteer to conduct an R–SAT assessment. The requested questionnaire information is necessary in order to facilitate electronic execution of the Commercial Facilities Sector's risk assessment to focus protection resources and activities on those assets, systems, networks, and functions with the highest risk profiles. Currently, there is no known data collection that includes multiple facilities within the Commercial Facilities Sector. After the user logs into the R–SAT system the user will be prompted with the R–SAT Assessment questionnaire and will answer various questions to input the data. Once the user begins the assessment, the only information required to be submitted to (and shared with) the U.S. Department of Homeland Security (DHS) before completing the assessment is venue identification information (e.g., point-of-contact information, address, latitude/longitude, venue type, capacity, etc.). A user can elect to share their entire completed assessment with DHS, which will protect the information as Protected Critical Infrastructure Information (PCII). The information from the assessment will be used to assess the risk of the evaluated entity (e.g., calculate a vulnerability score by threat, evaluate protective/mitigation measures relative to vulnerability, calculate a risk score, report threats presenting highest risks, etc.). The information will also be combined with data from other respondents to provide an overall sector perspective (e.g., report additional relevant protective/mitigation measures for consideration, etc.).

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate.

Title: Assessment Questionnaire—Risk Self-Assessment Tool (R–SAT).

OMB Number: 1670—NEW.

Frequency: Frequency.

Affected Public: Business or other for profit.

Number of Respondents: 200.

Estimated Time Per Respondent: 40 hours.

Total Burden Hours: 8,000 annual burden hours.

Total Burden Cost (capital/startup): $0.00.

Total Burden Cost (operating/maintaining): $0.00.

Signed: December 8, 2009.

Thomas Chase Garwood, III,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. E9–29738 Filed 12–14–09; 8:45 am]

BILLING CODE 9110–09–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2009–0153]

National Protection and Programs Directorate; Methodology Technical Implementation Functional Survey

AGENCY: National Protection and Programs Directorate, Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; New Information Collection request, 1670–NEW.

SUMMARY: The Department of Homeland Security, National Protection and Programs Directorate has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). The National Protection and Programs Directorate is soliciting comments concerning new collection request Methodology Technical Implementation (MTI) Functional Survey. DHS previously published this information collection request (ICR) in the **Federal Register** on September 14, 2009, at 74 FR 47010, for a 60-day public comment period. No comments were received by DHS. The purpose of this notice is to allow additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until January 14, 2010. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, Department of Homeland Security and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: If additional information is required contact: The Department of Homeland Security (DHS), National Protection and Programs Directorate, Lisa Hormann, Infrastructure Information Collection Division, DHS/NPPD/IP/IICD, *Lisa.hormann@associates.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Methodology Technical Implementation (MTI) Project Office supports the 18 critical infrastructure and key resource (CIKR) sectors by integrating risk and vulnerability assessment methodologies into automated tools. MTI efforts address the unique needs and requirements of each sector by working with sector partners to develop tailored solutions that enable the identification, analysis, and management of sector specific security risks. The MTI team collaborates with Sector-Specific Agencies (SSAs), Sector and Government Coordinating Councils (SCCs and GCCs), and divisions within the Department of Homeland Security's Office of Infrastructure Protection. The MTI team also works with sector specialists, risk analysts, private sector individuals, and Federal agency representatives. Efficient and effective use of the MTI tools helps all CIKR sectors nationwide reach their goal of making their sectors safer and provides a way to comply with recommendations in the National Infrastructure Protection Plan (NIPP). To ensure that interested stakeholders achieve this mission, MTI requests opinions and information from users of the tool regarding tool functions and improvements. The MTI Project Office is administered out of the Infrastructure Information Collection Division (IICD) in the Office of Infrastructure Protection (IP). The survey data collected is for internal MTI, IICD and IP use only. The MTI Project Office will use the results of the Functional Survey to determine levels of customer satisfaction with the MTI tools and prioritize future improvements of key tool functions. The results will also allow the program to appropriate funds cost-effectively based on user need, and cost savings while improving the tool.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate.

Title: MTI Functional Survey.

OMB Number: 1670–NEW.

Frequency: Annual.

Affected Public: Business or other for profit.

Number of Respondents: 5,500.

Estimated Time Per Respondent: 15 minutes (.25 hours).

Total Burden Hours: 1375 annual burden hours.

Total Burden Cost (operating/maintaining): $20,520.

Signed: December 8, 2009.

Thomas Chase Garwood, III,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. E9–29739 Filed 12–14–09; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2009–0152]

Infrastructure Protection (IP) Data Call Survey

AGENCY: National Protection and Programs Directorate, Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; new information collection request: 1670–NEW.

SUMMARY: The Department of Homeland Security, National Protection and Programs Directorate, has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). The National Protection and Programs Directorate is soliciting comments concerning new information collection request, Infrastructure Protection (IP) Data Call Survey. DHS previously published this information collection request (ICR) in the **Federal Register** on September 14, 2009, 74 FR 47012, for a 60-day public comment period. No comments were received by DHS. The purpose of this notice is to allow additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until January 14, 2010. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, Department of Homeland Security and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: If additional information is required contact: The Department of Homeland Security (DHS), NPPD/IP/IICD, Attn.: Mary Matheny-Rushdan, *mary.mathenyrushdan@dhs.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Department of Homeland Security (DHS) is the lead coordinator in the national effort to identify and prioritize the country's critical infrastructure and key resources (CIKR). At DHS, this responsibility is managed by the Office of Infrastructure Protection (IP) in the National Protection and Programs Directorate (NPPD). In FY2006, IP engaged in the annual development of a list of CIKR assets and systems to improve IP's CIKR prioritization efforts. This list is called the Critical Infrastructure List. The Critical Infrastructure List includes assets and systems that, if destroyed, damaged or otherwise compromised, could result in significant consequences on a regional or national scale. The IP Data Call is administered out of the Infrastructure Information Collection Division (IICD) in the Office of Infrastructure Protection (IP). The IP Data Call provides opportunities for States and territories to collaborate with DHS and its Federal partners in CIKR protection. DHS, State and territorial Homeland Security Advisors (HSA), Sector Specific Agencies (SSA), and territories build their CIKR data using the IP Data Call application. To ensure that HSAs, SSAs and territories are able to achieve this mission, IP requests opinions and information in a survey from IP Data Call participants regarding the IP Data Call process and the Web-based application used to collect the CIKR data. The survey data collected is for internal IICD and IP use only. IICD and IP will use the results of the IP Data Call Survey to determine levels of customer satisfaction with the IP Data Call process and the IP Data Call application and prioritize future improvements. The results will also allow IP to appropriate funds cost-effectively based on user need, and improve the process and application.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate.

Title: IP Data Call Survey.

OMB Number: 1670–NEW.

Affected Public: State, Local, or Tribal Government.

Number of Respondents: 138.

Estimated Time per Respondent: 2 hours.

Total Burden Hours: 276.

Total Burden Cost (operating/maintaining): $25,513.

Signed: December 8, 2009.

Thomas Chase Garwood, III,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. E9–29740 Filed 12–14–09; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2009–0151]

CAPTAP Train the Trainer Survey

AGENCY: National Protection and Programs Directorate, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; New information collection request, 1670–NEW.

SUMMARY: The Department of Homeland Security, National Protection and Programs Directorate has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). The National Protection and Programs Directorate is soliciting comments concerning New Information Collection, Critical Infrastructure Key Resources (CIKR) Asset Protection Technical Assistance Program (CAPTAP) Train the Trainer Survey. DHS previously published this information collection request (ICR) in the **Federal Register** on September 14, 2009, 74 FR 47013, for a 60-day public comment period. No comments were received by DHS. The purpose of this notice is to allow additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until January 14, 2010. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, Department of Homeland Security and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: If additional information is required contact: The Department of Homeland Security (DHS), National Protection and Programs Directorate, Infrastructure Protection, *Attn.:* Veronica Heller, Team Lead, Planning and Policy Integration, Ballston One, 4601 N. Fairfax Drive 5th Floor, Arlington, Virginia 22203, *veronica.heller@dhs.gov,* 703–235–3035.

SUPPLEMENTARY INFORMATION: The Critical Infrastructure Key Resources (CIKR) Asset Protection Technical Assistance Program (CAPTAP) offers State and local first responders, emergency managers, and other homeland security officials training to develop comprehensive CIKR protection programs in their respective jurisdictions; access to the Constellation/Automated Critical Asset Management System (C/ACAMS) tools for using CIKR asset data, prevention and protection information; and incident response and recovery plans to make their communities safer. To ensure that interested parties appropriately advance this mission, C/ACAMS provides CAPTAP Train-the-Trainer (TTT) sessions to State and local government officials to so that they may

then train their colleagues through CAPTAP services. The survey measures customer satisfaction with the training provided through the CAPTAP TTT course. The C/ACAMS Program Management Office (PMO) is administered out of the Infrastructure Information Collection Division (IICD) in the Office of Infrastructure Protection (IP). The survey data collected is for internal C/ACAMS PMO, IICD and IP use only. The C/ACAMS PMO evaluates the CAPTAP TTT customer survey to determine levels of customer satisfaction with the CAPTAP TTT training and areas in need of improvement. The survey supports data-based decision making because it evaluates quantitative and qualitative data to identify improvements and identify significant issues based on what customers' experience. Obtaining current fact-based actionable data about the training allows the program to recalibrate its resources to address new or emerging issues.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate.

Title: CAPTAP Train the Trainer Survey.

OMB Number: 1670–NEW.

Frequency: Once.

Affected Public: Federal, State, Local, Tribal.

Number of Respondents: 150.

Estimated Time per Respondent: 12 minutes.

Total Burden Hours: 30 annual Burden Hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): None.

Signed: December 8, 2009.

Thomas Chase Garwood, III,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. E9–29741 Filed 12–14–09; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

I&A Customer Survey

AGENCY: Office of Intelligence and Analysis, DHS.

ACTION: 30-Day notice and request for comments; New information collection request, 1601–NEW.

SUMMARY: The Department of Homeland Security, Office of Intelligence and Analysis will submit the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). The Office of Intelligence and Analysis is soliciting comments concerning the I&A Customer Survey, which is a new collection. DHS previously published this information collection request (ICR) in the **Federal Register** on September 25, 2009 at 74 FR 48994, for a 60-day public comment period. No comments were received by DHS. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until January 14, 2010. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, Department of Homeland Security and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to 202–395–5806.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: If additional information is required contact: The Department of Homeland Security (DHS), Office of Intelligence and Analysis, Jason Clark, 202–447–3140.

SUPPLEMENTARY INFORMATION: The Implementing Recommendations of the 9/11 Commission act of 2007 (Pub. L. 110–53) identifies the U/SIA as having the primary Federal responsibility for outreach and sharing threat related information and intelligence with State, local and tribal officials (S&L). Section 511 of the 9/11 Act with regards to consumer feedback requires I&A to create a voluntary mechanism for any State, local, tribal law enforcement officer or other emergency response provider who is a consumer of the intelligence or other information products of I&A to provide feedback to the Department on the quality and utility of such intelligence products. This is a new collection for a pilot program. I&A Managers will use the survey results to determine which members of our S&L target audience are accessing our products, to generally gauge product effectiveness and relevance to the S&L mission, and to make improvements to intelligence products that increase customer satisfaction and program effectiveness. The results of the customer satisfaction surveys will be shared with DHS HQ, I&A, and as mandated by section 511 of the 9/11 Act, presented to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives.

Analysis

Agency: Department of Homeland Security, Office of Intelligence and Analysis.

Title: I&A Customer Survey.

OMB Number: 1601–NEW.

Frequency: Annually.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 144.

Estimated Number of Responses per Respondent: 25.

Estimated Time per Respondent: 2 minutes.

Total Burden Hours: 120 annual burden hours.

Dated: December 8, 2009.

Richard A. Spires,

Chief Information Officer.

[FR Doc. E9–29743 Filed 12–14–09; 8:45 am]

BILLING CODE 9110–9N–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2009–0150]

Constellation Automated Critical Asset Management System Functional Survey

AGENCY: National Protection and Programs Directorate, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; New information collection request, 1670–NEW.

SUMMARY: The Department of Homeland Security, National Protection and Programs Directorate has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). The National Protection and Programs Directorate is soliciting comments concerning New Information Collection Request, Constellation Automated Critical Asset Management System (C/ACAMS) Functional Survey. DHS previously published this information collection request (ICR) in the Federal Register on September 14, 2009, at 74 FR 47014, for a 60-day public comment period. No comments were received by DHS. The purpose of this notice is to allow additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until January 14, 2010. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, Department of Homeland Security and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: If additional information is required contact: The Department of Homeland Security (DHS), National Protection and Programs Directorate, Infrastructure Protection, Attn.: Veronica Heller, Team Lead, Planning and Policy Integration, Ballston One, 4601 N. Fairfax Drive 5th Floor, Arlington, Virginia 22203, *veronica.heller@dhs.gov*, 703–235–3035.

SUPPLEMENTARY INFORMATION: The C/ACAMS program offers State and local first responders, emergency managers, and other homeland security officials access to the C/ACAMS tools for using critical infrastructure and key resources (CIKR) asset data, prevention and protection information, and incident response and recovery plans to make their communities safer. Efficient and effective use of the C/ACAMS tools helps all State and local first responders and emergency managers nationwide reach their goal of making their communities safer. To ensure that interested stakeholders achieve this mission, C/ACAMS requests supporting information from users seeking to use its tool. The C/ACAMS Program Management Office evaluates the Functional Survey to determine levels of customers' satisfaction with the user experience with the C/ACAMS tool. The survey supports data-based decision making because it evaluates quantitative and qualitative data to identify improvements and identify significant issues based on experienced customer assessments of key tool functions. Obtaining current fact-based actionable data about tool features allows the program to appropriate funds cost-effectively based on user need, saving costs while improving the tool.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate.

Title: Constellation Automated Critical Asset Management System Functional Survey.

OMB Number: 1670–NEW.

Affected Public: Federal, State, Local, Tribal.

Number of Respondents: 650.

Estimated Time per Respondent: 15 minutes.

Total Burden Hours: 163 annual burden hours.

Total Burden Cost (capital/startup): $1,800.00.

Total Burden Cost (operating/maintaining): $1,250.00.

Signed: December 8, 2009.

Thomas Chase Garwood, III,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. E9–29742 Filed 12–14–09; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before November 28, 2009. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by December 30, se2009.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

CALIFORNIA

Humboldt County

Eureka Theatre, 612 F. St., Eureka, 09001199.

Madera County

Westlake Theatre, 634–642 S. Alvarado St., Los Angeles, 09001200.

San Francisco County

Doolan, Richard P., Residence and Storefronts, 557 Ashbury St./1500–1512 Haights St., San Francisco, 09001201.

GEORGIA

Cobb County

Lake Acworth Beach and Bathhouse, Lakeshore Dr., Acworth, 09001202.

IOWA

Lee County

Lee, Captain Daniel S. and Fannie L. (Brooks), House, 803 1st St. E., Independence, 09001203.

KANSAS

Gray County

Barton, Welborn 'Doc', House, 202 S. Edwards St., Ingalls, 09001204.

Sedgwick County

Blaser, Reank E., House, (Residential Resources of Wichita, Sedgwick County, Kansas 1870–1957) 136 N. Crestway Ave., Wichita, 09001205.

Guldner House, (Residential Resources of Wichita, Sedgwick County, Kansas 1870–1957) 1919 W. Douglas, Wichita, 09001206.

Trego County

Collyer Downtown Historic District, Area along Ainslie Ave., roughly bounded by 2nd St. on the N. and 4th St. on the S., Collyer, 09001207.

MISSOURI

Adair County

Masonic Temple, 217 E. Harrison St., Kirksville, 09001208.

NEW YORK

New York County

Fort Washington Presbyterian Church, 21 Wadsworth Ave., New York, 09001209.

NORTH DAKOTA

Grand Forks County

University of North Dakota Historic District, Roughly bounded by the English Coulee, Campus Rd., Memorial Stadium, & 4th and 5th Aves. N., Grand Forks, 09001210.

OREGON

Multnomah County

Ladd Carriage House, 1331 SW. Broadway St., Portland, 09001211.

PENNSYLVANIA

Chester County

Chandler Mill Rd., Kennett Township, Kennett, 09001213.
Cheyney, Squire, Farm, 1255 Cheyney Thornton Rd., Thornbury, 09001214.
Hopewell Farm, 1751 Valley Rd., Valley, 09001215.

Philadelphia County

Pennsylvania State Office Building, 1400 Spring Garden St., Philadelphia, 09001216.
Philadelphia Quartermaster Depot, 2724 S. 20th St., Philadelphia, 09001212.

WASHINGTON

Grant County

Hartline School, (Rural Public Schools of Washington State MPS) 92 Chelan St., Hartline, 09001217.

King County

Naval Air Station (NAS) Seattle, 7400 Sand Point Way NE., Seattle, 09001218.

Whatcom County

Cissna Cottages Historic District, Area roughly bounded by H., Halleck, G., and Girard Sts., Bellingham, 09001219.

WISCONSIN

Green County

Cleveland's Hall and Blacksmith Shop, N7302 County Trunk Hwy X, Brooklyn, 09001220.

Rock County

Robinson, John C. and Mary, Farmstead, 18002 W. Co. Trunk Hwy C, Union, 09001221.

In the interest of preservation the comment period for the following resource has been waived:

VIRGINIA

Henrico County

Curles Neck Farm, 4705 Curles Neck Rd., Henrico, 09001222.

Request for REMOVAL has been made for the following resource:

PENNSYLVANIA

Monroe County

Swiftwater Inn, PA 611, Swiftwater, 76001651.

[FR Doc. E9–29762 Filed 12–14–09; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nomination

Nomination for the following property being considered for listing in the National Register was received by the National Park Service on December 8, 2009. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of this property under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by December 18, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

In the interest of preservation the comment period for the following resource has been shortened to (3) three days:

Illinois

Cook County

Reese, Michael Hospital Campus, Roughly bounded by 26th St., Cottage Grove, Vernon Avenues, 31st St., and the Illinois Central Railroad Tracks, Chicago, 09001236.

[FR Doc. E9–29763 Filed 12–14–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation Training Division

[OMB Number 1110–NEW]

FBI National Academy Level I Evaluation; Proposed collection, Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Approval for a New Collection; *FBI National Academy Level 1 Evaluation: Student Course Questionnaire FBI National Academy: General Remarks Questionnaire.*

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Training Division's Office of Technology, Research, and Curriculum Development (OTRCD) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 30 days until January 14, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments (especially on the estimated public burden or associated response time), suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact *Candace Matthews, Evaluation Program Manager, Federal Bureau of Investigation, Training Division, Curriculum Development and Evaluation Unit, FBI Academy, Quantico, Virginia 22135 or facsimile at (703) 632–3111.*

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following three points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the proposed collection of the information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

1. *Type of Information Collection:* Approval of a New Collection.

2. *Title of the Forms:*

FBI National Academy Level 1 Evaluation: Student Course Questionnaire;

FBI National Academy: General Remarks Questionnaire.

3. *Agency Form Number, if any, and the applicable component of the department sponsoring the collection:*

Form Number: 1110–XXXX.

Sponsor: Training Division of the Federal Bureau of Investigation (FBI), Department of Justice (DOJ).

4. *Affected Public who will be asked or required to respond, as well as a brief abstract:*

Primary: FBI National Academy students that represent State and local police and sheriffs' departments, military police organizations, and Federal law enforcement agencies from the United States and over 150 foreign nations.

Brief Abstract: This collection is requested by FBI National Academy. These surveys have been developed to measure the effectiveness of services that the FBI National Academy provides. We will utilize the students' comments to improve the current curriculum.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

Approximately 1,020 FBI National Academy students per year will respond to two types of questionnaires. (1) FBI National Academy Level 1 Evaluation: Student Course Questionnaire and (2) FBI National Academy: General Remarks Questionnaire. It is predicted that we will receive a 75% respond rate for both surveys.

Each student will respond to approximately six to seven Student Course Questionnaires—one for each class they have completed. The average time for reading the directions to each questionnaire is estimated to be 2 minutes; the time to complete each questionnaire is estimated to be approximately 20 minutes. Thus the total time to complete the Student Course Questionnaire is 22 minutes.

For the FBI National Academy: General Remarks Questionnaire, student will respond to one questionnaire. The average time for reading the directions to this questionnaire is estimated to be 2 minutes; the time to complete the questionnaire is estimated to be approximately 10 minutes. Thus the total time to complete the General Remarks Questionnaire is 12 minutes.

The total hour burden for both surveys is 2,822 hours.

6. *An estimate of the total public burden (in hours) associated with the collection:*

The average hour burden for completing all the surveys combined is 2,822 hours.

If additional information is required, contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: *December 9, 2009.*

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–29744 Filed 12–14–09; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0046]

Agency Information Collection Activities: Existing Collection, Comments Requested

ACTION: 60-Day notice of information collection for renewal: Three fingerprint cards: Arrest and institution; Applicant; Personal identification.

The Department of Justice, Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division will be submitting the following information collection renewal to the Office of Management and Budget (OMB) for review in accordance with established review procedures of the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until February 16, 2010. This process is conducted in accordance with 5 CFR 1320.10.

All comments, suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Penny L. Rosier, Management Program Analyst, Federal Bureau of Investigation, Criminal Justice Information Services Division (CJIS), Biometric Services Section, Support Services Unit, Module E–1, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; or by facsimile to (304) 625–5549.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have a practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the propose collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Existing collection in use with an OMB control number of 1110–0046.

(2) *The title of the form/collection:* Three Fingerprint Cards: Arrest and Institution; Applicant; Personal Identification.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Forms FD–249 (Arrest and Institution), FD–258 (Applicant), and FD–353 (Personal Identification) encompassed under OMB 1110–0046; CJIS Division, FBI, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: City, county, State, Federal and Tribal law enforcement agencies; civil entities requesting security clearance and background checks. This collection is needed to collect information on individuals requesting background checks, security clearance, or those individuals who have been arrested for or accused of criminal activities. Acceptable data is stored as part of the Integrated Automated Fingerprint Identification System (IAFIS) of the FBI.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 88,979 agencies as respondents at 10 minutes per fingerprint card completed.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 110,969 annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: December 9, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–29745 Filed 12–14–09; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0188]

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day notice of information collection under review; Extension without change of a currently approved collection.

Budget Detail Worksheet

The Department of Justice, Office of Justice Programs, Office of the Comptroller, will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. The proposed information collection was previously published in the **Federal Register,** Volume 74, Number 180, page 47960–47961 on September 18, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 14, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Marcia K. Paull, Chief Financial Officer at (202) 353–2820, Office of the Chief Financial Officer, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Extension without change of a currently approved collection.

(2) *The title of the form/collection:* Budget Detail Worksheet.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Non-applicable.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* All potential grantee partners who are possible recipients of our discretionary grant programs. The eligible recipients include state and local governments, Indian tribes, profit entities, non-profit entities, educational institutions, and individuals.

The form is not mandatory and is recommended as a guide to assist the recipient in preparing the budget narrative as authorized in 28 CFR parts 66 and 70.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 2,500 respondents will complete a 4-hour form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the forms is 10,000 annual burden hours.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: December 9, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–29746 Filed 12–14–09; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

December 9, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the OMB Control Number (*see* below).

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Type of Review: Revision of a currently approved collection.

Title of Collection: International Training Application.

OMB Control Number: 1220–0179.

Affected Public: Individuals or households.

Total Estimated Number of Respondents: 100.

Total Estimated Annual Burden Hours: 34.

Total Estimated Annual Costs Burden: $0.

Description: The purpose of this request for review is for the BLS to obtain clearance to collect information to support the BLS international training program. This collection allows the BLS to collect the information needed to register trainees for the international training programs. For additional information, see related notice published at Vol. 74 FR 49023 on September 25, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–29733 Filed 12–14–09; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

December 9, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the OMB Control Number (*see* below).

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Employee Benefits Security Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: PTE 2006–16 (Securities Lending by Employee Benefit Plans).

OMB Control Number: 1210–0065.

Affected Public: Private sector.

Estimated Number of Respondents: 100.

Total Estimated Annual Burden Hours: 191.

Total Estimated Annual Costs Burden (Excludes Hourly Wage Costs): $5,600.

Description: Prohibited Transaction Exemption (PTE) 2006–16 permits an employee benefit plan to lend securities to certain broker-dealers and banks and to make compensation arrangements for lending services provided by a plan fiduciary in connection with such securities loans. In the absence of this exemption, some aspects of these transactions might be prohibited under Section 406 of Employee Retirement Income Security Act of 1974 (ERISA). A plan fiduciary needs the collected information to meet its fiduciary obligation to participants and beneficiaries under ERISA section 404(a), which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion and to ensure the plan's security lending transactions qualify for exemptive relief. The Department uses the information to (1) ensure that the rights of participants and beneficiaries are protected, (2) effectively enforce the terms of the class exemption and (3) ensure user compliance. For additional information, see related notice published in the **Federal Register** on September 25, 2009 (Vol. 74, page 49022).

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–29765 Filed 12–14–09; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of a ''Certification of Non-Relocation and Market and Capacity Information Report'' (Form 4279–2) for the following:

Applicant/Location: DSC/Purgatory, LLC/Durango, Colorado.

Principal Product/Purpose: The loan, guarantee, or grant application is to refinance existing debt and also extend snowmaking and new trails. The NAICS industry code for this enterprise is: 713920 Skiing Facilities.

DATES: All interested parties may submit comments in writing no later than December 29, 2009. Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution

Avenue, NW., Room S–4231, Washington, DC 20210; or e-mail *Dais.Anthony@dol.gov;* or transmit via fax (202) 693–3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number (202) 693–2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR Part 75, authorizes the United States Department of Agriculture to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

Signed at Washington, DC, this 9th day of December 2009.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. E9–29769 Filed 12–14–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Announcement of the Tools for America's Job Seekers Challenge

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The U.S. Department of Labor's (DOL) Employment and Training Administration (ETA), in conjunction with the White House and IdeaScale, is launching the Tools for America's Job Seekers Challenge. Using an on-line platform designed by IdeaScale, the Challenge will allow toolmakers and developers to present their on-line job tools to workforce development experts and job seekers to explore, discuss, and recommend. The tools that receive the most recommendations will be shared broadly with the workforce investment system and job seekers, allowing workforce system decision-makers to easily access the recommendations of their peers and customers. Workforce system decision-makers can use this feedback to inform their decisions about which tools to make available through One-Stop Career Centers, State job banks, and other Internet-based resources. Selection of a tool does not constitute an official endorsement by DOL or ETA: This is not an opportunity to apply for government funding, and ETA will not make any funds available to any party pursuant to this announcement.

SUPPLEMENTARY INFORMATION: In a fast-changing marketplace, it is difficult for job seekers and the nation's almost 3,000 One-Stop Career Centers to keep up with state of the art on-line job search and career advancement tools. Therefore, DOL and ETA are challenging enterprising entrepreneurs and organizations to showcase their on-line solutions through a platform that allows workforce system decision-makers and job seeker customers to explore, comment on, and recommend tools. The Challenge will help the workforce investment system uncover the most effective on-line tools. ETA will work with Federal, State, and local workforce system professionals and partners at the conclusion of the Challenge to deploy the tools in the most efficient way throughout the workforce system, to help quickly connect job seekers to the jobs currently available in the economy.

The Challenge will be run in three phases. Phase One will operate from November 30, 2009 to December 18, 2009. ETA encourages entrepreneurs and organizations to help develop an inventory of on-line job search and career advancement tools by submitting information on their tools at *www.DOLChallenge.Ideascale.com.* Although DOL is primarily interested in identifying tools that are free for the use of America's jobseekers, tools with a fee may be submitted as long as the submitter provides a short-term demo site or other platform that allows the tools to be reviewed free of charge in Phase 2 of the Challenge. After the Challenge has been completed, the workforce development system and job seekers can decide whether to buy or license such tools. DOL will accept submissions from businesses and entrepreneurs, nonprofit organizations, and State and local workforce agencies. Participating tools will be classified into one or more of these categories:

- General job boards, listing sites, and aggregators
- Niche job boards
- Career tools such as ladders, transition tools, etc.
- Web-based career exploration sites
- Web 2.0/social media sites specializing in job searches or job postings
- Other job matching and career advancement tools

Along with the tool itself, ETA will ask developers to provide basic information such as the target uses and users of the tool or product, and contact information. At their option, developers may also submit a YouTube video of their tool in action or other tool-related materials.

Phase Two will operate from January 4 to January 15, 2010. Workforce development professionals and job seekers are invited to test-drive the tools and recommend those they find useful. Reviewers are encouraged to recommend tools based on: (1) How effective the tool is in providing accurate results—including how well the tool reflects jobs available in the target labor market; (2) how efficient the tool is in completing job search and matching tasks in a reasonable amount of time; and (3) the level of satisfaction the user experienced. Reviewers may recommend as many tools as they wish, and are encouraged to comment on the tools to provide more feedback on their experience with the tools. Phase Three will begin at the end of January. DOL and ETA will publish the top tools in each category, allowing workforce system decision-makers to easily access the recommendations of their peers and customers, and use this feedback to inform their decisions about which tools to make available through One-Stop Career Centers, State job banks, and other Internet-based resources.

As a result of the Challenge, the workforce development system will have increased awareness of on-line tools that can help meet the job information needs of the significantly increased number of customers requiring service in the current economic recovery effort.

Paperwork Reduction Act (PRA) Statement: The annualized public reporting burden for the collection of information described in this Notice (OMB Control No. 1205–0476, Expiration Date 05/31/2010), which is voluntary, is estimated to average

approximately ten minutes per respondent for Phase One and five minutes per tool commented on in Phase Two.

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, Designated Project Officer, Office of Workforce Investment at (202) 693–2784; or e-mail *DOL.Challenge@dol.gov.*

Signed: at Washington, DC this 9th day of December 2009.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. E9–29831 Filed 12–11–09; 11:15 am]

BILLING CODE 4510–FN–P

OFFICE OF MANAGEMENT AND BUDGET

Fiscal Year 2008 Cost of Outpatient Medical, Dental, and Cosmetic Surgery Services Furnished by Department of Defense Medical Treatment Facilities; Certain Rates Regarding Recovery From Tortiously Liable Third Persons

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice.

SUMMARY: By virtue of the authority vested in the President by section 2(a) of Public Law 87–603 (76 Stat. 593; 42 U.S.C. 2652), and delegated to the Director of the Office of Management and Budget (OMB) by the President through Executive Order No. 11541 of July 1, 1970, the rates referenced below are hereby established. These rates are for use in connection with the recovery from tortiously liable third persons for the cost of outpatient medical, dental and cosmetic surgery services furnished by military treatment facilities through the Department of Defense (DoD). The rates were established in accordance with the requirements of OMB Circular A–25, requiring reimbursement of the full cost of all services provided. The outpatient medical and dental rates referenced are effective upon publication of this notice in the **Federal Register** and will remain in effect until further notice. Pharmacy rates are updated periodically. The inpatient rates, published on January 15, 2009, remain in effect until further notice. A full analysis of the rates is posted at the DoD's Uniform Business Office Web site: *http://www.tricare.mil/ocfo/_docs/2009_MedDenCS_Rates%206_25_09.pdf.* The rates can be found at: *http://www.tricare.mil/ocfo/mcfs/ubo/mhs_rates.cfm.*

Peter R. Orszag,

Director.

[FR Doc. E9–29801 Filed 12–14–09; 8:45 am]

BILLING CODE 3110–01–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 10–03]

Report on the Selection of Eligible Countries for Fiscal Year 2010

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: This report is provided in accordance with section 608(d)(1) of the Millennium Challenge Act of 2003, Public Law 108–199, Division D (the ''Act''), 22 U.S.C. 7708(d)(1).

Dated: December 11, 2009.

Henry C. Pitney,

(Acting) Vice President and General Counsel, Millennium Challenge Corporation.

Report on the Selection of Eligible Countries for Fiscal Year 2010

Summary

This report is provided in accordance with section 608(d)(1) of the Millennium Challenge Act of 2003, Public Law 108–199, Division D (the ''Act''), 22 U.S.C. 7708(d)(1).

The Act authorizes the provision of Millennium Challenge Account (''MCA'') assistance under section 605 of the Act to countries that enter into compacts with the United States to support policies and programs that advance the progress of such countries in achieving lasting economic growth and poverty reduction, and are in furtherance of the Act. The Act requires the Millennium Challenge Corporation (''MCC'') to determine the countries that will be eligible to receive MCA assistance during the fiscal year, based on their demonstrated commitment to just and democratic governance, economic freedom, and investing in their people, as well as on the opportunity to reduce poverty and generate economic growth in the country. The Act also requires the submission of reports to appropriate congressional committees and the publication of notices in the **Federal Register** that identify, among other things:

1. The countries that are ''candidate countries'' for MCA assistance during fiscal year 2010 (FY10) based on their per-capita income levels and their eligibility to receive assistance under U.S. law, and countries that would be candidate countries but for specified legal prohibitions on assistance (section 608(a) of the Act; 22 U.S.C. 7708(a));

2. The criteria and methodology that the Board of Directors of MCC (''the Board'') will use to measure and evaluate the relative policy performance of the ''candidate countries'' consistent with the requirements of section 607 of the Act in order to select ''MCA eligible countries'' from among the ''candidate countries'' (section 608(b) of the Act, 22 U.S.C. 7708(b)); and

3. The list of countries determined by the Board to be ''MCA eligible countries'' for FY10, with justification for eligibility determination and selection for compact negotiation, including which of the MCA eligible countries the Board will seek to enter into MCA compacts (section 608(d) of the Act, 22 U.S.C. 7708(d)).

This is the third of the above-described reports by MCC for FY10. It identifies countries determined by the Board to be eligible under section 607 of the Act for FY10 (22 U.S.C. 7706) and countries with which the Board will seek to enter into compacts under section 609 of the Act, as well as the justification for such decisions.

Eligible Countries

The Board met on December 9, 2009 to select countries that will be eligible for MCA compact assistance under section 607 of the Act for FY10. The Board selected the following countries as eligible for such assistance for FY10: Cape Verde, Indonesia, Jordan, Malawi, Moldova, the Philippines, and Zambia.

In accordance with the Act and with the ''Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in Fiscal Year 2010'' submitted to the Congress on September 11, 2009, selection was based primarily on a country's overall performance in three broad policy categories: (1) ''Ruling Justly''; (2) ''Encouraging Economic Freedom''; and (3) ''Investing in People.'' As a basis for determining which countries would be eligible for MCA compact assistance, the Board relied upon 17 transparent and independent indicators to assess, to the maximum extent possible, countries' policy performance and demonstrated commitment in these three broad policy areas. In determining eligibility, the Board compared countries' performance on the indicators relative to their income-level peers, evaluating them in comparison to either the group of low income countries (LIC) or the group of lower-middle income countries (LMIC). In particular, the Board considered if a country performed above the median in relation to its peers on at least half of the indicators in the Ruling Justly and Economic Freedom policy categories, above the median on at least three of five indicators in the Investing in People policy category, and above the median on the ''Control of Corruption'' indicator. The Board also took into account whether the country performed substantially below the median on any indictor, and if so, whether the country is taking appropriate action to address the shortcomings. Scorecards reflecting each country's performance on the indicators are available on MCC's Web site at *http://www.mcc.gov.*

The Board also considered whether any adjustments should be made for data gaps, data lags, or recent events since the indicators were published, as well as strengths or weaknesses in particular

indicators. Where appropriate, the Board took into account additional quantitative and qualitative information, such as evidence of a country's commitment to fighting corruption and promoting democratic governance, and its effective protection of human rights. For countries that graduated from the LIC group to the LMIC group in FY10 due to an increase in their per capita gross national income, the Board also took into account supplemental information that showed how the new LMIC country would have performed in comparison to the LIC group. In addition, the Board considered the opportunity to reduce poverty and promote economic growth in a country, in light of the overall context of the information available, as well as the availability of appropriated funds.

This was the first year the Board considered countries for eligibility for second compacts, which is permissible under section 609(k) of the Act. In determining second compact eligibility, the Board considered—in addition to the criteria outlined above—the country's performance implementing its first compact, including the nature of the country partnership with MCC, the degree to which the country has demonstrated a commitment and capacity to achieve program results, and the degree to which the country has implemented the compact in accordance with MCC's core policies and standards.

There were no countries selected as eligible for the first time in FY10. However, Cape Verde, an LMIC, was selected as eligible for MCA assistance for a second compact under section 606(b) (22 U.S.C. 7705(b)) of the Act.

Cape Verde meets MCC's indicator criteria this year for the first time since it advanced from the LIC group to the LMIC group four years ago. Cape Verde has been an economic reformer over the past two decades and has consistently displayed good economic and political governance. Since becoming an LMIC, the Government of Cape Verde has worked hard to raise its indicator performance to meet the standards of its more competitive peer group. It has worked over the past four years on ongoing reforms to streamline business registration, as well as on efforts to improve the accuracy of its indicator data. These efforts are now reflected on Cape Verde's MCC scorecard. Cape Verde's current compact is due to conclude in October 2010. Cape Verde corrected some early compact implementation difficulties and is now a relatively strong performer on the implementation of its compact.

Country partners that are developing or implementing compacts must also show a commitment to maintaining and improving their policy performance. While MCC's indicators work well as a transparent way of identifying those countries that are most committed to sound development policies and for discerning trends over the medium-term, they are not as well-suited for tracking incremental progress from year-to-year. Countries may be generally maintaining performance but not meet the criteria in a given year due to factors such as:

- Graduation from the LIC category to the LMIC category,
- Data improvements or revisions,
- MCC's introduction of two new indicators in fiscal year 2008 and the accompanying requirement that countries pass three of the five indicators in the Investing in People category,
- Increases in peer-group medians, and
- Slight declines in performance.

Six countries selected as eligible for MCA assistance in FY10 were previously selected as eligible in at least one prior fiscal year. Because they have not yet signed a compact agreement, they needed to be reselected as eligible for FY10 funds to continue compact development. Three of these countries are in the LIC category: Malawi, Moldova, and Zambia. Three countries, Indonesia, Jordan, and the Philippines, are in the LMIC category.

The Board reselected these countries based on their continued performance since their prior selection. The Board determined that no material change has occurred in their performance on the indicator criteria since the fiscal year 2009 selection that indicates a serious decline in policy performance. While two of the countries—Indonesia and the Philippines—graduated to the more competitive LMIC category this year and fare less well against the higher standards, both countries would have met MCC's indicator criteria as LICs.

The Board also reviewed the policy performance of countries that are implementing compacts. However, these countries do not need to be reselected each year in order to continue implementation. Once MCC makes a commitment to a country through a compact agreement, MCC will not consider the country for reselection on an annual basis during the term of its compact. MCC will continue to work with a country—even if it does not meet the indicator criteria each year—as long as the country has not demonstrated a pattern of actions inconsistent with the eligibility criteria. If it is determined that a country has demonstrated a significant policy reversal, the Board can hold it accountable by applying MCC's Suspension and Termination Policy.

For those countries that have not demonstrated a significant policy reversal but do not meet the indicator criteria, MCC will invite these countries to participate or continue their participation in MCC's policy improvement process. Countries participating in the policy improvement process are asked to develop and implement a forward-looking action plan that outlines the steps they plan to take to improve performance on certain policy criteria. They then periodically report on progress made on the plan.

Finally, a number of countries that performed well on the quantitative elements of the selection criteria (*i.e.,* on the policy indicators) were not chosen as eligible countries for FY10. As discussed above, the Board considered a variety of factors in addition to the country's performance on the policy indicators in determining whether it was an appropriate candidate for assistance (*e.g.,* the country's commitment to fighting corruption and promoting democratic governance; the availability of appropriated funds; and where MCC would likely have the best opportunity to reduce poverty and generate economic growth).

Selection To Initiate the Compact Process

The Board also authorized MCC to invite Cape Verde to submit a proposal for a second compact, as described in section 609 of the Act (22 U.S.C. 7708) (previously eligible countries that were reselected but have not yet signed a compact will not be asked to submit another proposal for FY10 assistance). Submission of a proposal is not a guarantee that MCC will finalize a compact with an eligible country. Any MCA assistance provided under section 605 of the Act will be contingent on the successful negotiation of a mutually agreeable compact between the eligible country and MCC, approval of the compact by the Board, and the availability of funds.

[FR Doc. E9–29941 Filed 12–11–09; 4:15 pm]

BILLING CODE 9211–03–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Determination of the Chairperson of the National Endowment for the Arts Regarding Potential Closure of Portions of Meetings of the National Council on the Arts

Section 20 U.S.C. 955(f) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq.*) authorizes the National Council on the Arts to review applications for financial assistance to the National Endowment for the Arts and make recommendations to the Chairperson.

The Federal Advisory Committee Act (FACA), as amended (Pub. L. 92–463), governs the formation, use, conduct, management, and accessibility to the public of committees formed to advise and assist the Federal Government. Section 10 of that Act directs meetings of advisory committees to be open to the public, except where the head of the agency to which the advisory committee reports determines in writing that a portion of a meeting may be closed to the public consistent with subsection (c) of section 552b of Title 5, United States Code (the Government in the Sunshine Act).

It is the policy of the National Endowment for the Arts that meetings of the National Council on the Arts be conducted in open session including those parts during which recommendations for funding are considered. However, in recognition that the Endowment is required to consider the artistic excellence and artistic merit of applications for financial assistance and that

consideration of individual applications may require a discussion of matters such as an individual artist's abilities, reputation among colleagues, or professional background and performance, I have determined to reserve the right to close limited portions of Council meetings if such information is to be discussed. The purpose of the closure is to protect information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. Closure for this purpose is authorized by subsection (c)(6) of section 552b of Title 5, United States Code.

Additionally, the Council will consider prospective nominees for the National Medal of Arts award in order to advise the President of the United States in his final selection of National Medal of Arts recipients. During these sessions, similar information of a personal nature will be discussed. As with applications for financial assistance, disclosure of this information about individuals who are under consideration for the award would constitute a clearly unwarranted invasion of personal privacy.

Therefore, in light of the above, I have determined that those portions of Council meetings devoted to consideration of prospective nominees for the National Medal of Arts award may be closed to the public. Closure for these purposes is authorized by subsections (c)(6) of section 552b of Title 5, United States Code.

All other portions of the meetings of the National Council on the Arts shall be open to the public unless the Chairperson of the National Endowment for the Arts or a designee determines otherwise in accordance with section 10(d) of the Act.

Further, in accordance with the FACA, the Panel Coordinator shall be responsible for publication in the **Federal Register** of a notice of all advisory committee meetings including the intent to close any portion of the Council meeting. Such notice shall be published in advance of the meetings and contain:

1. Name of the committee and its purposes;

2. Date and time of the meeting, and, if the meeting is open to the public, its location and agenda; and

3. A statement that the meeting is open to the public, or, if the meeting or any portion thereof is not to be open to the public, a statement to that effect.

A record shall be maintained of any closed portion of the Council meeting.

The Director of Council Operations is designated as the person from whom lists of committee members may be obtained and from whom minutes of open meetings or open portions thereof may be requested. On November 10, 2009, Chairman of the National Endowment for the Arts Rocco Landesman approved the determination to close the meetings.

Dated: December 10, 2009.

Kathy Plowitz-Worden,

Committee Management Officer.

[FR Doc. E9–29788 Filed 12–14–09; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Determination of the Chairperson of the National Endowment for the Arts Regarding Closure of Portions of Meetings of Advisory Committees (Advisory Panels)

Section 20 U.S.C. 959(c) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq.*) requires the Chairperson of the Endowment to utilize advisory panels to review applications for financial assistance to the National Endowment for the Arts and make recommendations to the Chairperson.

The Federal Advisory Committee Act (FACA), as amended (Pub. L. 92–463), governs the formation, use, conduct, management, and accessibility to the public of committees formed to advise and assist the Federal Government. Section 10 of that Act directs meetings of advisory committees to be open to the public, except where the head of the agency to which the advisory committee reports determines in writing that a portion of a meeting may be closed to the public consistent with subsection (c) of section 552b of Title 5, United States Code (the Government in the Sunshine Act).

It is the policy of the National Endowment for the Arts to make the fullest possible disclosure of records to the public, limited only by obligations of confidentiality and administrative necessity. In recognition that the Endowment is required to consider the artistic excellence and artistic merit of applications for financial assistance and that consideration of individual applications may require a discussion of matters such as an individual artist's abilities, reputation among colleagues, or professional background and performance, I have determined to reserve the right to close the portions of advisory committee meetings involving the review, discussion, evaluation, and ranking of grant applications. The purpose of the closure is to protect information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. Closure for this purpose is authorized by subsection (c)(6) of section 552b of Title 5, United States Code.

All other portions of the meetings of these advisory committees shall be open to the public unless the Chairperson of the National Endowment for the Arts or a designee determines otherwise in accordance with section 10(d) of the Act.

Further, in accordance with FACA, the Panel Coordinator shall be responsible for publication in the **Federal Register** of a notice of all advisory committee meetings. Such notice shall be published in advance of the meetings and contain:

1. Name of the committee and its purposes;

2. Date and time of the meeting, and, if the meeting is open to the public, its location and agenda; and

3. A statement that the meeting is open to the public, or, if the meeting or any portion thereof is not to be open to the public, a statement to that effect.

A record shall be maintained of any closed portions of panel meetings.

The Panel Coordinator is designated as the person from whom lists of committee members may be obtained and from whom minutes of open meetings or open portions thereof may be requested. On November 10, 2009, Chairman of the National Endowment for the Arts Rocco Landesman approved the determination to close the meetings.

Dated: December 10, 2009.

Kathy Plowitz-Worden,

Committee Management Officer.

[FR Doc. E9–29790 Filed 12–14–09; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0553]

Biweekly Notice Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any

amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 18, 2009 to December 2, 2009. The last biweekly notice was published on December 1, 2009 (74 FR 62831).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking and Directives Branch (RDB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RDB at 301–492–3446. 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 O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards

consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from December 15, 2009. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading

Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Dominion Energy Kewaunee, Inc. Docket No. 50–305, Kewaunee Power Station, Kewaunee County, Wisconsin

Date of amendment request: August 24, 2009.

Description of amendment request: The licensee proposed to convert the Kewaunee Power Station (KPS) current Technical Specifications (CTS) to the Improved Technical Specifications (ITS) format as outlined in NUREG–1431, Rev. 3.0, ''Standard Technical Specifications, Westinghouse Plants.'' Some of the proposed changes involve reformatting, renumbering, and rewording of the CTS with no change in intent. These changes, since they do not involve technical changes to the CTS, are administrative. This type of change is connected with the movement of requirements, or with the modification of wording that does not affect the technical content of the CTS. These changes also include non-technical modifications of requirements to conform to TSTF–GG–05–01, ''Writer's Guide for Plant-Specific Improved Standard Technical Specifications,'' or provide consistency with the Improved Standard Technical Specifications in NUREG–1431. Administrative changes are not intended to add, delete, or relocate any technical requirements of the CTS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change involves reformatting, renumbering, and rewording the CTS. The reformatting, renumbering, and rewording process involves no technical changes to the CTS. As such, this change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accident or transient events. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) [nor does it change] methods governing normal plant operation. The proposed change will not impose any new or eliminate any old requirements. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not reduce a margin of safety because it has no effect on any safety analyses assumptions. This change is administrative in nature. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., Counsel for Dominion Energy Kewaunee, Inc., 120 Tredegar Street, Richmond, VA 23219.

NRC Branch Chief: Robert J. Pascarelli.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 22, 2009.

Description of amendment request: The proposed change will modify the Technical Specifications (TSs), to clarify Table 2.2–1, Notes ''1'' and ''5''; and Table 3.3–1, Notes ''a'' and ''c'', Table 3.3–1 Action 2, and Table 3.3–1 Action 3 which have resulted in Plant Protection System redundancy issues with respect to verbatim compliance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes modify the table notations for the 10^{-4}% [percent] Bistable in Technical Specifications (TS) TS Table 2.2–1 Notes ''1'' and ''5'', TS Table 3.3–1 Notes ''a'' and ''c'', TS Table 3.3–1 Action 2, and TS Table 3.3–1 Action 3. The proposed changes to these trip bypass removal functions do not adversely impact any system, structure, or component design or operation in a manner that would result in a change in the frequency or occurrence of accident initiation. The reactor trip bypass removal functions are not accident initiators. System connections and the trip setpoints themselves are not affected by trip bypass removal setpoint variations.

As previously approved in TS Amendment 145 [issued September 24, 1998], the hysteresis for the 10^{-4}% Bistable is small, there is a negligible impact on the CEA [control element assembly] withdrawal analyses. Revised analyses, accounting for slightly different bypass removal power levels caused by the bistable hysteresis, would result in negligible changes to the calculated peak power and heat flux for the pertinent CEA withdrawal events. Therefore, the consequences of any accident previously evaluated will not significantly change.

With respect to the clarification proposed for the THERMAL POWER input to the bypass capability of the affected reactor trips for the 10^{-4}% Bistable, the proposed change does not alter the manner of operation of the operating bypasses and automatic bypass removals. This change corrects a discrepancy between the formal definition of this terminology and its use in the context of the applicable Technical Specifications.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The trip bypass removal functions in question protect against possible reactivity events. The power, criticality levels, and possible bank withdrawals associated with these trip functions have already been evaluated. Therefore, all pertinent reactivity events have previously been considered. Slight differences in the power level at which the automatic trip bypass removal occurs can not cause a different kind of accident.

The proposed changes to TS Table 2.2–1 Notes ''1'' and ''5'', TS Table 3.3–1 *Notes ''a'' and ''c'', TS Table 3.3–1 Action 2, and TS Table 3.3–1 Action 3 do not alter any plant system, structure, or component. Furthermore, these changes do not reduce the capability of any safety-related equipment to mitigate AOOs [anticipated operational occurrences].

In addition, no new or different accidents result from proposed clarifications to the operating bypasses and automatic bypass removals of the affected reactor trips. The results of previously performed accident analyses remain valid. Therefore, this change does not create the possibility of a new or different kind of accident.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The safety function associated with the CPC [core protection calculators] and HLP [high logarithmic power] trip functions are maintained. Since the hysteresis for the 10^{-4}% Bistable is small, there is a negligible impact on the CEA withdrawal analyses. Calculated peak power and heat flux are not

significantly changed as a result of the bistable hysteresis. All acceptance criteria are still met for these events. There is no change to any margin of safety as a result of this change.

Clarification of the THERMAL POWER input to the operating bypasses and automatic bypass removals of the 10^{-4}% Bistable does not alter the operation of the operating bypasses and automatic bypass removals of the affected reactor trips. This change corrects a discrepancy between the formal definition of this terminology and its use in the context of the applicable Technical Specifications.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Counsel—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Michael T. Markley.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2), Beaver County, Pennsylvania

Date of amendment request: June 11, 2009.

Description of amendment request: The proposed amendment would: (1) Modify Technical Specifications (TSs) to eliminate Surveillance Requirement (SR) 3.3.2.9, which verifies that the Engineered Safety Feature Actuation System Response Times are within the limits for the recirculation spray pumps, (2) revise Section 1.4 of the TSs to add clarification to Notes associated with SRs in accordance with Technical Specification Task Force Traveler, TSTF 475–A, Revision 1, ''Control Rod Notch Testing Frequency and SRM [Source Range Monitor] Insert Control Rod Action,'' (3) revise the BVPS–1 operating license to remove a License Condition for recommended inspections of steam generator repairs, and (4) revise the BVPS–2 operating license to remove an exemption to 10 CFR 70.24.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to the Operating License pages and Example 1.4–1 are editorial changes that do not have any effect on equipment or plant operation. Therefore, these proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The elimination of the requirement to verify a response time for the recirculation spray pumps will not affect the operation of the pumps and will not impact the applicable safety analyses because the potential variation in the measurable response time has an insignificant effect on the results of the applicable safety analyses. The recirculation spray system is an accident mitigation system, so no new accident initiators are created by the elimination of the subject surveillance requirement. Thus eliminating the surveillance requirement will not result in a significant increase in the probability of an accident previously evaluated. The elimination of the subject surveillance requirement will not impact the accident mitigation function of the recirculation spray system because the pump response time is not a critical safety analyses assumption due to the fact that the potential variation in the measurable response time has an insignificant effect on the analysis. Since the post-accident performance of the recirculation spray system is not changed by eliminating the requirement to verify a response time for the pumps, the proposed change will not involve a significant increase in consequences of an accident previously evaluated. Therefore, the elimination of the surveillance requirement will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to the Operating License pages and Example 1.4–1 are editorial changes that do not have any effect on equipment or plant operation. Therefore, these proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The elimination of the surveillance requirement to verify a response time for the recirculation spray pumps will not affect the operation of the pumps. The pumps will continue to perform in the same manner after the elimination of the surveillance requirement as they do with the surveillance requirement. Therefore, the elimination of the surveillance requirement will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes to the Operating License pages and Example 1.4–1 are editorial changes that do not have any effect on equipment or plant operation. Therefore, these proposed changes will not involve a significant reduction in a margin of safety.

The elimination of the surveillance requirement to verify a response time for the recirculation spray pumps is consistent with the applicable safety analysis since a response time for the pumps is not an analysis assumption. As a result the existing margin of safety is not impacted. Therefore, the elimination of the surveillance requirement will not involve a significant reduction in a margin of safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David W. Jenkins, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Branch Chief: Nancy L. Salgado.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: October 30, 2009.

Description of amendment request: The proposed amendment would revise Watt Bar Nuclear Plan, Unit 1 license by adding an exception to Operating License Condition 2.F regarding the provisions of the Fire Protection Program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not affect the design of the automatic total-flooding CO_2 [carbon dioxide] suppression system, the operational characteristics or function of the CO_2 suppression system, the interfaces between the CO_2 suppression system and other plant systems, or the reliability of the CO_2 suppression system. The CO_2 suppression system is not considered an initiator of any Updated Final Safety Analysis Report (UFSAR) accident or transient previously evaluated. The CO_2 suppression system is designed to extinguish a fire or control and minimize the effects of a fire until the fire brigade can respond and extinguish it.

The consequences of previously evaluated accidents and transients will not be significantly affected by the revised requirements for CO_2 concentration in the Auxiliary Instrument Room because the CO_2 suppression system is not credited in the accident analyses. Although the function of the system is to extinguish a fire or control

and minimize the effects of a fire until the fire brigade can respond and extinguish it, this function does not mitigate accidents or transients. Thus, the consequences of accidents or transients previously evaluated are not affected by the proposed change in the required CO_2 concentration for the Auxiliary Instrument Room.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a change in the design, configuration, or method of operation of the plant. The proposed change will not alter the manner in which equipment operation is initiated, nor will the functional demands on credited equipment be changed. The capability for fire suppression and extinguishment will not be changed. The proposed change does not affect the interaction of the CO_2 suppression system with any system whose failure or malfunction can initiate an accident. As such, no new failure modes are being introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not alter the plant design, including instrument setpoints, nor does it alter the assumptions contained in the safety analyses. The CO_2 suppression system is designed for fire suppression and extinguishment and is not assumed or credited for accident mitigation. Although the change does reduce a parameter (CO_2 concentration) specified in the license, the proposed change does not impact the redundancy or availability of equipment required for accident mitigation, or the ability of the plant to cope with design basis accident events.

Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: L. Raghavan.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action *see* (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Florida Power and Light Company, Docket No. 50–251, Turkey Point Plant, Unit 4, Miami-Dade County, Florida

Date of application for amendment: September 1, 2009, supplemented by letters dated October 28, 29, and 31, November 5, 6, 12, and 13, 2009.

Brief description of amendment: The request would change the implementation date of approved license amendment 229 for Unit 4, dated July 17, 2007, from ''prior to the end of Turkey Point 4 cycle 24'' to ''no later than February 28, 2011, for Unit 4 only.''

Date of issuance: November 13, 2009.

Effective date: As of the date of issuance and shall be implemented immediately.

Amendment No.: 237.

Renewed Facility Operating License No. DPR–41: Amendment revised the license.

Date of initial notice in ***Federal Register:*** September 15, 2009 (74 FR 47278). The supplements dated October 28, 29, and 31, November 5, 6, 12, and 13, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 13, 2009.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: April 24, 2009 (TS–464).

Description of amendment request: The proposed changes revised the Technical Specifications (TS) Bases sections 3.1.6, ''Rod Pattern Control,'' and 3.3.2.1, ''Control Rod Block Instrumentation'' to allow the Browns Ferry units to reference in the improved control rod banked position withdrawal sequence (BPWS) when performing a reactor shutdown. In addition, the proposed changes added a footnote to TS Table 3.3.2.1–1, ''Control Rod Block Instrumentation''. The proposed changes are consistent with Nuclear Regulatory Commission approved Industry Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–476, Revision 1, ''Improved BPWS Control Rod Insertion Process (NEDO–33091).''

Date of issuance: November 19, 2009.

Effective date: Date of issuance, to be implemented within 60 days.

Amendment Nos.: 276, 303, and 262.

Renewed Facility Operating License Nos. DPR–33, DPR–52, and DPR–68: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 28, 2009 (74 FR 37249).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 19, 2009.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 3rd day of December 2009.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–29545 Filed 12–14–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0485]

Development of NRC's Safety Culture Policy: Public Workshops; Request for Nomination of Participants in Round Table Discussions and Stakeholder Participation

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of public workshops; request for nomination of participants in round table discussions.

SUMMARY: The NRC has prepared a draft policy statement on safety culture to include the unique aspects of nuclear safety and security, and to note expectations that the policy applies to individuals and organizations performing or overseeing NRC-regulated activities. The NRC is conducting public workshops to solicit input relating to the development of the safety culture policy statement. These workshops will be composed of panel discussions. Attendees' participation and feedback on the discussions will also be solicited during the workshops. In addition to announcing the public workshops, the other purpose of this notice is to request the names of individuals desiring to participate in the panel discussion portion of the workshops. Nominations and requests to participate in the panel discussions are requested by January 15, 2010, to allow for their consideration.

The NRC staff is holding workshops to support an overarching goal of forging a consensus around the objectives, strategies, activities and measures that enhance safety culture for NRC-regulated activities. Specifics include the development of the safety culture common terminology effort that comprises: (1) Development of a common safety culture definition; and (2) development of high-level description/traits of areas important to safety culture. These workshops aim to develop these concepts for incorporation into our draft final policy statement and will be considered when revising our oversight programs for NRC-regulated nuclear industries. The tentative dates for the planned public workshops are February 2–4, 2010, and April 13–15, 2010, and October 27–28, 2010, at or near NRC headquarters in Rockville, MD. Please check the NRC Web site (*http://www.nrc.gov/public-involve/public-meetings/index.cfm* and/or *http://www.nrc.gov/about-nrc/regulatory/enforcement/safety-culture.html)* for any updates to the workshop schedules and/or information regarding this effort.

In addition to this **Federal Register** Notice, the NRC has issued a separate **Federal Register** Notice (November 6, 2009, 74 FR 57525, ADAMS Number ML093030375), which provides individuals and organizations with an interest in nuclear safety, an opportunity to comment on the draft safety culture policy statement in the event they are unable to attend the workshops referenced in this **Federal Register** Notice.

DATES: Public Workshop Dates: Workshop meeting notices will be available on the NRC Public Meeting Schedule Web site at *http://www.nrc.gov/public-involve/public-meetings/index.cfm* at least ten days prior to each workshop. The meeting notices on the NRC Public Meeting Schedule Web site will provide information on how those unable to participate in person may do so via teleconference and/or possibly through the Internet.

ADDRESSES: Individuals or organizations with an interest in nuclear safety are encouraged to submit names of individuals who will represent each industry group, stakeholder, union, and so forth, or themselves in the panel discussion portion of the workshops, to Alex Sapountzis or Maria Schwartz by mail to U.S. Nuclear Regulatory Commission, Office of Enforcement, Concerns Resolution Branch, Mail Stop O–4 A15A, Washington, DC 20555–0001, or by e-mail to *Alexander.Sapountzis@nrc.gov* or *Maria.Schwartz@nrc.gov.*

Public Workshops: The public workshops will be held at or near the NRC Headquarters building located at 11555 Rockville Pike, Rockville, MD 20852. Because on-street parking is extremely limited, the most convenient transportation to the workshop venue, if held at NRC headquarters, is via Metro's Red Line to the White Flint Stop, which is directly across the street from NRC Headquarters. Please allow time to register with building security upon entering the building. Those unable to travel and attend in person may participate by teleconference and/or possibly through the internet. The public meeting notice will provide specific details regarding this option.

FOR FURTHER INFORMATION CONTACT: Alex Sapountzis, telephone (301) 415–7822 or by e-mail to *Alexander.Sapountzis@nrc.gov;* or Maria Schwartz, telephone (301) 415–1888 or by e-mail to *Maria.Schwartz@nrc.gov.* Both of these individuals can also be contacted by mail at the U.S. Nuclear Regulatory Commission, Office of Enforcement, Concerns Resolution Branch, Mail Stop O–4 A15A, Washington, DC 20555–0001. Prior to each workshop, attendees are requested to register with one of the contacts listed in the workshop meeting notice (*i.e.,* the notice serves to announce the date, time and location of the workshop), so that sufficient accommodations can be made for their participation. Please let the contact know if special services, such as services for the hearing impaired, are necessary.

SUPPLEMENTARY INFORMATION:

(1) Purpose of the Public Workshops

The goal of these workshops is to develop concepts that will be incorporated into our draft final policy statement and to consider incorporating these views into our oversight programs for NRC-regulated nuclear industries, as appropriate. Furthermore, the NRC is working with the Agreement States to facilitate their consideration and support of effort in their oversight programs for materials licensees.

The development of the safety culture common terminology concepts (definition and high-level description/traits of areas important to safety culture) will be used in the development of a final safety culture policy statement to facilitate transparency and common understanding of safety culture-related concepts by interested stakeholders. The staff expects that the final safety culture policy will set forth expectations for fostering a strong safety culture, will pertain to all levels of an organization, and will apply to all individuals performing or overseeing NRC-regulated activities. The NRC is working towards increasing the attention that is given to safety culture as part of its efforts to ensure the safe and secure use of radioactive material within NRC's jurisdiction. Because the development of a robust safety culture is important for all NRC-regulated nuclear industries, the NRC is seeking involvement in this effort by individuals and organizations with an interest in nuclear safety. The

NRC plans to conduct a series of workshops to maximize the involvement of interested persons in this effort to develop the safety culture definition and the description/traits that will be used to develop the final safety culture policy statement.

(2) Background

In SECY–09–0075 (ADAMS Number ML091130068), dated May 18, 2009, the staff provided a draft safety culture policy statement to the Commission for its approval. SECY–09–0075 also provided a response to the questions posed in Staff Requirements Memorandum (SRM) COMGBJ–08–0001 (ADAMS Number ML080560476). Based on document reviews and other information collection activities addressing safety culture, as well as outreach activities which included a public meeting held on February 3, 2009, (ADAMS Number ML090270103 for the notice with topics to be discussed and meeting summary, ADAMS Number ML090930572), the staff concluded the following: (1) The Commission's expectations for safety culture should be published in one policy statement entitled, ''Safety Culture Policy Statement;'' (2) the current Reactor Oversight Process (ROP), which includes consideration of cross-cutting aspects of inspection findings, offers valuable insights into licensee's safety culture; (3) the staff should enhance its safety culture initiative for materials licensees, which includes obtaining additional stakeholder views on how the NRC can increase attention to safety culture in the materials area; and (4) the staff should continue to engage the Agreement States on how best to increase the involvement of the Agreement States and Agreement State licensees in safety culture initiatives (**Note**: The ADAMS documents referenced in this notice are publicly available and contain additional information on the NRC's safety culture initiative, which will not be repeated in this notice. The NRC has established a safety culture Web site that contains additional information on safety culture at *http://www.nrc.gov/about-nrc/regulatory/enforcement/safety-culture.html).*

On October 16, 2009, the Commission directed the NRC staff in SRM (SECY–09–0075) to publish the draft safety culture policy statement for public comment for no less than a 90-day public comment period. The draft safety culture policy statement was issued for public comment in a **Federal Register** Notice (November 6, 2009, 74 FR 57525), which provides individuals and organizations with an interest in nuclear safety an opportunity to comment on the draft safety culture policy statement. Additionally, within the SRM, the Commission stressed the importance it places on engaging a broad range of stakeholders in developing the draft final safety culture policy statement in order to ''ensure the final policy statement presented to the Commission benefits from consideration of a spectrum of views and provides the necessary foundation for safety culture applicable to the entire nuclear industry.'' Interested stakeholders may include, for example, Agreement States, organizations representing NRC licensees or Agreement State licensees, and organizations/unions established to provide government or nuclear safety oversight.

Publicly Available Documents: Publicly available documents related to this safety culture initiative can be accessed using the following methods: NRC's Public Document Room (PDR), where the public may examine, and have copied for a fee, publicly available documents. The address is U.S. Nuclear Regulatory Commission Public Document Room, Public File Area 0–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or NRC's Agency wide Documents Access and Management System (ADAMS), which can be accessed at *http://www.nrc.gov/reading-rm/adams.html.* From this site, 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 you encounter problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, or (301) 415–4737 or by email to *pdr.resource@nrc.gov.*

(3) Topics for Discussion

The topics that will be discussed at these workshops include developing a common safety culture definition and high-level description/traits of areas important to safety culture. This effort will support the development of a final safety culture policy statement that is transparent, understandable and applicable to all individuals performing or overseeing NRC-regulated industries.

(4) Agendas

Detailed agendas will be available on the NRC Public Meeting Schedule Web site at *http://www.nrc.gov/public-involve/public-meetings* at least ten days prior to each workshop.

(5) Format of Workshops

To ensure that this process is open, effective, and collaborative, the format of each workshop will consist of a panel discussions among stakeholders, including representatives from NRC-regulated nuclear industries, interest groups such as unions, and members of the public. The panel discussions will be followed by an interactive discussion with other meeting attendees. The NRC is requesting that individuals or organizations with an interest in nuclear safety nominate/self-nominate individuals to participate in the panel discussions (*e.g.,* nuclear power reactor licensees, nuclear fuel cycle facility licensees, Agreement State regulators and so forth should each nominate one or more individuals to speak for that industry/group of licensees/organizations/unions; members of the public with a background/specific interest in safety culture should self-nominate). Nominations and requests to participate in the panel discussions are requested by January 15, 2010. Nominations should also include information supporting the nomination such as affiliation(s) and expertise. The NRC will use the nominations and information supporting the nomination to select final participants with a goal of ensuring a broad spectrum of views and backgrounds. Nominated individuals who are not selected to participate in the panel discussions are highly encouraged to attend the workshops, where there will be opportunities to offer input.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 9th day of December 2009.

Roy Zimmerman,

Director, Office of Enforcement.

[FR Doc. E9–29793 Filed 12–14–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Meeting Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of December 14, 21, 28, 2009, January 4, 11, 18, 2010.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of December 14, 2009

There are no meetings scheduled for the week of December 14, 2009.

Week of December 21, 2009—Tentative

There are no meetings scheduled for the week of December 21, 2009.

Week of December 28, 2009—Tentative

There are no meetings scheduled for the week of December 28, 2009.

Week of January 4, 2010—Tentative

There are no meetings scheduled for the week of January 4, 2010.

Week of January 11, 2010—Tentative

Tuesday, January 12, 2010

9:30 a.m. Briefing on Office of Nuclear Security and Incident Response—Programs, Performance, and Future Plans (Public Meeting) (*Contact:* Marshall Kohen, 301–415–5436).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

1:30 p.m. Briefing on Threat Environment Assessment (Closed—Ex. 1).

Week of January 18, 2010—Tentative

Tuesday, January 19, 2010

9:30 a.m. Briefing on the NRC Enforcement and Allegations Programs (Public Meeting) (*Contact:* Shahram Ghasemian, 301–415–3591).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

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* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html*.

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *rohn.brown@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov*.

Dated: December 10, 2009.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. E9–29871 Filed 12–11–09; 11:15 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Computer Matching and Privacy Protection Act of 1988; Records Used in Computer Matching Programs

AGENCY: Railroad Retirement Board (RRB).

ACTION: Notice of records used in computer matching programs notification to individuals who are receiving or have received benefits under the Railroad Unemployment Insurance Act.

SUMMARY: As required by the Computer Matching and Privacy Protection Act of 1988, the RRB is issuing a public notice of its use and intent to use, in ongoing computer matching programs, certain information obtained from State agencies with respect to individuals who received benefits under the Railroad Unemployment Insurance Act. The information may consist of either (1) report of unemployment or sickness payments made by the State for the same period that benefits were paid by the RRB or (2) wages and names and addresses of employers who reported wages to the State for the same period that benefits were paid by the RRB.

The purpose of this notice is to advise individuals applying for or receiving benefits under the Railroad Unemployment Insurance Act of the use made by the RRB of this information obtained from State agencies by means of a computer match.

DATES: Submit comments on or before February 16, 2010.

ADDRESSES: Address any comments concerning this notice to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy Grant, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, telephone number (312) 751–4869.

SUPPLEMENTARY INFORMATION: Under certain circumstances, the Computer Matching and Privacy Protection Act of 1988, Public Law 100–503, requires a Federal agency participating in a computer matching program to publish a notice in the **Federal Register** regarding the establishment of that matching program. Such a notice must include information in the following first five categories:

Name of Participating Agencies: The Railroad Retirement Board and agencies of all 50 States.

Purpose of the Match: To identify individuals who have improperly collected benefits provided by the RRB while earning remuneration in non-railroad employment or while collecting unemployment or sickness benefits paid by a State agency.

Authority for Conducting the Match: 45 U.S.C. Sections 231(b) and 362(f) and 42 U.S.C. Section 503(c)(1).

Categories of Records and Individuals Covered: All recipients of benefits under the Railroad Unemployment Insurance Act during a given period who reside in the States with which the RRB has negotiated a matching program agreement. Records furnished by the States are covered under Privacy Act system of records RRB–21, Railroad Unemployment and Sickness Insurance Benefit System.

Inclusive Dates of the Matching Program: Agreements with the individual States will run for either 12 or 18 months. The number of matches conducted with each State during the period of the match will vary from State to State, ranging from 2 to 4 depending on whether the agreement provides for matches to be conducted quarterly or every six months.

Procedure: The RRB will furnish the State agency a file of records. The data elements will consist of beneficiary identifying information, such as the name and Social Security Number (SSN), as well as the overall period during which the individual received benefits under the Railroad Unemployment Insurance. The State agency will match on the identifying information.

If the matching operation reveals that the individual who had received benefits under the Railroad Unemployment Insurance Act also received either unemployment or sickness insurance benefits from the State for any days in the period, the State agency will notify the RRB. Depending on arrangements made between the two jurisdictions, and, in the case of State sickness benefits on the applicable State law, either the RRB or the State agency will attempt to recover the amount of the duplicate payments.

If the matching operation reveals that wages had been reported for the individual during the requested period, the State will notify the RRB of this fact and furnish a breakdown of the wages and the name and address of each employer who reported earnings for the individual. The RRB will then write

each employer who reported earnings for the individual for the given period. Only if the employment is verified will the RRB take action to recover the overpayment. If the RRB benefits had been paid under the Railroad Unemployment Insurance Act, recovery is limited to payments made for days on which the individual was gainfully employed.

Other Information: The notice we are giving here is in addition to any individual notice.

A copy of this notice will be furnished to both Houses of Congress and the Office of Management and Budget.

Dated: December 9, 2009.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. E9–29766 Filed 12–14–09; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before January 14, 2010. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer,* Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *David_Rostker@omb.eop.gov*, fax number 202–395–7285, Office of Information and Regulatory Affairs, Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, *jacqueline.white@sba.gov*, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Statement of Personal History.

Form No.: 912.

Frequency: On Occasion.

Description of Respondents: Applicants for SBA Financial Assistance or other programs.

Annual Responses: 142,000.

Annual Burden: 35,500.

Curtis B. Rich,

Acting Chief, Administrative Information Branch.

[FR Doc. E9–29829 Filed 12–14–09; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6852]

Culturally Significant Objects Imported for Exhibition Determinations: ''Mammoths and Mastodons: Titans of the Ice Age''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Mammoths and Mastodons: Titans of the Ice Age,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Field Museum, Chicago, IL, from on or about March 5, 2010, until on or about September 6, 2010; at the Liberty Science Center, Jersey City, NJ, from on or about October 16, 2010, until on or about January 9, 2011; at the Houston Museum of Natural Science, Houston, TX, from on or about February 19, 2011, until on or about May 30, 2011; at the Missouri History Museum, St. Louis, MO, from on or about November 25, 2011, until on or about April 15, 2012; at the Anchorage Museum, Anchorage, AK, from on or about May 26, 2012, until on or about September 3, 2012; at the Museum of Science, Boston, MA, from on or about October 13, 2012, until on or about January 13, 2013; at the Denver Museum of Nature & Science, Denver, CO, from on or about February 15, 2013, until on or about May 27, 2013; at the San Diego Natural History Museum, San Diego, CA, from on or about July 4, 2013, until on or about October 6, 2013; and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* 202/632–6473). The address is U.S. Department of State, SA–5, L/PD, Fifth Floor, Washington, DC 20522–0505.

Dated: December 8, 2009.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E9–29819 Filed 12–14–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending November 28, 2009

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq.*).

The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2009–0310.

Date Filed: November 24, 2009.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 23, 2009.

Description: Application of Jin Air Company, Limited ''Jin Air'' requesting an exemption and foreign air carrier permit authorizing Jin Air to engage in scheduled foreign air transportation of persons, property and mail between

Seoul, Republic of Korea, on the one hand, and the United States territory of Guam, on the other hand. Jin Air also requests authority to operate charters.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E9–29774 Filed 12–14–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending November 21, 2009

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2007–27718.

Date Filed: November 17, 2009.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 8, 2009.

Description: Application of Insel Air International B.V. requesting an amendment of its foreign air carrier permit to allow it to engage in scheduled air transportation of persons, property, and mail from points behind the Netherlands Antilles, via the Netherlands Antilles and intermediate points, to points in the United States and beyond, to the full extent permitted by the US-Netherlands Antilles Air Transport Agreement. Insel Air also requests exemption authority so that it may exercise the rights requested in this application prior to the issuance of an amended foreign air carrier permit.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E9–29780 Filed 12–14–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending November 21, 2009

The following Agreements were filed with the Department of Transportation under Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2009–0297.

Date Filed: Novermber 16, 2009.

Parties: Members of the International Air Transport Association.

Subject: PTC COMP, Resolution 024e, Rules for Payment of Local Currency Fares, (Memo 1552), *Intended effective date:* 15 December 2009.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E9–29773 Filed 12–14–09; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings; Agreements Filed the Week Ending November 28, 2009

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2009–0312.

Date Filed: November 27, 2009.

Parties: Members of the International Air Transport Association.

Subject: TC3 Japan-Korea, Expedited Resolution 002ma, (Memo 1326), Intended effective date: 15 January 2010.

Docket Number: DOT–OST–2009–0313.

Date Filed: November 27, 2009.

Parties: Members of the International Air Transport Association.

Subject: TC3 Japan, Korea—South Asian Subcontinent Expedited, Resolution 002L, (Memo 1327), Intended effective date: 15 January 2010.

Docket Number: DOT–OST–2009–0314.

Date Filed: November 27, 2009.

Parties: Members of the International Air Transport Association.

Subject: TC3 Japan, Korea—South East Asia (except between Korea (Rep. of) and Guam, Northern Mariana Islands) Expedited Resolution 002k, (Memo 1328), Intended effective date: 15 January 2010.

Docket Number: DOT–OST–2009–0315.

Date Filed: November 27, 2009.

Parties: Members of the International Air Transport Association

Subject: TC3 Japan, Korea—South East Asia between Korea (Rep. of) and Guam, Northern Mariana Islands Resolution 002kk (Memo 1329), Intended effective date: 15 January 2010.

Docket Number: DOT–OST–2009–0316.

Date Filed: November 27, 2009.

Parties: Members of the International Air Transport Association.

Subject: TC3 Within South East Asia (except between Malaysia and Guam) Expedited Resolution 002bi, (Memo 1330), *Intended effective date:* 15 January 2010.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E9–29776 Filed 12–14–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Office of the Secretary; Privacy Act of 1974: System of Records

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice to modify a system of records.

SUMMARY: DOT proposes to modify a system of records under the Privacy Act of 1974. The system is FMCSA's Motor Carrier Management Information System (MCMIS), which is updated to include new processes and extractions of sensitive data to implement a change that alters the purpose for which the information is used and an addition of a routine use. This system would not duplicate any other DOT system of records.

DATES: *Effective Date:* This notice will be effective, without further notice, on January 25, 2010, unless modified by a subsequent notice to incorporate comments received by the public. Comments must be received by January 14, 2010 to be assured consideration.

ADDRESSES: Send comments to Habib Azarsina, Departmental Privacy Officer, S–80, United States Department of Transportation, Office of the Secretary of Transportation, 1200 New Jersey Avenue, SE., Washington DC 20590 or *habib.azarsina@dot.gov.*

FOR FURTHER INFORMATION CONTACT: Habib Azarsina, Departmental Privacy Officer, S–80, United States Department of Transportation, Office of the Secretary of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone 202.366.1965, or *habib.azarsina@dot.gov.*

SUPPLEMENTARY INFORMATION: The DOT system of records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, as proposed to be modified, is available from the above mentioned address and appears below:

DOT/FMCSA 001

SYSTEM NAME:

Motor Carrier Management Information System (MCMIS).

SECURITY CLASSIFICATION:

Unclassified, Sensitive.

SYSTEM LOCATION:

Volpe National Transportation Systems Center, U.S. Department of Transportation, 55 Broadway, Cambridge, MA 02142.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM OF RECORDS:

1. Individuals who are the sole proprietor/driver (owner/operator) of a motor carrier or hazardous material shipper subject to Federal Motor Carrier Safety Regulations.

2. Drivers of commercial motor vehicles who:

- Were involved in a recordable crash;
- Were the subject of a roadside driver/vehicle inspection; or
- Are the subjects of an investigatory action.

CATEGORIES OF RECORDS IN MCMIS:

MCMIS stores the following types of information:

- *Census Files*—These files contain the USDOT number, carrier identification, carrier address, type and size of operation, commodities carried, and other characteristics of the operation for interstate (and some intrastate) motor carriers, intermodal equipment providers, cargo tank facilities, and shippers. They include motor carrier PII consisting of social security numbers (SSN) and employee identification numbers (EIN).
- *Investigatory Files*—These files contain results of safety audits, compliance review investigations, and enforcement actions conducted by Federal, State, and local law enforcement agencies. They include driver and co-driver PII consisting of SSN and EIN.
- *Driver/Vehicle Safety Violations and Inspection Data*—This data is collected during roadside inspections of drivers and vehicles and includes driver and co-driver PII consisting of names, dates of birth, vehicle license plate numbers, and State driver's license numbers.
- *Crash Data*—This data is collected from State and local police crash reports and includes driver and co-driver PII consisting of names, dates of birth, vehicle license plate numbers, and State driver's license numbers.

MCMIS SHARES PII WITH THE FOLLOWING FMCSA SYSTEMS OR SYSTEM COMPONENTS:

- *Driver Information Resource (DIR)*—The DIR creates a driver profile using MCMIS crash data from the past five years and inspection data from the past three years. This profile shows PII data for the driver regardless of the employing carrier. The DIR also includes driver/vehicle safety violations and inspection data per the PSP description below. Access is restricted to FMCSA staff, FMCSA contractors and Motor Carrier Safety Assistance Program (MCSAP) State lead agencies.
- *Pre-Employment Screening System (PSP)*—The specific objectives of the PSP are aligned with the requirements of 49 U.S.C. 31150. The PSP will provide driver crash and inspection records from the DIR to requesting motor carriers that have a driver's consent. The PSP also allows a sole proprietor (owner/operator) to review his/her own driver-related data in the DIR.
- *Driver Safety Measurement System (DSMS)*—FMCSA utilizes MCMIS data in the DSMS to support the Comprehensive Safety Analysis 2010 (CSA 2010) initiative and its operational model test. The DSMS uses driver/vehicle safety violations and inspection data and crash data to evaluate the safety performance of Commercial Motor Vehicle (CMV) drivers in seven categories. Access is restricted to FMCSA enforcement personnel, FMCSA Headquarters (HQ) staff and MCSAP State lead agencies.
- *Carrier Safety Measurement System (CSMS)*—FMCSA utilizes MCMIS data in the CSMS to support the CSA 2010 initiative and its operational model test. The CSMS uses driver/vehicle safety violations and inspection data and crash data to evaluate the safety of motor carriers. Access is restricted to FMCSA enforcement, Federal and local law enforcement personnel, FMCSA HQ staff, MCSAP State lead agencies and law enforcement agencies that are FMCSA grantees. The objective of CSMS is to provide an assessment of a carrier's regulatory compliance and safety performance.
- *Safety Fitness Electronic Records (SAFER)*—The SAFER Web site receives MCMIS driver/vehicle safety violations and inspection data and census data on a daily basis for report generation. Although SAFER receives driver-related PII from MCMIS, SAFER reports for the public users and enforcement officers contain no PII. The driver-related PII from MCMIS is included on the Company Safety Profile reports that are requested by commercial motor carriers for their company.
- *Enforcement Management Information System (EMIS)*—The EMIS is a Web-based application *https://emis.fmcsa.dot.gov/* used to monitor, track, and store information related to FMCSA enforcement actions. It manages and tracks all enforcement actions associated with notifying the carrier, monitoring the carrier's response, determining whether further compliance action is required, and generating reports for various FMCSA Headquarters, FMCSA Service Center, and FMCSA Division staff. It is the authoritative source for FMCSA enforcement data. EMIS imports census files, investigatory files, driver/vehicle safety violations and inspection data, and crash data from MCMIS for the purpose of automatically initiating UNFIT/UNSATISFACTORY cases within EMIS resulting from Safety Rating letters generated by MCMIS.
- *Analysis & information (A&I) Online*—The A&I is a Web-based tool designed to provide quick and efficient access to descriptive statistics and analyses regarding commercial vehicle, driver, and carrier safety information. It is used by Federal, State and local law enforcement personnel, the motor carrier industry, insurance companies, and the general public. A&I imports census files, investigatory files, driver/vehicle safety violations and inspection data, and crash data from MCMIS for the purpose of processing a monthly data snapshot of the MCMIS database.
- *ProVu*—ProVu is a viewer that allows Federal and State enforcement personnel and the motor carrier industry to electronically view standard motor carrier safety profile reports available from the FMCSA. ProVu imports driver/vehicle safety violations and inspection data and crash data in a standard report exported from MCMIS

for the purpose of generating Company Safety Profile reports.

• *Compliance Analysis and Performance Review Information (CAPRI)*—CAPRI is used by Federal and State enforcement personnel when conducting compliance reviews and safety audits, specialized cargo tank facility reviews, and hazardous material (HM) shipper reviews. CAPRI includes worksheets for collecting census files, investigatory files, driver/vehicle safety violations and inspection data, and crash data from MCMIS to track (1) hours of service, (2) driver qualifications, and (3) drug and alcohol compliance. It also creates the preliminary carrier safety fitness rating and various reports for motor carriers.

• *McQuery*—The MCMIS database is copied into McQuery, creating an exact image of the MCMIS database. The data in McQuery is used for responding to Freedom of Information Act (FOIA) requests and other requests for public information, generating special data requests for FMCSA, and supporting the operations of FMCSA.

• *GOTHAM*—GOTHAM is an internal FMCSA analysis system that utilizes selected extracts of MCMIS data and is only accessible through the DOT/FMCSA Intranet. GOTHAM imports census files, investigatory files, driver/vehicle safety violations and inspection data, and crash data from MCMIS for the purpose of delivering standard reports via the Intranet.

MCMIS SHARES NON-PII WITH THE FOLLOWING FMCSA SYSTEMS OR SYSTEM COMPONENTS:

• *Query Central (QC)*—QC is a secure Web application that provides Federal and State safety enforcement personnel with a single location where they can enter one query and obtain targeted safety data on commercial motor vehicle (CMV) carriers, vehicles, and drivers from multiple sources in FMCSA and Customs and Border Patrol. QC does not maintain a database of its own, but instead pulls data from the authoritative sources in real-time. QC utilizes MCMIS to verify carrier information. However, QC does not import or use privacy-related information on drivers from MCMIS.

• *Licensing and Insurance System (L&I)*—The L&I system is used to enter and display licensing and insurance information regarding authorized for-hire motor carriers, freight forwarders, and property brokers. It is the authoritative source for FMCSA licensing and insurance data. L&I is part of the registration process. L&I imports information from MCMIS as follows:

—Data about carriers that received unsatisfactory ratings;

—Data about Out-of-Service carriers; and

—USDOT numbers for synchronization with docket numbers.

• *Hazmat Registration (HMReg)*—HMReg exports data from MCMIS to the Pipeline and Hazardous Materials Safety Administration (PHMSA) database server in response to HAZMAT registration data requests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 502, 504, 506, 508, Chapter 139, 49 CFR 1.73, and Executive Order 9397.

PURPOSE(S):

To provide a central collection point for records on some intrastate motor carriers, interstate motor carriers, and hazardous material shippers in order to facilitate the analysis of the safety-related data required to administer and manage the agency's programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF USE:

• Information may be shared with Federal, State, local, and foreign government agencies for the purposes of enforcing motor carrier and Hazardous Materials shipper safety.

• Information may be accessed by Federal contractors involved in the system support and maintenance of MCMIS.

• Information may be shared with State lead agencies and other law enforcement grantees under the FMCSA Motor Carrier Safety Grant Program and Border Enforcement Grant program, which is a Federal grant program that provides financial assistance to States for the reduction in the frequency and severity of CMV crashes and hazardous materials incidents.

• Information may be shared with Federal, State, and local law enforcement programs to safeguard against and respond to the breach of personally identifiable information.

• In addition to those disclosures permitted under 5 U.S.C. 552a(b) of the Privacy Act, additional disclosures may be made in accordance with the DOT Prefatory Statement of General Routine Uses published at 65 FR 19476 (April 11, 2000).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

• *Storage*—MCMIS records are stored in an automated system operated and maintained at the Volpe National Transportation Systems Center (Volpe Center) in Cambridge, MA.

• *Retrievability*—Electronic records are retrieved through automated searches on key words or identifying information (*e.g.,* name, Social Security Number, Employer Identification Number, company name, trade name, and geographical location).

• *Accessibility (Including Safeguards)*—MCMIS access is managed by the Volpe Center. This facility has its own approved System Security Plan that requires the system to be maintained in a secure computer room with access restricted to authorized personnel. Access to the building is limited and requires users to provide a valid account name and password. MCMIS contains a usage tracking system for other authorized users. MCMIS requires users to change access control identifiers at periodic intervals.

• FMCSA operates MCMIS in accordance with the E-Government Act (Pub. L. 107–347), the Federal Information Security Management Act (FISMA) of 2002, and other required policies, procedures, practices, and security controls for implementing the Automated Information System Security Program. Only authorized Federal and State government personnel and contractors conducting system support or maintenance may access MCMIS records. Access to records is password protected, and the scope of access for each password is limited to the official need of each individual who is authorized access. The motor carriers have access to their registration information in MCMIS. Additional protection is afforded by the use of password security, data encryption, and a secure network.

• *Retention and Disposal*—The master files are logged and backed up. The master tape is retained in a secure offsite storage facility and then destroyed in accordance with applicable NARA retention schedule NI–557–05–07 item #5.

SYSTEM MANAGER CONTACT INFORMATION:

Heshmat Ansari, Ph.D.; Division Chief, IT Development Division; Office of Information Technology; Federal Motor Carrier Safety Administration; U.S. Department of Transportation; 1200 New Jersey Avenue SE.; W68–330; Washington, DC 20590.

NOTIFICATION PROCEDURE:

Individuals wishing to know if their records appear in this system may make a request in writing to the System Manager. The request must include the requester's name, mailing address, telephone number and/or e-mail

address, a description and the location of the records requested, and verification of identity (such as, a statement under penalty of perjury that the requester is the individual who he or she claims to be).

RECORD ACCESS PROCEDURES:

Individuals seeking to access their information in this system should apply to the System Manager by following the same procedure as indicated under ''Notification Procedure.''

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest their information in this system should apply to the System Manager by following the same procedure as indicated under ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

Driver information is obtained from roadside driver/vehicle inspections and crash reports submitted by State and local law enforcement agencies and from investigations performed by State and Federal investigators. State officials and FMCSA field offices forward safety information to MCMIS soon after it has been compiled and processed locally.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to subsection (k)(2) of the Privacy Act (5 USC 552a), portions of this system are exempt from the requirements of subsections (c)(3), (d), (e)(4)(G)–(I) and (f) of the Act, for the reasons stated in DOT's Privacy Act regulation (49 CFR Part 10, Appendix, Part II, at A.8.

Dated: December 8, 2009.

Habib Azarsina,

Departmental Privacy Officer.

[FR Doc. E9–29770 Filed 12–14–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–303 (Sub-No. 35X)]

Wisconsin Central Ltd.—Abandonment Exemption—in Outagamie County, WI

Wisconsin Central Ltd. (WCL),[1] has filed a verified notice of exemption under 49 CFR 1152 Subpart F–*Exempt Abandonments* to abandon its line of railroad between mileposts 111.0 and 112.9, a distance of 1.9 miles in Kaukauna, Outagamie County, WI. The line traverses United States Postal Service Zip Code 54130, and there are no stations on the line.

WCL has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 14, 2010, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 28, 2009. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 4, 2010, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to WCL's representative: Jeremy M. Berman, 29 N. Wacker Dr., Suite 920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

WCL has filed both an environmental report and a historic report that address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 18, 2009. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), WCL shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by WCL's filing of a notice of consummation by December 15, 2010, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at: *http://www.stb.dot.gov.*

Decided: December 8, 2009.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–29720 Filed 12–14–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program for Van Nuys Airport, Van Nuys, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by City of Los Angeles, Los Angeles World Airports under the provisions of 49 U.S.C. 47501 *et seq.* (formerly the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and 14 Code of Federal Regulations (CFR) part 150 (hereinafter referred to as ''Part 150'').

[1] WCL is a wholly owned subsidiary of Canadian National Railway Company.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,500. *See* 49 CFR 1002.2(f)(25).

On April 20, 2009, the FAA determined that the noise exposure maps submitted by Los Angeles World Airports under Part 150 were in compliance with applicable requirements. On October 16, 2009, the FAA approved the Van Nuys Airport noise compatibility program. Fifteen (15) of the thirty-five (35) total number of recommendations of the program were approved. No program elements relating to new or revised flight procedures for noise abatement were proposed by the airport operator.

DATES: *Effective Date:* The effective date of the FAA's approval of the Noise Compatibility Program for Van Nuys Airport is October 16, 2009.

FOR FURTHER INFORMATION CONTACT: Victor Globa, Environmental Protection Specialist, Federal Aviation Administration, Los Angeles Airports District Office, Mailing Address: P.O. Box 92007, Los Angeles, California 90009–2007. Street Address: 15000 Aviation Boulevard, Lawndale, California 90261. Telephone: 310/725–3637. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for Van Nuys Airport, effective October 16, 2009.

Under section 47504 of the Act, an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required. Prior to an FAA decision on a request to implement the action, an environmental review of the proposed action may be required. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under applicable law contained in Title 49 U.S.C. Where federal funding is sought, requests for project grants must be submitted to the FAA Los Angeles Airports District Office in the Western-Pacific Region.

The Van Nuys Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from July 16, 2008 to (or beyond) the year 2013. It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in section 47504 of the Act. The FAA began its review of the program on April 20, 2009, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 35 proposed actions for noise abatement, noise mitigation, land use planning and program management on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and Part 150 have been satisfied. The overall program was approved by the FAA, effective October 16, 2009.

FAA approval was granted for fifteen (15) specific program measures. The approved measures included such items as: [Measure #1] Airport Land Use Compatibility (ALUC) Plan; [Measure #16] Noise Roundtable; [Measure #18] Automated Feedback System; and [Measure #23] Noise Abatement Officer. One (1) measure; [Measure #11] Improved Communications [Helicopter Operations] was approved for improving means of communication; but disapproved for any changes to existing flight procedures not approved in the NCP and flight tracks; [Measure #14] Signage was approved for procedures already in effect at the airport; [Measure #3] Additional Development Within Impact Area is approved with respect to preventing the introduction of new housing but the portion of the measure that permits new noncompatible development within the DNL 65 dB, even with sound attenuation and/or easement is disapproved for purposes of Part 150 since it is inconsistent with the FAA's guidelines and 1998 policy; [Measure #17] Noise Management Monitoring System is approved for purposes of Part 150. Approval of this measure does not obligate the FAA to participate in funding the acquisition or installation of the permanent noise monitors and associated equipment. Note, for the purpose of aviation safety, this approval does not extend to the use of monitoring equipment for enforcement purposes by in-situ measurement of any pre-set noise thresholds; [Measure #5] Van Nuys Helicopter Policy is approved for study, however, the portion of the measure that recommends adoption of local plans and ordinances as necessary to regulate the establishment and operation of new helicopter landing facilities is disapproved; [Measure #12] Establish Noise Abatement and Departure Techniques for All Aircraft Departing Van Nuys was approved as a voluntary measure since the measure refers to the existing voluntary Fly Friendly program. Any changes to the voluntary nature of the Fly Friendly program or an adjustment to flight profiles is disapproved; [Measure #21] Marketing Policy has been approved as voluntary. Any mandatory enforcement of this

policy would constitute an airport noise and access restriction that may only be adopted after full compliance with the Airport Noise and Capacity Act of 1990, 49 U.S.C. 47524(b), and 14 CFR part 161;[Measure #13] Establish Noise Abatement and Departure Procedures was approved in part, as voluntary; disapproved in part pending compliance with 14 CFR part 161. The measure related to maintaining the existing flight procedure at the airport is approved as voluntary. Any changes to the voluntary nature of the Fly Friendly program or adjustments to flight profiles is disapproved; [Measure #19] Tenant Association has been approved in part. This approval does not extend to solutions or recommendations by the Tenant Association to existing operational procedures. These must be vetted through the FAA to determine their impacts on aviation safety and efficiency; [Measure #2] Insulation and [Measure #22] Financial Assistance have been approved for homes or noncompatible development that was constructed or existed before October 1, 1998. Homes acoustically treated by the City of Los Angeles prior to approval of the Part 150 study cannot be made eligible for federal AIP or PFC funding.

FAA disapproved twenty (20) specific program measures. The disapproved measures included: [Measure #4] Construction and Capital Improvement was disapproved due to lack of quantifiable benefits identified and the FAA not being able to determine how the measure contributes to improving the noise environment around the airport; [Measure #6] West Side Operations was disapproved due to lack of quantitative analysis and the changes in altitudes would increase complexity for pilots and controllers; [Measure #7] Helicopter Training Facility was disapproved since the airport does not have authority to regulate numbers of operations; such action would be subject to analysis and approval under 14 CFR part 161. Also, the NCP does not provide sufficient information to determine that there would be a noise benefit; [Measure #8] Improve Use of Established [Helicopter] Routes was disapproved since the recommended Stagg Street arrival/departure procedure would create a safety hazard for FAA Air Traffic Control. It is also noted that the NCP states that an analysis of benefits was not conducted, and that it is not likely that benefits will occur within the CNEL noise contours of the official NEMs; [Measure #9] Bull Creek [Helicopter] Route to Balboa was disapproved since the 1991 Helicopter Study indicates a shift in helicopter traffic to Balboa Boulevard would require helicopters to fly over more residential areas and a school. Without current land use information, it is not possible to tell whether new noncompatible land uses would be impacted or benefitted should the route be shifted; [Measure #10] [Altitude of] Public Service [Helicopter] Fleets was disapproved since aircraft altitudes may not be established by local ordinance. Any study of possible changes to the airspace in the vicinity of Van Nuys Airport must be conducted in consultation with the FAA's Air Traffic Organization because of the potential impacts on airspace service and efficiency. Should a study recommend changes in altitude that are demonstrated to be safe, they may be submitted for approval in 14 CFR part 150; [Measure #15] Runway Policy—Full Length Departure was disapproved since there is no analysis to demonstrate the measure's noise benefits and the FAA cannot determine how the measure contributes to improving the noise environment around the Airport. This disapproval does not prohibit or discourage continuation of exiting practices to use the full runway length outside the Part 150 program; [Measure #20] Automatic Terminal Information Service (ATIS) Message was disapproved since FAA Order 7110.65 Air Traffic Control, no longer provides for noise abatement advisories; [Measure #24] Noise Abatement Information was disapproved since noise abatement procedures are airport specific and must be evaluated for effectiveness at individual airports. Any new procedures proposed for noise mitigation at VNY may not be implemented prior to conducting a study to determine whether they can be implemented safely and efficiently, and whether they are noise beneficial; [Measure #25] Raising Burbank (Bob Hope Airport) Glideslope was disapproved since the FAA has concerns regarding the ''ripple'' effect the change to the glideslope would cause within the Southern California Terminal Radar Control (TRACON) airspace around VNY. Traffic is already constrained by multiple regulated airspace areas and high terrain nearby. Raising the glideslope at Bob Hope Airport would require additional changes to vertical altitude for separation changes. This will create the loss of significant designated altitude when there is an aircraft executing the Instrument Landing System to Bob Hope Airport. Loss of any altitude will be detrimental to air traffic operations in the vicinity; [Measure #27] Air Traffic Control Tower (ATC) was disapproved since specific standards must be met prior to extending the hours of operation at any ATC facility. FAA does not enforce locally enacted noise rules. Keeping the tower open solely for the purpose of noise abatement does not meet these criteria; [Measure #26] Lease Policy which was disapproved for purposes of Part 150 since the NCP analysis includes very little information on the measure. The measure appears to apply only to jet aircraft, which could be unjustly discriminatory and it does not discuss potential impacts on owners of non-staged, Stage 1 and other non-Stage 2 aircraft; [Measure #28] Aircraft ''N'' Numbers were disapproved for purposes of Part 150 since there is insufficient information to demonstrate a measurable noise benefit; [Measure #29] Incentives and Disincentives in Rental Rates was disapproved since the proposed measure could constitute an airport noise and access restriction that may only be adopted after full compliance with the Airport Noise and Capacity Act of 1990, 49 U.S.C. 47521 et seq., and 14 CFR part 161; [Measure #30] Incentives and Disincentives in Landing Fees was disapproved since the proposed measure could constitute an airport noise and access restriction that may only be adopted after full compliance with the Airport Noise and Capacity Act of 1990 (ANCA), and 14 CFR part 161; [Measure #31] Expansion of Fines was disapproved since the measure proposes to expand fines to mandate compliance with a voluntary Fly Friendly program that constitutes an airport noise and access restriction that may only be adopted after full compliance with the Airport Noise and Capacity Act of 1990 (ANCA), 49 U.S.C. 47524(b), and 14 CFR part 161; [Measure #32] Maximum Daytime Noise Limits was disapproved since the NCP does not quantify noise benefits derived from implementing this measure and this measure constitutes an airport noise and access restriction that may only be adopted after full compliance with the Airport Noise and Capacity Act of 1990 (ANCA), and 14 CFR part 161. The completed Part 161 analysis may be submitted for FAA reconsideration of this measure under Part 150 if an FAA determination under Part 150 is being sought; [Measure #33] Limit on Stage 3 Jets was disapproved since the NCP does not quantify the noise benefits and this measure constitutes an airport noise and access restriction that may only be adopted after full compliance with the Airport Noise and Capacity Act of 1990 (ANCA), and 14 CFR part 161. The completed Part 161 analysis may be

submitted for FAA reconsideration of this measure under Part 150 if an FAA determination under Part 150 is being sought; [Measure #34] Expansion of Curfew was disapproved since the NCP does not quantify the noise benefits and this measure constitutes an airport noise and access restriction that may only be adopted after full compliance with the Airport Noise and Capacity Act of 1990 (ANCA), and 14 CFR part 161. The completed Part 161 analysis may be submitted for FAA reconsideration of this measure under Part 150 if an FAA determination under Part 150 is being sought; and [Measure #35] Cap/Phase-Out of Helicopters was disapproved since the NCP does not quantify the noise benefits and this measure constitutes an airport noise and access restriction that may only be adopted after full compliance with the Airport Noise and Capacity Act of 1990, and 14 CFR part 161. The completed Part 161 analysis may be submitted for FAA reconsideration of this measure under Part 150 if an FAA determination under Part 150 is being sought. These determinations are set forth in detail in a Record of Approval signed by the Associate Administrator for Airports (ARP–1) on October 16, 2009. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the City of Los Angeles, Los Angeles World Airports.

The Record of Approval also will be available on-line at: *http://www.faa.gov/airports_airtraffic/airports/environmental/airport_noise/part_150/states/.*

Issued in Hawthorne on December 4, 2009.

Mark A. McClardy

Manager, Airports Division, Western-Pacific Region.

[FR Doc. E9–29755 Filed 12–14–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Availability regarding a Finding of No Significant Impact (FONSI): K Street, 24th Street, NW., to 7th Street, NW., Washington, DC.

SUMMARY: The FHWA, in coordination with the District Department of Transportation (DDOT), is issuing a Finding of No Significant Impact (FONSI) for improvements to the K Street Corridor in northwest Washington, DC to efficiently accommodate multi-modal travel, including an exclusive transitway within a portion of the existing street right-of-way.

FOR FURTHER INFORMATION CONTACT: Federal Highway Administration, District of Columbia Division: Mr. Michael Hicks, Environmental/Urban Engineer, 1900 K Street, Suite 510, Washington, DC 20006–1103, Telephone number 202–219–3513, e-mail: *michael.hicks@dot.gov;* or Mr. Faisal Hameed, Program Manager, Project Development & Environment, Transportation Policy & Planning Administration, District Department of Transportation, 2000 14th Street, NW., 7th Floor, Washington, DC 20009, Regular Office Hours 8:30 a.m. to 4:30 p.m., Telephone number 202–671–2326, e-mail: *faisal.hameed@dc.gov.*

SUPPLEMENTARY INFORMATION: The FHWA, in coordination with DDOT, is issuing a FONSI for the preferred alternative, Alternative 2, as identified in the Final Environmental Assessment for K Street, 24th Street, NW., to 7th Street, NW., Washington, DC. This project would reconstruct existing K Street to provide an exclusive two-way, two-lane, center transitway, flanked by medians on either side that include bus platforms, and three general purpose lanes in each direction. Parking and loading would be accommodated in the curb lanes during off-peak hours. Bicycles would be accommodated in the curb lanes. The determination that the proposed undertaking will not have a significant impact on the environment has been made pursuant to the Council on Environmental Quality's regulations (40 CFR 1500) for implementing the National Environmental Policy Act.

Electronic Access

An electronic copy of this document may be downloaded, using a computer, modem and suitable communications software, from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's Web site at: *http://www.access.gpo.gov/nara.*

The FONSI will be available for public review at: *http://www.fhwa.dot.gov/dcdiv/projects.htm* or *http://www.ddot.dc.gov/kstreetEA.*

Authority: 23 U.S.C. 315; 49 CFR 1.48

Mark Kehrli,

Division Administrator.

[FR Doc. E9–29771 Filed 12–14–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Final FAA Decision on Proposed Airport Access Restriction

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The Airport Noise and Capacity Act of 1990 (hereinafter referred to as ''the Act'' or ''ANCA'') provides notice, review, and approval requirements for airports seeking to impose noise or access restrictions on Stage 3 aircraft operations that become effective after October 1, 1990. 49 U.S.C. 47521 *et seq.*

The Federal Aviation Administration (FAA) announces that it has disapproved the application for an airport noise and access restriction submitted by the Burbank Glendale Pasadena Airport Authority (BGPAA) for Bob Hope Airport (BUR) under the provisions of 49 U.S.C. 47524 of the ANCA, and 14 CFR part 161. The FAA determined that the application does not provide substantial evidence the restriction meets the six statutory conditions for approval under ANCA and part 161. The FAA's decision was issued October 30, 2009.

DATES: *Effective Date:* The effective date of the FAA's decision on the application for a mandatory noise and access restriction at BUR is October 30, 2009. The FAA found the application was completed on May 5, 2009 (74 FR 29530). The FAA opened a docket for public comment (FAA–2009–0546). The FAA received nearly 150 separate comments, which were considered during the FAA's evaluation of the BGPAA application.

FOR FURTHER INFORMATION CONTACT: Victoria L. Catlett, Planning and Environmental Division, APP–400, 800 Independence Avenue, SW., Washington, DC 20591. E-mail address: *vicki.catlett@faa.gov.* Telephone number 202–267–8770.

SUPPLEMENTARY INFORMATION: On February 3, 2009, FAA received BGPAA's initial request for approval of a full, mandatory night-time curfew at Bob Hope Airport as described in the attached application. The application states ''Pursuant to FAR Part 161.311(d) the Authority is seeking a full, mandatory night-time curfew as described in the attached application. The [BGPAA] is not seeking any other alternative restriction.'' On March 5, 2009, FAA determined that the application was complete except for the

environmental documentation provided in support of a categorical exclusion under the National Environmental Policy Act (NEPA). By letter dated March 9, 2009, BGPAA stated its intent to supplement and resubmit the application. On May 5, 2009, FAA received BGPAA's supplemented application. On May 29, 2009, FAA determined BGPAA's application to be complete. Pursuant to 14 CFR 161.313(c)(4)(ii), the FAA's 180-day review period starts on the date of receipt of the last supplement to the application (May 5, 2009).

The FAA may only approve a restriction that demonstrates, by substantial evidence, each of the six statutory conditions have been met. 14 CFR part 161, § 161.305. These six statutory conditions of approval are: *Condition 1:* The restriction is reasonable, nonarbitrary, and nondiscriminatory; *Condition 2:* The restriction does not create an undue burden or interstate or foreign commerce; *Condition 3:* The proposed restriction maintains safe and efficient use of the navigable airspace; *Condition 4:* The proposed restriction does not conflict with any existing Federal statute or regulation; *Condition 5:* The applicant has provided adequate opportunity for public comment on the proposed restriction; and *Condition 6:* The proposed restriction does not create an undue burden on the national aviation system. The FAA evaluated BGPAA's application under the provisions of 14 CFR 161.317 and determined the application satisfies the requirements under Condition 4 and Condition 5. However, the application does not satisfy the requirements under Condition 1, Condition 2, Condition, 3, or Condition 6.

This notice also announces the availability of the FAA's final agency order disapproving the airport access restriction at *http://www.faa.gov/airports/*.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington DC on December 4, 2009.

Benito DeLeon,

Director, Office of Airport Planning and Programming.

[FR Doc. E9–29397 Filed 12–14–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2009–0170]

Highway Safety Programs; Conforming Products List of Screening Devices To Measure Alcohol in Bodily Fluids

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This Notice amends and updates the list of devices that conform to the Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids.

DATES: *Effective Date:* December 15, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. De Carlo Ciccel, Behavioral Research Division, NTI–131, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; *Telephone:* (202) 366–1694.

SUPPLEMENTARY INFORMATION: On August 2, 1994, NHTSA published Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids (59 FR 39382). These specifications established performance criteria and methods for testing alcohol screening devices to measure alcohol content. The specifications support State laws that target youthful offenders (*e.g.,* ''zero tolerance'' laws) and the Department of Transportation's workplace alcohol testing program. NHTSA published its first Conforming Products List (CPL) for screening devices on December 2, 1994 (59 FR 61923, with corrections on December 16, 1994 in 59 FR 65128), identifying the devices that meet NHTSA's Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids. Five devices appeared on that first list. Thereafter, NHTSA amended the CPL on August 15, 1995 (60 FR 42214) and on May 4, 2001 (66 FR 22639), adding 7 devices to the CPL in those two actions. On September 19, 2005, NHTSA published an updated CPL (70 FR 54972), adding several devices to the list and removing several other devices. Subsequently NHTSA discovered an error regarding the name of a device listed on the CPL and republished the CPL on December 5, 2005 (70 FR 72502) to correct the error. NHTSA last published an update to the CPL on January 31, 2007 (72 FR 4559), adding 3 new devices.

On March 31, 2008, NHTSA published revised Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids (73 FR 16956). These specifications removed testing of interpretive screening devices (ISDs) because ISDs did not provide an unambiguous test result. These specifications also removed from use the Breath Alcohol Sample Simulator as it is not necessary for testing breath alcohol screening devices. All other performance criteria and test methods were maintained.

Since the publication of the last CPL, NHTSA has evaluated additional devices at the Volpe National Transportation Systems Center (VNTSC) in Cambridge, Massachusetts, resulting in the addition of 14 new breath alcohol screening devices to the CPL. One device is being removed from the CPL as it is no longer supported or sold by the manufacturer and several devices are being renamed.

(1) AK Solutions USA, LLC, submitted 3 screening devices for testing, several trade name revisions, and the removal of 1 device from the CPL. The trade names of the new conforming devices are: AlcoMate AccuCell AL–9000, a handheld device with a fuel cell sensor; AlcoMate Premium AL–7000, a handheld device that utilizes replaceable semiconductor detectors, and AlcoMate Prestige (AL–6000), also a handheld device that utilizes replaceable semiconductor detectors. The replaceable detectors also conform to the model specifications and are specific to each device. Alcoscan AL–5000 is being removed from the list. This device is no longer being sold or supported by the manufacturer. The following three devices are being renamed: SafeMate (formerly known as AlcoChecker), SafeDrive (formerly known as AlcoKey), and AlcoMate Core (formerly known as Alcoscan AL–6000). (2) BAC Solutions, Inc., submitted a screening device for testing. The trade name for this device is BACmaster. This is a bench top stationary screening device with an infrared detector. (3) B.E.S.T. Labs, Inc., submitted a device for testing. The PB 9000e is a handheld device with a fuel cell sensor. (4) CMI, Inc., submitted a device for testing. This device, the Intoxilyzer 500, with a handheld fuel cell sensor conforms to the model specification for alcohol screening devices. This is the same device listed below as the Alcometer 500, distributed by Lion Laboratories, Ltd. (5) First Innovative Technology Group, Ltd., submitted a device, the AAT198 Pro. This is a handheld device with a semiconductor detector. (6) Guth Laboratories, Inc., submitted the Alcotector WAT90 for testing. This conforming device is handheld with a fuel cell sensor. (7) KHN Solutions, LLC, submitted 2 screening devices for

testing. Their trade names are: BACTRACK Select S50 and the BACTRACK Select S80 and both devices are handheld. The BACTRACK Select S50 has a semiconductor detector while the S80 has a fuel cell sensor. (8) Lion Laboratories, Ltd. submitted the Alcometer 500. This is the same device as the Intoxilyzer 500 submitted by CMI, Inc., listed above. (9) Q3 Innovations, Inc. submitted 2 screening devices for testing. The AlcoHAWK PT500 and the AlcoHAWK Slim 2 are handheld with semiconductor detectors. All of the above devices meet the NHTSA Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids.

Consistent with paragraphs (1) and (2) above, NHTSA amends the Conforming Products List of Screening Devices to Measure Alcohol in Bodily Fluids to read as follows:

CONFORMING PRODUCTS LIST OF ALCOHOL SCREENING DEVICES

Distributors/manufacturer	Devices
AK Solutions, USA, LLC., Palisades Park, New Jersey.[1]	• AlcoScan AL–2500. • SafeMate.[2] • SafeDrive. • AlcoMate.[3] (aka: AlcoHAWK Pro by Q3 Innovations). • AlcoMate Accu Cell AL–9000. • AlcoMate Pro.[3] • AlcoMate Core.[4] • AlcoMate Premium AL–7000, with replaceable Premium Sensor Modules (SM–7000).[4 5] • AlcoMate Prestige AL–6000, with replaceable Prestige Sensor Modules (SM–6000).[4 6]
Alco Check International, Hudsonville, Michigan	Alco Check 3000 D.O.T.[7] Alco Check 9000.[7]
Akers Biosciences, Inc., Thorofare, New Jersey	Breath Alcohol ✓ .02 Detection System.[8]
BAC Solutions, Inc., Birmingham, Michigan	BACmaster.
B.E.S.T. Labs., Boardman, Ohio	PB 9000e.
Chematics, Inc., North Webster, Indiana	ALCO–SCREEN 02™.[9]
CMI, Inc., Owensboro, Kentucky	Intoxilyzer 500 (aka: Alcometer 500—Lion Laboratories).
First Innovative Technology Group, Ltd., Hong Kong	AAT198—Pro.
Guth Laboratories, Inc., Harrisburg, Pennsylvania	• Alco Tector Mark X. • Mark X Alcohol Checker. • Alcotector WAT89EC–1. • Alcotector WAT90.
Han International Co., Ltd.,[2] Seoul, Korea	A.B.I. (Alcohol Breath Indicator) (aka: AlcoHAWK ABI by Q3 Innovations).
KHN Solutions, LLC, San Francisco, California	BACTRACK Select S50[10] BACTRACK Select S80.[10]
Lion Laboratories, Ltd., Wales, United Kingdom	Alcometer 500 (aka: Intoxilyzer 500—CMI, Inc.).
OraSure Technologies, Inc., Bethlehem, Pennsylvania	Q.E.D. A150 Saliva Alcohol Test.
PAS Systems International, Inc., Fredericksburg, Virginia	PAS Vr.
Q3 Innovations, Inc., Independence, Iowa	• AlcoHAWK Precision. • AlcoHAWK Slim. • AlcoHAWK Slim 2. • AlcoHAWK Elite. • AlcoHAWK ABI (aka: A.B.I. (Alcohol Breath Indicator) by Han Intl.). • AlcoHAWK Micro. • AlcoHAWK PRO (aka: AlcoMate by AK Solutions). • AlcoHAWK PT 500.
Repco Marketing, Inc., Raleigh, North Carolina	Alco Tec III.
Seju Engineering Co., Taejeon, Korea	Safe-Slim.
Sound Off, Inc., Hudsonville, Michigan	Digitox D.O.T.[7].
Varian, Inc., Lake Forest, California	On-Site Alcohol.[11]

[1] The AlcoMate was manufactured by Han International of Seoul, Korea, but marketed and sold in the U.S. by AK Solutions.

[2] Manufactured by Seju Engineering, Korea.

[3] Han International does not market or sell devices directly in the U.S. market. Other devices manufactured by Han International are listed under AK Solutions, Inc. and Q–3 Innovations, Inc.

[4] Manufactured by Sentech Korea Corp.

[5] These devices utilize replaceable semiconductor detectors. Instead of re-calibrating the device, a new calibrated detector can be installed. This device comes with 4 detectors including the one that was already installed.

[6] These devices utilize replaceable semiconductor detectors. Instead of re-calibrating the device, a new calibrated detector can be installed. This device comes with 5 detectors including the one that was already installed.

[7] While these devices are still being sold, they are no longer manufactured or supported.

[8] The Breath Alcohol ✓ .02 Detection System consists of a single-use disposable breath tube used in conjunction with an electronic analyzer that determines the test result. The electronic analyzer and the disposable breath tubes are lot specific and manufactured to remain calibrated throughout the shelf-life of the device. This screening device cannot be used after the expiration date.

[9] While the ALCO–SCREEN 02™ saliva-alcohol screening device manufactured by Chematics, Inc. passed the requirements of the Model Specifications when tested at 40 °C (104 °F), the manufacturer has indicated that the device cannot exceed storage temperatures of 27 °C (80 °F). Instructions to this effect are stated on all packaging accompanying the device. Accordingly, the device should not be stored at temperatures above 27 °C (80 °F). If the device is stored at or below 27 °C (80 °F) and used at higher temperatures (i.e., within a minute), the device meets the Model Specifications and the results persist for 10–15 minutes. If the device is stored at or below 27 °C (80 °F) and equilibrated at 40 °C (104 °F) for an hour prior to sample application, the device fails to meet the Model Specifications. Storage at temperatures above 27 °C (80 °F), for even brief periods of time, may result in false negative readings.

[10] Manufactured by DA Tech Co., Ltd., Korea.

[11] While this device passed all of the requirements of the Model Specifications, readings should be taken only after the time specified by the manufacturer. For valid readings, the user should follow the manufacturer's instructions. Readings should be taken one (1) minute after a sample is introduced at or above 30 °C (86 °F); readings should be taken after two (2) minutes at 18 °C–29 °C (64.4 ° − 84.2 °F); and readings should be taken after five (5) minutes when testing at temperatures at or below 17 °C (62.6 °F). If the reading is taken before five (5) minutes has elapsed under the cold conditions, the user is likely to obtain a reading that underestimates the actual saliva-alcohol level.

Authority: 23 U.S.C. 403; 49 CFR 1.50; 49 CFR part 501.

Issued on: November 18, 2009.

Jeff Michael,

Associate Administrator for the Office of Research and Program Development.

[FR Doc. E9–29822 Filed 12–14–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice for San Diego International Airport, San Diego, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by San Diego County Regional Airport Authority, for San Diego International Airport under the provisions of 49 U.S.C. 47501 *et. seq* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise exposure maps is November 10, 2009.

FOR FURTHER INFORMATION CONTACT: Victor Globa, Environmental Protection Specialist, Federal Aviation Administration, Los Angeles Airports District Office, Mailing Address: P.O. Box 92007, Los Angeles, California 90009–2007. Street Address: 15000 Aviation Boulevard, Hawthorne, California 90261. Telephone: 310/725–3637.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for San Diego International Airport are in compliance with applicable requirements of 14 Code of Federal Regulations (CFR) part 150 (hereinafter referred to as ''Part 150''), effective November 10, 2009. Under 49 U.S.C. section 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by San Diego County Regional Airport Authority. The documentation that constitutes the ''Noise Exposure Maps'' as defined in section 150.7 of Part 150 includes: Figure 2, Existing Condition (2009) Noise Exposure Map; Figure 3, Forecast Condition (2014) Noise Exposure Map; Figure 4, Comparison of Existing (2009) and Forecast (2014) Noise Exposure Maps; Figure 5, Existing SAN Airport Layout; Figure 6, Runway 9 Departure Arrival Tracks, Figure 7, Runway 27 Departure and Arrival Tracks; Figure 8, Helicopter Departure and Arrival Tracks; Table 3, Annual CNEL Measured at the RMT's; Table 4, Comparison of Annual CNEL-Measured and Modeled; Table 5, 2007 Aircraft Operations; Table 6, Existing (2009) Modeled Average Daily Aircraft Operations; Table 7, Forecast (2014) Modeled Average Daily Aircraft Operations; Table 8, Runway Utilization; Table 9, Number of Non-Residential Sensitive Receptors within 2009 and 2014 CNEL Contours; Table 10, Listing of Non-Residential Sensitive Receptors within 2009 and 2014 CNEL Contours; Table 11, Estimated Residential Population within 2009 and 2014 CNEL Contours; Table 12, Number of Single Family Homes Eligible for Sound Mitigation; Table 13, Number of Multi-Family Residential Units Eligible for Mitigation; Table 14, Noise Technical Advisory Group Members; Table 15, Noise Technical Advisory Group Meetings; Table 16, Community Information Workshops Content. The FAA has determined that these Noise Exposure Maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on November 10, 2009.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of Part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Western-Pacific Region Office, Airports Division, Room 3012, 15000 Aviation Boulevard, Hawthorne, California 90261.

Federal Aviation Administration, Los Angeles Airports District Office, Room 3000, 15000 Aviation Boulevard, Hawthorne, California 90261.

Mr. Dan Frazee, Director, Airport Noise Mitigation, San Diego County Regional Airport Authority, 3225 North Harbor Drive, San Diego, California 92101.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Hawthorne, California, December 4, 2009.

Mark A. McClardy,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. E9–29760 Filed 12–14–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In September 2009, there were seven applications approved. This notice also includes information on three applications, approved in August 2009, inadvertently left off the August 2009 notice. Additionally, 12 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of 158.29.

PFC Applications Approved

Public Agency: City of Kansas City, Missouri.

Application Number: 09–06–C–00–MCI.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $22,679,060.

Earliest Charge Effective Date: July 1, 2014.

Estimated Charge Expiration Date: June 1, 2015.

Classes of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enpianements at Kansas City International Airport (MCI).

Brief Description of Projects Approved for Collection at MCI and Use at MCI:

Terminal chilled water line and cooling tower replacement.
Airfield pavement rehabilitation.
New snow removal equipment.
Cargo apron rehabilitation.

Brief Description of Project Approved for Collection at MCI and Use at Charles B. Wheeler Downtown Airport: Runway 1/19 safety area extensions.

Brief Description of Project Partially Approved for Collection at MCI and Use at MCI: Snow removal equipment/aircraft rescue and firefighting vehicle maintenance facility.

Determination: Partially approved. The FAA determined that the existing facility included uses that were not PFC eligible. Therefore, only 14 percent of the cost of the building renovations was determined to be eligible.

Brief Description of Project Approved for Collection at MCI for Future Use at MCI: Airfield sand and deicing facility.

Brief Description of Project Partially Approved for Collection at MCI for Future Use at MCI: Airfield snow removal equipment building.

Determination: Partially approved. The public agency requested that this facility be funded solely with PFC revenue. However, the FAA's calculations on the minimum size and fleet make-up of the airport's snow removal fleet determined that only 32 of the 45 pieces of snow removal equipment (equaling 71 percent of the existing fleet) were PFC-eligible. Therefore, the approved PFC amount for this facility was limited to 71 percent of the total project cost.

Brief Description of Disapproved Project: Common use airfield waste facility.

Determination: Disapproved. The FAA determined that this project was not PFC eligible in accordance with § 158.15(b)(1).

Decision Date: August 13, 2009.

For Further Information Contact: Nicoletta Oliver, Central Region Airports Division, (816) 329–2642.

Public Agency: County and City of Yakima, Washington.

Application Number: 09–12–U–00–YKM.

Application Type: Use PFC revenue. *PFC Level:* $3.00.

Total PFC Revenue Approved in this Decision: $300,000.

Charge Effective Date: August 1, 2006.

Estimated Charge Expiration Date: April 1, 2011.

Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.

Brief Description of Project Approved for Use: Relocate South 16th Avenue/safety area service road.

Decision Date: August 27, 2009.

For Further Information Contact: Trang Tran, Seattle Airports District Office, (425) 227–1662.

Public Agency: County of Chemung, Horseheads, New York.

Application Number: 09–03–C–00–ELM.

Application Type: Impose and use a PFC. *PFC Level:* $4.50.

Total PFC Revenue Approved in this Decision: $2,080,342.

Earliest Charge Effective Date: March 1, 2010.

Estimated Charge Expiration Date: October 1, 2014.

Class of Air Carriers Not Required To Collect PFC's: Nonscheduled/on-demand carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enpianements at Elmira Corning Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Snow removal equipment.
Storm water drainage study.
Security fence.
Master plan update.
Airport sweeper.
Terminal renovations.
Terminal lighting improvements.
PFC application.
Passenger canopy.
Land acquisition environmental assessment and appraisals (north of Sing Sing Road/runway 24 runway protection zone).
Broom.

Brief Description of Projects Approved for Collection:

Design general aviation access.
Construct general aviation access.
Truck-mounted snow blower.
Master plan update in 2013.
Design snow removal equipment/maintenance building.
Construct snow removal equipment/maintenance building.

Brief Description of Projects Approved for Use:

Land acquisition (easement)—runways 10 and 28 runway protection zone.
Land acquisition (fee simple)—runway 24 runway protection zone.
Design runway 24 and taxiway A extensions.
Construct runway 24 and taxiway A extensions.

Brief Description of Disapproved Projects:

Design parking lot expansion.
Construct parking lot expansion.

Determination: Disapproved. The FAA determined that this project was not PFC eligible in accordance with § 158.15(b)(1).

Brief Description of Withdrawn Projects:

Design taxiways A, L, and D.
Construct taxiways A, L, and D.

Date of Withdrawal: August 30, 2009.

Decision Date: August 31, 2009.

For Further Information Contact: Andrew Brooks, New York Airports District Office, (516) 227–3816.

Public Agency: Town of Mammoth Lake, California.

Application Number: 09–02–C–00–MMH.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $399,917.

Earliest Charge Effective Date: November 1, 2009.

Estimated Charge Expiration Date: November 1, 2025.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Reconstruction of runway 09/27—phases I and II.
Acquire snow removal equipment.
Terminal building improvements.

Decision Date: September 8, 2009.

For Further Information Contact: Gretchen Kelly, San Francisco Airports District Office, (650) 876–2778, extension 623.

Public Agency: City of Flagstaff, Arizona.

Application Number: 09–02–C–00–FLG.

Application Type: Impose and use a PFC. *PFC Level:* $3.00.

Total PFC Revenue Approved in this Decision: $1,157,023.

Earliest Charge Effective Date: November 1, 2009.

Estimated Charge Expiration Date: February 1, 2015.

Class of Air Carriers Not Required To Collect PFC's: Nonscheduled/on-demand carriers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Flagstaff Pulliam Airport.

Brief Description of Project Approved for Collection and Use: Extend runway 03/21.

Decision Date: September 11, 2009.

For Further Information Contact: Darlene Williams, Los Angeles Airports District Office, (310) 725–3625.

Public Agency: City of San Angelo, Texas. *Application Number:* 09–08–C–00–SJT.

Application Type: Impose and use a PFC. *PFC Level:* $4.50.

Total PFC Revenue Approved in this Decision: $988,304.

Earliest Charge Effective Date: February 1, 2010.

Estimated Charge Expiration Date: August 1, 2014.

Class of Air Carriers Not Required To Collect PFC's: Nonscheduled/on-demand carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at San Angelo Regional Airport/Mathis Field.

Brief Description of Projects Approved for Collection and Use:

Taxiway B rehabilitation.
Overhead powerline relocation.
Terminal renovations.
PFC program application number 8.
Taxiways A, D, and H.
Security fencing improvements.
Acquire aircraft rescue and firefighting vehicle.
Update airport master plan and update airport layout plan.
Runway 3/21 rehabilitation.
Runway 9/27 rehabilitation.

Decision Date: September 16, 2009.

For Further Information Contact: Marcelino Sanchez, Texas Airports Development Office, (817) 222–5652.

Public Agency: Gallatin Airport Authority, Belgrade, Montana.

Application Number: 09–05–C–00–BZN.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $29,000,000.

Earliest Charge Effective Date: March 1, 2011.

Estimated Charge Expiration Date: March 1, 2029.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Gallatin Field.

Brief Description of Project Approved for Collection and Use: Terminal expansion.

Decision Date: September 17, 2009.

For Further Information Contact: Dave Stelling, Helena Airports District Office, (406) 449–5271.

Public Agency: Cities of Fort Collins and Loveland, Loveland, Colorado.

Application Number: 09–06–C–00–FNL.

Application Type: Impose and use a PFC. *PFC Level:* $4.50.

Total PFC Revenue Approved in this Decision: $350,000.

Earliest Charge Effective Date: June 1, 2010.

Estimated Charge Expiration Date: January 1, 2013.

Class of Air Carriers Not Required To Collect PFCs: None.

Brief Description of Projects Approved for Collection and Use:

Construct taxiway Al extension.
North airfield drainage improvements.
Wildlife assessment study.
Taxiway E grading and utility lowering.
Purchase snow removal equipment.
Security enhancements 3.
Taxiway E construction.
1–Hangar fencing.
T–Hangar pavement reconstruction.
Taxiway D pavement maintenance.
Purchase aircraft rescue and firefighting truck.
Rehabilitate airport rotating beacon.
Install airfield electrical vault backup generator.
Security enhancements 4.

Decision Date: September 18, 2009.

For Further Information Contact: Chris Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: County of Gunnison, Gunnison, Colorado.

Application Number: 09–05–C–00–GUC.

Application Type: Impose and use a PFC. *PFC Level:* $4.50.

Total PFC Revenue Approved in this Decision: $396,438.

Earliest Charge Effective Date: June 1, 2016.

Estimated Charge Expiration Date: April 1, 2019.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Conduct wildlife study.
Install airport beacon.
Rehabilitate commercial service apron.
Expand general aviation apron.
Rehabilitate general aviation apron.
Acquire aircraft rescue and firefighting vehicle.
Update airport layout plan.
Acquire snow removal equipment vehicles.
PFC administration.

Decision Date: September 23, 2009.

For Further Information Contact: Chris Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: Ports of Douglas County and Chelan County, East Wenatchee, Washington.

Application Number: 09–09–C–00–EAT.

Application Type: Impose and use a PFC. *PFC Level:* $4.50.

Total PFC Revenue Approved in this Decision: $105,268.

Earliest Charge Effective Date: February 1, 2010.

Estimated Charge Expiration Date: August 1, 2010.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Project Approved for Collection and Use:

Security fence phase II.
Fire station access road phase II.
Terminal design update phase II.
Taxiway B design phase I.
Terminal construction phase Ill.
Terminal construction phase IV.
Security gates/proximity locks.
Airpacs—aircraft rescue and firefighting.
Airport Way design and environmental assessment.

Decision Date: September 23, 2009.

For Further Information Contact: Trang Tran, Seattle Airports District Office, (425) 227–1662.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
05–09–C–01–MSP Minneapolis, MN	09/01/09	$7,315,783	$8,659,351	02/01/19	02/01/19
99–08–C–03–SJC San Jose, CA	09/09/09	$36,880,000	$36,628,580	04/01/03	04/01/03
92–01–C–01–FLG Flagstaff, AZ	09/10/09	$2,463,581	$1,775,294	01/01/15	11/01/09
95–03–C–02–PHX Phoenix, AZ	09/14/09	$106,966,000	$93,230,839	11/01/98	11/01/98
97–04–U–01–PHX Phoenix, AZ	09/14/09	NA	NA	11/01/98	11/01/98
03–01–C–01–MLU Monroe, LA	09/15/09	$452,224	$401,025	02/01/06	02/01/06
06–02–C–01–MLU Monroe, LA	09/15/09	$720,000	$413,444	09/01/07	09/01/07
04–04–C–01–GUC Gunnison, CO	09/23/09	$2,278,137	$1,691,864	06/01/14	06/01/16
06–03–C–01–BJI Bemidji, MN	09/23/09	$337,711	$790,324	05/01/08	01/01/14
02–04–C–01–BPT Beaumont, TX	09/23/09	$149,300	$116,051	04/01/07	09/01/05
02–05–C–01–BLI Bellingham, WA	09/23/09	$930,653	$926,873	10/01/06	10/01/06
06–07–C–01–BLI Bellingham, WA	09/23/09	$1,058,649	$1,058,549	11/01/07	11/01/07

Issued in Washington, DC, on December 4, 2009.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. E9–29566 Filed 12–14–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In October 2009, there were nine applications approved. This notice also includes information on six applications, approved in September 2009, inadvertently left off the September 2009 notice. Additionally, 15 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Burbank-Glendale-Pasadena Airport Authority, Burbank, California.

Application Number: 09–09–C–00–BUR.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $20,465,000.

Earliest Charge Effective Date: April 1, 2013.

Estimated Charge Expiration Date: January 1, 2025.

Class of Air Carriers Not Required To Collect PFCs: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Bob Hope Airport.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

Engineered material arresting system extension.
Airfield infrastructure improvements.
Aircraft rescue and firefighting vehicle.

Brief Description of Project Partially Approved for Collection and Use at a $4.50 PFC Level: Parking lot A relocation.

Determination: Partially approved for collection and use. The approval is limited to the cost associated with the removal and demolition, minus any salvage value, of the existing facility.

Brief Description of Projects Approved for Collection and Use at a $3.00 PFC Level:

Passenger improvements—terminal A baggage claim.
Airport facility/building improvements—high voltage/switchgear replacement and public address system upgrade.
Airport facility/building improvements—main entrance sign.
Airfield generator.
Noise monitoring system.

Brief Description of Project Partially Approved for Collection and Use at a $3.00 PFC Level: Information improvements—common use passenger processing system.

Determination: Revenue-producing equipment, including check-in ticket units and telephones, is not PFC eligible.

Brief Description of Project Approved for Use at a $450 PFC Level: Taxiway D extension.

Decision Date: September 28, 2009.

FOR FURTHER INFORMATION CONTACT: Darlene Williams, Los Angeles Airports District Office, (310) 725–3625.

Public Agency: Port of Pasco, Pasco, Washington.

Application Number: 09–07–C–00–PSC.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $2,884,950.

Earliest Charge Effective Date: November 1, 2013.

Estimated Charge Expiration Date: October 1, 2021.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Security access control system.
Terminal access road reconstruction.
Taxiway D reconstruction (runway 3L to taxiway A).
North end runway 12/30 rehabilitation.
Runway 3L/21 R rehabilitation.
Master plan study.
Acquire aircraft rescue and firefighting equipment.
Construct aircraft rescue and firefighting building.
Acquire interactive training system.
Runway 3L121R—12/30 intersection rehabilitation.
PFC administration.

Decision Date: September 29, 2009.

FOR FURTHER INFORMATION CONTACT: Trang Tran, Seattle Airports District Office, (425) 227–1662.

Public Agency: San Diego County Regional Airport Authority, San Diego, California.

Application Number: 09–07–C–00–SAN.

Application Type: Impose and use a PFC. *PFC Level:* $4.50.

Total PFC Revenue Approved in this Decision: $85,181,950.

Earliest Charge Effective Date: December 1, 2009.

Estimated Charge Expiration Date: October 1, 2012.

Class of Air Carriers Not Required To Collect PFC's: Non-scheduled/on demand air carriers (air taxi/commercial operators) filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at San Diego International Airport.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

Terminal improvements—gate 1A reconfiguration.
Air cargo ramp improvements.
Aircraft rescue and firefighting vehicle.
Noise mitigation—quieter home program, phase IV.
Terminal planning and schematic design.

Brief Description of Projects Approved for Collection and Use at a $3.00 PFC Level:

Expand terminal 2 east facilities.
Terminal 12 kV service upgrade—phase II.

Brief Description of Project Paritally Approved for Collection and Use at a $3.00 PFC Level: Replace/protect terminal 1 escalators.

Determination: Partially approved for collection and use. The FAA determined that the installation of video monitoring equipment at various locations within the escalator areas is not PFC-eligible because the purpose of the monitoring system is to allow airport personnel to monitor the operational efficiency of the escalators.

Brief Description of Withdrawn Project: Runway 9 displaced threshold relocation.

Date of Withdrawal: September 17, 2009.

Decision Date: September 30, 2009.

FOR FURTHER INFORMATION CONTACT: Darlene Williams, Los Angeles Airports District Office, (310) 725–3625.

Public Agency: County of Broward, Fort Lauderdale, Florida.

Application Number: 09–10–C–00–FLL.

Application Type: Impose and use a PFC. *PFC Level:* $4.50.

Total PFC Revenue Approved in this Decision: $223,211,000.

Earliest Charge Effective Date: October 1, 2012.

Estimated Charge Expiration Date: February 1, 2018.

Class of Air Carriers Not Required To Collect PFC's: Non-scheduled/on-demand air carriers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Fort Lauderdale—Hollywood International Airport.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

Relocate security gates.
Very-high-frequency omni-directional range relocation.
Security administration system.
Runway overlay.

Brief Description of Projects Partially Approved for Collection and Use at a $4.50 PFC Level: Terminal 4 redevelopment.

Determination: Partially approved for collection and use. The FAA determined that the construction of new airport administrative, Transportation Security Administration, and Customs offices is not PFC eligible. Terminal area apron.

Determination: Partially approved for collection and use. The FAA determined that the public agency did not provide justification for the inclusion of the hydrant fueling line item in this project. In addition, the cost estimate included an amount for design of the Concourse A project however the public agency did not include a description or justification of this work element in the PFC application. Therefore, PFC revenue may not be used for the hydrant fueling or design of Concourse A work elements.

Brief Description of Projects Approved for Collection and Use at a $3.00 PFC Level:

Runway 9R127L design and program management.
Loading bridges.
Apron lighting.

Decision Date: September 30, 2009.

FOR FURTHER INFORMATION CONTACT: Dean Stringer, Orlando Airports District Office, (407) 812–6331.

Public Agency: City of Killeen, Texas.

Application Number: 09–07–C–00–GRK.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $2,300,000.

Charge Effective Date: March 1, 2010.

Estimated Charge Expiration Date: February 1, 2013.

Class of Air Carriers Not Required To Collect PFC's: Part 135 charter operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Killeen—Fort Hood Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Taxiway E reconstruction.
Baggage handling system improvements and expansion.
Security system upgrade and expansion.
Procure disabled passenger lift.
Flight information systems upgrade.
Common use departure gate equipment upgrade.
Blast pad.
Drainage improvements.
Administrative expenses.

Decision Date: September 30, 2009.

FOR FURTHER INFORMATION CONTACT: Glenn Boles, Texas Airports Development Office, (817) 222–5661.

Public Agency: City of Waco, Texas.
Application Number: 09–04–C–00–ACT.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in this Decision: $790,163.
Earliest Charge Effective Date: December 1, 2009.
Estimated Charge Expiration Date: April 1, 2012.
Class of Air Carriers Not Required To Collect PFC's: Non-scheduled/on-demand air carriers filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Waco Regional Airport.
Brief Description of Projects Approved for Collection and Use:
Holdroom expansion.
Runways 14/32 and 1/19 safety area design and construction.
Install passenger loading bridges.
Acquire aircraft rescue and firefighting suits.
PFC preparation.
Decision Date: September 30, 2009.
FOR FURTHER INFORMATION CONTACT: Guillermo Villalobos, Texas Airports Development Office, (817) 222–5657.

Public Agency: State of Alaska/Department of Transportation and Public Facilities, Juneau, Alaska.
Application Number: 09–03–C–00–ANC.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in this Decision: $10,200,000.
Earliest Charge Effective Date: March 1, 2012.
Estimated Charge Expiration Date: July 1, 2015.
Class of Air Carriers Not Required To Collect PFC's: None.
Brief Description of Projects Approved for Collection and Use:
Acquire snow removal equipment.
Passenger terminal building renovations and upgrades.
Passenger terminal loading bridge replacement.
Apron reconstruction.
Decision Date: October 2, 2009.
FOR FURTHER INFORMATION CONTACT: Eric Helms, Alaska Region Airports Division, (907) 271–5202.

Public Agency: State of Hawaii, Honolulu, Hawaii.
Application Number: 09–04–C–00–HNL.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in this Decision: $105,909,130.
Earliest Charge Effective Date: January 1,2010.
Estimated Charge Expiration Date: February 1, 2014.
Class of Air Carriers Not Required To Collect PFC's: None.
Brief Description of Project Approved for Collection at Honolulu International Airport (HNL) and Use at Kahului Airport (OGG) at a $4.50 PFC Level: Taxiway A pavement improvements.
Brief Description of Project Approved for Collection at HNL and Use at OGG at a $3.00 PFC Level: Air cargo apron improvements, phase II.
Brief Description of Projects Approved for Collection at HNL and Use at HNL at a $4.50 PFC Level:
Taxiway Z structural improvements.
New airfield electrical vault.
Interisland maintenance facility site preparation.
Brief Description of Projects Approved for Collection at HNL and Use at HNL at a $3.00 PFC Level:
Electrical distributed generation system.
PFC administrative costs.
Decision Date: October 13, 2009.
FOR FURTHER INFORMATION CONTACT: Steve Wong, Honolulu Airports District Office, (808) 541–1225.

Public Agency: State of Hawaii, Honolulu, Hawaii.
Application Number: 09–04–C–00–OGG.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in this Decision: $24,663,770.
Earliest Charge Effective Date: January 1, 2010.
Estimated Charge Expiration Date: February 1, 2014.
Class of Air Carriers Not Required To Collect PFC's: None.
Brief Description of Project Approved for Collection at Kahului Airport (OGG) and Use at OGG at a $4.50 PFC Level: Taxiway A pavement improvements.
Brief Description of Project Approved for Collection at OGG and Use at OGG at a $3.00 PFC Level: Air cargo apron improvements, phase II.
Brief Description of Projects Approved for Collection at OGG and Use at Honolulu International Airport (HNL) at a $4.50 PFC Level:
Taxiway Z structural improvements.
New airfield electrical vault.
Interisland maintenance facility site preparation.
Brief Description of Projects Approved for Collection at OGG and Use at HNL at a $3.00 PFC Level:
Electrical distributed generation system.
PFC administrative costs.
Decision Date: October 13, 2009.
For Further Information Contact: Steve Wong, Honolulu Airports District Office, (808) 541–1225.
Public Agency: State of Hawaii, Honolulu, Hawaii.
Application Number: 09–04–C–00–KOA.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in this Decision: $7,254,050.
Earliest Charge Effective Date: January 1, 2010.
Estimated Charge Expiration Date: February 1, 2014.
Class of Air Carriers Not Required To Collect PFC's: None.
Brief Description of Project Approved for Collection at Kona International Airport at Keahole (KOA) and Use at Kahului Airport (OGG) at a $4.50 PFC Level: Taxiway A pavement improvements.
Brief Description of Project Approved for Collection at KOA and Use at OGG at a $3.00 PFC Level: Air cargo apron improvements, phase II.
Brief Description of Projects Approved for Collection at KOA and Use at Honolulu International Airport (HNL) at a $4.50 PFC Level:
Taxiway Z structural improvements.
New airfield electrical vault.
Interisland maintenance facility site preparation.
Brief Description of Projects Approved for Collection at KOA and Use at HNL at a $3.00 PFC Level:
Electrical distributed generation system.
PFC administrative costs.
Decision Date: October 13, 2009.
FOR FURTHER INFORMATION CONTACT: Steve Wong, Honolulu Airports District Office, (808) 541–1225.

Public Agency: State of Hawaii, Honolulu, Hawaii.
Application Number: 09–04–C–00–LIH.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in this Decision: $7,254,050.
Earliest Charge Effective Date: January 1, 2010.
Estimated Charge Expiration Date: February 1, 2014.
Class of Air Carriers Not Required To Collect PFC's: None.
Brief Description of Project Approved for Collection at Lihue Airport (LIH)

And Use at Kahului Airport (OGG) at a $4.50 PFC Level: Taxiway A pavement improvements.

Brief Description of Project Approved for Collection at LIH and Use at OGG at a $3.00 PFC Level: Air cargo apron improvements, phase II.

Brief Description of Projects Approved for Collection at LIH and Use at Honolulu International Airport (HNL) at a $4.50 PFC Level:

Taxiway Z structural improvements.
New airfield electrical vault.
Interisland maintenance facility site preparation.

Brief Description of Projects Approved for Collection at LIH and Use at HNL at a $3.00 PFC Level:

Electrical distributed generation system.
PFC administrative costs.

Decision Date: October 13, 2009.

FOR FURTHER INFORMATION CONTACT: Steve Wong, Honolulu Airports District Office, (808) 541–1225.

Public Agency: Lexington-Fayette Urban County Airport Board, Lexington, Kentucky.

Application Number: 09–07–C–00–LEX.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $37,400,347.

Earliest Charge Effective Date: August 1, 2022.

Estimated Charge Expiration Date: February 1, 2038.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Blue Grass Airport.

Brief Description of Projects Approved for Collection and Use:

Replace runway 8/26.
Taxiway D relocation.
Terminal curb-front improvements.
PFC application development.

Brief Description of Projects Partially Approved for Collection and Use: Sanitary sewer improvements.

Determination: Partially approved for collection and use. The approval is limited to that portion of the improvements that serves eligible areas or facilities. Terminal interior renovation phase II.

Determination: Partially approved for collection and use. The FAA determined that the replacement of the existing ceiling system and wall finishes were maintenance items and not eligible development. Therefore, costs associated with these two work items, including financing costs, were disallowed.

Decision Date: October 15, 2009.

FOR FURTHER INFORMATION CONTACT: Cynthia Wills, Memphis Airports District Office, (901) 322–8190.

Public Agency: Huntsville-Madison County Airport Authority, Huntsville, Alabama.

Application Number: 09–16–C–00–HSV.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $5,007,823.

Earliest Charge Effective Date: May 1, 2010.

Estimated Charge Expiration Date: May 1, 2012.

Classes of Air Carriers Not Required To Collect PFC's:

(1) Air taxi/commercial operators having fewer than 500 annual passenger enplanements; (2) certified air carriers having fewer than 500 annual passenger enplanements; and (3) certified route air carriers having fewer than 500 annual passenger enplanements.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Huntsville International Airport.

Brief Description of Projects Approved for Collection and Use:

Interactive training and workstations.
Western land.
Airfield/ramp rehabilitation.
Runway 18L136R overlay design and construction.
Personnel equipment and public safety radios.
Speed runway sweeper and airfield sweeper.
Master plan update.
Airfield erosion control phase I.
Runway 18R category II signage upgrade.
Group VI airfield improvements.
Snow plow vehicle.
New security system.
Snow equipment/storage.
Air traffic control tower relocation/connectivity.
Air cargo ramp expansion.

Decision Date: October 16, 2009.

FOR FURTHER INFORMATION CONTACT: Phillip Braden, Memphis Airports District Office, (901) 322–8181.

Public Agency: Greater Orlando Aviation Authority, Orlando, Florida.

Application Number: 09–13–C–00–MCO.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $227,788,000.

Earliest Charge Effective Date: November 1, 2020.

Estimated Charge Expiration Date: February 1, 2026.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Baggage system capacity improvements—phase I.
Landside terminal restroom improvements.
Automated people mover improvements.
Taxiway C rehabilitation.

Brief Description of Projects Partially Approved for Collection and Use: Common use self services and common use passenger processing systems improvements.

Determination: Partially approved for collection and use. Those kiosks which permit airlines to collect a fee for a ticket or service, upgrade, or any other collection of money from the passenger, is considered revenue producing and, thus, is not PFC eligible. Remote baggage screening facility improvements.

Determination: Partially approved for collection and use. A portion of the project, for which the public agency requested PFC funding was determined to be ineligible.

Decision Date: October 27, 2009.

FOR FURTHER INFORMATION CONTACT: Susan Moore, Orlando Airports District Office, (407) 812–6331.

Public Agency: City of Burlington, Vermont.

Application Number: 10–04–C–00–BTV.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $17,298,103.

Earliest Charge Effective Date: December 1, 2009.

Estimated Charge Expiration Date: March 1, 2014.

Class of Air Carriers Not Required To Collect PFC's: On demand air taxi commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Burlington International Airport.

Brief Description of Projects Approved for Collection and Use:

Expand and rehabilitate terminal building.

Extend roadway system.

South apron expansion.

Enclosed walkway.

Professional services.

Decision Date: October 28, 2009.

FOR FURTHER INFORMATION CONTACT: Priscilla Scott, New England Region Airports Division, (781) 238–7614.

AMENDMENTS TO PFC APPROVALS

Amendment No., City, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
04–04–C–01–MSL, Muscle Shoals, AL	09/24/09	$57,355	$54,730	04/01/09	04/01/09
08–09–C–01–VLD, Valdosta, GA	09/24/09	30,300	89,427	12/01/09	07/01/10
06–09–C–01–JAX, Jacksonville, FL	09/25/09	267,389,352	231,806,084	12/01/23	10/01/23
03–06–C–02–MLB, Melbourne, FL*	09/25/09	6,806,435	6,806,435	09/01/17	03/01/19
08–08–C–02–JNU, Juneau, AK	10/08/09	9,905,870	9,897,370	11/01/17	11/01/17
92–01–I–08–SRQ, Sarasota, FL	10/08/09	13,945,012	13,944,391	01/01/01	01/01/01
95–02–U–05–SRQ, Sarasota, FL	10/08/09	NA	NA	01/01/01	01/01/01
95–03–C–06–SRQ, Sarasota, FL	10/08/09	1,100,000	750,061	04/01/02	04/01/02
02–06–C–08–MSY, New Orleans, LA	10/13/09	271,336,494	271,336,494	12/01/17	09/01/18
04–07–C–04–MSY, New Orleans, LA	10/13/09	75,182,406	92,998,206	10/01/17	04/01/22
07–03–C–01–TRI, Blountville, TN	10/14/09	1,264,140	668,500	10/01/14	07/01/13
06–12–C–02–BNA, Nashville, TN*	10/15/09	21,671,262	11,400,201	02/01/11	10/01/10
98–05–C–01–PHX, Phoenix, AZ	10/16/09	193,445,920	147,875,677	04/01/02	04/01/02
02–06–C–01–PHX, Phoenix, AZ	10/16/09	221,402,900	208,085,801	11/01/05	11/01/05
03–04–C–01–TYR, Tyler, TX	10/26/09	2,140,662	1,437,855	02/01/17	10/01/11

Notes: The amendments denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Melbourne, FL and Nashville, TN, this change is effective on December 1, 2009.

Issued in Washington, DC, on December 9, 2009.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. E9–29772 Filed 12–14–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

CSX Transportation, Inc.

[Docket Number FRA–2007–26965]

The CSX Transportation, Inc. (CSXT) seeks an extension of the relief previously granted under Docket Number FRA–2007–26965. The original request granted conditional approval on January 18, 2008, for relief from the requirements of the Rules, Standards and Instructions, Title 49 CFR part 236, § 236.586—Daily or after trip test. Specifically, CSXT requested that a visual inspection not be required as part of the daily or after trip test performed on locomotives equipped with microprocessor equipment during a proposed test period. For purposes of most effective monitoring, clarity of the remaining required cab signal testing and associated record-keeping, as well as consistency with a similar request from another railroad, FRA granted CSXT relief from the requirement of performing the test prescribed by § 236.586 on microprocessor-based automatic cab signal, train stop, and train control systems for a 2-year test period.

Applicant's justification for the extension: Over the past 18 months, CSXT has not seen any notable increase or decrease in locomotive shoppings as a result of not performing a daily or after-trip test prior to entering equipped territory.

CSXT further request that they be allowed to conduct the currently required quarterly performance review on a semi-annual basis, with all other conditions of the January 18, 2007, letter to be abided with.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2007–26965) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the

document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on December 7, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–29764 Filed 12–14–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Union Pacific Railroad Company

[Docket Number FRAB2006B24646]

The Union Pacific Railroad Company (UP) seeks an extension of the relief previously granted under Docket Number FRA–2006–24646. The original request granted conditional approval on January 18, 2008, for relief from the requirements of the Rules, Standards and Instructions, Title 49 CFR part 236, § 236.586—Daily or after trip test. Specifically, UP sought to change the administration of the first sentence in paragraph (a) from Aintervals of not more than 2 months'' to ''intervals of not more than 92 days'' for all cab signal devices on locomotives operated on UP.

Applicant's justification for the extension: UP has been operating under the requirements set forth in the conditions of the original approval for the past 18 months and have had no adverse effects on the safety of operations. The extension will continue to maximize overall safety by performing maintenance in the best working environment with the highest skilled and best trained personnel, which can best be achieved by performing maintenance in conjunction with the 92-day periodic inspection.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2006–24646) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on December 7, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–29751 Filed 12–14–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Buckeye Municipal Airport under the provisions of 49 U.S.C. 47501 *et seq.* (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and 14 CFR part 150 by Town of Buckeye. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR Part 150 for Buckeye Municipal Airport were in compliance with applicable requirements, effective September 22, 2008 and **Federal Register** published February 25, 2009. The proposed noise compatibility program will be approved or disapproved on or before June 1, 2010.

DATES: *Effective Date:* The effective date of the start of FAA's review of the noise compatibility program is December 4, 2009. The public comment period ends February 1, 2010.

FOR FURTHER INFORMATION CONTACT: Roxana Hernandez, Los Angeles Airports District Office, Room 3000, 15000 Aviation Boulevard, Lawndale, CA 90261 and (310) 725–3614. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Buckeye Municipal Airport, which will be approved or disapproved on or before June 1, 2010. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has formally received the noise compatibility program for Buckeye Municipal Airport, effective on December 4, 2009. The airport operator has requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act. Preliminary review of the submitted material indicates that it conforms to FAR Part 150 requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before June 1, 2010.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety or create an undue burden on interstate or foreign commerce, and whether they are reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments relating to these factors, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Los Angeles Airports District Office, Room 3000, 15000 Aviation Boulevard, Lawndale, CA 90261.

Mr. Kimm Flatt, Airport Manager, Buckeye Municipal Airport, 3000 South Palo Verde Road, Buckeye, AZ 85326.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Hawthorne, California, on December 4, 2009.

Mark A. McClardy,

Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. E9–29759 Filed 12–14–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from the Association of American Railroads (WB463–12—10/05/09) for permission to use certain data from the Board's Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Scott Decker, (202) 245–0330.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–29756 Filed 12–14–09; 8:45 am]

BILLING CODE 4915–01–P

Federal Register

Tuesday,
December 15, 2009

Part II

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2008–0496; FRL–9091–7]

RIN 2060–A076

Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is adjusting the allowance system controlling U.S. consumption and production of hydrochlorofluorocarbons (HCFCs). This action allocates production and consumption allowances for HCFC–22 and HCFC–142b, as well as other HCFCs for which allowances were not allocated previously, for the control periods 2010–2014. This action also establishes baselines for HCFCs for which EPA had not established baselines previously. The HCFC allowance system is part of EPA's Clean Air Act program to phase out ozone-depleting substances to protect the stratospheric ozone layer. Protection of the stratospheric ozone layer helps reduce rates of skin cancer and cataracts, as well as other health and ecological effects. The U.S. is obligated under the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol) to limit HCFC consumption and production to a specific level and, using stepwise reductions, to decrease the specific level culminating in a complete HCFC phaseout in 2030. The next major milestone, to occur on January 1, 2010, is a 75 percent reduction from the aggregate U.S. HCFC baseline for production and consumption. The allowances allocated in this action ensure compliance with the international stepwise reduction, consistent with the 1990 Clean Air Act Amendments. In addition, this action amends the regulatory provisions concerning allowances for HCFC production for developing countries' basic domestic needs to be consistent with the September 2007 adjustments to the Montreal Protocol. Also, this action provides the Agency's interpretation of a self-effectuating ban on introduction into interstate commerce and use of HCFCs contained in section 605(a) of the Clean Air Act and amends existing regulatory provisions to facilitate implementation of the statutory requirements.

DATES: This rule is effective January 1, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2008–0496. All documents in the docket are listed on the *www.regulations.gov* Web site. 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 either electronically through *www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, 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.

FOR FURTHER INFORMATION CONTACT: Jeremy Arling by telephone at (202) 343–9055, or by e-mail at *arling.jeremy@epa.gov* or by mail at U.S. Environmental Protection Agency, Stratospheric Protection Division, Stratospheric Program Implementation Branch (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. For technical information, contact Staci Gatica at (202) 343–9469, or by e-mail at *gatica.staci@epa.gov* or by mail at U.S. Environmental Protection Agency, Stratospheric Protection Division, Stratospheric Program Implementation Branch (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. You may also visit the Ozone Depletion Web site of EPA's Stratospheric Protection Division at *www.epa.gov/ozone/strathome.html* for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and related topics.

SUPPLEMENTARY INFORMATION: Under the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol), as amended, the U.S. and other industrialized countries that are Parties to the Protocol have agreed to limit production and consumption of hydrochlorofluorocarbons (HCFCs), and to phase out production and consumption in a stepwise fashion over time, culminating in a general phaseout by 2020 while permitting a small amount of HCFC production and consumption to continue solely for servicing existing appliances until 2030. Title VI of the Clean Air Act Amendments of 1990 (CAAA of 1990) also mandates restrictions on HCFCs, culminating in a complete production and consumption phaseout in 2030. For purposes of both the Montreal Protocol and the Clean Air Act, ''consumption'' is defined as production plus imports minus exports. Sections 605 and 606 of the Clean Air Act authorize EPA to promulgate regulations to manage the consumption and production of HCFCs until the terminal phaseout. In 1993, EPA established a chemical-by-chemical, ''worst-first,'' approach to implement the Montreal Protocol's graduated phaseout in overall HCFC levels (58 FR 65018). Key concepts in the ''worst-first'' approach include ''distinguishing among HCFCs based on their ODP [ozone depletion potential] and phasing out use in new equipment prior to use for servicing existing equipment'' (58 FR 65026).[1] The consumption cap became effective in 1996, and HCFC consumption in the U.S. remained about 15 percent below the cap for the first two years. In 1998 and 1999, consumption rose to levels that approached the cap. On January 21, 2003, EPA established an allowance system for HCFCs (68 FR 2820), noting at that time that it would again pursue a notice-and-comment rulemaking to implement a 2010 stepwise reduction. EPA promulgated minor amendments to these regulations on June 17, 2004 (69 FR 34024), and July 20, 2006 (71 FR 41163).

This action implements the next step in the chemical-by-chemical phaseout the United States uses to meet its international obligations. Specifically, EPA is granting specified percentages of the consumption and production baselines for HCFC–141b, HCFC–22, and HCFC–142b for the control periods 2010–2014. This action also establishes company-by-company consumption and production baselines for other HCFCs and grants specified percentages of those baselines for the control periods 2010–2014. This action also amends the provisions for HCFC production allowances to meet the basic domestic needs of developing countries. In addition, EPA is providing its interpretation of a self-effectuating ban on introduction into interstate commerce and use of HCFCs, which is contained in section 605(a) of the Clean Air Act.

[1] The ozone depletion potential (ODP) is a number that refers to the amount of ozone depletion caused by a substance. It is the ratio of the impact on ozone of a chemical compared to the impact of a similar mass of CFC–11. Thus, the ODP of CFC–11 is defined to be 1.0. Other CFCs and HCFCs have ODPs ranging from 0.01 to 1.0.

Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register.** EPA is issuing this final rule under section 307(d)(1) of the Clean Air Act, which states: ''The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies.'' Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the policies underlying APA section 553(d) in making this rule effective on January 1, 2010. APA section 553(d) provides exceptions for any action that grants or recognizes an exemption or relieves a restriction or as otherwise provided by the agency for good cause found and published within the rule. This final rule relieves a restriction by authorizing the production and import of certain HCFCs in 2010 that would otherwise be prohibited under the existing regulations.

Abbreviations and Acronyms Used in This Document

AHRI—Air-Conditioning, Heating, and Refrigeration Institute
BDN—Basic Domestic Need
CAA—Clean Air Act
CAAA—Clean Air Act Amendments of 1990
CFC—Chlorofluorocarbon
EPA—Environmental Protection Agency
FDA—Food and Drug Administration
HCFC—Hydrochlorofluorocarbon
HFC—Hydrofluorocarbon
Montreal Protocol—*Montreal Protocol on Substances that Deplete the Ozone Layer*
MOP—Meeting of the Parties
MT—Metric Ton
NPRM—Notice of Proposed Rulemaking
ODP—Ozone Depletion Potential
ODS—Ozone-Depleting Substance
OEM—Original Equipment Manufacturer
Party—States and regional economic integration organizations that have consented to be bound by the *Montreal Protocol on Substances that Deplete the Ozone Layer*
SNAP—Significant New Alternatives Policy
TXV—Thermostatic Expansion Valve
UNEP—United Nations Environment Programme

Table of Contents

I. Regulated Entities

This rule will affect the following categories:

Category	NAICS code	SIC code	Examples of regulated entities
Industrial Gas Manufacturing	325120	2869	Fluorinated hydrocarbon gases manufacturers and reclaimers.
Other Chemical and Allied Products Merchant Wholesalers.	424690	5169	Chemical gases and compressed gases merchant wholesalers.
Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.	333415	3585	Air-Conditioning Equipment and Commercial and Industrial Refrigeration Equipment manufacturers.
Air-Conditioning Equipment and Supplies Merchant Wholesalers.	423730	5075	Air-conditioning (condensing unit, compressors) merchant wholesalers.
Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers.	423620	5064	Air-conditioning (room units) merchant wholesalers.
Plumbing, Heating, and Air-Conditioning Contractors	238220	1711, 7623	Central air-conditioning system and commercial refrigeration installation; HVAC contractors.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware potentially could be regulated by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business organization, or other entity is regulated by this action, you should carefully examine these regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. Background

A. How Does the Montreal Protocol Phase Out HCFCs?

The *Montreal Protocol on Substances that Deplete the Ozone Layer* is the international agreement aimed at reducing and eventually eliminating the production and consumption of

stratospheric ozone-depleting substances. The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 12, 1988. Congress then enacted, and President George H.W. Bush signed into law, the Clean Air Act Amendments of 1990 (CAAA of 1990), which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, Subchapter VI, to ensure that the United States could satisfy its obligations under the Montreal Protocol. Title VI includes restrictions on production, consumption, and use of ozone-depleting substances that are subject to acceleration if ''the Montreal Protocol is modified to include a schedule to control or reduce production, consumption, or use * * * more rapidly than the applicable schedule'' prescribed by the statute. Both the Montreal Protocol and the Clean Air Act define consumption as production plus imports minus exports.

In 1990, as part of the London Amendment to the Montreal Protocol, the Parties identified HCFCs as ''transitional substances'' to serve as temporary, lower-ODP substitutes for CFCs and other ODS. EPA similarly viewed HCFCs as ''important interim substitutes that will allow for the earliest possible phaseout of CFCs and other Class I substances [2]'' (58 FR 65026). In 1992, through the Copenhagen Amendment to the Montreal Protocol, the Parties created a detailed phaseout schedule for HCFCs beginning with a cap on consumption for industrialized (Article 2) Parties, a schedule to which the United States adheres. The consumption cap for each Article 2 Party was set at 3.1 percent (later tightened to 2.8 percent) of a Party's CFC consumption in 1989, plus a Party's consumption of HCFCs in 1989 (weighted on an ODP basis). Based on this formula, the HCFC consumption cap for the U.S. was 15,240 ODP-weighted metric tons, effective January 1, 1996. This became the U.S. consumption baseline for HCFCs.

The 1992 Copenhagen Amendment created a schedule with graduated reductions and the eventual phaseout of HCFC consumption (Copenhagen, 23–25 November, 1992, Decision IV/4). Prior to the 2007 adjustment, the schedule called for a 35 percent reduction of the consumption cap in 2004, followed by a 65 percent reduction in 2010, a 90 percent reduction in 2015, a 99.5 percent reduction in 2020 (restricting the remaining 0.5 percent of baseline to the servicing of existing refrigeration and air-conditioning equipment), with a total phaseout in 2030.

The Copenhagen Amendment did not cap HCFC production. In 1999, the Parties created a cap on production for Article 2 Parties through an amendment to the Montreal Protocol agreed by the Eleventh Meeting of the Parties (Beijing, 29 November–3 December 1999, Decision XI/5). The cap on production was set at the average of: (a) 1989 HCFC production plus 2.8 percent of 1989 CFC production, and (b) 1989 HCFC consumption plus 2.8 percent of 1989 CFC consumption. Based on this formula, the HCFC production cap for the U.S. was 15,537 ODP-weighted metric tons, effective January 1, 2004. This became the U.S. production baseline for HCFCs.

To further protect human health and the environment, the Parties to the Montreal Protocol adjusted the Montreal Protocol's phaseout schedule for HCFCs at the 19th Meeting of the Parties in September 2007. In accordance with Article 2(9)(d) of the Montreal Protocol, the adjustment to the phaseout schedule was effective on May 14, 2008.[3]

As a result of the 2007 Montreal Adjustment (reflected in Decision XIX/6), the United States and other industrialized countries are obligated to reduce HCFC production and consumption 75 percent below the established baseline by 2010, rather than 65 percent as was the previous requirement. The other milestones remain the same: 90 percent below the baseline by 2015, and 99.5 percent below the baseline by 2020—allowing, during 2020 to 2030, production and consumption at only 0.5 percent of baseline solely for servicing existing air-conditioning and refrigeration equipment. The adjustment also resulted in a phaseout schedule for HCFC production that parallels the consumption phaseout schedule. All production and consumption for Article 2 Parties is phased out by 2030.

Decision XIX/6 also adjusted the provisions for Parties operating under paragraph 1 of Article 5 (developing countries): (1) To set HCFC production and consumption baselines based on the average 2009–2010 production and consumption, respectively; (2) to freeze HCFC production and consumption at those baselines in 2013; and (3) to add stepwise reductions of 10 percent below baselines by 2015, 35 percent by 2020, 67.5 percent by 2025, and 97.5 percent by 2030—allowing, between 2030 and 2040, an annual average of no more than 2.5 percent to be produced or imported solely for servicing existing air-conditioning and refrigeration equipment. All production and consumption for Article 5 Parties is phased out by 2040.

In addition, Decision XIX/6 adjusted Article 2F to allow industrialized countries to produce ''up to 10 percent of baseline levels'' for export to Article 5 countries ''in order to satisfy basic domestic needs'' until 2020.[4] Paragraph

[2] Class I refers to the controlled substances listed in appendix A to 40 CFR part 82 subpart A. Class II refers to the controlled substances listed in appendix B to 40 CFR part 82 subpart A.

[3] Under Article 2(9)(d) of the Montreal Protocol, an adjustment enters into force six months from the date the depositary (the Ozone Secretariat) circulates it to the Parties. The depositary accepts all notifications and documents related to the Protocol and examines whether all formal requirements are met. In accordance with the procedure in Article 2(9)(d), the depositary communicated the adjustment to all Parties on November 14, 2007. The adjustment entered into force and become binding for all Parties on May 14, 2008.

[4] Paragraphs 4–6 of adjusted Article 2F read as follows:

4. Each Party shall ensure that for the twelve-month period commencing on 1 January 2010, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex C does not exceed, annually, twenty-five percent of the sum referred to in paragraph 1 of this Article. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the controlled substances in Group I of Annex C does not exceed, annually, twenty-five percent of the calculated level referred to in paragraph 2 of this Article. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten percent of its calculated level of production of the controlled substances in Group I of Annex C as referred to in paragraph 2.

5. Each Party shall ensure that for the twelve-month period commencing on 1 January 2015, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex C does not exceed, annually, ten percent of the sum referred to in paragraph 1 of this Article. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the controlled substances in Group I of Annex C does not exceed, annually, ten percent of the calculated level referred to in paragraph 2 of this Article. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten percent of its calculated level of production of the controlled substances in Group I of Annex C as referred to in paragraph 2.

6. Each Party shall ensure that for the twelve-month period commencing on 1 January 2020, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex C does not exceed zero. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the controlled substances in Group I of Annex C does not exceed zero. However:

i. Each Party may exceed that limit on consumption by up to zero point five percent of the sum referred to in paragraph 1 of this Article in any such twelve-month period ending before 1 January 2030, provided that such consumption shall be restricted to the servicing of refrigeration and air conditioning equipment existing on 1 January 2020;

14 of Decision XIX/6 notes that no later than 2015 the Parties would consider ''further reduction of production for basic domestic needs'' in 2020 and beyond. Under paragraph 13 of Decision XIX/6, the Parties will review in 2015 and 2025, respectively, the need for the ''servicing tails'' for industrialized and developing countries. The term ''servicing tail'' refers to an amount of HCFCs used to service existing equipment, such as certain types of air-conditioning and refrigeration appliances.

B. How Does the Clean Air Act Phase Out HCFCs?

The United States has chosen to implement the Montreal Protocol phaseout schedule on a chemical-by-chemical basis. In 1992, environmental and industry groups petitioned EPA to implement the required phaseout by eliminating the most ozone-depleting HCFCs first. Based on the available data at that time, EPA believed that the U.S. could meet, and possibly exceed, the required Montreal Protocol reductions through a chemical-by-chemical phaseout that employed a ''worst-first'' approach focusing on certain chemicals earlier than others. In 1993, as authorized by section 606 of the CAA, the U.S. established a phaseout schedule that eliminated HCFC–141b first and would greatly restrict HCFC–142b and HCFC–22 next, followed by restrictions on all other HCFCs and ultimately a complete phaseout (58 FR 15014, March 18, 1993; 58 FR 65018, December 10, 1993). EPA explained that its action modified the schedule contained in paragraphs (a) and (b) of section 605 (58 FR 65025). Paragraph (a) addresses use and introduction into interstate commerce, while paragraph (b) addresses production.

On January 21, 2003 (68 FR 2820), EPA promulgated regulations to ensure compliance with the first reduction milestone in the HCFC phaseout: the requirement that, by January 1, 2004, the U.S. reduce HCFC consumption by 35 percent and freeze HCFC production. In that rule EPA established chemical-specific consumption and production baselines for HCFC–141b, HCFC–22, and HCFC–142b. Section 601(2) states that EPA may select ''a representative calendar year'' to serve as the baseline for HCFCs. In the 2003 allocation rule, EPA concluded that because the entities eligible for allowances had differing production and import histories, no one year was representative for all companies. Therefore, EPA assigned an individual consumption baseline year to each company by selecting its highest ODP-weighted consumption year from among the years 1994 through 1997. EPA assigned individual production baseline years in the same manner. EPA also provided an exception allowing new entrants provided that they began importing after the end of 1997 but before April 5, 1999, the date the advanced notice of proposed rulemaking (ANPRM) was published. EPA believed that such small businesses might not have been aware of the impending rulemaking that would affect their ability to continue in the HCFC market.

The 2003 allocation rule apportioned production and consumption baselines to each company in amounts equal to the amounts in the company's highest ''production year'' or ''consumption year,'' as described above. It completely phased out the production and import of HCFC–141b by granting 0 percent of that substance's baseline for production and consumption in the table at § 82.16. EPA did, however, create a petition process to allow applicants to request very small amounts of HCFC–141b beyond the phaseout. The rule also granted 100 percent of the baselines for production and consumption of HCFC–22 and HCFC–142b. EPA was able to allocate allowances for HCFC–22 and HCFC–142b at 100 percent of baseline because, in light of the concurrent complete phaseout of HCFC–141b, the allocations for HCFC–22 and HCFC–142b, combined with projections for consumption of all other HCFCs, remained below the 2004 cap of 65 percent of the U.S. baseline.

EPA allocates allowances for specific years; they are valid between January 1 and December 31 of a given control period (*i.e.,* calendar year). Prior to this rulemaking, EPA had not allocated any HCFC allowances for year 2010 or beyond. The regulations at 40 CFR 82.15(a) and (b) only permitted the production and import of HCFC–22 and HCFC–142b for the years 2003–2009. Through this rulemaking, EPA is now allocating calendar-year allowances for HCFC–142b and HCFC–22 to allow production and import during the 2010–2014 control periods. Absent the grant of calendar-year allowances, § 82.15 would prohibit their production and import after December 31, 2009. This final rule allows for continued production and consumption, at specified amounts, of HCFC–142b, HCFC–22, and other HCFCs not previously granted allocations, for the 2010–2014 control periods.

In the United States, an allowance is the unit of measure that controls production and consumption of ozone-depleting substances. An allowance represents the privilege granted to a company to produce or import one kilogram (not ODP-weighted) of the specific substance. EPA establishes company-by-company baselines (also known as ''baseline allowances'') and allocates calendar-year allowances equal to a percentage of the baseline for specified control periods. EPA has allocated two types of calendar-year allowances—production allowances and consumption allowances—for HCFC–22 and HCFC–142b. ''Production allowance'' and ''consumption allowance'' are defined at 40 CFR 82.3. To produce an HCFC for which allowances have been allocated, an allowance holder must expend both production and consumption allowances. To import an HCFC for which allowances have been allocated, an allowance holder must expend consumption allowances. An allowance holder exporting HCFCs for which it has expended consumption allowances may obtain a refund of those consumption allowances upon submittal of proper documentation to EPA.

Since EPA is implementing the phaseout on a chemical-by-chemical basis, it allocates and tracks production and consumption allowances on an absolute kilogram basis for each chemical. Upon EPA approval, an allowance holder may trade allowances of one type of HCFC for allowances of another type of HCFC, with transactions weighted according to the ozone depletion potential (ODP) of the chemicals involved. Pursuant to section 607 of the Clean Air Act, EPA applies an offset to each HCFC trade by deducting 0.1 percent from the transferor's allowance balance. The offset benefits the ozone layer since it ''results in greater total reductions in the production in each year of * * * class II substances than would occur in that year in the absence of such transactions'' (42 U.S.C. 7671f).

Because EPA has allocated the same amount of allowances every year from 2004 to 2009—with minor changes reflecting permanent trades of baseline allowances—and because EPA tracks the production and consumption of all HCFCs (including those for which baselines are not allocated), the Agency can ascertain that the U.S. will remain comfortably below the aggregate HCFC cap through 2009. The 2003 allocation rule announced that EPA would allocate allowances for 2010–2014 in a

ii. Each Party may exceed that limit on production by up to zero point five percent of the average referred to in paragraph 2 of this Article in any such twelve-month period ending before 1 January 2030, provided that such production shall be restricted to the servicing of refrigeration and air conditioning equipment existing on 1 January 2020.

subsequent action and that those allowances would be lower in aggregate than for 2003–2009, consistent with the next stepwise reduction for HCFCs under the Montreal Protocol. EPA stated its intention to determine the exact amount of allowances that would be needed for HCFC–22 and HCFC–142b, bearing in mind that other HCFCs would also contribute to total HCFC consumption. EPA stated that it would likely achieve the 2010 reduction step by applying a percentage reduction to the HCFC–22 and HCFC–142b baseline allowances. EPA has monitored the market to estimate servicing needs and market adjustments in the use of HCFCs, including HCFCs for which EPA did not establish baselines in the 2003 allocation rule.

C. What Sections of the Clean Air Act Apply to This Rulemaking?

Several sections of the Clean Air Act apply to this rulemaking. Section 605 of the Clean Air Act phases out production and consumption and restricts the use of HCFCs in accordance with the schedule set forth in that section. Section 606 provides for acceleration of the schedule in section 605 based on an EPA determination regarding current scientific information or the availability of substitutes, or to conform to any acceleration under the Montreal Protocol. EPA has previously accelerated the section 605 schedule through a rulemaking published December 10, 1993 (58 FR 65018). Through this action, EPA is further accelerating the HCFC production and consumption phaseouts in section 605(b)–(c).

Section 606 provides authority for EPA to promulgate regulations that establish a schedule for production and consumption that is more stringent than what is set forth in section 605 if: ''(1) Based on an assessment of credible current scientific information (including any assessment under the Montreal Protocol) regarding harmful effects on the stratospheric ozone layer associated with a class I or class II substance, the Administrator determines that such more stringent schedule may be necessary to protect human health and the environment against such effects, (2) based on the availability of substitutes for listed substances, the Administrator determines that such more stringent schedule is practicable, taking into account technological achievability, safety, and other relevant factors, or (3) the Montreal Protocol is modified to include a schedule to control or reduce production, consumption, or use of any substance more rapidly than the applicable schedule under this title.'' It is only necessary to meet one of the three criteria. In this instance, all three criteria have been met with respect to the schedule for phasing out production and consumption of HCFC–22 and HCFC–142b.

The first criterion allows the Administrator, based on an assessment of credible current scientific information, to determine that a more stringent schedule may be necessary to protect human health. The recent scientific findings by the Montreal Protocol's Science Assessment Panel, *Science Assessment of Ozone Depletion: 2006,* available in the docket for this rulemaking, were initially presented to the Parties to the Montreal Protocol in October 2006 at the 18th Meeting of the Parties in New Delhi, India. The Assessment was published in March 2007, and hard copies were available to the Parties in advance of the 26th Open-Ended Working Group Meeting held in June 2007 in Nairobi, Kenya. The assessment report shows that notwithstanding the evidence of a healing of the ozone layer, there continue to be human health and environmental effects associated with ozone depletion and that recovery continues to rely on a successful total global phaseout of ODS. Specifically, the report concludes that the date when equivalent effective stratospheric chlorine (EESC) relevant to mid-latitude ozone depletion returns to pre-1980 levels is 2049, which is five years later than projected in the previous Scientific Assessment. The later return is primarily due to higher estimated future emissions of CFC–11, CFC–12, and HCFC–22. The report includes scenarios where additional actions taken by the Parties would result in a faster recovery. While these specific scenarios (including complete phaseout by the end of that calendar year) were not all necessarily deemed to be practical, they demonstrated to the Parties what could be achieved with additional actions. The percentage reduction in EESC attributed to HCFCs is larger than previously reported and the scenarios showed that reducing HCFCs could have a greater effect than reducing any of the other compounds or groups of compounds given their current production levels. These findings contributed in part to the willingness of many Parties, including the United States, to consider the adjustments to the Montreal Protocol's HCFC phaseout schedule that were successfully negotiated in September 2007. EPA published a notice of data availability (72 FR 35230) concerning the potential changes in HCFC consumption from proposed adjustments to the Montreal Protocol submitted by the United States for consideration at the 19th Meeting of the Parties held in Montreal September 2007. The data made available through that notice were specific to the United States' proposal but had general applicability to the other five proposals submitted by various Parties to the Protocol and to what was ultimately agreed to by the Parties at the 19th Meeting. EPA believes the recent scientific findings on stratospheric ozone depletion, together with the well-established relationship between ozone depletion and increased risk of human health effects, support a determination that a more stringent HCFC phaseout schedule may be necessary to protect against such effects.

The second criterion allows the Administrator to determine that a more stringent schedule is practicable based on the availability of substitutes for ODS, taking into account technological achievability, safety, and other relevant factors. Since the establishment of the domestic chemical-by-chemical phaseout in the United States, advances by industry have resulted in the availability of substitutes for a large variety of end-use applications. Under section 612 of the CAA, EPA's Significant New Alternatives Policy (SNAP) program evaluates alternatives for ODS and lists as acceptable those that do not pose a greater risk to human health than other substitutes that are currently or potentially available. Alternatives include chemical replacements, product substitutes, and alternative technologies. The SNAP program has reviewed approximately 400 alternatives to date. EPA makes information available concerning potential alternatives for various end-use applications. Suitable alternatives—in many cases, multiple suitable alternatives—are available for all end-use applications for the HCFCs considered in this action. However, as discussed later in this preamble, EPA has learned of three niche end use applications where substitutes exist but other factors may be affecting the timing of their implementation. Because sufficient quantities of HCFC have already been produced for these uses, EPA took this information into account in evaluating the schedule for phasing out use under section 605(a) rather than the schedule for phasing out production under section 605(b)–(c). The use phaseout is discussed below.

The SNAP program has reviewed substitutes to ODS for the following industrial sectors:

- Refrigeration & Air Conditioning
- Foam Blowing Agents

- Cleaning Solvents
- Fire Suppression and Explosion Protection
- Aerosols
- Sterilants
- Tobacco Expansion
- Adhesives, Coatings & Inks

HCFCs have been used in all of these industrial sectors except for tobacco expansion. Within the air conditioning and refrigeration industrial sector, end uses where HCFCs have been used include chillers, industrial process refrigeration systems, industrial process air conditioning, bus and passenger train AC, ice machines, very low temperature refrigeration, ice skating rinks, cold storage warehouses, refrigerated transport, retail food refrigeration, household appliances, and residential and light commercial air conditioning and heat pumps. The SNAP program lists substitutes for each of these end uses.

A wide range of alternative refrigerants found acceptable under EPA's SNAP program are available in the AC and refrigeration sector. Hydrofluorocarbons (HFCs) and HFC-based alternatives, including R–134a, R–410A (composed of HFC–32/HFC–125), R–407C (composed of HFC–32/HFC–125/HFC–134a), R–404A (composed of HFC–125/HFC–143a/HFC–134a), and R–507A (composed of HFC–125/HFC–143a), are currently used in a variety of refrigeration and AC equipment. In addition, other refrigerants such as CO_2, ammonia, and hydrocarbons are available as alternatives. The pace of transition to equipment using these alternatives has varied by industry and type of equipment. Appendix A to the Servicing Tail report found in the docket to this rule presents EPA's estimates of the market penetration of alternatives for each end use within this sector.

Some mobile AC equipment has been using alternatives since the early 1990s, with some buses and trains using R–134a, and some heavy rail cars using R–407C. Stationary AC equipment using R–410A has been commercially available since 1996, and is expected to dominate the U.S. residential market in the near future. The projections in the Servicing Tail report are based on information regarding the transition to alternatives. New sales of residential AC systems are modeled such that only 10 percent of the market adopts alternatives by the end of 2008 and the remainder of the market for new equipment transitions completely by the end of 2009. Consumers naturally prefer equipment, services, and refrigerant that costs less. Previously, R–22 has been cheaper than alternatives. However, the economics are changing and R–410A pricing is beginning to match that of R–22. Most residential AC equipment purchasers now are buying equipment using R–410A.

Retail food refrigeration end-uses have been transitioning to alternatives more quickly than AC end-uses. EPA estimates that half of the refrigerant used in existing stores is R–22 but only 5% of new refrigeration systems installed in 2009 were charged with R–22. Advanced refrigeration technologies (*e.g.,* distributed systems and secondary loop systems) represent an estimated 40% of new equipment sales and such systems installed in the last ten years have been charged with HFC refrigerants.

As mentioned in the Servicing Tail report, several AC and refrigeration equipment manufacturers have indicated that they have discontinued production of new equipment that uses R–22. These actions are consistent with the actions taken in the mid-1990s, when the refrigeration and AC industries phased out CFC refrigerants from new production chillers, refrigerators, motor vehicle air conditioners, and other products two or more years before the 1996 CFC consumption phaseout.

Alternatives are available in the other sectors as well. For example, numerous alternatives exist for HCFC–22 and HCFC–142b for foam blowing agents, including water, Ecomate®, saturated light hydrocarbons (*e.g.,* cyclopentane), CO_2, HFO–1234ze, and a number of HFCs or HFC blends. In place of HCFCs as propellants, most aerosol cans use saturate light hydrocarbons (*e.g.,* propane, n-butane, isobutane) or dimethyl ether where flammability is not a major concern or HFCs or compressed gases (*e.g.,* CO_2, nitrogen) where flammability is a concern. (A complete list of substitutes is available at *http://www.epa.gov/ozone/snap/lists/index.html*.) EPA believes that given the availability of substitutes, a more stringent phaseout schedule for HCFC–22 and HCFC–142b is now practicable.

The last criterion is that the Montreal Protocol be modified to include a schedule to control or reduce production, consumption, or use of any substance more rapidly than section 605 would dictate. The United States submitted a proposal to adjust the Montreal Protocol in March 2007 to accelerate the phaseout of HCFCs. This was one of six proposals considered by the Parties at their 19th Meeting. Due to the efforts of the United States and others, the Parties agreed to adjustments that result in a more aggressive phaseout schedule for both developed and developing countries. Therefore, this third criterion has been met. Through this action, EPA is incorporating in its regulations a schedule that reflects the 2007 Montreal Adjustment. While section 606 is sufficient authority for this acceleration of the section 605 phaseout schedule, section 614(b) of the Clean Air Act provides that in the case of a conflict between the Act and the Protocol, the more stringent provision shall govern. Thus, section 614(b) requires the Agency to establish phaseout schedules at least as stringent as the schedules contained in the Protocol. To meet the 2010 stepdown requirement, EPA is allocating HCFC allowances for the years 2010 through 2014 at a level that will ensure the aggregate HCFC production and consumption will not exceed 25 percent of the U.S. baselines.

In addition to implementing the 2007 Montreal Adjustment, this rule also addresses provisions in section 605 of the Clean Air Act that relate to use and introduction into interstate commerce of class II substances. This action completes EPA's implementation (begun in 1993) of the section 605 provisions on use of class II substances. EPA is also promulgating regulatory language to reflect the section 605 provisions on introduction into interstate commerce of class II substances. EPA previously addressed the provisions concerning use of class II substances in a 1993 rulemaking that accelerated the phaseout schedule for HCFC–22 and HCFC–142b (58 FR 15014, 58 FR 65018). The intent of the 1993 rulemaking was to accelerate not only the production and consumption schedule, but also the use restrictions for those two substances under the authority of section 606(a)(1) and (2). In the March 18, 1993, notice of proposed rulemaking, EPA stated that the effect of this acceleration was ''to prohibit the use of the chemicals (virgin material only) for any use except as a feedstock or as a refrigerant in existing equipment as of January 1, 2010'' (58 FR 15028). EPA noted in the December 10, 1993, final rulemaking that ''HCFC restrictions and the approach included in this final rule have not changed from those proposed by the Agency in March'' (58 FR 65028). The regulatory provisions included with that notice, however, did not control use directly, but instead banned production and import for most uses. This action completes the prohibitions contemplated in the 1993 rule by adding to the regulatory text the restriction on use as well as the corresponding prohibitions on introduction into interstate commerce.

EPA is providing exceptions to this ban for medical equipment and thermal expansion valves, for which the practicability of substitutes remains an issue. EPA is also clarifying its interpretation of the section 605(a) restrictions on use and introduction into interstate commerce.

III. Summary of This Final Action

In this action, EPA is amending the existing regulations to implement the next major milestone in the HCFC phaseout. As a Party to the Montreal Protocol, and having ratified the Montreal Protocol and all of its amendments, the United States is required to decrease its amount of HCFC consumption and production to 25 percent of the U.S. baseline by 2010. Our domestic chemical-by-chemical approach results in differing schedules for the phaseout of individual HCFCs. EPA believes that the chemical-by-chemical allocation of HCFC allowances ensures that the United States continues to maintain an overall HCFC production and consumption level that is below the 2010 cap specified by the September 2007 Montreal Adjustment, while at the same time ensuring that servicing needs consistent with section 605(a) of the Clean Air Act and EPA's implementing regulations continue to be met. Thus, the aggregate allowances for all U.S. HCFC consumption in the years 2010–2014 do not exceed 3,810 ODP-weighted metric tons (25 percent of the aggregate U.S. consumption baseline) annually and the aggregate allowances for all U.S. HCFC production in the years 2010–2014 do not exceed 3,884.25 ODP-weighted metric tons (25 percent of the aggregate U.S. production baseline) annually.

To meet the 2010 cap for the 2010–2014 control periods, EPA is maintaining its past practice of apportioning company-specific production and consumption baselines for individual HCFCs, and allocating a certain percent of that baseline in an amount necessary to meet demand. For HCFC–22, that percentage decreases on an annual basis to reflect a projected decrease in demand as well as to promote recycling and reclamation, which in turn should prevent shortages that might otherwise occur upon the stepdown in 2015. This approach was discussed briefly in the proposal (73 FR 78691) and was supported in comments to the Agency. For HCFC–141b, HCFC–22, and HCFC–142b, EPA is adjusting the previously established company-specific baselines to reflect (1) permanent inter-company transfers of baseline allowances for a particular HCFC and (2) changes to the names of entities identified in the tables at § 82.17 and § 82.19. These adjustments do not reflect inter-pollutant transfers occurring on an annual basis. For 2010–2014, given the previous phaseout of HCFC–141b, EPA will continue to allocate zero percent of the HCFC–141b baseline, and allow only limited amounts of production via the existing EPA petition process.[5] EPA is allocating an annually declining percentage of baseline for HCFC–22 ranging from 41.9 percent in 2010 to 26.1 percent in 2014 and is allocating 0.47 percent of baseline for HCFC–142b in all years 2010–2014 to meet the U.S. obligations under the Montreal Protocol and to reflect the use restrictions under section 605(a) of the CAA while providing for servicing needs consistent with those restrictions.

EPA is also implementing production and consumption controls for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb, which did not have baselines prior to this rulemaking. EPA is apportioning company-specific baselines for these HCFCs based on production and import data available to the Agency. For control periods 2010–2014, EPA is granting 125 percent of baseline for these HCFCs.

The allocations for HCFC–22, HCFC–142b, HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb reflect EPA's analysis of market data for these chemicals. The allocation levels for these HCFCs meet the need for virgin material and avoid shortages during the affected control periods, as well as accommodate some market growth for the HCFCs for which EPA is allocating allowances for the first time in this action.

For the years 2010–2014, the Montreal Protocol allows a cap of 3,810 ODP tons for U.S. HCFC consumption (resulting in an aggregate of 19,050 ODP tons over the five control periods) and 3,884.25 ODP tons for U.S. HCFC production (resulting in 19,421.25 ODP tons over five control periods). Of that amount, EPA is allocating allowances totaling 12,355.5 ODP tons of consumption and 11,621.43 ODP tons of production over the five control periods. These allocations represent 65 percent of the consumption cap and 60 percent of the production cap established by the Montreal Protocol for 2010–2014. The difference between the cap and the total allocation reflects EPA's estimate of the need for HCFCs during these control periods. It also will accommodate minor adjustments in the market, particularly to allow potential market growth for HCFCs that have not been produced or imported since 2003 (and which are therefore not reflected here). As discussed in more detail in Section IV.B.3, it will also encourage greater reclamation of recovered refrigerant and will facilitate preparation for the 2015 phasedown in the consumption cap to 10% of baseline.

This action also changes two other components of the HCFC allowance allocation framework. First, to reflect the September 2007 Montreal Adjustments, EPA is adjusting the amount of Article 5 allowances for control periods 2010–2019. Second, EPA is completing its implementation of the provisions in section 605 of the Clean Air Act that relate to use and introduction into interstate commerce of class II substances. As discussed in Section VI.D. below, EPA is excepting the use of HCFC–22 in thermostatic expansion valves and in medical equipment from the accelerated restrictions on introduction into interstate commerce and use. EPA also is providing a limited grandfathering for use of HCFCs in refrigeration appliances that have not yet been ''manufactured'' under EPA's interpretation of that term but whose components have been specified for installation under a building permit or contract dated on or before January 1, 2010.

This final rule combined with the accompanying final rule titled ''Protection of Stratospheric Ozone: Ban on the Sale or Distribution of Pre-Charged Appliances'' (EPA Docket: EPA–HQ–OAR–2007–0163) (referred to in this preamble as the Pre-Charged Appliances rule) will have the following effects on the sale, distribution, and installation of air-conditioning and refrigeration products charged with HCFC–22, HCFC–142b, or blends containing one or both of these substances.

- Sale and distribution of *appliances* pre-charged with HCFC–22 or HCFC–142b is allowed for self-contained, factory-charged appliances such as pre-charged window units, packaged terminal air conditioners (PTACs), and some commercial refrigeration units, if manufactured *before* January 1, 2010. The pre-charged appliance rule does not prohibit sale and distribution of pre-2010 inventory (*i.e.,* stockpiled inventories).
- Sale and distribution of *appliances* pre-charged with HCFC–22 or HCFC–142b is not allowed for self-contained, factory-charged appliances such as pre-charged window units, PTACs, and some commercial refrigeration units, if manufactured *on or after* January 1,

[5] EPA did not propose, and is not implementing in this action, any changes to the HCFC–141b petition process for the 2010–2014 control periods.

2010. This prohibition which is contained in the pre-charged appliance rule, applies regardless of when the refrigerant was produced and whether it is virgin or reclaimed. Under the allocation rule, neither stockpiled HCFC–22 produced prior to January 1, 2010, nor new HCFC–22 produced after that date can be used to manufacture new appliances on or after January 1, 2010.

- Sale and distribution of appliance *components* pre-charged with HCFC–22 or HCFC–142b is allowed if the components (*e.g.* condensing units, line sets, and coils that are charged with refrigerant) were manufactured before January 1, 2010. The pre-charged appliance rule does not prohibit sale or distribution of pre-2010 inventory (*i.e.,* stockpiled inventories).
- Pre-charged *components* manufactured before January 1, 2010, may be used to service appliances manufactured before January 1, 2010, but may not be assembled to create new appliances unless there is *no* use of virgin HCFC–22 or HCFC–142b, in the components or otherwise. The allocation rule prohibits use of virgin HCFC–22 and HCFC–142b in manufacturing new appliances.
- There is *no* exemption from the pre-charged appliance rule for the sale or distribution of pre-charged appliances and pre-charged components that are charged with reclaimed HCFC–22 or HCFC–142b refrigerant. In other words, the provisions banning sale and distribution apply equally regardless of whether the appliances or components contain virgin or reclaimed refrigerant.
- Under the allocation rule, *virgin HCFC–22 or HCFC–142b may only be used to service existing appliances.* Virgin HCFC–22 and HCFC–142b may not be used to manufacture new pre-charged appliances and appliance components. Virgin HCFC–22 and HCFC–142b also may not be used to charge new appliances assembled onsite on or after January 1, 2010, though new appliances (not pre-charged) may be charged with reclaimed refrigerant.
- EPA is providing an *exception* to the allocation rule that allows virgin HCFC–22 to be used in the onsite ''manufacture'' of appliances for a particular project between January 1, 2010, and December 31, 2011, if the components have been specified for use at that project under a building permit or contract dated before January 1, 2010.
- Under the allocation rule, HCFC–22 produced prior to January 1, 2010, may be used until January 1, 2015, for the manufacture of thermostatic expansion valves (TXVs).
- The sale and distribution of *used appliances* is not affected by either rule.

IV. Allocation of Allowances for the 2010–2014 Control Periods

A. Baselines for HCFC–22 and HCFC–142b Allowances

In the proposed rule, EPA presented five options for allocating HCFC–22 and HCFC–142b allowances for the control periods 2010–2014: (1) Allocating a percentage of the baseline production and consumption allowances (see 40 CFR 82.17 and 82.19 respectively), with or without considering any intra- and/or inter-pollutant transfers that resulted in a different amount of production or consumption for a specific HCFC; (2) allocating allowances based on evaluation of the most recent three years of production, import, and/or export data as reported to EPA; (3) allocating allowances based on an evaluation of past sales of HCFCs by allowance holders by considering how the HCFCs were ultimately used (*e.g.,* servicing refrigeration or air-conditioning vs. original manufacture of refrigeration or air-conditioning equipment and foam blowing); (4) allocating allowances based on aggregated ODP tons; or (5) allocating a total amount of allowances and allowing for purchase by establishing an auction system.

As discussed in the proposed rule, each of these five methods offers advantages and disadvantages for potential allowance holders that vary according to whether a particular entity is predominantly a producer or importer; whether it currently sells HCFC–22 and HCFC–142b to original equipment manufacturers, wholesalers, retailers, or companies that service appliances; whether the portion of its business that is ODS-based is expanding or contracting as the next major milestone in the phaseout approaches; its liquidity; whether it holds both HCFC–142b and HCFC–22 allowances and/or engages in inter-pollutant transfers; and whether it sold HCFCs for applications that do not lend themselves to servicing. Without regard to the practices of individual entities, each of the allocation schemes also offers advantages and disadvantages associated with the ease of implementation and other administrative burdens.

In this final action, EPA is finalizing option 1 by allocating a percentage of the baseline allowances (§§ 82.17 and 82.19) for HCFC–22 and HCFC–142b. As discussed in Section IV.A.2. of the preamble, EPA is modifying the baseline allowances through the consideration of permanent inter-company baseline transfers for the same HCFC but is not accounting for inter-pollutant transfers within a single company that resulted in a different amount of production or consumption for a specific HCFC on an annual basis.

Of all the options, applying a uniformly smaller percentage of the existing baseline as the method for allocating HCFC–22 and HCFC–142b allowances is the least disruptive to the current market and best ensures a continued smooth transition away from ozone-depleting substances. This system closely matches the current HCFC allocation method, with which producers and importers are familiar. EPA provided notice of this option in the preamble to the 2003 allocation rule by indicating that EPA ''intends to achieve this reduction step through notice and comment prior to 2010 and will likely implement the reduction by simply listing a percent of baseline allowances to be granted in § 82.16 for the years after 2009'' (68 FR 2823). Many commenters have informed EPA that, based in part on this statement, producers and importers have aligned their business activities around the baselines set forth in the 2003 allocation rule. Such planning includes not only ensuring capacity to produce or import these HCFCs but also the establishment and maintenance of relationships with distributors and contractors.

Second, on a related note, EPA agrees with a comment that this approach is the most consistent with the existing framework for recordkeeping and reporting. This option utilizes EPA's existing ODS tracking system and does not require additional one-time or periodic reporting obligations that may be necessary under the other options. EPA uses information from quarterly, annual, and other periodic reporting requirements to monitor consumption, production, imports, and exports of all HCFCs. EPA also uses this information to ensure companies' compliance with regulatory requirements and to develop reports that are requested by the Parties to the Montreal Protocol, including reports ascertaining U.S. compliance with the phaseout caps. The information enables EPA to monitor production and consumption for all HCFCs, including HCFCs for which baselines have not yet been established and for which allowances have not yet been allocated. Option 1 limits administrative burden for allowance holders, and additionally, can be implemented more quickly than other options.

Third, EPA prefers option 1 because it applies an established and well-vetted baseline. All of the other options would require the Agency to disregard the

existing baseline in its entirety and rely on another basis for allocating production and consumption allowances. This would minimize the value of establishing a baseline and lead to market uncertainty. EPA seeks instead to minimize unanticipated changes and prevent market disruptions. EPA, however is making minor changes to company baseline allowances to reflect inter-company baseline trades, as discussed below.

Most commenters preferred option 1 for the reasons described above. Some commenters, however, favored the alternative approaches. The second-most-favored allocation method was option 5, under which EPA would auction allowances. Commenters favoring this option preferred it because it could potentially allow for new entrants into an HCFC–22 market that those commenters say is dominated by a small number of large companies. These commenters typically disagreed with option 1 because it would favor the existing set of stakeholders. Option 1 does not automatically prohibit new entrants, as they could acquire allowances from existing allowance holders under the existing regulatory framework. While EPA acknowledges that not having allowances can be a barrier to entry into this market, EPA does not believe it is necessary or appropriate to adopt a particular regulatory approach specifically for the purpose of encouraging new entrants at this point in a phaseout.

In the July 20, 2001, proposed HCFC allocation rule, EPA expressed skepticism about promoting new entrants into the HCFC market: ''Encouraging new companies to join the business after the ANPRM would counter the efforts of moving people out of HCFCs into more environmentally sound substitutes. EPA believes that any new entrants following the ANPRM publication would not be precluded from entering the market, because they could purchase allowances from existing allowance holders who may not intend to use their full amount of allowances. They also have the opportunity to import recovered HCFCs through EPA's petition system or deal in substitutes to HCFCs, which would benefit the ozone layer and provide longer-term business security. Accordingly, EPA believes that the market will sufficiently allow for any new entrants after April 5, 1999, as appropriate.'' (66 FR 38073). In the 2003 final rule, EPA provided a limited exemption for companies that began importing HCFCs after the first stakeholder meeting in 1997 but before the ANPRM publication date, after which they would have had reason to know of an imminent rulemaking allocating allowances based on historical production and importation. EPA did not extend this exemption further because once public notice was given via the ANPRM, ''businesses that desired an allocation of HCFC allowances would have known the risks of jumping into the business at this juncture.'' (66 FR 38073). Since that time eight years ago, access to information and knowledge of the risks regarding entering the HCFC–22 market have only increased. There have been new entrants to the market, as evidenced by commenters seeking allocation rights who were not in operation in 2003. These entities have entered the market by purchasing consumption allowances, as EPA predicted they could back in 2003. These entities can continue to purchase consumption allowances or import substitutes for HCFCs. As the market continues to decrease, EPA does not believe that providing consumption allowances to these or other new entities is necessary to prevent disruption to the continued servicing of existing equipment. Given EPA's intent to phase down, and ultimately phase out, the use of HCFC–22, consistent with the requirements of the CAA and obligations under the Montreal Protocol, EPA believes it is justified in continuing to allocate only to those entities who participated in the market at the initial stages as well as those that have entered the market by purchasing HCFC–22 baseline allowances in accordance with the established practices. EPA therefore does not believe that choosing this option for the purpose of opening up the market to new entrants is appropriate at this time as it may create disruption to the existing regulatory framework.

EPA also suggested, in option 4, that it could allocate allowances on an ODP-ton-weighted basis, authorizing allowance holders to consume or produce any combination of HCFC up to that ODP limit. Only one commenter supported this option, saying it would be more closely aligned with the requirements of the Montreal Protocol, which established a total ODP cap, and would more closely approximate an unregulated market. Furthermore, EPA would not need to predict the supply and demand for individual HCFCs. The commenter recognized, though, that it would have been better to establish such a system in the 2003 allocation rule and that it would be more difficult to implement today. At this point in the phaseout, EPA does not believe that it would be appropriate to switch to an ODP-weighted allocation. EPA raised, and rejected, this option in 2003 when it initially established baselines and allocated production and consumption allowances for HCFCs. In 2003, EPA applied a ''worst first'' approach to the phaseout of HCFCs and set limits only on HCFC–141b, HCFC–22, and HCFC–142b. Moving to an ODP-weighted allocation system at this point would disrupt the market and not reflect the market decisions made between 2003 and 2009.

Finally, options 2 and 3 received limited support from commenters. EPA is not persuaded that changing the baseline allowances through any of the methods presented in those options would be more appropriate than the manner proposed under option 1. EPA discusses comments on these options in the response to comments document, available in the docket for this rulemaking.

After considering comments, EPA is allocating a percentage of the baseline allowances for HCFC–22 and HCFC–142b, per option 1, in this final rule. The specific percentages are discussed in Section IV.C. below.

1. Adjusting the Baseline for Inter-company and Inter-pollutant Transfers

Sections 607(b) and (c) of the Clean Air Act permit inter-pollutant and inter-company transfers of allowances, respectively. Inter-pollutant transfers are the transfer of an allowance of one substance to an allowance of another substance on an ODP-weighted basis. Inter-company transfers are transfers of allowances for the same ODS from one company to another company. Section 607(c) also authorizes inter-company transfers combined with inter-pollutant transfers, so long as the requirements of both are met. The corresponding regulatory provisions appear at 40 CFR 82.23.

EPA proposed in allocation option 1 to establish a percentage of baseline allowances for each HCFC ''*with or without* considering any permanent baseline transfers *and/or* inter-pollutant transfers that resulted in a different amount of production or consumption for a specific HCFC included'' (emphasis added). The company-specific baselines in the proposed regulatory text did, though, reflect adjustments resulting from approved inter-company transfers of baseline allowances (*i.e.,* permanent rather than calendar-year allowances) as well as intra-company, inter-pollutant transfers. EPA received multiple comments on how transfers of allowances should be reflected in company baselines. All comments on the issue supported

adjusting the baselines to reflect inter-company transfers. Most commenters were opposed, however, to adjusting a company's baseline to reflect inter-pollutant transfers occurring within that company. As discussed in this section, the final allocation reflects adjustments due to inter-company transfers but not inter-pollutant transfers.

In this final rule, EPA is updating the baselines for HCFC–22 and HCFC–142b to reflect name changes and permanent inter-company baseline transfers. Doing so reflects the changes in the marketplace that have occurred since the last time EPA addressed these baselines. As discussed above, permanent inter-company baseline transfers provide a mechanism for new entrants to join or expand in the HCFC–22 market and for other companies to expand their business. When EPA allocated allowances from 2004 to 2009, the Agency made minor changes to reflect such permanent trades of baseline allowances. EPA recognizes that in some cases entities are no longer actively involved in HCFC production, import, and/or export activities. EPA sought comment on whether it should retain the baselines for such entities or whether it should retire, auction, or redistribute the baselines among the active entities. EPA received only one comment on the issue, which favored EPA's preferred approach of retaining the baseline for those entities. The commenter noted that any allowances distributed to passive holders will find their way into circulation if needed. EPA agrees, as this has been a mechanism by which new entrants have entered the HCFC allocation system in the past.

Eight commenters opposed, and two commenters supported, the proposed adjustments to company baselines to reflect intra-company, inter-pollutant transfers. At issue is the fact that two companies have made inter-pollutant transfers with the apparent intent of reflecting them as permanent adjustments to their baseline allowances. Comments in opposition stated that adjusting the baselines to account for these permanent inter-pollutant transfers would inequitably redistribute allowances. Because allowance holders receive allocations based on a percentage of market share, increasing allowances to two companies has the effect of decreasing allowances to the other market participants. Thus, two companies would receive 38% and 912% more HCFC–22 allowances while the remaining companies would each receive 16% fewer HCFC–22 allowances. Commenters opposed to this redistribution requested that EPA utilize the 2003 baseline and claim it would be the most equitable way of reducing and allocating allowances among the entire community.

Three commenters also stated that allowing these transfers would unnecessarily disrupt the marketplace. They stated that stakeholders believed that EPA would allocate allowances in 2010–2014 by reducing allowances to all baseline allowance holders by an equal percentage and planned accordingly. They did not anticipate an increase in allowances to some companies resulting in a significant decrease for them. According to the commenters this shift in HCFC–22 allowances would require distributors to seek material from different suppliers than in the past and would thus disadvantage the allowance holders and their customers.

In the 2003 rule, both EPA and commenters to that rule recognized the flexibility that inter-pollutant and inter-company transfers provide. One company has utilized inter-pollutant transfers annually since 2006. Each year it has converted over 95% of its HCFC–142b allowances to HCFC–22 allowances to supply the servicing market. Allowing inter-pollutant transfers since 2006 has had little impact on the greater marketplace because it did not reduce the allocation levels for the other allowance holders. Commenters have demonstrated to EPA how treating inter-pollutant trades as permanent would negatively affect all other allowance holders. While the company that has historically relied on these transfers would be negatively affected by not treating its inter-pollutant transfers as permanent, EPA is concerned that reflecting such transfers in this rule would disrupt the entire market in 2010 and could encourage greater disruption in future control periods. Commenters pointed out that adjusting the baselines to reflect intra-company, inter-pollutant transfers could create incentives for future manipulation of the allocation system in anticipation of the future control periods. For example, in 2020 EPA will no longer be issuing HCFC–22 allowances. EPA has anticipated that companies with HCFC–22 allowances would no longer be in the HCFC market at that date if they did not hold allowances for other HCFCs that are still allowed after 2020. For example, if EPA were to establish an allocation framework based on inter-pollutant trades, in 2019 companies with HCFC–22 allowances could convert them all to allowances for HCFC–123 or some other compound for which allowances are available and thus remain in the market. As another example, in 2015 a producer or importer that previously had not participated in the HCFC–123 market could dominate that market by converting its HCFC–22 allowances in 2014 to HCFC–123 allowances. Given the different ODPs of HCFC–22 and HCFC–123, converting one allowance of HCFC–22 would result in 2.75 allowances of HCFC–123. Also, since companies hold many more HCFC–22 allowances than HCFC–123 allowances, converting those HCFC–22 allowances would have an overwhelming effect on the current HCFC–123 allowance holders. In effect, establishing allocations based on permanent inter-pollutant transfers would transform the U.S. HCFC phasedown from a chemical-by-chemical phaseout, as established under the ''worst-first'' approach in the 1993 rule, to an ODP-weighted phasedown. Under an ODP-weighted phasedown, allowance holders could permanently transfer their production and import of specific HCFCs so long as the total ODP cap is not affected. Companies that do not transfer their allowances, however, would remain holding a smaller percentage of the total ODP cap, and thus would be left with fewer allowances. The ODP-weighted method was rejected in both the 2003 rule and this rule, though EPA did take comment on it in the proposal, as discussed in the previous section.

Some commenters stated that modifying the baselines by taking into account intra-company, inter-pollutant transfers would be contrary to the Clean Air Act. One commenter argued that section 607 of the Clean Air Act allows EPA to approve inter-pollutant transfers of allowances only on a year-to-year basis. That commenter pointed to language in section 607(b) stating that EPA regulations are to permit ''a production allowance for a substance for any year to be transferred for a production allowance for another substance for the same year on an ozone depletion weighted basis.'' The commenter also discussed the legislative history of the 1990 Clean Air Act Amendments.

After considering the language of section 607 and the legislative history, EPA believes that section 607(b) is best read as permitting only year-by-year inter-pollutant transfers. Section 607(b) states that EPA's rules are to permit ''a production allowance for a substance for any year to be transferred for a production allowance for another substance for the same year.'' This language emphasizes the year-by-year nature of such transactions. No parallel language appears in section 607(c). That section does, however, provide that any

inter-pollutant transfers between two or more persons must meet the requirements of section 607(b). Hence, EPA interprets section 607 as requiring that all inter-pollutant transfers, whether occurring between companies or within a single company, be conducted on a yearly—and thus temporary—basis.

EPA has made past statements that are consistent with this interpretation. In the 2003 rule that established the allowance system for HCFCs (68 FR 2835), EPA stated: ''The permanent transfer of baseline allowances is a lasting shift of some quantity of a company's allowances to another company.'' EPA also indicated what would happen at the time of the next stepdown or phaseout date: ''[A]t the time of a reduction step or a phaseout of the substance, the current holder of baseline allowances that were received in a permanent transfer would be the person who would have them deducted.'' EPA decided in the 2003 rule to ''allow permanent transfers of baseline allowances with those allowances disappearing at the phaseout date for the specific HCFC, regardless of what inter-pollutant transfers had taken place'' (68 FR 2835). Further discussion of this issue appears in the response to comments document available from the docket.

In summary, this final rule reflects the changes in consumption and production baseline allowances from inter-company transfers but not inter-pollutant transfers. The resulting consumption baseline amounts for HCFC–22, HCFC–142b, and HCFC–141b are shown below in Table 3.

2. Meeting the Needs of Certified Reclaimers

Many commenters requested that EPA allocate allowances to certified reclaimers to ensure that they would be able to obtain the virgin HCFCs needed for mixing with recovered HCFCs during the reclamation process. Recovered refrigerant often contains contaminants, including air, water, particulates, acidity, chlorides, high boiling residues, and other impurities including other refrigerants. Reclamation is the re-processing and upgrading of a recovered controlled substance through such mechanisms as filtering, drying, distillation, and chemical treatment in order to restore the substance to the purity levels specified in Appendix A to 40 CFR part 82, subpart F (based on ARI Standard 700, ''Specifications for Fluorocarbon and Other Refrigerants''). While most of the contaminants can be efficiently removed to bring the purity to ARI Standard 700, removing cross-contamination from other refrigerants poses additional challenges due to their chemistry. One method of separating out other refrigerants is to pass the material through a distillation tower, potentially several times. Some reclaimers blend virgin material with cross-contaminated recovered material to bring the material up to ARI Standard 700. Reclaimers do not currently have a consumption baseline per se; however, a limited number of reclaimers that also are HCFC importers do have a consumption baseline. Therefore, generally reclaimers purchase virgin HCFC–22 from allowance holders in a manner similar to other HCFC users such as air-conditioning and refrigeration appliance manufacturers.

Forty-five commenters encouraged EPA to allocate HCFC–22 consumption allowances to reclaimers so that they would have improved access to virgin HCFC–22 which they could then blend with recovered HCFC–22. The comments stated in various ways that having allocations would (1) improve the economics of reclamation, (2) foster greater recovery, (3) foster greater reclamation, and (4) provide environmental benefits. The primary mechanism suggested by commenters was that EPA provide to reclaimers an amount equal to 10% of the total annual HCFC–22 allocation. This method would reduce the amounts that the existing allowance holders would otherwise have received by 10% and redirect those allowances to certified reclaimers. EPA would allocate that 10% among reclaimers based on the amount of material each company reclaimed in some prior year, as reported to EPA under existing section 608 requirements.

First, commenters in support of allocating consumption allowances to reclaimers stated that it would improve the economics of the reclamation industry. Reclamation through separation and distillation requires costly distillation towers that are energy-intensive, and thus expensive, to operate. Alternatively, reclaimers who practice blending must purchase virgin HCFC–22, often at market prices. These commenters stated that having allocation rights would allow reclaimers to import HCFC–22 at a lower cost and thus be able to sell reclaimed HCFC–22 at a price that is competitive with domestically produced or imported virgin HCFC–22.

Second, these commenters stated that acquiring less expensive virgin material could help defray other costs associated with refrigerant reclamation, thereby allowing them to reclaim more contaminated (*i.e.,* more economically marginal) refrigerant. One commenter stated that reclaimers have many tons of material in inventory that could be reclaimed through blending but that it currently cannot reprocess without virgin material at competitive prices.

Third, these commenters stated that allocations to reclaimers would increase refrigerant recovery rates. Reclaimers would be more financially able to accept slightly cross contaminated HCFCs from contractors and wholesalers without needing to assess additional fees on them to pay for destruction or fractional distillation. Removing this disincentive for returning contaminated material would encourage more recovery and discourage an incentive to vent refrigerant. One commenter estimated that allocations for reclaimers would result in as much as a 15% increase in recovered refrigerant within the first two years of allocations.

Finally, these commenters claimed an environmental benefit from encouraging these less expensive blending practices. They stated that blending reduces the need for fractional distillation, a process that utilizes 300 times more energy than blending and they observed that increased recovery means less refrigerant is vented into the atmosphere.

In addition to comments supporting allocation of consumption allowances to certified reclaimers, EPA also received two comments stating that allocations to reclaimers are not necessary and will not encourage greater recycling/reclamation in the marketplace. These commenters stated that (1) current reclamation capacity is sufficient to meet greater future demand; (2) separation and distillation technology currently exists, precluding the need for virgin HCFC–22 to reclaim recovered HCFCs; and (3) allocating allowances to reclaimers creates numerous administrative and practical challenges that were not presented for notice and comment.

EPA has previously detailed the importance of recovering and reusing HCFC–22 and the Agency strongly encourages increased recovery and either recycling or reclamation [6] of

[6] EPA has defined Recover, Recycle, and Reclaim at § 82.152 as follows: (1) *Recover* refrigerant means to remove refrigerant in any condition from an appliance and to store it in a external container without necessarily testing or reprocessing it in any way; (2) *recycle* refrigerant means to extract refrigerant from an appliance and clean refrigerant for reuse without meeting all of the requirements for reclamation. In general, recycled refrigerant is refrigerant that is cleaned using oil separation and singe or multiple passes through devices, such as replaceable core filter-driers, which reduce moisture, acidity, and particulate matter. These

HCFC–22. Section 608 of the CAA prohibits the intentional venting of HCFCs and EPA regulations require that they be recovered and then either recycled, reclaimed, or destroyed. The recovery and reuse of HCFCs prevents emissions to the atmosphere where they can deplete the stratospheric ozone layer and reduces the amount of virgin material that needs to be produced. Recovery becomes even more important in light of the 2015 Montreal Protocol phasedown step, when the U.S. HCFC consumption cap is reduced from 3,810 ODP-weighted metric tons to 1,524 ODP-weighted metric tons. In its report *The U.S. Phaseout of HCFCs: Projected Servicing Needs in the U.S. Air-Conditioning and Refrigeration Sector* (the ''Servicing Tail'' report), EPA estimates that to meet demand in 2015, recovered material will have to provide 29% of the total servicing demand for HCFC–22. A smooth transition for stakeholders—including continued availability of needed material for approved uses—has historically been an essential aspect of the U.S.'s success in implementing the Montreal Protocol and Clean Air Act requirements. EPA therefore has given much consideration to the suggestion raised by commenters. EPA does not believe, though, that allocating allowances to reclaimers in this rulemaking is necessary or the most appropriate action that EPA can take to foster greater recovery and reclamation of HCFC–22.

First, while commenters stated that providing allowances to reclaimers for HCFCs to be used in blending may foster increased recovery, EPA is concerned that it may foster unsustainable reclamation practices. Commenters stated that the blending ratios of virgin to recovered material range from 4:1 to as high as 10:1 (reflecting ''blending up'' recovered material from either 98.5% pure or 97.5% pure respectively, to 99.5%). The amount of virgin HCFC–22 produced or imported for all purposes, including for blending out impurities, will decrease significantly in 2015 when the overall HCFC cap declines from 25% of baseline to 10% of baseline. Production and import of virgin HCFC–22 for refrigerant uses will cease in 2020. Therefore, reclamation through separation and distillation will be more important in 2015 and absolutely necessary in 2020.

Second, allocating allowances to reclaimers would be a major change to the rule that would affect other stakeholders who have not had the opportunity to comment on the reclaimers' suggestion. Current allowance holders would have their allocations reduced 10% under this suggestion. If EPA were to finalize such a suggestion, EPA would want to provide other stakeholders an opportunity to comment. The suggestion raises several issues that would benefit from the notice and comment process. Specifically, issuing allowances to reclaimers raises questions of who would receive allowances, what the baselines would be, and how many allowances would be allocated. Other questions about how to implement this suggestion would include whether EPA should provide additional allowances to reclaimers that currently have baseline allocations, and whether EPA should set the baseline according to the amount reclaimed, as commenters suggested, or according to the amount recovered. Furthermore, some reclaimers currently manufacture and sell niche blend refrigerants that include HCFC–22 as a component, so EPA would need a mechanism to ensure that they would use the allocation for reclamation purposes, not for continued production of these blends. Different allocation methods offer advantages and disadvantages for potential allowance holders that vary according to the specific characteristics of the stakeholder. Thus, altering the final rule to accommodate the reclaimers' suggestion is not a simple matter. If EPA were to issue a supplemental proposal to provide an opportunity for all stakeholders to comment on these issues, the rule would likely be delayed beyond January 1, 2010. This would have a negative impact on all stakeholders who are depending on an allowance allocation for the production and import of HCFCs in 2010.

Third, EPA believes that it can take other actions in this rule that will foster recovery and reclamation while avoiding the complications raised by the commenters' suggestion. The same commenters that suggested allocations to reclaimers also noted that a constant allocation rate over the five control periods, as proposed, might discourage rather than foster reclamation. To avoid that, in this final rule EPA is allocating at 80% of the estimated demand in 2010 and is reducing the allocation over five years. EPA anticipates that the price of HCFC–22 will increase as allocations decrease and supply is reduced. Some of the economic constraints for recovery and reclamation will therefore loosen and more recovered material being held in inventory may be reclaimed. EPA believes that encouraging the market for recovered material in this way will be the most effective and appropriate mechanism that this current rulemaking can take to increase recovery and reclamation.

Overall, while EPA agrees that recovery practices should be improved and reclamation expanded, the Agency does not agree with commenters that EPA should provide allocations to reclaimers at this time as a way of doing so. Therefore, in this final rule, EPA is not adding new entrants based on their status as EPA-certified refrigerant reclaimers. EPA may consider such an approach when proposing future allocation rules.

B. Factors for Considering Allocation Amounts for HCFC–22 and HCFC–142b

EPA proposed to allocate HCFC–22 and HCFC–142b allowances based on the projected servicing needs for those compounds, taking into account the amount of those needs that can be met through recycling and reclamation. The proposed rule discussed and sought public comment on two alternate methods for determining how many allowances to allocate in 2010–2014 for these two compounds. One alternative that EPA rejected would have allocated the maximum amount of HCFC–22 and HCFC–142b that ensures compliance under the Montreal Protocol aggregate cap in 2010 without room for other HCFCs. The other alternative EPA rejected would have been to allocate a percentage of the aggregate HCFC consumption and production caps in 2010 for HCFC–22 and HCFC–142b equal to the same overall percentage of the aggregate HCFC consumption and production caps allocated for each substance in the 2003 allocation rule. Thus, in 2003, EPA allocated HCFC–22 allowances equal to 66 percent of 9,906 ODP tons and HCFC–142b allowances equal to 13 percent of 9,906 ODP tons. This second method would have applied the same percentages to the total allowable HCFC consumption level for 2010–2014 of 3,810 ODP-weighted metric tons (*i.e.* 2,515 ODP tons of HCFC–22 and 495 ODP tons of HCFC–142b). EPA rejected these alternate methods because they do not consider servicing needs and thus could result in shortages or oversupply of HCFC–22. Additional discussion of these alternatives is found in the proposed rule. Neither of these approaches received favorable comment. EPA

procedures are usually implemented at the field job site; (3) *reclaim* refrigerant means to reprocess refrigerant to all of the specifications in appendix A to 40 CFR part 82, subpart F (based on ARI Standard 700–1995, Specification for Fluorocarbons and other Refrigerants) that are applicable to that refrigerant and to verify that the refrigerant meets these specifications using the analytical methodology prescribed in section 5 of appendix A of 40 CFR part 82, subpart F.

therefore concludes that an approach based on the servicing need is most appropriate for allocating HCFC–22 and HCFC–142b allowances. Because it is important to promote greater use of recycled and reclaimed material in anticipation of the 2015 phasedown step, EPA does not intend to allocate the difference between the allocation authorized by the Parties of the Montreal Protocol and the allocation authorized by this rulemaking except under unforeseen extenuating circumstances.

1. The Importance of HCFC–22 Servicing Needs for Existing Equipment

HCFC–22 is the most widely used HCFC and the demand for its use in servicing existing equipment is the primary factor affecting EPA's estimate of production and consumption of HCFCs in the coming years. EPA has issued and sought comment on three versions of a draft report analyzing servicing demand for the HCFC appliances in the U.S. refrigeration and air-conditioning sector projected to be in service from 2010–2019. The Servicing Tail report focuses on air-conditioning and refrigeration appliances because such equipment will represent the bulk of the servicing need. In addition, the servicing exception to the use ban for HCFC–22 and HCFC–142b pertains only to use as a refrigerant in such equipment. Under section 605(a) of the Clean Air Act and EPA's implementing regulations, nearly all other uses of these two HCFCs are banned effective January 1, 2010. The projected servicing need for HCFC–22 in 2010 is approximately 62,500 metric tons (3,438 ODP-weighted metric tons), or approximately 90 percent of the consumption cap for all HCFCs in 2010, which is 3,810 ODP-weighted metric tons. HCFC–142b has primarily been used as a foam blowing agent, a use which will be phased out in 2010. The projected servicing need for existing refrigeration equipment containing HCFC–142b is extremely low: approximately 100 metric tons (7 ODP tons). EPA therefore has focused the analysis on HCFC–22 because that compound is the predominant HCFC in the installed base of air-conditioning and refrigerant equipment for which servicing in the U.S. will likely continue.

The Servicing Tail Report provides a classification of refrigeration and air conditioning equipment that continue to use HCFC–22. Refrigeration equipment can be categorized as: (1) Domestic refrigeration, (2) refrigerated transport, (3) industrial process refrigeration, and (4) commercial refrigeration. Domestic refrigeration includes household refrigerators, household freezers, combination refrigerator/freezer units, and water coolers. With the exception of certain older household freezers that use HCFC–22, this category typically does not use HCFCs or blends containing HCFCs. Refrigerated transport includes refrigeration used in equipment that moves products from one place to another and includes refrigerated ship holds, truck trailers (*i.e.,* reefer trucks), railway freight cars, and other shipping containers. Industrial process refrigeration systems are complex, customized systems used to cool process streams in the chemical, food processing, pharmaceutical, petrochemical, and manufacturing industries. This sector also includes industrial ice machines, equipment used directly in the generation of electricity, and ice rinks. Commercial refrigeration appliances that continue to use HCFC–22 can be further broken down into two end uses: cold storage warehouses and retail food refrigeration systems.

The majority of HCFC–22 equipment that is projected to be in use from 2010 onward will be air-conditioning applications, including window units, packaged terminal units, unitary air-conditioning, chillers, dehumidifiers, water and ground source heat pumps, and mobile air-conditioning in buses and trains. EPA projects that approximately 145.6 million units of all such types of HCFC–22 air-conditioning equipment will be in use in 2010, decreasing from 2010 levels by about 41 percent in 2015 and 86 percent in 2020. In addition, approximately 3.8 million units of HCFC–22 refrigeration equipment will be in use in 2010. The installed base of HCFC–22 refrigeration equipment is projected to decrease from 2010 levels by about 44 percent in 2015 and 75 percent in 2020.

EPA developed these estimates using its Vintaging Model. This model is the primary tool that EPA used to launch the analysis and form the basis for quantitative estimates of projected HCFC consumption. The Vintaging Model estimates the annual chemical emissions from industry sectors that have historically used ODS, including air conditioning, refrigeration, foams, solvents, aerosols, and fire protection. Within these industry sectors, there are over fifty independently modeled end uses. The model uses information on the market size and growth for each of the end uses, as well as a history and projections of the market transition from ODS to alternatives. As ODS are phased out, a percentage of the market share originally filled by the ODS is allocated to each of its substitutes. The model tracks emissions of annual ''vintages'' of new equipment that enter into operation by incorporating information on estimates of the quantity of equipment or products sold, serviced, and retired or converted each year, and the quantity of the compound required to manufacture, charge, and/or maintain the equipment. EPA's Vintaging Model uses this market information to build an annual inventory of in-use stocks of equipment and the ODS refrigerant and non-ODS substitutes in each of the end uses. Additional information on the Vintaging Model is available in the docket for this rulemaking.

On November 4, 2005, EPA published a Notice of Data Availability (70 FR 67172) making the first draft of the Servicing Tail report available for public review and comment. On September 29, 2006, EPA held a stakeholder meeting presenting the findings in the second draft of the Servicing Tail report along with other important information regarding the next major milestones in the HCFC phaseout. EPA solicited additional comments on the findings presented at the meeting. Representatives of air conditioning and refrigeration manufacturers, chemical producers, importers, reclaimers, industry associations, and environmental organizations commented on the projected amount of HCFCs needed to service the installed base of equipment and on the amounts expected to be available from reclamation. In June 2008, EPA prepared a third draft of the Servicing Tail report to: (1) Reflect the September 2007 Montreal Adjustment, in which the Parties agreed to adjust the stepwise reduction in 2010 from 65 percent of baseline to 75 percent of baseline for non-Article 5 Parties; (2) consider more recent production and consumption data in the United States; and (3) consider more recent trends in the air-conditioning and refrigeration sectors. EPA placed this revised draft report in the docket and accepted comments on it during the public comment period. These comments are discussed below.

The projections of past HCFC consumption, as presented in the Servicing Tail report, showed reasonable agreement with production, import, and export data reported to the Agency as required by 40 CFR 82.24 on a quarterly, annual, and transactional basis. EPA's analysis of the reported data confirms that the United States is satisfying its obligations as it phases out ODS and enables EPA to consider trends in the HCFC markets on a chemical-by-chemical basis. EPA also uses this information to submit an annual report

to the Ozone Secretariat as required by the Parties to the Montreal Protocol.

The projected servicing need for HCFC–22 in 2010 is 62,500 metric tons (3,438 ODP-weighted metric tons), or approximately 90 percent of the ODP-weighted consumption cap for all HCFCs in 2010, which is 3,810 ODP-weighted metric tons. EPA estimates that the servicing need for HCFC–22 will continue to decrease each year, and this final rule accounts for this by decreasing the allocation annually in each of the years 2011–2014. In contrast, the lead option in the proposed rule would have maintained a constant HCFC–22 allocation of 50,000 metric tons in 2010 through 2014. EPA recognizes that in 2013 and 2014 the proposed HCFC–22 allocation would surpass projected need. This is one reason why EPA is not allocating a constant amount of HCFC–22 allowances for the years 2010–2014. This final rule allocates at 20% below modeled need in 2010, decreasing to 26% below the modeled need in 2014, and relies on a consistent amount of reclaimed material to assist in meeting projected servicing needs. This approach is described in Section IV.B.3 below. Estimates of projected need are discussed in the Servicing Tail report found in the docket to this rule.

After review of comments and other data and estimates of HCFC servicing needs, EPA is not convinced that there is any reason to allocate above the need projected in the Servicing Tail report. In general, commenters supported the analysis presented in the Servicing Tail report. These repeated efforts to seek and incorporate comments on this analysis are important to the Agency, as the final rule bases the allocation amounts on the demand estimates it contains. While EPA received four additional comments on the Servicing Tail report in association with the proposed rule, the Agency is confident that this report accurately reflects the existing demand for HCFC–22 to support servicing of existing equipment.

Two commenters asked EPA to describe why it projects a decrease in post-2010 HCFC–22 demand of approximately 6,100 metric tons compared to the previous version of its Servicing Tail report. The decrease in projected HCFC–22 demand between the September 2006 and June 2008 reports is a direct result of updates made to EPA's Vintaging Model based on industry and stakeholder input as well as EPA's own research. EPA updated the Vintaging Model to reflect slight increases in HCFC–22 demand for chillers, cold storage, and industrial process refrigeration, and to reflect a decrease in HCFC–22 demand for dehumidifiers and a significant decrease in HCFC–22 demand for retail food end uses. These changes are part of EPA's ongoing effort to improve modeling assumptions. Model assumptions and results (such as consumption and emissions estimates) from major air-conditioning and refrigeration end-uses were presented at the April 2007 spring meeting of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI). EPA revised the Vintaging Model based on research done in preparation for those meetings and based on comments received on those presentations. EPA subsequently used revised model output to update the June 2008 report.

One of the commenters also asked technical questions pertaining to the Vintaging Model and stated a belief that the change might be due to clerical errors in the 2008 report. Specifically, the commenter noted that (1) HCFC–22 chilling units expected to be in service in 2010 increase by 4,295% between the 2006 and 2008 reports; (2) 2010 unitary projections for HCFC–22 retail food refrigeration equipment increases 72% between the two most recent reports; and (3) there is a decrease of over two million dehumidifiers projected to be in service in 2010, which is the only significant projected equipment reduction. The increase in R–22 chiller units between the 2006 and 2008 reports is not a clerical error; it is the result of the addition of new chiller end-uses into the model and resulting analysis. Second, updates made to assumptions for the retail food end-uses in the model did result in an increase in equipment. However, despite the increase in the number of units, there was a decrease in stocks, growth rates, leak rates, and charge sizes which caused a decrease in R–22 demand post-2010. Finally, conversations with industry indicated that dehumidifier projections in the September 2006 report were too high. EPA discusses these questions raised by commenters in more detail in the response to comments document.

One commenter suggested that the current economic climate may slow the transition to new equipment, as owners seek to repair rather than replace existing equipment, an effect which the 2008 Servicing Tail report does not reflect. While the Servicing Tail report does not consider effects from the recent economic downturn, the servicing estimate does account for the practice of replacing components rather than installing new equipment. EPA notes that while the economic downturn may extend the time existing HCFC–22 equipment is used, it has also reduced the amount of HCFC-based equipment installed and hence will reduce future demand for servicing. EPA understands that the actual transition will not perfectly synchronize with the model year-by-year, whether for economic conditions, weather, or other events. However, the combination of reclaimed and virgin HCFCs should be sufficient to meet demand.

One commenter stated that there are significant barriers to a rapid transition to equipment that uses ozone-safe hydrofluorocarbons (HFCs) before and after January 1, 2010. EPA responds that the transition to HFC or other SNAP-acceptable substitute refrigerants is only required for new equipment. Furthermore, EPA's discussion with manufacturers of equipment and foam formerly reliant on HCFC–22 and HCFC–142b indicate that the industry has been working for some time to implement such alternatives by January 1, 2010. The January 1, 2010, date for restricting the use of newly production or imported HCFC–22 and HCFC–142b was established and published in the **Federal Register** on December 10, 1993 (58 FR 65018).

Using reported data, the June 2008 version of the Servicing Tail report, and comments provided at the September 2006 stakeholder meeting, submitted in subsequent correspondence (available in the docket), and provided in response to the proposed rule, the Agency has sufficient information to allocate a percentage of baseline allowances for HCFC–22 and HCFC–142b for production and consumption in 2010–2014 for servicing needs. The specific percentage of baseline for each of the affected compounds is discussed below.

2. Meeting Servicing Needs With Virgin and Reclaimed Material

The Agency recognizes that servicing needs can be met with a combination of newly-manufactured HCFCs (virgin HCFCs) and HCFCs that have been recovered and either recycled or reclaimed. Therefore, EPA does not anticipate that virgin HCFC–22 will need to be produced or imported to meet the entire HCFC–22 servicing need (estimated to be 3,438 ODP tons in 2010). The Servicing Tail report analyzes various scenarios regarding reclamation. In addition, EPA's memo to the docket ''Summary: EPA Analysis of U.S. Reclamation Practices and Trends'' provides background on the reclamation industry, includes information concerning capacity to reclaim greater amounts of refrigerants, and for 2010 projects that more than 20 percent of the servicing need can be met by recovering HCFC–22 from existing equipment.

Recycled and reclaimed HCFCs offset the need for newly-manufactured HCFCs and after the terminal phaseout, as with the CFC phaseout, will become the only material available for servicing existing equipment. EPA regulations at 40 CFR part 82 subpart F, promulgated under section 608 of the CAA, are targeted to reduce the use and emission of certain substances including HCFCs by maximizing their recapture and recycling during the service, maintenance, repair, and disposal of appliances. These regulations, and section 608 of the CAA, prohibit the venting or knowing release into the environment of HCFCs. The regulations require that they be recovered and then either recycled, reclaimed, or destroyed. Therefore, it is reasonable to assume that some amount of recovered HCFCs will be available to meet servicing needs. In accordance with the chemical-by-chemical phaseout regime adopted by the United States, after 2020 only recycled, reclaimed, and stockpiled HCFC–22 and HCFC–142b will be available to service appliances that require those substances. EPA's existing regulations at § 82.16 terminate HCFC–22 and HCFC–142b production and consumption at the end of 2019. The very small amount of additional production and consumption of HCFCs allowed under Article 2F of the Montreal Protocol between 2020 and 2030 for servicing existing appliances (0.5 percent of baseline) will only be permitted for HCFCs other than HCFC–141b, HCFC–22, and HCFC–142b, per § 82.16(e), and will be restricted to servicing air-conditioning and refrigeration equipment manufactured prior to January 1, 2020, per § 82.16(d).

The Servicing Tail report uses EPA's Vintaging Model to determine the quantities of HCFC–22 from existing (recycled or reclaimed) sources that can meet post-2010 servicing needs with the remaining quantities required through virgin manufacture (expending allowances). For a given year, the Vintaging Model assumes that a certain percentage, which varies by end use, of refrigerants are recovered from discarded equipment. The model aggregates the quantities recovered but does not distinguish the ''pool'' of refrigerant between quantities that are reclaimed and those that are recycled.

For purposes of analysis, the Servicing Tail report considers scenarios for HCFC–22 where differing amounts of refrigerant from decommissioned or converted appliances were recycled or reclaimed and reused for servicing. For example, the report examines scenarios in which 10 percent, 15 percent, 20 percent, 50 percent, and 75 percent of the total amount of HCFC–22 in retired or converted equipment is recovered. These analyses depict the potential ratios of new and recovered HCFC–22 that could be available during the years 2010–2019 to meet the overall servicing needs, recognizing that the higher recovery rates are less likely for the earlier control periods.

Recovery of HCFC refrigerants, with subsequent recycling or reclamation, will continue to increase over time. During the past several years the price of newly manufactured HCFC refrigerants has increased, creating a greater incentive for refrigerant to be reused. Recently, EPA has learned that many reclaimers are beginning to work directly with contactors to provide education concerning the benefits of refrigerant recovery. Certain reclaimers have recently established programs to provide incentives for contractors to return used refrigerants, including avoiding unnecessary mixing of refrigerants and thereby increasing the amount of refrigerant that can meet AHRI Standard 700. Such programs should encourage the existing trends of increased amounts of recovered refrigerants available for reuse. Given its previous experience with the class I phaseout, EPA believes that over time an increasing percentage of HCFCs will be recovered for reuse. For example, after the 1996 CFC phaseout, motor vehicles with CFC–12 air-conditioning systems continued to be serviced with recovered CFC–12. Recovered CFC refrigerants are still in use today for servicing a range of older equipment.

Three commenters disagreed with EPA's assumption that 20% of the total amount of HCFC–22 in equipment retired or retrofitted beginning in 2010 can either be recovered or made available for reuse. Generally this concern centered on the fact that current recovery and reclamation rates are not 20%. One of these commenters stated that the current use of reclaimed HCFC–22 is closer to seven percent. Though not stated in the comment, EPA believes this is a reference to data reported to EPA under 40 CFR part 82 subpart F showing that 4,556 MT of HCFC–22 was reclaimed in 2008. This amounts to 7.3% of the modeled demand in 2010, up from 5.9% in 2007. This value, though, does not reflect the total recovery rate as it excludes the amount of recycled refrigerant. EPA does not track recycled refrigerants, since recycled refrigerant (unlike reclaimed refrigerant) must be charged back into equipment with the same ownership rather than re-enter the market. EPA therefore knows that the combined amount of recycled and reclaimed refrigerants is greater than 7.3%. Two commenters provided estimates for the combined reclamation and recycling rates. One commenter said it is currently less than 15% of the modeled demand while the other estimated approximately 24 million pounds, or 17%. As described in the proposed rule, EPA has both anecdotal and reported information concerning recovery rates for refrigerants, though it does not have figures for recycled refrigerants. Furthermore, EPA notes that the amount reclaimed in one year does not mean that it was recovered in that year. Many reclaimers collect more than they reclaim in any one year due to market shifts. One commenter said that reclaimers have many tons of material in inventory waiting to be reclaimed when the economics of reclamation improve, which EPA believes will occur through the allocation levels established in this rule. EPA is aware that 20% recovery and reclamation for 2010 is greater than current industry practice but has not received comments that convince us that the rate is unreasonable.

The third commenter opposed to EPA's 20% recovery assumption was not optimistic that reclamation facilities currently had sufficient capacity or could increase capacity during the next few years to meet the demand. However, the reclamation companies together provided a comment stating that they currently have sufficient capacity to reclaim 36 million pounds of refrigerants each year, which is equal to 16,329 MT, or 26% of the estimated demand in 2010. The main concern of the reclaim industry is not reclamation capacity but rather the economic disincentive to reclaim and poor recovery practices. One commenter pointed to an expansion in the number of distributors offering refrigerant recovery services in support of EPA's goal of achieving 20% recovery. Multiple commenters suggested methods to improve contractor participation in the recovery, and recycling or reclamation of refrigerant, such as certification programs, enforcement, educational outreach, and training. EPA agrees that such approaches could improve contractor participation although they are beyond the scope of this rulemaking and welcomes further discussion with stakeholders to improve recovery and recycling or reclamation rates in 2010 and beyond.

EPA is basing the HCFC–22 allocation amounts on the amount EPA has estimated is needed, recognizing that reclamation and recycling reduce the

amount of virgin HCFC–22 that needs to be produced to meet that servicing need. EPA also continues to believe that an allocation at 80% of the estimated servicing demand is appropriate for 2010. Ten commenters stated that EPA's proposal to meet 80% of servicing demand through HCFC–22 consumption allowances, with the remaining demand being met through recovered material, is an appropriate approach. Six of these commenters stated that reducing the available supply of new HCFC–22 will create a need, and therefore a market, for recovery and reclamation. Four commenters stated that EPA should issue allowances at more than 80% of servicing demand and shared the concern that there will be insufficient recovered and reclaimed HCFC–22 to meet the difference. Three other commenters encouraged EPA to issue consumption allowances equaling less than 80% of HCFC–22 servicing demand in 2010.

EPA believes that if the 2010 allocation is 80% of the modeled demand, the remaining servicing need can be met from recycled or reclaimed material. Given the regulatory requirements for recycling and reclamation (at 40 CFR part 82 subpart F), experience with the CFC phaseout, and industry practices, EPA believes that by January 1, 2010, the effective date of this rule, the remaining 2010 servicing need can be met with recycled or reclaimed material. The Agency believes that 20% of the HCFC–22 in equipment that is retired or retrofitted each year after 2010 can be recovered and reclaimed and that the availability of recycled or reclaimed material will increase through 2014 as recovery practices improve. In 2020, all HCFC–22 and HCFC–142b used to service air-conditioning and refrigerant equipment will be supplied by recycled or reclaimed refrigerant that has been recovered from existing appliances in light of the nearly-complete phasedown of production and import of virgin material in accordance with the CAA and the Montreal Protocol. Additionally, EPA regulations already prohibit the intentional venting of refrigerants and require refrigerant recovery, and the market for recycled and reclaimed refrigerant is predicted to grow as the phaseout progresses. As discussed below, EPA also believes that reducing the allocation each year from 2010 to 2014 to reflect declining demand will lead to higher rates of recovery and recycling/reclamation. Additional information concerning recovery, recycling, and reclamation is found in the Servicing Tail report and the ''Summary: EPA Analysis of U.S. Reclamation Practices and Trends'' report in the docket.

3. Annual Reduction in Allocated Amounts

EPA's proposal to allocate 80% of the 2010 servicing demand for HCFC–22 (50,000 metric tons) was based on its belief that the remaining need could be met with refrigerant that was recovered and either reclaimed or recycled. Thirty three commenters pointed out, though, that EPA's proposal to maintain a constant allocation for each control period over 2010–2014 did not reflect that demand will decrease over that time as equipment goes out of service and are replaced with appliances using alternative refrigerants. Therefore, while an allocation of 50,000 MT would equal 80% of estimated demand in 2010, an allocation of 50,000 MT in 2013 and 2014 would exceed the modeled demand for those years (by 1,600 MT in 2013 and 6,400 MT in 2014). The proposed rule took comment on the idea of increasing the expected contribution of recycled and reclaimed refrigerant for each control period by annually reducing the allocation of HCFC–22. EPA now believes that unless it were to reduce the allocations for virgin HCFC–22 between 2010 and 2014, there could be an oversupply of HCFC–22 and the contribution of recycled and reclaimed refrigerant would decrease, both in the total number of kilograms and as the proportion of overall need.

Commenters expressed the possibility that a constant allocation as proposed could harm the rates of recovery and reclamation. Reclaimers commented that they would not be able to compete with the less expensive virgin material that would exceed the market demand in 2013–2014. With no economic incentive to reclaim, they claim they could be driven to idle their reclamation facilities, restarting them in 2015 to meet the demand resulting from that stepdown. They argue that two years of inactivity would weaken their contacts with contractors and distributors and hamper efforts to instill proper recovery practices. EPA is unable to predict the precise effect of allowing production levels in excess of demand and does not believe that all reclaimers will be affected in the same way. However, EPA does agree that this could harm the recovery and reclaim industry at exactly the time when rates of recovery and reclamation need to be increasing.

EPA is particularly concerned with providing as smooth a transition to the 2015 stepdown as possible. At that date, the U.S. must meet a 90% reduction below the baseline for all HCFCs, which is equivalent to 1,524 ODP-weighted metric tons. EPA's Servicing Tail report shows that even a 20% recovery rate would be insufficient to meet the demand for HCFC–22 in 2015. As shown in Table 4–5 in the report, demand for HCFC–22 in 2015 is projected to be 38,800 MT while the cap for all HCFCs equates to 27,709 MT of HCFC–22 (assuming no allocation for any other HCFCs). A 20% recovery rate would allow for the additional use of 8,800 MT but would still leave a shortfall of 2,291 MT in 2015. EPA calculates that to meet the total demand in 2015, the recovery rate must increase to 26% (representing 29% of total servicing demand) by that year.

Based on the comments, EPA believes it is desirable to institute a year-by-year reduction for the period of 2010–2014. A smooth transition for stakeholders—including continued availability of needed material for approved uses—has historically been an essential aspect of the U.S.'s success in implementing the Montreal Protocol and Clean Air Act requirements. To ease the transition to 2015 and avoid disruptions to the market and shortages in HCFC–22 at that date, the Agency believes it is necessary to take steps now to foster further recovery.

EPA believes that the servicing demand over 2010–2014 can continue to be met under the new allocation levels in the final rule. Since EPA is not banning the use of existing HCFC–22 appliances that have been manufactured prior to January 1, 2010, recovered and reclaimed HCFC–22 will become more valuable as the phaseout progresses. The demand for HCFC–22 to service existing equipment will provide an economic incentive to increase the quantities of recovered HCFC–22 available for reclamation. As an indicator of the improved economics, several reclamation companies have recently started offering financial payments for recovered HCFC–22. The docket provides further information on EPA's assumptions regarding the availability of recovered and reclaimed HCFC–22 to meet servicing needs.

Finally, annual reductions to the allocation provides clear environmental benefits compared to the lead option in the proposed rule, assuming the same starting point. Over the five-year period 2010–2014, the proposed rule would have allocated 250,000 metric tons of HCFC–22. Over the same period, the final rule is allocating 203,100 MT of HCFC–22, a difference of 46,900 MT, or 2,574 ODP tons.

Commenters suggested various possible methods for allocating HCFC–22 allowances on a declining annual

basis. One commenter supported an annually declining allocation but did not support a total allocation over the five-year period less than what EPA proposed. EPA believes that such an approach would negate many of the benefits of annually reducing the allocations, including easing the transition to the 2015 control period and providing an environmental benefit. To implement the suggestion, the allocation would have to equal demand in 2010, which would not create any impetus for reclamation in that year, and be 84% of demand in 2014. EPA believes that meeting 20% of demand with used material in 2010 is feasible and that the Agency should not wait until 2014 to approach that goal. For the same reason, EPA also rejects another suggested method that would increase the 2010 allocation from 50,000 MT to 55,000 MT. The majority of commenters agree with EPA's approach of allocating at 80% of demand in 2010, with recovered and either recycled or reclaimed HCFC–22 meeting the remainder. Indeed, other commenters agreed with an allocation of 50,000 MT in 2010 and used that value as the starting point for a straight-line annual reduction to other 2014 endpoints. One suggestion was to set allocations that decline linearly from 2010–2014, where the allocation if extrapolated to 2015 would equal the 2015 cap. This results in a yearly reduction of 4,458 MT. Another similar suggestion rounded up the annual reduction to 5,000 MT, which results in a line that would be below the cap in 2015.

Because the primary benefit of annually reducing the allocation is to ensure demand in 2015 is met through greater recovery and reclamation, EPA believes that it is more appropriate to base the allocation more directly on that goal. In 2015, EPA estimates demand of HCFC–22 at 38,800 MT. Were the allocations to consist entirely of HCFC–22, the cap would limit the 2015 HCFC–22 allocation to only 27,709 MT, a difference of 11,091 MT that would have to be made up with recovered material. Furthermore, it is likely that the allocation in 2015 will not consist entirely of HCFC–22 as EPA will need to reserve room under the cap for other HCFCs, similar to the approach EPA is taking in this rule for the 2010–2014 control periods. EPA believes it is appropriate to establish an annual step-down such that the amount of total demand to be met from recovered HCFC–22 will equal 12,500 MT each year, as that is the amount EPA proposed to be met in 2010 and it is approximately the amount that will be needed to meet the servicing demand in 2015. Under this approach, the allocations would equal 50,000 MT in 2010, 45,400 MT in 2011, 40,700 MT in 2012, 35,900 MT in 2013, and 31,100 MT in 2014. These values, shown in the table below, are derived by subtracting 12,500 MT from the estimated demand each year. EPA will not issue allowances for 2015 and beyond until a future rulemaking but extends the table to 2015 to show the estimated demand for that year and the amount of recovered material that must be used to meet the demand at that date, assuming the allocation in 2015 consists entirely of HCFC–22 and does not include other HCFCs.

	2010	2011	2012	2013	2014	2015
Estimated Demand (MT)	62,500	57,900	53,200	48,400	43,600	38,800
Total Allocation (MT)	50,000	45,400	40,700	35,900	31,100	27,709
Reclaimed Amount (MT)	12,500	12,500	12,500	12,500	12,500	11,091

This annual stepdown lies between the two rates suggested by commenters. As the total demand decreases, maintaining the supply of recovered HCFCs at a constant level results in recovered material comprising a greater proportion of the total demand each year. Under this approach, the percentage of the total need to be met with reclaimed material will rise from 20% to 29% of total demand in 2014, though the total amount of reclaimed material supplied remains at 12,500 MT for all five years. EPA believes this is appropriate as it facilitates meeting the demand in 2015, of which at least 29% must be met with recovered material.

Commenters who requested annual reductions in the amount of HCFC–22 allocations did not suggest that EPA annually reduce the allocations of HCFC–142b. EPA is not reducing the allocation of HCFC–142b on an annual basis because the Agency does not believe that the same rationale would apply to HCFC–142b. Most recovered HCFC–22 comes from refrigeration and air-conditioning appliances. The largest single use of HCFC–142b prior to 2010 was to blow foam and recovery is not required from discarded foam. The need for recovery is also less, given the small amounts of HCFC–142b needed to service existing refrigeration equipment post-2010. Finally, it is difficult to reclaim HCFC–142b from refrigerant blends and such recovery is not widely practiced. Therefore, EPA is finalizing annual reductions only for HCFC–22 and maintaining the allocations of HCFC–142b as proposed.

C. Allocations of HCFC–22 and HCFC–142b

EPA is revising the two types of tables in 40 CFR part 82 that together specify the production and consumption allowances available to allowance holders during specified control periods. Tables at § 82.17 and § 82.19 apportion baseline production allowances and baseline consumption allowances, respectively, to individual companies for individual HCFCs. Complementing these tables, the table at § 82.16 lists the percentage of baseline allocated to allowance holders for specific control periods. By selecting option 1, discussed in Section IV.A. of the preamble above, EPA is retaining this framework of complementary tables, revising them to reflect adjustments to baselines, and granting percentages of baselines in a manner that achieves the 2010 phasedown goal.

The percentages for HCFC–22 and HCFC–142b in the table at § 82.16 (Table 1 below) have changed from the proposed rule. In the proposal, the allocation for HCFC–22 for 2010 was 35.2% of baseline. In the final rule, the value is 41.9%. Similarly, the percent allocation for HCFC–142b for 2010 was 4.9% of baseline in the proposed rule and is 0.47% in the final rule. These changes do not reflect a change in the allocation amounts, as the total allocation for HCFC–22 in 2010 remains 50,000 MT (the same as the proposal), and the total allocation for HCFC–142b 2010 remains at 100 metric tons (the same as the proposal). Instead, these changes are due to not changing the baselines to reflect inter-pollutant transfers occurring on an annual basis within a single company. The proposal, which treated the intracompany transfer of HCFC–142b to HCFC–22 as permanent, had a total consumption baseline of 141,865 MT. By not accounting for those transfers, the baseline in the final rule decreased to 119,285 MT. With a smaller total

baseline, the factor that each baseline allowance holder must multiply to reach the same amount of allowances is greater. Thus, 50,000 is equal to 35.2% of 141,865 and 41.9% of 119,285. The opposite is true for HCFC–142b, which had a proportionately smaller baseline in the proposed rule but now has a larger baseline since EPA is not accounting for inter-pollutant transfers.

EPA is amending the table at § 82.16 by including control periods 2010–2014, by continuing to allocate zero percent to HCFC–141b, and by allocating specified percentages (in separate columns) to HCFC–22, HCFC–142b, and—as will be discussed later—other HCFCs. The allocations for HCFC–22 decrease on an annual basis, rather than remaining constant for each of the 2010–2014 control periods as was proposed.

TABLE 1—PHASEOUT SCHEDULE FOR CLASS II CONTROLLED SUBSTANCES IN 40 CFR 82.16

Control period	Percent of HCFC–141b	Percent of HCFC–22	Percent of HCFC–142b	Percent of HCFC–123	Percent of HCFC–124	Percent of HCFC–225ca	Percent of HCFC–225cb
2003	0	100	100				
2004	0	100	100				
2005	0	100	100				
2006	0	100	100				
2007	0	100	100				
2008	0	100	100				
2009	0	100	100				
2010	0	41.9	0.47	125	125	125	125
2011	0	38.0	0.47	125	125	125	125
2012	0	34.1	0.47	125	125	125	125
2013	0	30.1	0.47	125	125	125	125
2014	0	26.1	0.47	125	125	125	125

EPA is allocating different baseline percentages for HCFC–22 and HCFC–142b because EPA projects that the needs will differ for servicing air-conditioning and refrigeration appliances during the 2010–2014 control periods. As discussed in Section IV.B.1. of the preamble above, EPA's analysis shows that there will be a significantly greater need for HCFC–22 than for HCFC–142b during the control periods 2010–2014. Based on the Servicing Tail report and reporting information already required by EPA regulations, the needs for individual HCFCs are not uniform. Allocating the same percentage of baseline for HCFC–22 and HCFC–142b would result in too few allowances for HCFC–22 and too many allowances for HCFC–142b. While inter-pollutant transfers in accordance with § 82.23(b) could be used to trade allowances of one HCFC for another, EPA does not believe it is appropriate to rely on such transfers as a mechanism for large-scale corrections. Instead, EPA anticipates that the continued availability of inter-pollutant transfers will permit the market to self-correct for unforeseen changes in demand and allow individuals to consider a range of options for their allowances. EPA seeks to avoid unnecessary disruptions in the marketplace and to promote a smooth transition for industry.

1. HCFC–22 Allowances for 2010–2014

For 2010, EPA is allocating HCFC–22 consumption allowances to meet 80 percent of the servicing need, assuming that the remainder will be met by recovered HCFC–22 that is either recycled or reclaimed. This translates into 50,000 metric tons (2,750 ODP-weighted metric tons), or approximately 72 percent of the total HCFC consumption cap for the 2010 control period. For the 2011–2014 control periods, EPA is annually reducing the allocation amount in a linear fashion, reflecting the declining servicing demand over that time.

As it did in the 2003 allocation rule, EPA is allocating production allowances among different chemicals using the same percentage breakdown as for consumption allowances. This rule allocates 46,368 metric tons (2,550 ODP tons of the 3,884.25-ODP-ton production cap) to HCFC–22 production in 2010, with the amount declining in each of the control periods from 2010 through 2014. This is consistent with section 605(c) of the Clean Air Act, which requires that the phaseout schedule for HCFC consumption be the same as that for HCFC production. EPA recognizes that there is a difference between the amount of imported and produced HCFCs and that the degree of difference may vary over time. However, EPA does not believe it is necessary to use two different chemical-by-chemical percentage breakdowns (*i.e.*, one for consumption allowances and another for production allowances) to ensure compliance with the production and consumption caps. Therefore, for simplicity and for consistency with section 605(c), EPA is using the same percentages for production and consumption allocations—deriving the percentages based on estimated need for each individual HCFC.

2. HCFC–142b Allowances for 2010–2014

As discussed in the Servicing Tail report, the projected servicing need for HCFC–142b is extremely low: Approximately 100 metric tons (6.5 ODP tons) in 2010 and decreasing to zero by 2015. Prior to 2010, the primary use of HCFC–142b has been to blow foam, a use no longer allowed after 2010. In estimating the need for 2010–2014, EPA has considered the amount of HCFC–142b produced and imported into the United States as reported to EPA in recent years under the existing requirements. Unlike with HCFC–22, EPA has not considered the reclamation and recovery rates of HCFC–142b in setting the allocation amounts. HCFC–142b has primarily been used in foams, which is not recovered. The small amount of HCFC–142b used in refrigeration and air conditioning applications is typically used as a component of a blend which is more difficult to reclaim. Furthermore, these blends have not gained any significant market share, unlike blends containing HCFC–22. Given these factors, the limited amount of data available to EPA indicates that less than 1 percent of HCFC–142b is recycled or reclaimed. EPA did not receive any additional data in the public comment process that would suggest otherwise.

In light of the limited data available, and the extremely low estimate of recycling and reclamation, EPA is allocating 100 percent of the projected HCFC–142b servicing need. Because of the lack of data and the small amounts being allocated, EPA is maintaining the

same allocation level for each of the 2010–2014 control periods, rather than allocating declining amounts as EPA is doing for HCFC–22. Therefore, EPA is issuing consumption allowances for HCFC–142b of 100 metric tons (6.5 ODP tons) in 2010–2014. EPA is also allocating production allowances for HCFC–142b at the same proportion of the production cap as was used to allocate consumption allowances as a proportion of the consumption cap. Thus, EPA is allocating production allowances for HCFC–142b at 118 metric tons (7.7 ODP tons).

3. How the Aggregate for HCFC–22 and HCFC–142b Translates Entity-by-Entity

EPA is allocating 50,000 metric tons of HCFC–22 consumption allowances in 2010 with declining amounts in 2011–2014, 46,329 metric tons of HCFC–22 production allowances in 2010 with declining amounts in 2011–2014, 100 metric tons of HCFC–142b consumption allowances, and 118 metric tons of HCFC–142b production allowances for years 2010–2014. However, EPA actually allocates allowances to individual persons (*i.e.*, legal entities). As discussed in Section IV.A.1 of this preamble, EPA is apportioning baselines and allocating allowances on a pro-rata basis to the entities that received baseline allowances in the 2003 allocation rule.

Company-specific production and consumption baselines (also referred to as ''baseline allowances'') for HCFC–141b, HCFC–22, and HCFC–142b are listed at §§ 82.17 and 82.19, respectively. The percentage of baseline each entity receives in each control period from 2003 through 2014 appears at § 82.16(a), as shown in Table 1 above.

Allowances allocated for individual control periods are called ''calendar-year allowances'' to distinguish them from the baseline production or consumption allowances (§ 82.17 and § 82.19). For 2010–2014, EPA is apportioning production and consumption baselines for HCFC–22, HCFC–141b, and HCFC–142b to the same entities that were apportioned HCFC–22, HCFC–141b, and HCFC–142b baselines in the 2003 allocation rule. EPA is amending that list of entities and their baselines to reflect changes in entities' names as well as mergers and acquisitions, but only where EPA has been notified of changes in writing before or during the comment period for this rulemaking.

Consistent with past practice, EPA is publishing baseline allowance information in this rule, having first notified the affected companies of its intention to do so. Applying the approach described above, EPA is apportioning production and consumption baselines for HCFC–141b, HCFC–22, and HCFC–142b to the following entities in the following amounts:

TABLE 2—BASELINE PRODUCTION ALLOWANCES OF HCFC–22, HCFC–141B, AND HCFC–142B IN 40 CFR 82.17

Person	Controlled substance	Allowances (kg)
Arkema	HCFC–22	28,219,223
	HCFC–141b	24,647,925
	HCFC–142b	16,131,096
DuPont	HCFC–22	42,638,049
Honeywell	HCFC–22	37,378,252
	HCFC–141b	28,705,200
	HCFC–142b	2,417,534
MDA Manufacturing	HCFC–22	2,383,835
Solvay Solexis	HCFC–142b	6,541,764

TABLE 3—BASELINE CONSUMPTION ALLOWANCES OF HCFC–22, HCFC–141B, AND HCFC–142B IN 40 CFR 82.19

Person	Controlled substance	Allowances (kg)
ABCO Refrigeration Supply	HCFC–22	279,366
Altair Partners	HCFC–22	302,011
Arkema	HCFC–22	29,524,481
	HCFC–141b	25,405,570
	HCFC–142b	16,672,675
Carrier Corporation	HCFC–22	54,088
Condor Products	HCFC–22	74,843
Continental Industrial Group	HCFC–141b	20,315
Coolgas, Inc	HCFC–141b	16,097,869
Coolgas Investment Property	HCFC–22	590,737
Discount Refrigerants	HCFC–22	375,328
	HCFC–141b	994
DuPont	HCFC–22	38,814,862
	HCFC–141b	9,049
	HCFC–142b	52,797
H.G. Refrigeration Supply	HCFC–22	40,068
Honeywell	HCFC–22	35,392,492
	HCFC–141b	20,749,489
	HCFC–142b	1,315,819
ICC Chemical Corp	HCFC–141b	81,225
Ineos Fluor Americas	HCFC–22	2,546,305
Kivlan & Company	HCFC–22	2,081,018
MDA Manufacturing	HCFC–22	2,541,545
Mondy Global	HCFC–22	281,824
National Refrigerants	HCFC–22	5,528,316
Refricenter of Miami	HCFC–22	381,293
Refricentro	HCFC–22	45,979
R–Lines	HCFC–22	63,172

TABLE 3—BASELINE CONSUMPTION ALLOWANCES OF HCFC–22, HCFC–141B, AND HCFC–142B IN 40 CFR 82.19—Continued

Person	Controlled substance	Allowances (kg)
Saez Distributors	HCFC–22	37,936
Solvay Fluorides	HCFC–22	413,509
	HCFC–141b	3,940,115
Solvay Solexis	HCFC–142b	3,047,386
Tulstar Products	HCFC–141b	89,913
USA Refrigerants	HCFC–22	14,865

D. HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb Allowances

EPA is establishing and apportioning baselines for other HCFCs that have been produced or imported in recent years by using information on production, import, export, and other transactions that has been reported to the Agency under existing regulations. Under the Montreal Protocol, all HCFCs are subject to the phaseout cap and EPA must report production, import, and export data for all HCFCs under Article 7 of the Protocol. EPA therefore requires recordkeeping and reporting for production, import, export, and trade of all HCFCs, including those for which baseline allowances have not yet been established. The recordkeeping and reporting requirements implement section 603 of the Clean Air Act and ensure that companies are in compliance with regulatory and Clean Air Act requirements and that the United States is able to document compliance with international obligations.

EPA reviewed HCFC production, import, and export data for the years leading up to the 2003 allocation rule, and chose to establish baselines and allocate allowances for the highest-ODP HCFCs (the ''worst-first'' approach) in a manner that ensured U.S. compliance with the 2004 cap (35 percent below the U.S. baseline). Prior to the tightening of the 2010 HCFC cap at the 19th Meeting of the Parties to the Montreal Protocol in September 2007 from a 65 percent reduction to a 75 percent reduction, EPA anticipated that limiting production and consumption of HCFC–22 and HCFC–142b for the 2010–2014 control periods would ensure sufficient room under the then-effective 65 percent reduction cap without the need to restrict production and consumption of other HCFCs. In preparing for the 19th Meeting of the Parties, EPA conducted an analysis, which was shared with stakeholders, to ensure that the U.S. could consider changes to our obligations that were both meaningful for ozone layer protection and achievable, allowing servicing needs to continue to be met. Considering that the September 2007 Montreal Adjustment provides for adjustment of the cap from a 65 percent to a 75 percent reduction, EPA is taking additional precautions to ensure that the more stringent cap will not be exceeded. These precautions include establishing and apportioning baselines for the 2010–2014 control periods for other HCFCs that were produced or imported during the 2003–2007 control periods.

1. Baselines for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb

EPA is amending §§ 82.17 and 82.19 to include company-specific production and consumption baselines for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb. EPA data indicate that those four HCFCs were produced, imported, or exported during the 2003–2007 control periods.

In the 2003 allocation rule, EPA did not issue allowances for all HCFCs, noting in part ''that the continuously developing HCFC market would be hampered by such distribution'' and that the market proportions at that time ''of these lower-ODP HCFCs do not reflect the rapidly expanding market and that distributing allowances for these HCFCs at [that] time would unnecessarily restrict their supply and impede transition to less ozone-depleting substances'' (68 FR 2823). Considering the recent adjustments to the Montreal Protocol and the evolution in the HCFC market, EPA believes it is now appropriate to establish a baseline and apportion baseline allowances for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb.

All HCFCs are covered under the Montreal Protocol stepwise reductions, and EPA must consider all HCFC production and import in ensuring that the United States continues to meet its international obligations. The four HCFCs addressed in this section are the only remaining HCFCs commonly used in the United States that do not currently have established baselines. Establishing baseline allowances for these four HCFCs will not trigger additional recordkeeping or reporting obligations, since companies that produce, import, or export any HCFC already report production and consumption data to EPA. The impacts on future production and consumption of these chemicals by individual entities stem from the years chosen for establishing a baseline, the apportionment of the baseline among companies, and the percentage of baseline allocated for the control years 2010–2014. EPA discusses these issues more specifically below.

EPA recognizes that many different methods and data sources can be used to establish baseline allowances. EPA proposed to use data reported to the Agency under § 82.24 and EPA is using that method in this final rule. EPA did not receive any comments opposed to using existing reported data. EPA also said in the proposed rule that it could augment the data for completeness or to verify accuracy by issuing requests for information under section 114 of the CAA. EPA did not receive comment relating to this process specifically, but believes that seeking additional information could delay the publication of the final rule without providing significant additional benefit.

EPA is making three changes to Table 5, which are found at 40 CFR 82.17 and 82.19, as compared to the proposed rule. First, EPA is adding Perfect Technology Center, LP (doing business as Perfect Cycle) to the list of companies being allocated baselines for the other HCFCs. Perfect Technology Center, LP had imported HCFC–123 during the time period used to set the baseline but its reporting forms—although submitted in compliance with EPA regulations—were misdirected and the information was not included in EPA's baseline calculations. Second, DuPont corrected previously reported data, which has the effect of adjusting DuPont's HCFC–123 baseline from 2,933,906 kg to 1,877,042 kg. Third, Honeywell had corrected previous HCFC–124 production data but EPA did not reflect that change in the proposed rule. EPA is reflecting that correction now by changing Honeywell's HCFC–124 production baseline from 1,804,121 kg to 1,759,681

kg. These changes do not affect the baselines or the allocation amounts for the other companies receiving HCFC–123 or HCFC–124 allowances.

In the 2003 allocation rule, EPA calculated each entity's HCFC–141b, HCFC–22, and HCFC–142b baselines from that entity's highest reported consumption and production over the years 1994–1997. EPA chose that particular range of years because beginning in 1998, some entities were aware of the impending rulemaking and could have increased production or import in an effort to secure higher baseline allowances. EPA stated in the 2003 allocation rulemaking that ''by not selecting a year after 1997 it will avoid creating an uneven playing field that skews allocations to those companies with ample resources and good access to information'' (68 FR 2832). EPA did propose and finalize an exception to the general approach by allowing new entrants that began importing after the end of 1997 but before April 5, 1999, the date of the ANPRM publication. EPA believed that such new entrants, typically small businesses, might not have been aware of the impending rulemaking that would affect their ability to continue in the HCFC market.

EPA is using the same general approach for these four HCFCs as in the 2003 allocation rule by considering the highest reported data from a range of years rather than selecting a single baseline year. However, EPA is not providing an exemption for new entrants. EPA did not receive any comments requesting a new entrant provision for these four HCFCs and does not believe that one is necessary as these baseline years reflect participants in the market in 2005–2007 and thus take into account relatively new entrants. As in the 2003 allocation rule, EPA is choosing a range of years because the entities receiving allowances have very different production and import histories and no one year is representative for all companies. EPA believes that selecting the year of highest activity for individual companies over a range of years creates less of a disadvantage to the industry and the HCFC market as a whole than selecting a single year. Therefore, in this final rule, EPA is using an entity's highest reported consumption and production data reported for the 2005–2007 control periods. By using past years, EPA avoids any ramp-up in the level of production and consumption resulting from a desire to maximize individual baselines in anticipation of the final rule. By using recent data, EPA ensures that the baseline reflects the current market as closely as possible, and addresses issues raised when EPA decided to postpone allocating baseline allowances for these HCFCs in 2003.

Four commenters generally agreed with the proposal to establish baselines for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb, acknowledging that a baseline for these chemicals will help ensure the United States meets its Montreal Protocol obligations and that the method used to establish a baseline was successfully utilized for HCFC–141b, HCFC–142b and HCFC–22. EPA did not receive any comments in opposition to establishing baselines for these HCFCs.

Two commenters disagree with EPA's proposal to establish the HCFC–123 baseline as a company's highest-year production and consumption between 2005 and 2007. One of those commenters stated a belief that the market for chillers using HCFC–123 has been steadily declining over the last several years and suggested that EPA instead select the lowest reported data from 2005–2007 to set the HCFC–123 baseline. The other commenter urged EPA to calculate the baseline using calendar year 2008 data, which it said better reflects the market. EPA disagrees with these alternative methods for establishing the baseline for HCFC–123. EPA does not support choosing the lowest year's reported data because EPA is not seeking to actively restrict the market for HCFC–123 in this rule. EPA does not wish to prejudge the market for HCFC–123, be it increasing or decreasing. EPA also does not believe that selecting the 2008 year is appropriate because EPA's experience has been that a single year's data may actually not be reflective of the market, even if the date is closer to the present. For example, the economic conditions in 2008 may have affected production for that year in a way that is not reflective of the market in 2010 and beyond. Also, as mentioned above, the entities receiving allowances have very different production and import histories and no one year is representative for all companies. For these reasons, EPA is establishing the HCFC–123 production and consumption baselines based on an entity's highest reported consumption and production for the 2005–2007 control periods.

EPA is apportioning production and consumption baselines for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb to the following entities for the following amounts, which are found in 40 CFR 82.17 and 82.19:

TABLE 4—BASELINE PRODUCTION ALLOWANCES OF HCFC–123, HCFC–124, HCFC–225CA, AND HCFC–225CB IN 40 CFR 82.17

Person	Controlled substance	Allowances (kg)
AGC Chemicals Americas	HCFC–225ca	266,608
	HCFC–225cb	373,952
DuPont	HCFC–124	2,269,210
Honeywell	HCFC–124	1,759,681

TABLE 5—BASELINE CONSUMPTION ALLOWANCES OF HCFC–123, HCFC–124, HCFC–225CA, AND HCFC–225CB IN 40 CFR 82.19

Person	Controlled substance	Allowances (kg)
AGC Chemicals Americas	HCFC–225ca	285,328
	HCFC–225cb	286,832
Arkema	HCFC–124	3,719
Condor Products	HCFC–124	3,746
Coolgas, Inc.	HCFC–123	20,000
DuPont	HCFC–123	1,877,042
	HCFC–124	743,312
Honeywell	HCFC–124	1,284,265

TABLE 5—BASELINE CONSUMPTION ALLOWANCES OF HCFC–123, HCFC–124, HCFC–225CA, AND HCFC–225CB IN 40 CFR 82.19—Continued

Person	Controlled substance	Allowances (kg)
ICOR	HCFC–124	81,220
National Refrigerants	HCFC–123	72,600
	HCFC–124	50,380
Perfect Technology Center, LP	HCFC–123	9,100
Tulstar Products	HCFC–123	34,800
	HCFC–124	229,582

2. Allocation Levels for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb

As proposed, EPA is allocating 125 percent of the baseline production and consumption allowances for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb for the 2010–2014 control periods. These allocations appear as additions to the table at § 82.16, shown in Table 1 above. EPA's intent in establishing baseline production and consumption allowances for these HCFCs is to create a mechanism for limiting growth in the production and consumption of these HCFCs during those control periods. EPA has heard from stakeholders that some amount of market expansion for these low-ODP HCFCs is possible during the 2010–2014 control periods. Unlike HCFC–22 and HCFC–142b, which are subject to use restrictions beginning January 1, 2010, these four low-ODP HCFCs are not subject to use restrictions until a later date. Given the low ODPs for these HCFCs, allocating 125 percent of the baseline for 2010–2014 allows for growth but still ensures that the United States meets the overall HCFC cap of 75 percent below the baseline during these control periods.

Any growth in the non-prohibited use of these HCFCs will be balanced to some extent by the 605(a) self-effectuating restrictions on most uses of HCFCs. Regardless of any action by EPA, usage of these HCFCs will be constrained, and in some instances prohibited, in 2015. For example, HCFC–225ca and HCFC–225cb are generally used as solvents but as of January 1, 2015, under section 605(a), HCFCs may not be used in solvents. Refrigerant uses for other HCFCs may continue until 2020. For example, while newly manufactured HCFC–22 cannot be produced or imported for charging into new air-conditioning and refrigeration appliances as of January 1, 2010 (40 CFR 82.16(c)), HCFC–123 can be produced or imported for new appliances until 2020 (40 CFR 82.16(d)). However, HCFC–123 is a transitional alternative for CFC–11 and is still scheduled for phaseout in 2015 except in equipment manufactured before 2020. Because of the section 605(a) use ban, EPA anticipates that any continued growth for these HCFCs will be considerably affected as of January 1, 2015. The section 605(a) use provisions are discussed in more detail below at Section VI of the preamble.

Through this action, EPA is allocating allowances equaling 125 percent of the baseline for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb for the 2010–2014 control periods. If rapid growth were to occur, creating the need for additional amounts of one or more of these HCFCs, EPA believes that inter-pollutant transfers could be used to make adjustments. EPA has calculated that 125 percent of the highest year's consumption of HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb for all the companies combined equals 137 ODP-weighted metric tons, which is less than 4 percent of the total HCFC consumption cap of 3,810 ODP tons. EPA data also show that 125 percent of the highest year's production of HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb for all the companies combined equals 135 ODP-weighted metric tons, which is less than 4 percent of the total HCFC production cap of 3,884.25 ODP tons.

In general, commenters, including those who use these other HCFCs, supported the proposed allocation amounts. The only comments disagreeing with the proposed allocation amounts were with respect to HCFC–123. Two commenters objected to an allocation of 125% of baseline for HCFC–123, claiming that this would artificially increase demand. These commenters proposed that EPA use a lower allocation amount, such as 80% of baseline. Another commenter stated that EPA should encourage the transition to non-ozone-depleting substances by accelerating the phaseout of HCFC–123 and reducing the allocation amounts on an annual basis. First, EPA disagrees that allocating more than 100% of baseline for HCFC–123 will artificially increase demand for this compound. Currently, there is no limit on HCFC–123 production or consumption. EPA does not believe that placing such a limit in this rule would artificially increase demand for this compound. As discussed above, EPA chose more than 100% to allow for normal growth in the market, not to impose any constraints or confer any benefits on the market. If the full amount of allowances is not needed, then EPA expects that the excess allowances may go unused or be transferred for other HCFCs. Second, under current domestic regulations, HCFC–123 can be produced or imported for new appliances until 2020 (40 CFR 82.16(d)). Third, EPA does not believe that the continued use of HCFC–123 at this point will threaten U.S. compliance with the overall HCFC cap. Therefore, the Agency disagrees that it is necessary to accelerate that schedule in this rule.

Some commenters also questioned EPA's analysis of the HCFC–123 market in the Servicing Tail report. They stated that the 3 million kilogram allocation to HCFC–123 surpasses their own estimate of needs. While EPA did not use a straight needs-based analysis for allocating HCFC–123, EPA did review the HCFC–123 needs analysis in the June 2008 Servicing Tail report and found that the source data used to project needs were not the same as those used to establish the allocation of HCFC–123. EPA has issued a final version of the Servicing Tail report (accessible in the docket to this action and at *http://www.epa.gov/ozone*). In any case, EPA has not chosen to allocate HCFC–123, HCFC–124, HCFC–225ca, or HCFC–225cb at the estimated need as shown in the Servicing Tail report. Instead, to allow for market growth as previously discussed, EPA is setting allocation baselines in the same manner for all four of these low-ODP HCFCs. Namely, EPA is setting each company's baseline at the highest consumption or production in the years 2005–2007, and allocating 125% of those baselines to avoid interfering with the existing market.

In accordance with the Montreal Protocol, EPA will issue a rule prior to the 2015 HCFC milestone to limit aggregate production and consumption

of all HCFCs to no more than 10 percent of the U.S. baselines for production and consumption. At that time, EPA plans to consider the appropriate level of allowances for 2015 and beyond based on market demand and the section 605(a) restrictions on introduction into interstate commerce and use discussed later in this preamble. Examples of uses that will be prohibited by section 605(a) beginning in 2015 are solvents, sterilants, and fire suppression uses. EPA anticipates other changes as well. For example, EPA's allowance level for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb does not assume a specified level of recycling and reclamation. For HCFCs used in non-refrigeration applications, such as solvents (*e.g.,* HCFC–225ca and HCFC–225cb), the section 608 prohibition on venting is not applicable. EPA received comment that it should consider recovery and recycling or reclamation of HCFC–123 in this rule when establishing production and consumption allowances. HCFC–123 is used in chillers that in some cases are replacing CFC chillers. Given that in many cases these appliances have expected lifespans of more than 20 years, it will be some time before significant amounts of HCFC–123 are recovered and recycled or reclaimed. In future rulemakings, however, EPA may estimate the amount of the total need for HCFC–123 that can be met through recycling and reclamation. As the HCFC–123 market matures, the refrigerant recovery, recycling, and reclamation requirements in 40 CFR part 82 subpart F will result in a greater amount of reusable HCFC–123.

E. Other HCFCs

As a result of EPA's allocation process, which is largely based on projected 2010–2014 need for HCFC–22 and HCFC–142b, minus an amount of HCFC–22 that is assumed to be recycled or reclaimed, the total allocation is lower than the aggregate HCFC cap. EPA recognizes that there could be some additional need for HCFCs not specifically included in this rule. While some niche applications in the U.S. use other HCFCs, such as HCFC–21, EPA is not aware of additional need for production or import of these substances at this time, as adequate amounts appear to be in inventory. However, EPA is not foreclosing the possibility of additional production or import for these niche uses. Also, some amount of HCFC–141b will likely continue to be produced or imported via the petition process during the 2010–2014 control periods. EPA believes that there is sufficient room under the cap for such continued production and import. The current regulations at 40 CFR 82.15 ban the production and import of class II substances for which EPA has apportioned baseline production and consumption allowances in excess of allowances held by the producer or importer, but do not ban the production and import of class II substances for which EPA has not apportioned baseline production and consumption allowances. This rule does not alter the current regulations in that respect. The producer or importer of an HCFC that is not subject to the allowance system would be required to report to EPA consistent with the existing recordkeeping and reporting requirements. If necessary, EPA could amend the regulations to set and apportion baselines and issue allowances for these HCFCs. Therefore, retaining room under the cap provides the benefit of accounting for unanticipated growth in HCFCs that do not have allocations or other unforeseen events. However, those reasons are not why EPA is reserving room under the cap. Instead, it is the result of EPA's bottom-up approach of allocating allowances for HCFC–22 and HCFC–142b according to the modeled demand for virgin and reclaimed material.

EPA received two comments that reserving 22% of the total HCFC cap for ''other'' HCFCs is too excessive, given that HCFC–22 will have the greatest servicing needs and projected shortages. EPA agrees that the greatest need for all HCFC in the future will be for servicing existing HCFC–22 equipment. However, as discussed in Section VI.B.1., EPA carefully analyzed such needs through multiple iterations of its Servicing Tail report to determine an allocation of HCFC–22 necessary to avoid shortages. EPA believes that it is appropriate to allocate HCFC–22 based on demand (and considering the role of reclamation) because this will help the transition to the 2015 phase-down step, when the cap is reduced from 25% to 10% of baseline. While EPA is not ''reserving'' room under the cap for these other HCFCs, the effect of allocating allowances based on need is additional room under the aggregate HCFC cap for any HCFCs that EPA has not specifically included in §§ 82.16, 82.18, and 82.19.

One commenter encouraged EPA to retire the remaining allowances that have not been allocated under this rulemaking. This commenter was concerned that if EPA maintained a reserve, the market will look to the Agency to allocate additional HCFC–22 allowances in the future instead of seriously pursuing recovery and reclamation. EPA disagrees that the unallocated room under that cap constitutes a set of allowances that can be ''retired''; it simply represents the differential between the cap and the amount of allowances allocated. As stated earlier, room under the cap provides for potential market penetration of other HCFCs that do not have allocations. Furthermore, the Agency is not maintaining a ''reserve'' to be allocated at a future time but rather is maintaining an accounting of the total U.S. HCFC production and consumption to ensure compliance with the HCFC cap. EPA does not intend to allocate the extra amount under the cap, except under unforeseen extenuating circumstances, because it is important to promote greater use of recycled and reclaimed material in anticipation of the next phasedown step.

V. Article 5 Allowances

Under the Montreal Protocol, industrialized countries and developing countries have different schedules for phasing out ODS production and consumption. Developing countries operating under Article 5, paragraph 1 of the Montreal Protocol in most cases have additional time in which to phase out ODS. Recognizing that it would be inadvisable for developing countries to spend resources to build new ODS manufacturing facilities to meet basic domestic needs for chemicals they would ultimately phase out, the Parties to the Montreal Protocol decided to permit a small amount of production in industrialized countries, in addition to the amounts otherwise permitted for such countries under the relevant phaseout schedules, for export to meet the basic domestic needs of developing countries. As discussed above, at the 19th Meeting of the Parties (MOP) to the Montreal Protocol held in September 2007, the Parties agreed to a revised phaseout schedule for both Article 5 and non-Article 5 Parties. Included with the changes to the phaseout schedule were changes to the amount of production in industrialized countries that would be permitted to meet the basic domestic needs of Article 5 Parties. These changes were in keeping with the more stringent phaseout schedule for developing countries. Previously, the Montreal Protocol had allowed non-Article 5 countries to produce at 15 percent of their baseline levels for export to Article 5 countries from 2016, the year in which Article 5 countries were required to freeze consumption, through the terminal phaseout in 2040. At the 19th MOP the Parties agreed that to satisfy basic domestic needs of Article 5 countries,

non-Article 5 Parties would be allowed to produce up to 10 percent of baseline levels until 2020. For the period after 2020, the Parties agreed to consider further reduction of the production for basic domestic needs no later than 2015 (*UNEP/Ozl.Pro.19/7 Decision XIX/6: Adjustments to the Montreal Protocol with regard to Annex C, Group I, substances (hydrochlorofluorocarbons*)).

Section 605(d)(2) of the Clean Air Act states that notwithstanding the restrictions on production, use, and introduction into interstate commerce set forth in paragraphs (a) and (b) of that section, EPA ''may authorize the production of limited quantities of a class II substance in excess of the quantities otherwise permitted under such provisions solely for export to and use in developing countries that are Parties to the Montreal Protocol, as determined by the Administrator'' (42 U.S.C. 7671d(d)(2)). EPA's implementing regulation at 40 CFR 82.18(a) provides for the allocation of ''Article 5 allowances'' for production of specified HCFCs solely for export to Article 5 Parties to meet those countries' basic domestic needs. Currently under § 82.18(a) an entity that is apportioned baseline HCFC production allowances receives an amount of Article 5 allowances equal to 15 percent of that production baseline. The Article 5 Parties are listed at 40 CFR part 82, subpart A, appendix C, annex 4. In the proposed rule, EPA cited Appendix E of the same subpart which contained a less current list of Article 5 Parties than the one at Appendix C, Annex 4. In this final rule, EPA is updating both appendices to accurately reflect decisions taken to date under the Montreal Protocol regarding the developing country status of particular Parties.

EPA is amending § 82.18(a) to reflect the adjustment to the Montreal Protocol at the 19th MOP and to ensure that the United States does not permit a level of production to meet basic domestic needs in Article 5 Parties that exceeds the level specified in the adjustments. EPA is taking this action in accordance with section 606(a)(3) of the Clean Air Act. EPA also is making minor changes to § 82.15(c) to clarify that HCFCs produced with Article 5 allowances may be introduced into interstate commerce if destined for export.

Prior to this final rule, § 82.18(a)(1) stated that a person apportioned baseline production allowances for specified HCFCs is also apportioned Article 5 allowances for the specified HCFCs equal to the following percentages of that person's baseline: For controls periods through 2014, 15 percent; for controls periods from 2015 through 2029, 10 percent; and for control periods from 2030 through 2039, 15 percent. While the Montreal Protocol previously permitted production for the basic domestic needs of Article 5 countries equal to 15 percent of the U.S. production baseline for each control period until 2040, section 605(d)(2)(B) of the Clean Air Act requires that for the period between 2015 and 2030 the production for Article 5 countries be limited to 10 percent of baseline. Thus, EPA regulations at § 82.18(a) prior to this rule restricted Article 5 allowances to 10 percent of production baseline from January 1, 2015, through December 31, 2029, but otherwise allowed the full 15 percent previously permitted by the Protocol.

In this final rule, EPA is adopting the approach in the proposed rule by amending § 82.18(a) to allocate Article 5 allowances for HCFC–22, HCFC–142b, and HCFC–141b at 10 percent of a person's baseline, for the period 2010–2019, with no Article 5 allowances beyond 2019, consistent with the recent changes to the Montreal Protocol. Prior to 2015, production for export to Article 5 Parties of HCFC–123, HCFC–124, HCFC–225ca, or HCFC–225cb would not require expending Article 5 allowances.

Given that Article 2F of the Montreal Protocol, as adjusted in September 2007, does not provide for additional HCFC production to meet the basic domestic needs of Article 5 Parties past 2019, EPA is discontinuing the Article 5 allowance provision for all HCFCs at the end of 2019 in the absence of further adjustments to the Protocol. If the Parties were to adjust the basic domestic needs provisions of the Protocol to permit continued production for such needs past 2019, EPA would evaluate that adjustment and consider issuing a regulation to extend the availability of Article 5 allowances for basic domestic needs to the extent consistent with the Clean Air Act. Any such regulation would include production levels and schedules that were at least as stringent as those specified in the Montreal Protocol, as adjusted.

EPA did not receive adverse comments regarding the revisions to § 82.18(a).

VI. Accelerated Use Restrictions Under CAA Section 605

In addition to allocating HCFC allowances, this rulemaking completes the implementation of section 605 of the Clean Air Act. Section 605(a) of the Clean Air Act is a self-effectuating ban on both the introduction into interstate commerce and use of class II substances. Section 605(a) reads:

''Effective January 1, 2015, it shall be unlawful for any person to introduce into interstate commerce or use any class II substance unless such substance—

(1) Has been used, recovered, and recycled;

(2) Is used and entirely consumed (except for trace quantities) in the production of other chemicals; or

(3) Is used as a refrigerant in appliances manufactured prior to January 1, 2020.

As used in this subsection, the term 'refrigerant' means any class II substance used for heat transfer in a refrigerating system.''

Although section 605(a) is effective by its own terms, Congress directed EPA in section 605(c) to promulgate regulations restricting the use of class II substances in accordance with section 605. In this action, EPA is adding regulatory language to reflect the section 605 provisions on introduction into interstate commerce and use of class II substances.

The provisions governing HCFC–22 and HCFC–142b promulgated as part of the 1993 phaseout rule were intended ''to prohibit the use of the chemicals (virgin material only) for any use except as a feedstock or as a refrigerant in existing equipment as of January 1, 2010'' (58 FR 15028). As promulgated, however, the regulatory prohibitions did not control use directly, but instead banned production and import for most uses. Through this action, EPA is adding the direct use prohibitions contemplated in the 1993 phaseout rule as well as the corresponding prohibitions on introduction into interstate commerce contained in section 605(a). Consistent with the accelerated schedule adopted in the 1993 phaseout rule, the section 605(a) restrictions on use and introduction into interstate commerce apply to HCFC–22 and HCFC–142b beginning in 2010 and to all other HCFCs beginning in 2015.[7] The section 605(a) restrictions for 2010 also apply to blends containing HCFC–22 or HCFC–142b. The restrictions on production and import, both in general and for particular uses, that were promulgated in 1993 are at 40 CFR 82.16(b) through (g). EPA is not changing these provisions in this action. However, EPA is further implementing

[7] The petition process for HCFC–141b exemption allowances at 82.16(h) would sunset in 2015, since HCFC–141b is not used as a refrigerant and thus does not meet the criteria established by 605(a) for an exception from the statutory ban on use. EPA intends to revise § 82.16(h) when it addresses the control periods 2015–2019.

section 605(a) by codifying a restriction at § 82.15 on introduction into interstate commerce and use and by clarifying its interpretation of the statutory requirements. Limited exceptions to the restrictions on the introduction into interstate commerce and use are discussed in detail in Section VI.D.

The existing regulatory provisions at § 82.16(c) prohibit the production or import of HCFC–22 and HCFC–142b in 2010 and beyond for purposes that are not exempted in that section, consistent with section 605(a).[8] In this action EPA is amending § 82.15 to add prohibitions that specifically preclude any person from introducing into interstate commerce or using (according to the interpretations below) any HCFCs for purposes that are not consistent with section 605. EPA believes that this is appropriate because section 605(a) specifically bans use and introduction into interstate commerce. Under the current regulatory structure the prohibitions apply to the production and import of the HCFC compounds as bulk chemicals. The new provisions promulgated in this action restrict uses of bulk chemicals, and thus apply to use of HCFCs by manufacturers of appliances and other products containing HCFCs, as well as use of HCFCs by anyone who services such products.

The provisions relating to introduction into interstate commerce and use also apply to blends containing HCFC–22 or HCFC–142b.[9] Bulk gases include both neat HCFC–22 (or HCFC–142b) and blends containing HCFC–22 (or HCFC–142b). Blends of refrigerants are substances, not products, and thus are subject to the restrictions that apply to non-blended substances.

This action also revises the regulations on export production allowances at 40 CFR 82.18(b) to ensure consistency with section 605(a). Export production allowances allow an HCFC that is subject to a domestic phaseout to be produced for export to Parties that continue to allow imports of that substance. Prior to this rulemaking, entities holding baseline production allowances for HCFC–141b were allocated export production allowances equal to 100 percent of their baseline production allowances until December 31, 2029. To avoid a conflict with the section 605(a) restrictions on use and introduction into interstate commerce, EPA is discontinuing this provision on December 31, 2009. Under the definition finalized in this rule, ''introduction into interstate commerce'' includes release of HCFCs by the domestic manufacturer for distribution and transport prior to export. HCFC–141b is not used as a refrigerant and has not been used in transformation processes; therefore, the current export production allowances would have no remaining purpose with the implementation of the 605(a) use ban. EPA is not allocating export production allowances for any other HCFCs; however, as discussed in Section V, EPA is allocating Article 5 allowances for meeting the basic domestic needs of developing countries. EPA received no negative comments on the discontinuation of export production allowances.

A. Definition of ''Introduction Into Interstate Commerce''

Since the promulgation of the 2003 allocation rule, EPA has received questions from stakeholders regarding the Agency's interpretation of section 605(a). Based on these questions, EPA has included in this final rule a discussion of how it interprets that section, particularly the terms ''introduction into interstate commerce'' and ''use.'' This action promulgates a definition of interstate commerce to facilitate the implementation of section 605(a).

Section 605(a) states that ''it shall be unlawful for any person to introduce into interstate commerce * * * any class II substance'' unless certain exceptions apply. Section 611 (Labeling) contains a similar phrase, noting that certain products shall not be ''introduced into interstate commerce'' unless the product bears a clearly legible and conspicuous warning label. EPA's definition of interstate commerce for section 611 purposes appears at 40 CFR 82.104(n):

Interstate commerce means the distribution or transportation of any product between one state, territory, possession or the District of Columbia, and another state, territory, possession or the District of Columbia, or the sale, use or manufacture of any product in more than one state, territory, possession or District of Columbia. The entry points for which a product is introduced into interstate commerce are the release of a product from the facility in which the product was manufactured, the entry into a warehouse from which the domestic manufacturer releases the product for sale or distribution, and at the site of United States customs clearance.

After considering this regulatory definition, and noting the similarities in the statutory language, EPA is amending § 82.3 to include a definition of ''interstate commerce'' that is identical to the definition at § 82.104(n), except that the phrase ''controlled substance'' appears where the § 82.104(n) definition uses the term ''product.'' This is because section 605(a) addresses bulk substances rather than products. Adding a definition of interstate commerce to § 82.3 clarifies the applicability of the section 605(a) provisions. Using a definition that is already well-established in the labeling program minimizes stakeholder confusion.

Under this definition, ''introduction into interstate commerce'' includes release of HCFCs by the domestic manufacturer of those HCFCs for distribution and transport prior to export. The section 605(a) ban thus has relevance to the export of HCFCs—limiting exports to HCFCs that are ''used, recovered, and recycled'' (section 605(a)(1)); HCFCs that are destined for transformation (section 605(a)(2)); HCFCs that will be used as a refrigerant in appliances manufactured before the date specified in the regulations (section 605(a)(3)); and HCFCs that will be exported to Article 5 Parties (section 605(d)(2)). As a result, HCFC exports to non-Article 5 Parties are limited as of January 1, 2010, for HCFC–22 and HCFC–142b (and blends containing those compounds) and January 1, 2015, for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb (and blends containing those compounds).

One commenter expressed concern about its ability to export HCFC–22, HCFC–142b, and blends thereof beginning January 1, 2010, and HCFC–123, HCFC–124, and blends thereof beginning January 1, 2015, to non-Article 5 countries. The commenter stated its belief that the exception in section 605(a)(3) for use ''as a refrigerant in appliances manufactured prior to January 2020'' is not limited to appliances within the borders of the United States, and thus export of HCFCs should be allowed to service such appliances outside the United States. The commenter also provided regulatory language to support this idea, suggesting EPA add to both 82.15(g)(2) and 82.15(g)(3) the language ''for other export as allowed under the provisions of the Montreal Protocol.'' EPA agrees that the exemptions provided in 605(a) are not limited to the boundaries of the

[8] As discussed earlier in this action, there is an additional exception for production to meet the basic domestic needs of Article 5 countries, consistent with section 605(d).

[9] Listed here with both the trade name and ASHRAE number where available, they include, but are not limited to the following: MP–39 (R–401A), MP–66 (R–401B), MP–52 (R–401C), GHG (R–406A), FX–56 (R–409A), Hot Shot (R–414B), GHG–X4 (R–414A), Choice Refrigerant (R–420A), Freeze 12, Free Zone, GHG–HP, GHG–X5, HP–80 (R–402A), HP–81 (R–402B), FX–10 (R–408A), R–411A, R–411B, G2018C, R–403B, NARM–502.

United States and reiterates that exports of HCFC–22 and HCFC–142b to non-Article 5 Parties are allowable if those HCFCs (1) are used, recovered, and recycled, (2) will be used for transformation, or (3) will be used as a refrigerant in appliances manufactured before January 1, 2010. Because the current regulatory language does not prohibit such exports, EPA does not believe it is necessary to change the regulatory text as suggested by the commenter.

Three commenters stated that the definition of ''introduction into interstate commerce'' penalizes domestic manufacturers by effectively banning the export of pre-charged appliances containing HCFC–22 to Article 5 countries. One of these commenters requested that EPA treat pre-charged equipment intended for export to Article 5 countries in the same fashion as it does the export of bulk refrigerant. Specifically, EPA should allow the factory to charge equipment intended for export and count that usage of HCFC–22 against the total production cap. Another commenter said the export ban to Article 5 countries could detrimentally affect its partners' ability to fund the research and development of new technologies for the domestic market. This commenter stated that this export ban is contrary to the spirit of the Montreal Protocol. The third commenter stated that this ban would only cost U.S. manufacturing jobs without yielding an environmental benefit.

The inability to export pre-charged appliances derives from the section 605(a) prohibition on use of HCFCs, since manufacturers would not be able to use HCFC–22 to charge newly manufactured appliances and thus could not manufacture such equipment for either domestic or foreign markets. At the point of entry into interstate commerce, any appliances containing HCFC refrigerant would be covered under provisions in the Pre-Charged Appliances rule (discussed in conjunction with this rule in Section III of this preamble) regarding sale and distribution in interstate commerce, not under the section 605(a) introduction into interstate commerce provision, which pertains to substances rather than products. Therefore, the comment suggesting that EPA allow factories to charge equipment intended for export and to count that usage of HCFC–22 against the total production cap is not consistent with EPA's interpretation of the 605(a) use ban, as the use of the bulk HCFC–22 to produce the new equipment is prohibited under 605(a). Furthermore, export of any new appliances and components containing HCFC–22 is prohibited under the Pre-Charged Appliances rule.

Section 605(d)(2) states that notwithstanding 605(a) and (b), which contain the use and production restrictions on HCFCs, EPA may authorize production of limited quantities of HCFCs ''solely for export to and use in developing countries.'' The restrictions in section 605(a) and (b) pertain to bulk substances, not to products. In addition, section 605(d)(2) refers to HCFCs directly, and not to products containing HCFCs. EPA interprets section 605(d)(2) as allowing production of these ODS where the ODS themselves, as bulk substances, will be exported to developing countries for use in those countries. EPA does not interpret section 605(d)(2) as allowing use of HCFCs in U.S. product manufacture, even where the products are destined for use in developing countries.

EPA notes that export of appliances that do not contain an HCFC refrigerant charge is legal under both this final allocation rule and the pre-charged products rule. In addition, as noted above, EPA is not prohibiting introduction of HCFCs into interstate commerce for the purpose of export to Article 5 countries.

B. Interpretation of the Term ''Use''

In addition to banning ''introduction into interstate commerce'' of HCFCs, section 605(a) also bans the ''use'' of HCFCs. This section discusses EPA's interpretation of the term ''use'' in section 605(a). This discussion builds on EPA's 1993 rulemaking that prohibited production and import of HCFC–22 and HCFC–142b for most uses as of January 1, 2010.

Section 605(a) states that ''effective January 1, 2015, it shall be unlawful for any person to * * * use any class II substance unless such substance—

(1) Has been used, recovered, and recycled;

(2) Is used and entirely consumed (except for trace quantities) in the production of other chemicals; or

(3) Is used as a refrigerant in appliances manufactured prior to January 1, 2020.

As used in this subsection, the term 'refrigerant' means any class II substance used for heat transfer in a refrigerating system.''

Interpretation of the term ''use'' is important for the proper implementation of section 605(a). EPA carefully considered what the term ''use'' means for purposes of section 605(a). EPA analyzed whether ''use'' in this context pertains to end-users and how this could affect the public's continued operation of products such as refrigeration and air conditioning equipment. EPA also evaluated whether section 605(a) pertains only to manufacturing and servicing use. The three exemptions to the use prohibition found in 605(a) were helpful to EPA's understanding of what ''use'' means for purposes of that section.

With regard to products containing HCFCs for non-refrigerant purposes such as TXVs, sterilant mixtures, and products exempt from the section 610 ban on nonessential products, EPA interprets the term ''use'' as relating to the manufacture (and where applicable, the service) of those products, not the utilization of those products in the hands of an end-user. By accelerating section 605(a), EPA prohibited all ''use'' of virgin HCFC–22 and HCFC–142b (and blends thereof) for purposes other than the two exempted in section 605(a)(2) and (3) (*i.e.* transformation and as a refrigerant in appliances manufactured before January 1, 2010) beginning January 1, 2010. For example, HCFC–142b may no longer be used to blow foam, which was its primary use prior to 2010. EPA notes that uses not covered in section 605(a)(2) and (3) could continue if the HCFC is used, recovered, and recycled per section 605(a)(1). EPA received comments that HCFC–22 continues to be used in a sterilant blend and in thermostatic expansion valves (TXVs). In this final rule, EPA is creating limited exemptions from the accelerated use prohibition for these specific uses.

With regard to HCFCs used as refrigerants, EPA interprets the term ''use'' to mean initially charging as well as maintaining and servicing refrigeration equipment. Again, EPA does not read use to mean the continued utilization of a finished product owned by an end user. The three statutory exceptions in Section 605(a) inform EPA's understanding of the term ''use.'' While these exceptions apply to the ''interstate commerce'' ban as well as the ''use'' ban, the discussion below focuses on the ''use'' aspects of the exceptions.

The first exception, at section 605(a)(1), applies to class II substances that have been ''used, recovered, and recycled.'' This exception confirms EPA's understanding of the use ban as limited to the manufacture and servicing of HCFC products. If the ban applied to the use of HCFCs by a consumer, it might include the continued operation of an appliance (*e.g.,* a residential air conditioner) where an HCFC acts as the refrigerant. Under this broad definition of ''use,'' there would be an incentive for consumers to

hire servicing technicians to recover the HCFCs from appliances already in their homes and businesses, to recycle the HCFCs for reuse, and to charge the HCFCs back into the same appliances. These steps should not be necessary for continued operation of installed equipment. However, by taking these steps, consumers could avail themselves of the exception for ''used, recovered, and recycled'' substances at section 605(a)(1). There would be no environmental benefit to following such a procedure. There could even be an environmental detriment, given the potential for losses of refrigerant during the recovery and recycling process. EPA does not believe that Congress intended such a result. Moreover, EPA believes that Congress intended to permit the continued use of previously manufactured appliances, as indicated by the third exception to the use ban (section 605(a)(3)). EPA did not receive comments indicating that ''use'' should be understood to include use by the end-user. Thus, EPA is not interpreting use in a way that would result in shortening the useful lifetime of appliances that were manufactured prior to the effective date of the use restriction. EPA concludes that the section 605(a) ''use'' ban does not apply to a consumer's operation of equipment that contains HCFCs. Rather, it applies to the manufacture and servicing of equipment containing HCFCs. EPA believes that Congress meant for the section 605(a)(1) exception to allow the use of ''used, recovered, and recycled'' HCFCs in appropriate instances by servicing technicians and reclaimers.

EPA had proposed to interpret this exception to allow use of reclaimed HCFCs by manufacturers, as well. However, in the Pre-Charged Appliances rule EPA is prohibiting sale and distribution in interstate commerce of pre-charged appliances and components manufactured after January 1, 2010, including any such appliances and components charged with reclaimed material. Equipment charged with reclaimed HCFCs is covered by the final pre-charged appliance prohibition due to the difficulty of distinguishing between new and reclaimed material. The prohibition on sale and distribution of the appliances effectively ends the use of all HCFCs, including reclaimed HCFCs, in the manufacture of the appliances. EPA believes this outcome is appropriate because it is not practicable to achieve the Congressional goal of ending use of virgin HCFCs in the manufacture of new appliances without simultaneously banning use of reclaimed HCFCs in pre-charged appliances. Further information can be found in the preamble and response to comments document in the docket to that rule.

The second exception, at section 605(a)(2), refers to HCFCs that are ''used and entirely consumed (except for trace quantities) in the production of other chemicals.'' Similar language appears as an exception to the definition of ''production'' at section 601(11). EPA regulations refer to this type of use as ''transformation'' (see the definition of ''transform'' at 40 CFR 82.3). The current phaseout schedule for HCFC production and consumption already includes a transformation exception within § 82.16. EPA did not receive any comments on this issue. EPA is implementing the transformation exception in section 605(a)(2) consistent with the transformation exception to the HCFC production phaseout.

The third exception, at section 605(a)(3), provides for HCFCs that are ''used as a refrigerant in appliances manufactured prior to January 1, 2020.'' EPA reads this exception as allowing appliances, as defined in the CAA, manufactured before the specified date to be serviced with virgin HCFCs. (The meaning of the term ''manufactured'' is discussed below.) This is consistent with the legislative history of the exception. The predecessor to section 605(a)(3) in the Senate bill was an exception for ''other regulated substances'' (such as HCFCs) that are ''used to maintain and service household appliances or commercial refrigeration units manufactured prior to January 1, 2015.'' The House amendment contained identical language. While the language that emerged in the Conference Agreement is less specific, we can infer that this exception was intended to address, at a minimum, maintenance and servicing needs.

Based on these three exceptions to the ban, EPA interprets the term ''use'' in section 605(a) to mean, with regard to HCFCs used as refrigerants, initially charging as well as maintaining and servicing refrigeration equipment. Any finished product that is owned by end users may continue to be utilized. As written, the section 605(a)(3) exception would permit some newly manufactured appliances (*i.e.,* those manufactured prior to January 1, 2020) to be charged with virgin HCFCs following the effective date of the use ban. In the 1993 phaseout rule, however, EPA banned production and import of HCFC–22 and HCFC–142b, effective January 1, 2010, for use in equipment manufactured after January 1, 2010. EPA also indicated in the preamble to that rule that it intended to ban use of virgin HCFC–22 and HCFC–142b in such equipment. Consistent with decisions made in the 1993 rule, EPA is applying the section 605(a)(3) exception such that virgin HCFC–22 and HCFC–142b, and blends containing HCFC–22 or HCFC–142b, may be used for servicing and maintenance of appliances manufactured before 2010 but may not be used in the manufacture of equipment after January 1, 2010. EPA is taking this action under the authority of section 606 of the Clean Air Act. EPA notes that allowable servicing could entail a wide range of activities including replacing parts or components. Per the accompanying Pre-Charged Appliances rule, these parts and components may contain HCFCs (including virgin material) if manufactured prior to January 1, 2010, but must be shipped without HCFC (*i.e.* dry or with a nitrogen holding charge) if manufactured after January 1, 2010. For the low-ODP refrigerants covered by section 82.16(d) (HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb), however, EPA is not accelerating the January 1, 2015, effective date or the January 1, 2020, cutoff date in section 605(a)(3). Thus, for these low-ODP refrigerants, virgin material may be used as a refrigerant in appliances manufactured before January 1, 2020. This will allow initial charging of appliances using low-ODP HCFCs for a limited period following the effective date of the use restriction as well as servicing and maintenance uses.

Although EPA has not received comment on it, HCFC–22 and HCFC–142b, both neat or in blends with other fluids, have also been used in a broader range of products, including some products subject to, and other products exempt from, the nonessential products ban at section 610 of the CAA. Section 610(d) includes a self-effectuating ban on the sale of aerosol products and other pressurized dispensers, and plastic foam products that are not insulating foam products that contain HCFCs. EPA promulgated regulations that established a list of products exempted from the nonessential products ban. These products, listed in 40 CFR 82.70, consist of lubricants, coatings, or cleaning fluids for electrical or electronic equipment; lubricants, coatings, or cleaning fluids used for aircraft maintenance; mold release agents used in the production of plastic and elastomeric materials; spinnerette lubricants and cleaning sprays used in the production of synthetic fibers; document preservation sprays; portable fire extinguishing equipment used for

non-residential applications; wasp and hornet sprays for use near high-tension power lines; and foam insulation products (as defined in § 82.62).

While certain products containing HCFC–22, HCFC–142b, or blends thereof, are exempt from the nonessential products ban, EPA reads section 610 and section 605(a) together. By prohibiting use and introduction into interstate commerce of HCFCs as bulk substances, section 605(a) effectively prohibits the continued manufacture of any products containing HCFCs (which qualifies as a type of ''use'') unless specifically exempted in that section. None of the products exempt from the section 610(d) nonessential products ban fall under the 605(a) exemptions. Therefore, EPA clarifies here that such products are prohibited from continued manufacture, unless manufactured with recovered HCFCs. EPA believes that this will not impose any burden as manufacturers of these products have transitioned to alternatives.

Finally, EPA does not interpret ''use'' to include destruction, recovery for disposal, discharge consistent with all other regulatory requirements, or other similar actions where the substance is part of a disposal chain. At the point disposal-related actions occur, other statutory and regulatory provisions generally govern. For example, Congress addressed the issue of disposal under section 608. EPA has promulgated regulations to implement section 608 for appliances: These safe disposal requirements are codified at 40 CFR part 82 subpart F. In some instances, HCFCs may need to be introduced into interstate commerce in order to reach an appropriate destruction facility. Consistent with its interpretation of ''use,'' EPA is interpreting the interstate commerce prohibition to exclude introduction into interstate commerce for the purpose of destruction.

C. Interpretation of the Phrase ''Appliances Manufactured Prior To''

The exception in section 605(a)(3) limits introduction into interstate commerce and use to situations where the HCFC ''is used as a refrigerant in appliances manufactured prior to'' the specified date. EPA did not propose a definition of ''appliance'' specific to this action as ''appliance'' is already defined in 40 CFR part 82, subpart F, [10] based on the definition provided in section 601 of the Clean Air Act. Commenters requested clarification from EPA on what is an appliance, therefore, to facilitate understanding of this issue EPA is adding this same definition to Subpart A in 40 CFR 82.3. An appliance is ''any device which contains and uses a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.'' Many devices meet the section 601 definition of appliance. For example, commercial refrigeration includes end uses such as retail food refrigeration and cold storage. Industrial process refrigeration includes complex customized appliances used in the chemical, pharmaceutical, petrochemical, and manufacturing industries. This sector includes industrial ice machines, appliances used directly in the generation of electricity, and ice skating rinks. Other types of appliances include household refrigerators and freezers; chillers; water coolers; vending machines; residential dehumidifiers; and unitary systems including residential and light commercial heat pumps. Appliances are separate from components, which are the individual parts of an appliance, such as a condensing unit or line set, that by themselves cannot function to provide a cooling effect. In considering the meaning of ''manufactured,'' EPA has considered the definition of appliance carefully, particularly evaluating at what point a group of components become a manufactured appliance.

In the final rule, EPA is providing a definition of the term ''manufactured.'' This definition can also be found in the companion Pre-Charged Appliances rule. The term manufactured ''for an appliance, means the date upon which the appliance's refrigerant circuit is complete, the appliance can function, the appliance holds a full refrigerant charge, and the appliance is ready for use for its intended purposes; and for a pre-charged appliance component, means the date that such component is completely produced by the original equipment manufacture, charged with refrigerant, and is ready for initial sale or distribution in interstate commerce.''

Small appliances, such as refrigerators and window air-conditioners, thus are ''manufactured'' at the manufacturing facility. For instance, an appliance that has been pre-charged with the desired amount of refrigerant, has gone through the entire production line so that all mechanical and electrical procedures are complete, and is a ''stand-alone'' piece of equipment (*i.e.,* it only needs to be plugged into an electrical outlet and turned on to function properly) is ''manufactured'' when it is placed into the manufacturer's initial inventory. Appliances used in commercial refrigeration and industrial process refrigeration typically involve more complex installation processes and may require custom-built parts and thus are considered differently. Appliances that are field charged or have the refrigerant circuit completed onsite, regardless of whether additional refrigerant is added or not, are ''manufactured'' at the point when installation of all of the components and other parts are completed and the appliance is fully charged with refrigerant. Some components, such as condensing units for split-system air conditioners, contain a refrigerant charge from the factory but are then typically adjusted in the field at the time the appliance is installed to account for different line sizes and indoor unit configurations. EPA considers the ''manufacture'' of that split-system similar to that for field-charged equipment; that is, manufacture is not complete until the device is installed in the field and fully charged. EPA clarifies that ''the date upon which the appliance's refrigerant circuit is complete'' means the initial date, and does not include any opening and re-closing of the refrigerant loop as a result of servicing.

EPA received thirteen comments regarding its interpretation of the term ''manufacture.'' Commenters were primarily concerned with the effect that this interpretation will have on inventory that is still unsold after January 1, 2010. EPA discusses below its effort to minimize the effect on existing inventory. Eight commenters recommended that EPA define manufacture as the date the product, whether it is a complete appliance or not, leaves the original equipment manufacturer's (OEM) final assembly process, is packaged for shipment, and placed into initial inventory. EPA believes the commenters' concern arises with how the two terms ''appliance'' and ''manufacture'' are applied together. Small appliances, *i.e.,* devices that have a completed refrigerant circuit, are fully charged, and are functional and ready for use at the time they leave the factory are ''manufactured'' at the time they are placed into initial inventory at the factory and are shipped as complete ''appliances'' rather than as a set of components. In contrast, appliances used in commercial refrigeration and industrial process refrigeration are not placed in inventory or shipped as complete ''appliances.'' In such cases, OEMs are manufacturing components, not appliances. The point of manufacture of the commercial or industrial process refrigeration

[10] *See* 40 CFR 82.152 which contains the definition of ''appliance'' as well as examples of types of appliances in the definitions of ''commercial refrigeration,'' ''industrial process refrigeration,'' and ''small appliances.''

appliance occurs after the components have left the factory. EPA has consistently stated its interpretation that individual components such as condensers, evaporators, compressors, line sets, and valves in themselves do not constitute an appliance. In an earlier rulemaking addressing the sales of pre-charged appliance components, the Agency stated that pre-charged components are parts of but ''are clearly not appliances'' (November 9, 1994; 59 FR 55912). Commenters to the companion Pre-Charged Appliances rule noted that EPA provides similar language on its refrigerant sales restriction factsheet (found at (*www.epa.gov/ozone/title6/608/sales/sales.html*), which states that ''EPA considers a 'part' to be any component or set of components that makes up less than an appliance. For example, this includes line sets, evaporators, or condensers that are not sold as part of a set from which one can construct a complete split system or other appliance. EPA considers a part to be 'pre-charged' if it contains a CFC or HCFC that will become part of the operating charge of an appliance.'' EPA defines ''pre-charged components'' in the Pre-Charged Appliances rulemaking. In this HCFC allocation rule, EPA is clarifying that the appliance itself is not manufactured until the component parts, whether pre-charged or not, are fully installed and charged.

Five commenters stated that the proposed interpretation would negatively affect HVAC equipment used in commercial and residential buildings (including modular buildings). For example, a situation could arise where both the pre-charged condensing unit and indoor coil would be produced and possibly shipped prior to January 1, 2010, but the refrigerant loop would not be completed until after that date. As described above, EPA believes that placement of components into initial inventory or partial installation of certain components does not make sense as a definition of manufacture for split systems or other such appliances. In effect, what these commenters are requesting is that the appliance be considered manufactured when all of its component parts, or one specific part, are placed into initial inventory, not when those various parts are combined into a functional appliance, as defined at Section 82.152.

Fourteen commenters expressed concern that EPA's interpretation of manufacture will strand existing inventory of components and present a financial burden to OEMs, distributors, and contractors holding that equipment. EPA disagrees with the comment that inventory will have to be scrapped or that there are no further uses of that equipment. First, section 605(a) provides an exception to the use ban for used, recycled, or reclaimed refrigerant. Thus, reclaimed refrigerant could be used to charge components being installed in the field so as to manufacture a completely new appliance so long as charging occurs at the installation site rather than at the factory. Note that under the Pre-Charged Appliance rule, components could not be shipped with a charge of HCFC–22 or HCFC–142b, or blend thereof (even if reclaimed), but could be charged with a nitrogen holding charge or shipped dry. Second, pre-charged components manufactured before 2010 can be sold to service existing equipment. For example, an HCFC–22 condensing unit that fails after 2010 may be replaced with a similar HCFC–22 condensing unit that was manufactured prior to January 1, 2010. There is no limitation on whether the component contains virgin or reclaimed HCFC–22 or is shipped dry in this instance as the component was manufactured prior to January 1, 2010, and is being used for servicing rather than appliance manufacture. These continued uses of existing equipment allow holders of existing inventory to continue selling such equipment. Manufacturers, however, are prohibited from producing and charging with HCFC–22 components designed for use solely in the manufacture of new HCFC–22 systems after December 31, 2009. Based on comments submitted to this rule and made in prior stakeholder meetings, EPA does not anticipate OEMs producing such components or systems after December 31, 2009.

The continued sale of existing inventory will both reduce burden to stakeholders and be protective of the environment. EPA considers replacement of components as within the definition of servicing of existing equipment. EPA's Vintaging Model takes into account repairs such as these when modeling the lifetime of the appliance. Thus, allowing replacement of components with existing inventory does not change the estimated servicing demand. Furthermore, there may be no overall benefit to the environment in requiring companies holding existing equipment to scrap their inventory. In addition to the solid waste generated, there is the potential for losses of refrigerant during recovery and subsequent handling of the refrigerant.

EPA also received comments requesting a limited waiver for HCFC–22 and HCFC–142b appliances that had been scheduled for use in projects, such as construction projects, prior to January 1, 2010, but not yet completed. Commenters provided a range of scenarios in which building plans were established, but ground had not yet been broken, or appliance components ordered but not yet installed. Commenters noted that an increased financial burden would be borne by those who had made ''good faith'' attempts to adhere to the HCFC–22/HCFC–142b use ban prior to 2010, but for various reasons beyond their control (*e.g.,* budget shortfalls, weather delays, labor strikes) would not be able to complete projects prior to January 1, 2010. Commenters stated that EPA should accommodate new installations specifying HCFC–22 or HCFC–142b appliances that have entered into contracts, completed the bidding process, or have received building code approval prior to January 1, 2010.

In response to these concerns, EPA is granting flexibility in limited instances where projects have begun but due to delays have not yet been completed prior to January 1, 2010. EPA is adding to § 82.15(g)(2) the following exception: ''Introduction into interstate commerce and use of HCFC–22 is not subject to the prohibitions in paragraph (g)(2)(a)) of this section if the HCFC–22 is * * * for use as a refrigerant in appliances manufactured before January 1, 2012, provided that the components are manufactured prior to January 1, 2010, and are specified in a building permit or a contract dated before January 1, 2010, for use on a particular project.'' EPA does not intend to establish an across-the-board exemption to the phaseout period, but is adjusting the accelerated section 605(a) phaseout to allow for unforeseen delays in limited circumstances. In general, the Agency feels that ample time has been granted to allow chemical, appliance, and component manufacturers to phase out the manufacture of products dependent on HCFC–22, HCFC–142b, and blends thereof that are not intended to service existing installations. In 1993 EPA issued the first rule banning the production of HCFC–22 and HCFC–142b for use in equipment manufactured before January 1, 2010. Nonetheless, after considering comments, EPA is granting some flexibility to address particular circumstances affected by the definition of ''manufacture'' proposed in the December 23, 2008, proposal. EPA believes that a two year grandfathering provision will provide sufficient time to those who are bound by either a contract or building permit but facing

delays to complete the installation (*i.e.,* ''manufacture'') of such equipment.

EPA recognizes that building permits and contractual arrangements exist for construction projects that involve air-conditioning systems that will not be ''manufactured'' (*e.g.,* completion of the refrigerant circuit) until after December 31, 2009. In response to comments expressing this concern, this rule establishes a grandfathering provision which allows appliances containing HCFC–22, HCFC–142b, or blends thereof to be ''manufactured'' onsite for a particular project between January 1, 2010, and December 31, 2011, if their components are made prior to January 1, 2010, and specified for use at that project under a building permit or contract dated before January 1, 2010. EPA believes this will provide relief to the various concerns that were expressed by stakeholders.

EPA does not anticipate that this grandfathering will affect total modeled demand. The Vintaging Model assumes that this equipment was installed in 2009 and estimates servicing need based on 2009 as the date of manufacture. If not installed in 2009 but rather installed in subsequent years, the model already assumes it is installed, so the total servicing demand is not affected, though it is shifted forward in time. Thus, the model may underestimate actual annual demand from 2010 onward.

D. Exceptions to the Accelerated Use Restrictions

In the proposed rule, EPA clarified its prior interpretation from the 1993 phaseout rule (58 FR 15028) that the Agency was accelerating the section 605(a) prohibition on use of virgin HCFC–22, HCFC–142b, and blends thereof, except as a feedstock or as a refrigerant in existing equipment as of January 1, 2010. The accelerated use ban derives from EPA's authority under section 606 of the Clean Air Act to phase out the use of class II substances more rapidly than the schedule set forth in section 605. Under section 606, the Administrator is to accelerate the schedule ''if based on the availability of substitutes for listed substances, the Administrator determines that such more stringent schedule is practicable, taking into account technological achievability, safety, and other relevant factors.'' As discussed above, EPA believes that alternatives are available for HCFC–22 and HCFC–142b and therefore believes it is appropriate to accelerate the schedule. However, EPA received comments that described niche applications for HCFC–22. These two uses are for medical equipment and for thermostatic expansion valves (TXVs). In those two instances, EPA does not believe that the accelerated 605(a) ban is practicable, because while alternatives exist, it is not feasible to implement them immediately. In this final rule, EPA is exempting virgin HCFC–22 for use in TXVs and for medical equipment from the 2010 accelerated ban on introduction into interstate commerce and use.

The existing regulations at 40 CFR 82.16(c) prohibit, beginning January 1, 2010, the production and import of HCFC–22 for all uses except for use in a process that results in their transformation or destruction, for use as a refrigerant in equipment manufactured prior to January 1, 2010, or for limited export. Therefore, these users have had notice of the upcoming ban on production. However, EPA believes that there is benefit in allowing for the continued use of already produced material in these few specific non-refrigerant uses. Therefore, under this rule EPA is exempting the use of HCFC–22 produced prior to January 1, 2010, for TXVs and medical equipment. This limited exception ends December 31, 2014, as that is the date upon which all uses of HCFCs, except for those specifically enumerated in section 605(a), are banned.

1. Thermostatic Expansion Valves

EPA received several comments regarding the effect the proposed rule would have on the use and manufacture of thermostatic expansion valves (TXV). A TXV is a hermetically sealed valve that uses a very small amount of HCFC–22; one commenter said that they contain as little as 3 grams of HCFC–22. TXVs increase the efficiency of air conditioning and refrigeration equipment by carefully regulating the flow of refrigerant in the refrigerant circuit. The HCFC–22 contained in a TXV is separate from the HCFCs that act as refrigerants in the refrigerant circuit. As such, one commenter stated that TXVs should be exempt from regulation because the HCFC–22 charged in the TXV bulb does not provide cooling effect. EPA believes the intent of this comment was to allow for the continued sale of TXVs under EPA's companion Pre-Charged Appliances rule. EPA agrees that the HCFC–22 sealed within TXVs is not used for heat transfer purposes and not part of the refrigerant loop. Since it is not used for heat transfer in a refrigeration system the HCFC–22 used in TXVs is therefore not used as a ''refrigerant'' as defined in section 605(a). Therefore, this use of HCFC–22 is not exempted under section 605(a)(3).

Under section 605(a), the manufacture of TXVs containing HCFC–22 and HCFC–142b could continue if the HCFC in the TXV is used, recycled, or reclaimed.[11] Commenters argued that reclaimed HCFCs would not be appropriate for TXVs. They stated that virgin HCFC–22 has 100–200 ppmv volatile impurities while the ARI Standard 700 allows a maximum of 5,000 ppmv volatile impurities in reclaimed refrigerant. Commenters stated that the effects of these additional impurities are not yet understood and the TXV industry has not yet analyzed the effects or searched for alternatives to HCFC–22 in TXVs. Commenters told EPA that they expect they could complete such research within two years. In the meantime, however, they expressed concerns that not using an appropriate valve could cause a system to run inefficiently and possibly lead to catastrophic failure, with the associated possible loss of ODS.

One commenter argued against banning the sale of TXVs because they said that any loss from a leaky valve would be less than the de minimis loss associated with routine servicing. EPA disagrees with the commenter's suggestion to consider providing a de minimis exception in this instance. EPA has regulated many products that individually contain small amounts of ozone-depleting substances, such as aerosols and metered dose inhalers. While EPA agrees that a single TXV contains a small amount of HCFC–22, the amount of HCFC contained within a single product is not determinative of whether the total amount of HCFCs contained in such products is trivial.

EPA understands that the TXV manufacturers may not have been aware of the effects this rulemaking would have and agrees relief is appropriate to allow TXV manufacturers time to research appropriate alternatives, including reclaimed material. Such alternatives include cross-charge valves, which are valves that contain a different HCFC from the refrigerant found in the refrigerant loop. These valves currently exist but not all air-conditioning and refrigeration systems are compatible with a cross-charge valve. Further research can also be conducted to ascertain whether reclaimed HCFCs are suitable for use in TXVs.

As described above, EPA's interpretations of ''introduction into interstate commerce'' and ''use'' do not affect products manufactured prior to January 1, 2010. Therefore, existing

[11] EPA is not aware of any TXVs that use HCFC–142b; thus this provision only addresses TXVs containing HCFC–22.

TXVs may be used as replacements in existing air-conditioning and refrigeration equipment. Based on the comment that millions of TXVs are used each year, EPA does not believe that the existing inventory can meet the servicing demand of all remaining existing equipment. Nor does EPA believe that production of additional TXVs could be increased so shortly before January 1, 2010.

The lack of a TXV could result in a system running less efficiently or, in a worst case scenario, lead to compressor damage. EPA is concerned that failing to ensure an adequate supply of TXVs will result in the unintended consequence of removing existing equipment from service faster than anticipated. While likely rare, EPA wants to avoid the result of requiring existing equipment owners to have to replace an entire system due to the unavailability of an inexpensive valve. Therefore, this final rule allows for the introduction into interstate commerce and use of HCFC–22 produced prior to January 1, 2010, to be used until January 1, 2015, for the manufacture of TXVs.

2. Medical Equipment

Commenters to this rule also informed EPA that two companies continue to use a product containing ethylene oxide, HCFC–124, and HCFC–22 to sterilize medical equipment. One is a major manufacturer of intraocular lenses that are surgically implanted into the eye to treat cataracts. The other reprocesses costly heart catheters that were once discarded after a single use. After the close of the comment period, EPA received comment that another company continues to use a refrigerant blend containing HCFC–22 in a medical equipment device that provides therapy for women suffering from menorrhagia (excessive bleeding) by reducing menstrual flow. While this equipment uses HCFC–22 in a refrigerant blend, it is not an ''appliance'' under the Clean Air Act. Under the section 601(1) definition of ''appliance,'' the device must be ''used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.'' This device is used for medical purposes and does not provide comfort cooling or refrigeration. Beginning in 2010 it would be unlawful for the chemical producer to introduce the HCFC–22 into interstate commerce and for medical companies to use the HCFC–22 in their manufacture of medical equipment.

The two companies began transitioning from the blend containing HCFC–22 to pure ethylene oxide but they are currently two to four years away from fully implementing that alternative. Pure ethylene oxide, a SNAP-approved non-ozone-depleting compound, is explosive and must be used in specially designed and constructed facilities. Once the facilities are constructed, they must then be approved by the Food and Drug Administration (FDA) before they can begin manufacturing medical devices. Thus, while an alternative is approved for sterilant use, these two companies are still in the process of constructing and receiving approval for new facilities which would allow them to transition to that alternative.

EPA agrees with the commenter that the use of recovered and reclaimed HCFC–22 as a component of a sterilant is not a viable solution for sterilizing medical equipment. First, reclaimed HCFC–22 is purified according to Air-Conditioning, Heating, and Refrigeration Institute (AHRI) standards. The ARI Standard 700, among other things, requires that reclaimed HCFC–22 be 99.5% pure before being resold. This standard was designed to ensure that refrigeration equipment will work equally well regardless of whether the HCFC–22 is reclaimed or virgin. This standard does not consider medical uses of HCFC–22, where a 0.5% contamination level could have deleterious health effects. In addition, because reclaimed HCFC–22 is recovered from a variety of sources, the nature and the composition of the contaminants are varied and unknown. By contrast, commenters have told EPA that the contaminants in virgin HCFC–22 are constant and known because the source and production methods remain the same. Therefore, these contaminants have been screened for any medical effects and accounted for in the FDA approval of the sterilants for that medical use.

After the close of the comment period, EPA also heard from a manufacturer of medical equipment that contains HCFC–22 in a refrigerant blend and is used to ablate endometrial tissue. This company explained that it has taken significant steps to replace the HCFC–22 blend with an alternative refrigerant and was on schedule to have the replacement approved to be used in the medical device by the Underwriters Laboratory (UL) but the UL approval will not take place in 2009. This company requested a one-year exemption from the HCFC–22 use restriction, giving it enough time to complete the UL approval process.

EPA believes that an exception for the medical equipment described above is reasonable. First, such an exception is the type that was contemplated by Congress when writing the Clean Air Act. Section 605(d) authorizes EPA and FDA, in consultation, to allow the limited production and use of class II substances for medical devices after the statutory phaseout date of 2015. The existing regulation at 40 CFR 82.15(f) is reserved for a potential future exception for medical devices under Section 605(d). EPA is not invoking its authority under section 605(d) to create the exception for medical devices in this final rule because section 605(a) does not require a use phaseout until 2015. Nevertheless, EPA finds this exemption illustrative of the importance that Congress placed on medical uses. EPA is not inclined to create an exception for medical uses of HCFC–22 under section 605(d) when it issues allocations for the 2015–2019 control periods because EPA expects it will be practicable to implement alternatives by 2015. Based on the comments received in this rule, the few remaining users of HCFC–22 for medical purposes have plans in place to transition to alternatives prior to 2015.

Second, this exception will not have any adverse effects on the stratospheric ozone layer. EPA is limiting this exception to HCFC–22 that was produced under consumption allowances expended prior to January 1, 2010. The existing regulatory text in section 82.16(c) does not allow for HCFC–22 production beginning in 2010 for these sterilant uses and this use exemption would not change those provisions. Therefore, this exception will not result in additional production. EPA finally notes that the total volume of HCFC–22 needed for this use is small. The three companies estimate that only 57,000 kg of HCFC–22 will be needed between 2010 and the end of 2014.

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.'' 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.

EPA did not conduct a specific analysis of the benefits and costs associated with this action. Many previous analyses provide a wealth of information on the costs and benefits of the U.S. HCFC phaseout including:

• The 1993 *Addendum to the 1992 Phaseout Regulatory Impact Analysis: Accelerating the Phaseout of CFCs,*

Halons, Methyl Chloroform, Carbon Tetrachloride, and HCFCs.

- The 1999 Report *Costs and Benefits of the HCFC Allowance Allocation System.*
- The 2000 Memorandum *Cost/Benefit Comparison of the HCFC Allowance Allocation System.*
- The 2005 Memorandum *Recommended Scenarios for HCFC Phaseout Costs Estimation.*
- The 2006 ICR *Reporting and Recordkeeping Requirements of the HCFC Allowance System.*
- The 2007 Memorandum *Preliminary Estimates of the Incremental Cost of the HCFC Phaseout in Article 5 Countries.*
- The 2007 Memorandum *Revised Ozone and Climate Benefits Associated with the 2010 HCFC Production and Consumption Stepwise Reductions and a Ban on HCFC Pre-charged Imports.*

A memorandum summarizing these analyses is available in the docket.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. EPA already requires recordkeeping and reporting requirements and through this action is not proposing to amend those provisions. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 82 subpart A under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0498. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) 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 unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposal on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This action will affect the following categories:

Category	NAICS code	SIC code	Examples of regulated entities
Industrial Gas Manufacturing	325120	2869	Fluorinated hydrocarbon gases manufacturers and reclaimers.
Other Chemical and Allied Products Merchant Wholesalers.	424690	5169	Chemical gases and compressed gases merchant wholesalers.
Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.	333415	3585	Air-Conditioning Equipment and Commercial and Industrial Refrigeration Equipment manufacturers.
Air-Conditioning Equipment and Supplies Merchant Wholesalers.	423730	5075	Air-conditioning (condensing unit, compressors) merchant wholesalers.
Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers.	423620	5064	Air-conditioning (room units) merchant wholesalers.
Plumbing, Heating, and Air-Conditioning Contractors	238220	1711, 7623	Central air-conditioning system and commercial refrigeration installation; HVAC contractors.

After considering the economic impacts of the final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA is not changing the methodology for the 2010–2014 control periods. Instead, EPA is continuing to allocate production and consumption allowances using the same approach currently used for control periods 2003–2009. Thus the 13 small businesses eligible for allowances for HCFC–22 and HCFC–142b identified in that rulemaking (68 FR 2845) are still eligible for allowances under this rule. In addition, small businesses eligible for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb allowance allocations using the same methodology, are eligible for allowances. EPA is not modifying the recordkeeping or reporting provisions and thus will not have any impact on the burden to these businesses.

While EPA does not believe this action has a significant economic impact on a substantial number of small entities, nonetheless, EPA continues to try to reduce further any impacts on small entities. With respect to the allowance allocation system as a whole, EPA is continuing to provide flexibility. Consistent with the methodology for establishing baselines for HCFC–141b, HCFC–22, and HCFC–142b, while small entities will be on the same footing as larger entities, EPA is again using the highest year of consumption. EPA is also limiting consideration of company-specific baseline adjustments to reflect only permanent inter-company transfers made prior to June 16, 2008, to avoid skewing baselines to entities with ample resources or access to information. The ability to transfer allowances among entities provides the greatest flexibility for small entities to manage their allocation. As noted in the 2003 allocation rule (68 FR 2846), unlike with the class I substances, there is no restriction to limit inter-pollutant transfers to groups of substances. Both inter-pollutant and inter-company transfers of allowances are possible. A small entity can opt for short-term or long term decisions concerning the allowances it holds after evaluating its place in the overall market.

EPA has also tried to reduce the impact to small businesses from the section 605(a) provisions restricting the introduction into interstate commerce and use of HCFC–22 and HCFC–142b. Commenters expressed concern that under EPA's interpretation of the term ''manufactured,'' components that are still in inventory on January 1, 2010, would be stranded. In this final rule, EPA is clarifying that distributors and contractors, typically small businesses, may continue to sell such equipment in order to service existing equipment that uses HCFC–22. Such servicing includes the replacement of whole condensing units, compressors, or line sets. While the proposed rule prohibited the manufacture of new appliances containing HCFC–22, HCFC–142b, or blends thereof, EPA is providing a limited exception in this final rule to

allow for continued manufacture of such appliances between January 1, 2010, and December 31, 2011, if the components are made prior to January 1, 2010, and specified for use at that project under a building permit or contract dated before January 1, 2010. Finally, EPA is clarifying that new appliances may continue to be manufactured from dry components if the competed appliance is charged with recovered, recycled, or reclaimed refrigerant. EPA believes these three options will provide relief to the various concerns that were expressed by stakeholders.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. First, UMRA does not apply to rules that are necessary for the implementation of international treaty obligations. This rule implements the 2010 milestone for the phaseout of HCFCs under the Montreal Protocol. The requirements already established at 40 CFR part 82 subpart A already govern the production, import, and export of ODS. The regulatory changes for the next major milestone in the phaseout continue to implement the same general framework previously established. This action will not have any significant direct impacts or State, local and tribal governments or private sector entities. Therefore, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action apportions production and consumption allowances and establishes baselines for private entities, not small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, titled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This action does not have federalism implications. It 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, as specified in Executive Order 13132. This action is expected to primarily affect producers, importers, and exporters of HCFCs. Thus, the requirements of section 6 of the Executive Order do not apply. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on this action from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action not significantly or uniquely affect the communities of Indian tribal governments. It does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866. The Agency nonetheless has reason to believe that the environmental health or safety risk addressed by this action may have a disproportionate effect on children. Depletion of stratospheric ozone results in greater transmission of the sun's ultraviolet (UV) radiation to the earth's surface. The following studies describe the effects of excessive exposure to UV radiation on children: (1) Westerdahl J, Olsson H, Ingvar C. ''At what age do sunburn episodes play a crucial role for the development of malignant melanoma,'' Eur J Cancer 1994; 30A:1647–54; (2) Elwood JM, Japson J. ''Melanoma and sun exposure: an overview of published studies,'' Int J Cancer 1997; 73:198–203; (3) Armstrong BK, ''Melanoma: childhood or lifelong sun exposure,'' In: Grobb JJ, Stern RS, Mackie RM, Weinstock WA, eds. ''Epidemiology, causes and prevention of skin diseases,'' 1st ed. London, England: Blackwell Science, 1997; 63–6; (4) Whieman D, Green A. ''Melanoma and Sunburn,'' Cancer Causes Control, 1994; 5:564–72; (5) Heenan PJ. ''Does intermittent sun exposure cause basal cell carcinoma? A case control study in Western Australia,'' Int J Cancer 1995; 60:489–94; (6) Gallagher RP, Hill GB, Bajdik CD, et. al. ''Sunlight exposure, pigmentary factors, and risk of nonmelanocytic skin cancer I, Basal cell carcinoma.'' Arch Dermatol 1995; 131:157–63; (7) Armstrong DK. ''How sun exposure causes skin cancer: an epidemiological perspective,'' Prevention of Skin Cancer. 2004. 89–116.

This action reduces the potential continued use of Class II controlled substances and the emissions of such substances. It implements the United States commitment to reduce the total basket of HCFCs produced and imported to a level that is 75 percent below the respective baselines. While on an ODP-weighted basis, this is not as large a step as previous actions, such as the 1996 Class I phaseout, it is one of the most significant remaining actions the United States can take to complete the overall phaseout of ODS and further decrease impacts on children's health from stratospheric ozone depletion.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (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. The regulation issues allowances for the production and consumption of HCFCs, and prohibits the introduction into interstate commerce or use of products containing HCFCs.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 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. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not

consider 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 (EO) 12898 (59 FR 7629 (Feb. 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 United States.

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. By allocating allowances for HCFCs and thus restricting the amount of HCFCs available as of January 1, 2010, this rule avoids emissions of these ozone-depleting substances, lessening the adverse human health effects for the entire population.

K. The Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, 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 the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective January 1, 2010.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Reporting and recordkeeping requirements.

Dated: December 7, 2009.

Lisa P. Jackson,

Administrator.

■ 40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671(q)

Subpart A—Production and Consumption Controls

■ 2. Amend § 82.3 by adding in alphabetical order the definition of ''Appliance'', ''Interstate commerce'', and ''Manufactured'' to read as follows:

§ 82.3 Definitions for class I and class II controlled substances.

* * * * *

Appliance means any device which contains and uses a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

* * * * *

Interstate commerce means the distribution or transportation of any controlled substance between one state, territory, possession or the District of Columbia, and another state, territory, possession or the District of Columbia, or the sale, use or manufacture of any controlled substance in more than one state, territory, possession or District of Columbia. The entry points for which a controlled substance is introduced into interstate commerce are the release of a controlled substance from the facility in which the controlled substance was manufactured, the entry into a warehouse from which the domestic manufacturer releases the controlled substance for sale or distribution, and at the site of United States customs clearance.

* * * * *

Manufactured, for an appliance, means the date upon which the appliance's refrigerant circuit is complete, the appliance can function, the appliance holds a full refrigerant charge, and the appliance is ready for use for its intended purposes; and for a pre-charged appliance component, means the date that such component is completely produced by the original equipment manufacture, charged with refrigerant, and is ready for initial sale or distribution in interstate commerce.

* * * * *

■ 3. Amend § 82.15 by revising paragraph (c) and adding paragraph (g) to read as follows:

§ 82.15 Prohibitions for class II controlled substances.

* * * * *

(c) *Production with Article 5 allowances.* No person may introduce into U.S. interstate commerce any class II controlled substance produced with Article 5 allowances, except for export to an Article 5 Party as listed in Annex 4 of Appendix C of this subpart. Every kilogram of a class II controlled substance produced with Article 5 allowances that is introduced into interstate commerce other than for export to an Article 5 Party constitutes a separate violation under this subpart. No person may export any class II controlled substance produced with Article 5 allowances to a non-Article 5 Party. Every kilogram of a class II controlled substance that was produced with Article 5 allowances that is exported to a non-Article 5 Party constitutes a separate violation under this subpart.

* * * * *

(g) *Introduction into interstate commerce or use.* (1) Effective January 1, 2010, no person may introduce into interstate commerce or use HCFC–141b (unless used, recovered, and recycled) for any purpose except for use in a process resulting in its transformation or its destruction; for export to Article 5 Parties under § 82.18(a); for HCFC–141b exemption needs; as a transhipment or heel; or for exemptions permitted in paragraph (f) of this section.

(2)(i) Effective January 1, 2010, no person may introduce into interstate commerce or use HCFC–22 or HCFC–142b (unless used, recovered, and recycled) for any purpose other than for use in a process resulting in its transformation or its destruction; for use as a refrigerant in equipment manufactured before January 1, 2010; for export to Article 5 Parties under § 82.18(a); as a transhipment or heel; or for exemptions permitted in paragraph (f) of this section.

(ii) Introduction into interstate commerce and use of HCFC–22 is not subject to the prohibitions in paragraph (g)(2)(i) of this section if the HCFC–22 is for use in medical equipment prior to January 1, 2015; for use in thermostatic expansion valves prior to January 1, 2015; or for use as a refrigerant in appliances manufactured before January 1, 2012, provided that the components are manufactured prior to January 1, 2010, and are specified in a building permit or a contract dated before

January 1, 2010, for use on a particular project.

(3) Effective January 1, 2015, no person may introduce into interstate commerce or use HCFC–141b (unless used, recovered, and recycled) for any purpose other than for use in a process resulting in its transformation or its destruction; for export to Article 5 Parties under § 82.18(a), as a transhipment or heel; or for exemptions permitted in paragraph (f) of this section.

(4) Effective January 1, 2015, no person may introduce into interstate commerce or use any class II controlled substance not governed by paragraphs (g)(1) through (3) of this section (unless used, recovered, and recycled) for any purpose other than for use in a process resulting in its transformation or its destruction; for use as a refrigerant in equipment manufactured before January 1, 2020; for export to Article 5 Parties under § 82.18(a); as a transhipment or heel; or for exemptions permitted in paragraph (f) of this section.

(5) Effective January 1, 2030, no person may introduce into interstate commerce or use any class II controlled substance (unless used, recovered, and recycled) for any purpose other than for use in a process resulting in its transformation or its destruction; for export to Article 5 Parties under § 82.18(a); as a transhipment or heel; or for exemptions permitted in paragraph (f) of this section.

(6) Effective January 1, 2040, no person may introduce into interstate commerce or use any class II controlled substance (unless used, recovered, and recycled) for any purpose other than for use in a process resulting in its transformation or its destruction, as a transhipment or heel, or for exemptions permitted in paragraph (f) of this section.

* * * * *

■ 4. Revise § 82.16(a) to read as follows:

§ 82.16 Phaseout schedule of class II controlled substances.

(a) In each control period as indicated in the following table, each person is granted the specified percentage of baseline production allowances and baseline consumption allowances for the specified class II controlled substances apportioned under §§ 82.17 and 82.19:

Control period	Percent of HCFC–141b	Percent of HCFC–22	Percent of HCFC–142b	Percent of HCFC–123	Percent of HCFC–124	Percent of HCFC–225ca	Percent of HCFC–225cb
2003	0	100	100				
2004	0	100	100				
2005	0	100	100				
2006	0	100	100				
2007	0	100	100				
2008	0	100	100				
2009	0	100	100				
2010	0	41.9	0.47	125	125	125	125
2011	0	38.0	0.47	125	125	125	125
2012	0	34.1	0.47	125	125	125	125
2013	0	30.1	0.47	125	125	125	125
2014	0	26.1	0.47	125	125	125	125

* * * * *

■ 5. Revise § 82.17 to read as follows:

§ 82.17 Apportionment of baseline production allowances for class II controlled substances.

Effective January 1, 2010, the following persons are apportioned baseline production allowances for HCFC–22, HCFC–141b, HCFC–142b, HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb, as set forth in the following table:

Person	Controlled substance	Allowances (kg)
AGC Chemicals Americas	HCFC–225ca	266,608
	HCFC–225cb	373,952
Arkema	HCFC–22	28,219,223
	HCFC–141b	24,647,925
	HCFC–142b	16,131,096
DuPont	HCFC–22	42,638,049
	HCFC–124	2,269,210
Honeywell	HCFC–22	37,378,252
	HCFC–141b	28,705,200
	HCFC–142b	2,417,534
	HCFC–124	1,759,681
MDA Manufacturing	HCFC–22	2,383,835
Solvay Solexis	HCFC–142b	6,541,764

■ 6. Amend § 82.18 by revising paragraphs (a) and (b) to read as follows:

§ 82.18 Availability of production in addition to baseline production allowances for class II controlled substances.

(a) *Article 5 allowances.* (1) Effective January 1, 2003, a person apportioned baseline production allowances for HCFC–141b, HCFC–22, or HCFC–142b under § 82.17 is also apportioned Article 5 allowances, equal to 15 percent of their baseline production allowances, for the specified HCFC for each control period up until December 31, 2009, to be used for the production of the specified HCFC for export only to foreign states listed in Annex 4 of Appendix C to this subpart.

(2) Effective January 1, 2010, a person apportioned baseline production allowances under § 82.17 for HCFC–141b, HCFC–22, or HCFC–142b is also apportioned Article 5 allowances, equal to 10 percent of their baseline production allowances, for the specified

HCFC for each control period up until December 31, 2019, to be used for the production of the specified HCFC for export only to foreign states listed in Annex 4 of Appendix C to this subpart.

(3) Effective January 1, 2015, a person apportioned baseline production allowances under § 82.17 for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb is also apportioned Article 5 allowances, equal to 10 percent of their baseline production allowances, for the specified HCFC for each control period up until December 31, 2019, to be used for the production of the specified HCFC for export only to foreign states listed in Annex 4 of Appendix C to this subpart.

(b) *Export Production Allowances.* (1) Effective January 1, 2003, a person apportioned baseline production allowances for HCFC–141b under § 82.17 is also apportioned export production allowances, equal to 100 percent of their baseline production allowances, for HCFC–141b for each control period up until December 31, 2009, to be used for the production of HCFC–141b for export only, in accordance with this section.

(2) [Reserved]

* * * * *

■ 7. Section 82.19 is revised to read as follows:

§ 82.19 Apportionment of baseline consumption allowances for class II controlled substances.

Effective January 1, 2010, the following persons are apportioned baseline consumption allowances for HCFC–22, HCFC–141b, HCFC–142b, HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb, as set forth in the following table:

Person	Controlled substance	Allowances (kg)
ABCO Refrigeration Supply	HCFC–22	279,366
AGC Chemicals Americas	HCFC–225ca	285,328
	HCFC–225cb	286,832
Altair Partners	HCFC–22	302,011
Arkema	HCFC–22	29,524,481
	HCFC–141b	25,405,570
	HCFC–142b	16,672,675
	HCFC–124	3,719
Carrier	HCFC–22	54,088
Condor Products	HCFC–22	74,843
	HCFC–124	3,746
Continental Industrial Group	HCFC–141b	20,315
Coolgas, Inc	HCFC–141b	16,097,869
	HCFC–123	20,000
Coolgas Investment Property	HCFC–22	590,737
Discount Refrigerants	HCFC–22	375,328
	HCFC–141b	994
DuPont	HCFC–22	38,814,862
	HCFC–141b	9,049
	HCFC–142b	52,797
	HCFC–123	1,877,042
	HCFC–124	743,312
H.G. Refrigeration Supply	HCFC–22	40,068
Honeywell	HCFC–22	35,392,492
	HCFC–141b	20,749,489
	HCFC–142b	1,315,819
	HCFC–124	1,284,265
ICC Chemical Corp	HCFC–141b	81,225
ICOR	HCFC–124	81,220
Ineos Fluor Americas	HCFC–22	2,546,305
Kivlan & Company	HCFC–22	2,081,018
MDA Manufacturing	HCFC–22	2,541,545
Mondy Global	HCFC–22	281,824
National Refrigerants	HCFC–22	5,528,316
	HCFC–123	72,600
	HCFC–124	50,380
Perfect Technology Center, LP	HCFC–123	9,100
Refricenter of Miami	HCFC–22	381,293
Refricentro	HCFC–22	45,979
R-Lines	HCFC–22	63,172
Saez Distributors	HCFC–22	37,936
Solvay Fluorides	HCFC–22	413,509
	HCFC–141b	3,940,115
Solvay Solexis	HCFC–142b	3,047,386
Tulstar Products	HCFC–141b	89,913
	HCFC–123	34,800
	HCFC–124	229,582
USA Refrigerants	HCFC–22	14,865

■ 8. Revise Annex 4 to Appendix C of subpart A of part 82 to read as follows:

Appendix C to Subpart A of Part 82—Parties to the Montreal Protocol, and Nations Complying With, But Not Parties to, the Protocol

* * * * *

Annex 4 to Appendix C of Subpart A: Nations That Are Parties to the Montreal Protocol and Are Operating Under Article 5(1)

List of Article 5 Parties

1. Afghanistan
2. Albania
3. Algeria
4. Angola
5. Antigua & Barbuda
6. Argentina
7. Armenia
8. Bahamas
9. Bahrain
10. Bangladesh
11. Barbados
12. Belize
13. Benin
14. Bhutan
15. Bolivia
16. Bosnia and Herzegovina
17. Botswana
18. Brazil
19. Brunei Darussalam
20. Burkina Faso
21. Burundi
22. Cambodia
23. Cameroon
24. Cape Verde
25. Central African Republic
26. Chad
27. Chile
28. China
29. Colombia
30. Comoros
31. Congo
32. Congo, Democratic Republic of
33. Cook Islands
34. Cost Rica
35. Côte d'Ivoire
36. Croatia
37. Cuba
38. Djibouti
39. Dominica
40. Dominican Republic
41. Ecuador
42. Egypt
43. El Salvador
44. Equatorial Guinea
45. Eritrea
46. Ethiopia
47. Fiji
48. Gabon
49. Gambia
50. Georgia
51. Ghana
52. Grenada
53. Guatemala
54. Guinea
55. Guinea Bissau
56. Guyana
57. Haiti
58. Honduras
59. India
60. Indonesia
61. Iran, Islamic Republic of
62. Iraq
63. Jamaica
64. Jordan
65. Kenya
66. Kiribati
67. Korea, People's Democratic Republic of
68. Korea, Republic of
69. Kuwait
70. Kyrgyzstan
71. Lao People's Democratic Republic
72. Lebanon
73. Lesotho
74. Liberia
75. Libyan Arab Jamahiriya
76. Madagascar
77. Malawi
78. Malaysia
79. Maldives
80. Mali
81. Marshall Islands
82. Mauritania
83. Mauritius
84. Mexico
85. Micronesia, Federal States of
86. Moldova
87. Mongolia
88. Montenegro
89. Morocco
90. Mozambique
91. Myanmar
92. Namibia
93. Nauru
94. Nepal
95. Nicaragua
96. Niger
97. Nigeria
98. Niue
99. Oman
100. Pakistan
101. Palau
102. Panama
103. Papua New Guinea
104. Paraguay
105. Peru
106. Philippines
107. Qatar
108. Rwanda
109. Saint Kitts and Nevis
110. Saint Lucia
111. Saint Vincent & the Grenadines
112. Samoa
113. Sao Tome and Principe
114. Saudi Arabia
115. Senegal
116. Serbia
117. Seychelles
118. Sierra Leone
119. Singapore
120. Solomon Islands
121. Somalia
122. South Africa
123. Sri Lanka
124. Sudan
125. Suriname
126. Swaziland
127. Syrian Arab Republic
128. Tanzania, United Republic of
129. Thailand
130. The Former Yugoslav Republic of Macedonia
131. Timor-Leste
132. Togo
133. Tonga
134. Trinidad and Tobago
135. Tunisia
136. Turkey
137. Turkmenistan
138. Tuvalu
139. Uganda
140. United Arab Emirates
141. Uruguay
142. Vanuatu
143. Venezuela
144. Viet Nam
145. Yemen
146. Zambia
147. Zimbabwe

■ 9. Revise Appendix E to subpart A of part 82 to read as follows:

Appendix E to Subpart A of Part 82—Article 5 Parties

Afghanistan, Albania, Algeria, Angola, Antigua & Barbuda, Argentina, Armenia, Bahamas, Bahrain, Bangladesh, Barbados, Belize, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Congo, Democratic Republic of, Cook Islands, Cost Rica, Côte d'Ivoire, Croatia, Cuba, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Gabon, Gambia, Georgia, Ghana, Grenada, Guatemala, Guinea, Guinea Bissau, Guyana, Haiti, Honduras, India, Indonesia, Iran, Islamic Republic of, Iraq, Jamaica, Jordan, Kenya, Kiribati, Korea, People's Democratic Republic of, Korea, Republic of, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Madagascar, Malawi, Malaysia, Maldives, Mali, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia, Federal States of, Moldova, Mongolia, Montenegro, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, Nicaragua, Niger, Nigeria, Niue, Oman, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Qatar, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent & the Grenadines, Samoa, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia, Seychelles, Sierra Leone, Singapore, Solomon Islands, Somalia, South Africa, Sri Lanka, Sudan, Suriname, Swaziland, Syrian Arab Republic, Tanzania, United Republic of, Thailand, The Former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Tuvalu, Uganda, United Arab Emirates, Uruguay, Vanuatu, Venezuela, Viet Nam, Yemen, Zambia, Zimbabwe.

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December 15, 2009

Part III

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: Ban on the Sale or Distribution of Pre-Charged Appliances; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2007–0163; FRL–9091–9]

RIN 2060–AN58

Protection of Stratospheric Ozone: Ban on the Sale or Distribution of Pre-Charged Appliances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule bans the sale or distribution of air-conditioning and refrigeration appliances containing HCFC–22, HCFC–142b, or blends containing one or both of these substances, beginning January 1, 2010. In addition, EPA is banning the sale or distribution of air-conditioning and refrigeration appliance components that are pre-charged with HCFC–22, HCFC–142b, or blends containing one or both of these controlled substances as the refrigerant. These prohibitions apply only to appliances and components manufactured on or after January 1, 2010.

DATES: This final rule is effective on January 1, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. HQ–OAR–2007–0163. All documents in the docket are listed on the *http://www.regulations.gov* Web site. 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 electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket; EPA West; Room 3334; 1301 Constitution Avenue NW., Washington, DC 20460. 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 OAR Docket is (202) 566–1742.

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SUPPLEMENTARY INFORMATION: Under the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Protocol), as amended, the U.S. and other industrialized countries that are Parties to the Protocol have agreed to limit production and consumption of hydrochlorofluorocarbons (HCFCs) and to phase out consumption in a step-wise fashion over time, culminating in a complete phaseout in 2030. Title VI of the Clean Air Act Amendments of 1990 (CAAA) authorizes EPA to promulgate regulations to manage the consumption and production of HCFCs until the total phaseout in 2030. EPA promulgated final regulations establishing an allowance tracking system for HCFCs on January 21, 2003 (68 FR 2820). These regulations were amended on June 17, 2004 (69 FR 34024) and July 20, 2006 (71 FR 41163). This action establishes a ban on sale or distribution in interstate commerce of air-conditioning and refrigeration appliances, as well as appliance components that are pre-charged with HCFC–22, HCFC–142b, or blends containing one or both of these controlled substances. It does not, however, affect the sale or distribution of appliances or components manufactured before January 1, 2010.

Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. EPA is issuing this final rule under section 307(d)(1) of the Clean Air Act, which states: ''The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies.'' Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the policies underlying APA section 553(d) in making this rule effective on January 1, 2010. APA section 553(d) provides an exception for any action for which the agency provides good cause found and published within the rule. EPA finds that there is good cause to make this rule effective January 1, 2010. This final rule accompanies a second rule, ''Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export'' (EPA Docket: EPA–HQ–OAR–2008–0496) which contains interrelated requirements. The effective date of the other rule is January 1, 2010. Having two different effective dates for the two rules would create a discontinuity and potentially generate confusion among the regulated community. The interrelated nature of the two rules is discussed in Section II of the preamble.

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I. General Information

A. Does This Action Apply to Me?

This final rule will affect the following categories:

Category	NAICS code	SIC code	Examples of regulated entities
Contractors and Servicing	238220	1711, 7623	Plumbing, Heating, and Air-Conditioning Contractors.
Manufacturers of air conditioners and refrigerators	333415	3585	Air-Conditioning Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.
Air-Conditioning Equipment and Supplies Merchant Wholesalers.	423730	5075	Air-conditioning (condensing unit, compressors) merchant wholesalers.
Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers.	423620	5064	Air-conditioning (room units) merchant wholesalers.
Importers of air conditioners and refrigerators	333415	3585	Air-Conditioning Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware potentially could be regulated by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business organization, or other entity is regulated by this action, you should carefully examine these regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. Background

In 1973 chemists Frank Sherwood Rowland and Mario Molina at the University of California-Irvine began studying the impacts of chlorofluorocarbons (CFCs) in the earth's atmosphere. They discovered that CFC molecules were stable enough to migrate to the stratosphere and that the chorine atoms contained in these molecules could cause the breakdown of large amounts of ozone in the stratosphere. The Toxic Substances Control Act (TSCA), passed in 1976, included regulatory authority over CFCs. EPA's first regulatory response to the concerns for stratospheric ozone protection resulted in a ban on CFC aerosol propellants (43 FR 11301; March 17, 1978 and 43 FR 11318; March 17, 1978).

EPA followed this initial regulatory approach with an Advance Notice of Proposed Rulemaking (ANPRM) which discussed a freeze on the production of certain CFCs and a system of marketable permits to allocate CFC consumption among industries (45 FR 66726; October 7, 1980). EPA did not act immediately on the 1980 ANPRM and was subsequently sued by the Natural Resources Defense Council (*NRDC* v. *Thomas,* No. 84–3587 (D.D.C.)) for failure to regulate CFCs further. EPA and NRDC settled the case and agreed that EPA would propose further regulatory controls on CFCs, or state the reasons for deciding not to issue a proposal, by December 1, 1987, and would take final action by August 1, 1988.

On January 10, 1986 (51 FR 1257), EPA published its Stratospheric Ozone Protection Plan. That plan described the analytic basis for supporting negotiations for an international agreement to control CFCs and for reassessing the need for additional domestic regulations of CFCs and other ozone-depleting substances (ODS). The United States participated in negotiations organized by the United Nations Environment Programme (UNEP) to develop an international agreement to protect stratospheric ozone. These negotiations, preceded by the 1985 signing of the Vienna Convention, resulted in the signing of the Montreal Protocol in 1987. The United States ratified the Montreal Protocol on April 21, 1988. In 1988, EPA promulgated regulations implementing the requirements of the Montreal Protocol through a system of tradable allowances under section 157(b) of the Clean Air Act as amended in 1977. This section was subsequently modified by the 1990 Amendments and became CAA § 615. The Senate Report on the 1990 Amendments, Senate Rep. No. 101–228: ''Authority of the Administrator'' notes that this section ''is intended * * * to preserve the authority and responsibility of the Administrator as set forth in section 157 of the existing Clean Air Act,'' although the Conference report to the 1990 CAAA is silent on this matter.

Since the CAAA were passed in 1990, EPA has promulgated regulations based on various provisions of Title VI. For example, EPA has promulgated a production and consumption phaseout schedule that included a revised trading regime for class I ODS, a production and consumption phaseout schedule and trading regime for class II ODS, servicing requirements for air-conditioning and refrigeration appliances, bans on nonessential products containing or manufactured with ODS, and labeling requirements.

Concern for ozone layer protection remains paramount for the global community. In an effort to further protect human health and the environment, the Parties to the Montreal Protocol adjusted the Montreal Protocol's phaseout schedule for HCFCs in September 2007. The Parties agreed that industrialized countries, including the United States, would reduce production and consumption of HCFCs to 75 percent below the established baseline in 2010, to 90 percent below the established baseline in 2015, and to 99.5 percent in 2020—allowing for only 0.5 percent production and consumption between 2020–2030 to be used solely for servicing existing appliances culminating in the terminal phaseout in 2030. In addition, the Parties adjusted the schedule for non-industrialized countries by agreeing to set production and consumption baselines based on the average values for 2009–2010 production and consumption, respectively; to freeze production and consumption in 2013; and to add stepwise reductions as follows: 10 percent below baselines in 2015, 35 percent below in 2020, 67.5 percent below in 2025 and allowing for a servicing tail to average no more than 2.5 percent between 2030–2040 to be used solely for servicing existing appliances, culminating in the terminal phaseout in 2040.

The requirements already established at 40 CFR 82.16(c) make it unlawful to produce or import HCFC–22 or HCFC–142b on or after January 1, 2010, for use

in refrigeration or air-conditioning appliances manufactured on or after that date. The practical result of this provision is that effective January 1, 2010, domestic manufacturers of air-conditioning and refrigeration appliances will not be able to charge newly manufactured appliances with newly produced or imported HCFC–22 or HCFC–142b, and thus will not be introducing new appliances containing these substances into interstate commerce.

II. Final Action

EPA is establishing regulations that ban the sale or distribution or offer for sale or distribution in interstate commerce of all air-conditioning and refrigeration appliances containing HCFC–22, HCFC–142b, or blends containing one or both of these controlled substances[1], beginning January 1, 2010. The prohibition includes fully assembled appliances that are sold pre-charged with HCFC–22 or HCFC–142b (such as window air-conditioning units), as well as appliances that are field assembled with HCFC–22 or HCFC–142b (such as residential split systems and supermarket refrigeration equipment). This prohibition extends to imported appliances as well as U.S. manufactured appliances that are destined for export. EPA is also banning the sale or distribution in interstate commerce of appliance components that are pre-charged with HCFC–22 or HCFC–142b beginning January 1, 2010. The prohibitions do not apply to pre-charged appliances or pre-charged appliance components that are manufactured prior to January 1, 2010. Pre-charged appliances and components that have been manufactured prior to January 1, 2010 may be sold and distributed in interstate commerce.

Refrigeration and air-conditioning end-uses typically use a refrigerant in a vapor compression cycle to cool and/or dehumidify a substance or space, like a refrigerator cabinet, room, office building, or warehouse. HCFC–22 is a popular refrigerant that is commonly used in a variety of refrigeration and air-conditioning equipment including industrial and residential applications, most of which are field installed and charged on-site. HCFC–22 can be used in a large range of equipment including:

Residential Uses

- Window air-conditioning units.
- Dehumidifiers.
- Central air conditioners.
- Air-to-air heat pumps.
- Ground-source heat pumps.
- Ductless air conditioners.
- Chest or upright freezers.

Commercial and Industrial Uses

- Packaged air conditioners and heat pumps.
- Chillers.
- Retail food refrigeration.
- Cold storage warehouses.
- Industrial process refrigeration.
- Refrigerated transport.
- Public transport (*e.g.,* buses, trains, subway air-conditioning).

HCFC–22 is often used as a component in refrigerant blends that contain several chemical compounds. HCFC–22 refrigerant blends are used in various industrial, commercial, and residential end uses including: Retail food refrigeration, cold storage warehouses, industrial process refrigeration (IPR), and transport refrigeration appliances. As a refrigerant, HCFC–142b is rarely used by itself; it is generally a component of a refrigerant blend. For example, R–401A (Suva® MP39), R–406A (Autofrost GHG–X3), R–414B (Hot Shot®), Freeze-12™ are all refrigerant blends containing HCFC–22 and/or HCFC–142b.

Readers interested in substitutes for ODS refrigerants should review the Significant New Alternatives Policy (SNAP) program which evaluates and determines whether a substitute for an ODS in a specific end-use may be used safely in comparison to other available substitutes. Section 612 authorizes EPA to identify and publish lists of acceptable and unacceptable substitutes for class I or class II ozone-depleting substances. EPA has determined that a large number of alternatives are acceptable because they provide limited risk to human health and the environment. The purpose of SNAP is to allow a safe, smooth transition away from ODS by identifying as acceptable substitutes for those substances or processes that offer lower overall risks to human health and the environment than the ODS they replace, and by prohibiting substitutes that provide significantly greater risk than other substitutes that are available. Additional information concerning substitutes specifically for air-conditioning and refrigeration applications can be found at: *http://www.epa.gov/ozone/snap/refrigerants/index.html*.

This final rule does not restrict or prohibit the sale of appliances containing HCFC–22 or HCFC–142b as blowing agents in closed cell insulation foam. However, EPA has promulgated *SNAP Rule 13: The use of HCFC–22 and HCFC–142b in foams/listing of ozone depleting substitutes in foam blowing* (72 FR 14432), finding HCFC–22 and HCFC–142b as unacceptable substitutes for HCFC–141b in the manufacture of commercial refrigeration, sandwich panels, slabstock, and other ''pour foam'' applications.

This final rule does not affect the servicing of air-conditioning or refrigeration appliances manufactured prior to January 1, 2010. Servicing is regulated under other authorities, notably 40 CFR part 82 subpart F (*i.e.,* section 608 regulations). Service and repair of existing equipment using HCFC–22 or HCFC–142b is not affected by this final rule. EPA believes it is necessary to continue to permit the servicing of air-conditioning and refrigeration appliances manufactured prior to January 1, 2010, to ensure a smooth transition to non-ODS alternatives.

This final rule prohibits the sale or distribution, and the offer for sale or distribution, in interstate commerce of air-conditioning and refrigeration appliances and their components containing HCFC–22 or HCFC–142b beginning January 1, 2010. The ban applies to appliances and components manufactured on or after January 1, 2010, but not to appliances or components manufactured before that date. This final rule, combined with the accompanying final rule titled ''Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export'' (EPA Docket: EPA–HQ–OAR–2008–0496) published elsewhere in this issue of the **Federal Register**, which we refer to below as the ''allocation rulemaking,'' will have the following effects on the sale, distribution, and installation of air-conditioning and refrigeration products charged with HCFC–22 or HCFC–142b.

- Sale and distribution of *appliances* pre-charged with HCFC–22 or HCFC–142b is allowed for self-contained, factory-charged appliances such as pre-charged window units, packaged terminal air conditioners (PTACs), and some commercial refrigeration units, if manufactured *before* January 1, 2010. The pre-charged appliance rule does not prohibit sale and distribution of pre-2010 inventory (*i.e.,* stockpiled inventories).
- Sale and distribution of *appliances* pre-charged with HCFC–22 or HCFC–142b is not allowed for self-contained, factory-charged appliances such as pre-charged window units, packaged terminal air conditioners (PTACs), and some commercial refrigeration units, if

[1] Throughout this action, where EPA refers to HCFC–22 or HCFC–142b, it also refers to blends containing one or both of those HCFCs.

manufactured *on or after* January 1, 2010. This prohibition, which is contained in the pre-charged appliance rule, applies regardless of when the refrigerant was produced and whether it is virgin or reclaimed.[2] Under the allocation rule, neither stockpiled HCFC–22 produced prior to January 1, 2010, nor new HCFC–22 produced after that date can be used to manufacture new appliances on or after January 1, 2010.

- Sale and distribution of *appliance components* pre-charged with HCFC–22 or HCFC–142b is allowed if the components (*e.g.,* condensing units, line sets, and coils that are charged with refrigerant) were manufactured before January 1, 2010. The pre-charged appliance rule does not prohibit sale and distribution of pre-2010 inventory (*i.e.,* stockpiled inventories).
- *Pre-charged appliance components* manufactured before January 1, 2010 may be used to service appliances manufactured before January 1, 2010, but may not be assembled to create new appliances unless there is *no* use of virgin HCFC–22 or HCFC–142b, in the components or otherwise. The allocation rule prohibits use of virgin HCFC–22 and HCFC–142b in manufacturing new appliances.
- There is *no* exemption from the pre-charged appliance rule for the sale or distribution of pre-charged appliances and pre-charged components that are charged with reclaimed HCFC–22 or HCFC–142b refrigerant. In other words, the provisions banning sale and distribution apply equally regardless of whether the appliances or components contain virgin or reclaimed refrigerant.
- Under the allocation rule, *virgin* HCFC–22 and HCFC–142b *may only be used to service existing appliances.* Virgin HCFC–22 and HCFC–142b may not be used to manufacture new pre-charged appliances or appliance components. Virgin HCFC–22 and HCFC–142b also may not be used to charge new appliances assembled onsite on or after January 1, 2010, though new appliances (not pre-charged) may be charged with reclaimed refrigerant.
- EPA is providing an *exception* to the allocation rule that allows virgin HCFC–22 to be used in the onsite ''manufacture'' of appliances for a particular project between January 1, 2010, and December 31, 2011, if the components have been specified for use at that project under a building permit or contract dated before January 1, 2010.
- Under the allocation rule, HCFC–22 produced prior to January 1, 2010, may be used until January 1, 2015, for the manufacture of thermostatic expansion valves (TXVs).
- The sale and distribution of *used appliances* is not affected by either rule.

[2] At 40 CFR 82.152, EPA has defined *reclaim* refrigerant to mean to reprocess refrigerant to all of the specifications in appendix A to 40 CFR part 82, subpart F (based on ARI Standard 700–1995, Specification for Fluorocarbons and Other Refrigerants) that are applicable to that refrigerant and to verify that the refrigerant meets these specifications using the analytical methodology prescribed in section 5 of appendix A of 40 CFR part 82, subpart F.

A. Establishing 40 CFR Part 82, Subpart I

Today's final rule prohibits the sale or distribution and the offer for sale or distribution of pre-charged appliances and appliance components in interstate commerce in a new subpart I to 40 CFR part 82. The new subpart is titled *Ban on Refrigeration and Air-Conditioning Appliances Containing HCFCs.* A new subpart is warranted since existing subparts dealing with the phaseout of production and consumption of controlled substances generally apply to bulk substances and not finished goods.

As discussed in the NPRM, EPA considered amending subpart C, since that subpart includes a ban on the sale and distribution of certain products manufactured with or containing HCFCs, as well as air-conditioning and refrigeration appliances containing CFCs as the refrigerant, but those provisions were promulgated under CAA section 610. Given that EPA is using different authority for these provisions and is structuring them somewhat differently, EPA finds that for ease of reference, these new provisions should be housed in a new and easily identifiable subpart in the CFR.

B. Authority To Prohibit Sale or Distribution, or Offer for Sale or Distribution, of Specific Types of Appliances

EPA proposed to establish regulations under authority of section 615 of the Act, to take effect January 1, 2010, that would ban the sale or distribution or offer for sale or distribution in interstate commerce of all air-conditioning and refrigeration appliances and components containing HCFC–22 or HCFC–142b containing one or both of these controlled substances. EPA also proposed to ban effective January 1, 2010, the sale or distribution or offer for sale or distribution in interstate commerce of all air-conditioning and refrigeration appliances suitable for use solely with newly-produced HCFC–22 or HCFC–142b.

Section 301(a) authorizes EPA to promulgate regulations as are necessary to carry out its functions under the Clean Air Act, such as issuing prohibitions and standards. Further, section 615 of the CAA states that:

If, in the Administrator's judgment, any substance, practice, process, or activity may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere, and such effect may reasonably be anticipated to endanger public health or welfare, the Administrator shall promptly promulgate regulations respecting the control of such substance, practice, process, or activity, and shall submit notice of the proposal and promulgation of such regulation to the Congress.

For the reasons discussed below, EPA has determined that the practice of selling and distributing pre-charged air-conditioning and refrigeration appliances and components containing HCFC–22 or HCFC–142b may reasonably be anticipated to affect ozone in the stratosphere, and such effect may reasonably be anticipated to endanger public health.

C. Criteria and Conditions Established Under § 615 of CAAA

Under § 615, if in the Administrator's judgment, any substance, practice, process, or activity may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere, and such effect may reasonably be anticipated to endanger public health or welfare, then the Administrator must promptly promulgate regulations respecting the control of such substance, practice, process, or activity.

EPA proposed to conclude that, beginning January 1, 2010, the practice of selling and distributing pre-charged air-conditioning and refrigeration appliances and pre-charged appliance components containing HCFC–22 or HCFC–142b, as well as air-conditioning and refrigeration appliances suitable for use solely with newly produced HCFC–22 or HCFC–142b may reasonably be anticipated to affect ozone in the stratosphere, and such effect may reasonably be anticipated to endanger public health. EPA sought comment on this proposed conclusion. EPA explained that the impacts on stratospheric ozone resulting from continuing these activities can be delineated into impacts from the continued production of HCFC–22 or HCFC–142b for use as a refrigerant in air-conditioning and refrigeration appliances that cannot be initially charged in the U.S. but could be charged abroad and subsequently imported into the U.S. if EPA did not take action; and impacts from improperly servicing equipment and/or venting controlled substances. These impacts are discussed in this notice.

Three commenters stated that EPA must ensure that its findings regarding public health are well supported, documented in the record, and clearly meet the statutory criteria for an endangerment finding, under section 615. These commenters did not find EPA's finding to be well supported and instead said it was based on general assumptions, incomplete analyses, and extrapolations of calculations made by one consultant in one brief analysis. Other commenters found that the Agency's approach is an appropriate exercise of section 615 authority as it would fill a regulatory gap and is well-tailored to the section 615 endangerment finding.

After considering the comments, EPA is finalizing its proposed conclusion that the practice of selling and distributing air-conditioning and refrigeration appliances containing HCFC–22 or HCFC–142b may reasonably be anticipated to affect ozone in the stratosphere, and that such effect may reasonably be anticipated to endanger public health. Specific concerns raised by commenters regarding the ''Draft Memorandum on Costs Associated with Refrigerant Substitution from R–22 to R–410A in Pre-Charged Equipment Imports'' and the basis for estimates used in that document are discussed in the response to comments document available in the docket.

In reaching our conclusion, we considered both of the criteria contained in section 615. The first criterion is whether the substance, practice, process, or activity in question may reasonably be anticipated to affect the stratosphere. As summarized in the background section of this preamble, the effects of ODS on stratospheric ozone are well known. Further information on the science of ozone depletion is available in the docket. The specific ODS addressed in this action, HCFC–22 and HCFC–142b, are class II substances listed under section 602(b) of the Clean Air Act. Pursuant to section 602(b), class II substances are those substances that are ''known or may reasonably be anticipated to cause or contribute to harmful effects on the stratospheric ozone layer.'' As discussed below under the heading ''*Costs Analysis and Small Business Economic Impacts,''* EPA has prepared an estimate of the reduction in HCFC emissions attributable to a ban on pre-charged appliances. EPA estimates that the projected emissions of HCFC–22 between January 1, 2010 and December 31, 2019, in the absence of a ban on pre-charged appliances (based in part on charge sizes and estimated leak rates of pre-charged appliances), is approximately 4,070 ODP weighted tons. For purposes of approximate comparison, an assumed average of 407 ODP tons per year of averted emissions during this time period is approximately 11 percent of the 3,810 ODP ton U.S. compliance cap for consumption of all HCFCs each year during 2010–2014, and 27 percent of the cap during 2015–2019. Additionally, the avoided emissions of 4,070 ODP weighted tons is approximately 9 percent of all HCFC emissions projected for the United States for this same time period. These estimated reductions assume that HCFCs to be used for the US market will not be diverted to other markets in the world.

EPA believes that a reduction in the amount of the installed base of HCFC appliances reduces potential emissions and lessens the need for HCFCs for servicing. While some of the HCFCs used in appliances can be reclaimed and reused, a certain amount of the HCFCs becomes contaminated and is not available for future use. Thus restricting the installed base of HCFC appliances will have the effect of reducing the overall amount of HCFC consumption and emissions in the US. This approach is consistent with the previous actions taken to restrict applications of ozone-depleting substances where suitable substitutes exist. This action also helps further the goals of the Montreal Protocol, in particular the Parties' recent emphasis on reducing emissions of HCFCs, as evidenced by the Parties' agreement in September 2007 to pursue a more aggressive HCFC production and consumption phaseout. The result of the rulemaking will be fewer appliances pre-charged with HCFCs that could be emitted either during the useful lifetimes of the appliances via leaks or improper servicing, or by the improper disposal of the appliances resulting in the release of refrigerant in the U.S.

The second criterion in section 615 is whether ''such effect'' may reasonably be anticipated to endanger public health or welfare. The phrase ''such effect,'' as used in section 615, could be read in the context of this action to refer to (1) stratospheric ozone depletion generally; (2) stratospheric ozone depletion associated with HCFCs; or (3) stratospheric ozone depletion attributable to the specific practice of importing HCFC pre-charged appliances. As indicated above, EPA proposed to conclude that the stratospheric ozone depletion attributable to the specific practice of importing HCFC pre-charged appliances ''may reasonably be anticipated to endanger'' public health and thus is sufficient in itself. As further discussed below, EPA is finalizing this conclusion in this action. Therefore, it is not necessary to arrive at additional or definitive interpretations for purposes of this action. However, the following discussion briefly addresses the public health consequences of stratospheric ozone depletion generally as well as the stratospheric ozone depletion attributable to the specific practice of importing HCFC pre-charged appliances.

The links between stratospheric ozone depletion and skin cancer are well established. Other public health concerns include cataracts and immune suppression. Since the appearance of an ozone hole over the Antarctic in the 1980s, Americans have become aware of the health threats posed by ozone depletion, which decreases the atmosphere's ability to protect the earth's surface from the sun's ultraviolet (UV) rays. The 2006 documents *Scientific Assessment of Ozone Depletion, prepared by the Scientific Assessment Panel to the Montreal Protocol, and Environmental Effects of Ozone Depletion and its Interactions with Climate Change,* prepared by the Environmental Effects Assessment Panel (*see http://ozone.unep.org/Assessment_Panels*), provide comprehensive information regarding the links between emissions of ODS, ozone layer depletion, UV radiation, and human health effects.

Skin cancer is the most common form of cancer in the U.S., with more than 1,000,000 new cases diagnosed annually (National Cancer Institute, ''Common Cancer Types,'' at *http://www.cancer.gov/cancertopics/commoncancers*). Melanoma, the most serious form of skin cancer, is also one of the fastest growing types of cancer in the U.S.; melanoma cases in this country have more than doubled in the past two decades, and the rise is expected to continue (Ries, L., Eisner, M.P., Kosary, C.L., *et al,* eds. *SEER Cancer Statistics Review, 1973–1999.* Vol 2003. Bethesda (MD): National Cancer Institute; 2002.) In 2007, invasive melanoma was expected to strike more than 59,000 Americans and kill more than 8,000 (National Cancer Institute, ''Melanomas,'' at *http://www.cancer.gov/cancertopics/types/melanoma*).

Nonmelanoma skin cancers are less deadly than melanomas. Nevertheless, left untreated, they can spread, causing disfigurement and more serious health problems, and even death. There are two primary types of nonmelanoma skin cancers. Basal cell carcinomas are the most common type of skin cancer tumors. They usually appear as small,

fleshy bumps or nodules on the head and neck, but can occur on other skin areas. Basal cell carcinoma grows slowly, and rarely spreads to other parts of the body. It can, however, penetrate to the bone and cause considerable damage. Squamous cell carcinomas are tumors that may appear as nodules or as red, scaly patches. This cancer can develop into large masses, and unlike basal cell carcinoma, it can spread to other parts of the body.

EPA's analysis estimates that approximately 1,700 total cases of cancer (nonmelanoma and cutaneous malignant melanoma) and approximately 9 premature mortalities in the United States would be avoided by banning the sale and distribution of pre-charged appliances beginning in 2010. More information regarding this projection is available in a memorandum prepared by ICF Consulting for EPA (''Avoidance of Skin Cancer Incidences and Mortalities Associated with a 2010 Ban on Products Pre-Charged with R–22'') [3] and placed in the docket for this rulemaking. EPA does not routinely provide projections of this nature in developing rules under Title VI of the CAA.

Other UV-related skin disorders include actinic keratoses and premature aging of the skin. Actinic keratoses are skin growths that occur on body areas exposed to the sun. The face, hands, forearms, and the ''V'' of the neck are especially susceptible to this type of lesion. Although premalignant, actinic keratoses are a risk factor for squamous cell carcinoma. Chronic exposure to UV radiation also causes premature aging, which over time can make the skin become thick, wrinkled, and leathery.

Cataracts are a form of eye damage in which a loss of transparency in the lens of the eye clouds vision. If left untreated, cataracts can lead to blindness. Research has shown that UV radiation increases the likelihood of certain cataracts. Although curable with modern eye surgery, cataracts diminish the eyesight of millions of Americans. Other kinds of eye damage include pterygium (*i.e.,* tissue growth that can block vision), skin cancer around the eyes, and degeneration of the macula (*i.e.,* the part of the retina where visual perception is most acute).

Based on the discussion above of the two criteria contained in section 615, EPA concludes that beginning January 1, 2010, the practice of selling and distributing pre-charged air-conditioning and refrigeration appliances and pre-charged appliance components containing HCFC–22 or HCFC–142b, as well as air-conditioning and refrigeration appliances suitable for use solely with newly produced HCFC–22 or HCFC–142b may reasonably be anticipated to affect ozone in the stratosphere, and such effect may reasonably be anticipated to endanger public health.

D. Defining Air-Conditioning and Refrigeration Appliances and Pre-Charged Appliance Components

In the NPRM, EPA proposed that any air-conditioning or refrigeration appliances containing HCFC–22 or HCFC–142b would be subject to the proposed ban on the sale and distribution in interstate commerce if manufactured on or after January 1, 2010. EPA proposed that the ban include pre-charged components for appliances, such as line-sets and pre-charged compressors, because such pre-charged components present the same concerns as pre-charged appliances.

i. Appliance

Section 601 of the CAA defines the term ''Appliance'' to mean ''* * * any device which contains and uses a class I or class II substance as a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.'' For purposes of Subpart I, EPA proposed to use the definition of ''appliance'' in EPA's refrigerant recycling and emissions reduction regulations at 40 CFR part 82, subpart F, which is identical to the statutory definition.

EPA requested comment on using the definition of appliance that appears in subpart F to determine what would be subject to the proposed ban. In response to the Agency's request, commenters noted that they do not believe that every air-conditioning and refrigeration system—regardless of size, use, application, complexity (such as an industrial process refrigeration system)—should be subject to the proposed rule in the same manner. Specifically, these commenters suggested that the scope of the appliances covered by the rule be revised to clearly exclude residential, commercial, and industrial process refrigeration systems that are not pre-charged when they leave the factory, but are designed to use HCFC–22 or HCFC–142b. The commenters requested that EPA clarify that ''any device which contains and uses a refrigerant'' would not include systems that can use refrigerants, but are not pre-charged.

EPA agrees with comments stating that *appliance* be defined consistently with the previously promulgated definition of *appliance* at subpart F. EPA is noting, and later discusses in detail, that equipment (including residential, commercial, and industrial process refrigeration) that is not pre-charged with HCFC–22 or HCFC–142b is not covered under this rulemaking. EPA believes that consistency in these definitions benefits the regulated community. Failure to provide a consistent regulatory definition would likely lead to uncertainly in the refrigeration and air-conditioning supply and service sectors, countering the Agency's efforts to phase out use of HCFC–22 and HCFC–142b in new installations.

In order to provide regulatory clarity, this final rule applies the same definition of *appliance* that is found at CAA section 601 and promulgated at 40 CFR part 82, subpart F. The definition of *appliance* means any device which contains and uses a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

For further clarification, EPA considers the following equipment as appliances, some of which are typically pre-charged with HCFC–22 or HCFC–142b:

- Air-to-air heat pumps;
- Chest or upright freezers;
- Ductless air conditioners;
- Dehumidifiers;
- Ground-source heat pumps;
- Packaged air conditioners and heat pumps;
- Unitary air conditioners; and
- Window air-conditioning units.

This listing is not intended to be exhaustive, but includes appliances that may be manufactured and shipped pre-charged with refrigerant.

ii. Pre-Charged Appliance Component

In the NPRM, EPA proposed to define *pre-charged appliance component* as any portion of a pre-charged appliance including but not limited to condensers and line sets that are charged with refrigerant prior to sale or distribution or offer for sale or distribution in interstate commerce.

EPA has not previously promulgated a definition of pre-charged appliance component. However, in an earlier rulemaking addressing the sales of pre-charged appliance components, the Agency stated that pre-charged components are parts of but ''are clearly not appliances''(November 9, 1994; 59 FR 55912). Commenters noted that EPA provides similar language on its

[3] HCFC–22 is also referred to as R–22, particularly where it is used in refrigeration and air-conditioning applications.

refrigerant sales restriction factsheet, stating that EPA considers a ''part'' to be ''any component or set of components that makes up less than an appliance. For example, this includes line sets, evaporators, or condensers that are not sold as part of a set from which one can construct a complete split system or other appliance. EPA considers a part to be ''pre-charged'' if it contains a CFC or HCFC that will become part of the operating charge of an appliance'' (*http://www.epa.gov/ozone/title6/608/sales/sales.html*).

In proposing to define pre-charged appliance component, EPA requested comment regarding the universe of components that are typically manufactured and/or shipped pre-charged with HCFC–22 or HCFC–142b. EPA received comment from major appliance and component manufacturers identifying equipment that is typically pre-charged with refrigerant, specifically HCFC–22. These manufacturers stated that components such as evaporator coils, condenser coils, compressors or line sets are often shipped pre-charged with HCFC–22. EPA received one request to add ''condensing units'' to the listed examples of pre-charged appliance components. The remaining comments concerning the universe of pre-charged appliance components concerned the sale of inventoried components and did not address the actual definition of pre-charged appliance component.

EPA has consistently stated its interpretation that components that make up an appliance such as condensers, evaporators, compressors, and line sets in themselves do not constitute appliances. EPA considers components (such as compressors, condensers, and evaporators) to be portions of the refrigerant circuitry without which the appliance would not be able to function in its intended purpose. When sold charged with refrigerants, these components present all the same concerns as the pre-charged appliances. However, a major appliance component, such as a condensing unit, is not an appliance. A condensing unit is not an air conditioner, refrigerator, chiller, or freezer that provides a cooling effect, but it is certainly a component of such equipment. In addition, it is conceivable that major components would have different dates of manufacture, making the equation of date of appliance manufacture with the date of component manufacture difficult if not impossible. By comparison, it is relatively simple to determine the date of manufacture for pre-charged appliances where the refrigerant circuitry is typically intact and charged, and the appliance is ready to serve its intended purpose at the point of manufacture (*e.g.,* a window air conditioner).

For further clarification, the following are components that in themselves do not satisfy the definition of *appliance,* but are typically pre-charged with HCFC–22 or HCFC–142b:

- Line sets;
- Condensing units;
- Compressors; and
- Coils.

This listing is not intended to be exhaustive, but includes components that may be manufactured and shipped pre-charged with refrigerant.

EPA is changing the proposed definition of *pre-charged appliance component* to add compressors, condensing units, and coils to the list of examples of appliance components that may be pre-charged with refrigerant as a part of the manufacturing process prior to the component's sale or distribution or offer for sale or distribution in interstate commerce. EPA is also changing the proposed definition to make clear that the definition is not limited to pre-charged appliance components found solely in pre-charged appliances. EPA intends the definition to include any appliance component that may be pre-charged prior to sale or distribution. Therefore, EPA is defining *pre-charged appliance component* to mean any portion of an appliance including but not limited to condensers, compressors, line sets, and coils, that is charged with refrigerant prior to sale or distribution or offer for sale or distribution in interstate commerce.

iii. ''Manufactured'' and ''Date of Manufacture''

EPA did not propose a definition of ''manufactured'' in the NPRM. However, the term *manufactured* as it relates to the sale or distribution of pre-charged appliances and appliance components was discussed in detail in the preamble to the NPRM adjusting the allowance system for HCFC production, import, and export (73 FR 78680), which was published on the same day (December 23, 2008) as the NPRM for this final pre-charged appliance rule. That discussion of the term included four criteria for when an appliance would be considered ''manufactured.'' Due to the volume of comments concerning manufacture and date of manufacture, EPA believes that further explanation of EPA's use of the term ''manufactured'' in the context of this action is warranted.

The vast majority of comments received in response to the NPRM related to the sale of inventoried appliances and components that were manufactured prior to January 1, 2010, but would likely remain in inventories after 2010. EPA received comment that its understanding of the term ''manufactured'' is not consistent with previous conventions defining a product as ''manufactured'' when it leaves the manufacturer's final assembly process, is packed for shipment, and placed into initial inventory. Several commenters noted that they preferred a definition of manufactured under which, the date of manufacture is a finite date controlled by the manufacturer and is not dependent on the dealer network or purchase by the ultimate consumer.

EPA received numerous comments from manufacturers and distributors of pre-charged appliances and components stating that the Agency should interpret ''date of manufacture'' for an appliance to conform to the date of manufacture of components, such as the date of condenser manufacture. These commenters recommended that EPA define the date of manufacture in terms of the date of manufacture displayed on name-plate marking, but no sooner than the date on which the assembly and end-of-line testing of the equipment item in question are substantially completed or the equipment is shipped from the factory or put into the original equipment manufacturer's (OEM's) inventory, whichever occurs first.

EPA believes that the concern expressed in many of the comments arises from a commingling of the definitions of the terms ''appliance'' and ''pre-charged appliance component.'' There are several reasons why EPA does not equate the date of component manufacture to the date of appliance manufacture. As previously stated, components in themselves do not satisfy the previously promulgated definition of *appliance,* which is identical to the statutory definition. Components likely have distinct individual manufacture dates and may be field installed months or even years after their manufacture. EPA's reliance on the date of a particular component's manufacture, as a means of determining when an appliance was manufactured, would lead to a patchwork approach that could create confusion. In addition, because components may have differing manufacture dates, such an approach would require the Agency to provide makeshift determinations as to which major component's manufacture date would determine the date of appliance manufacture.

EPA is promulgating a definition in today's final rule stating that an appliance is ''manufactured'' on the date that the appliance meets four

criteria: (1) The appliance's refrigerant circuit is complete, (2) the appliance can function, (3) the appliance is charged with refrigerant, and (4) the appliance is ready for use for its intended purpose. Small appliances, such as refrigerators and window air-conditioners, thus are ''manufactured'' while the appliance is at a manufacturing facility. For instance, a small appliance (such as a residential refrigerator) that has been pre-charged with refrigerant by the OEM has gone through the entire production line so that all mechanical and electrical procedures are complete, and is a ''stand-alone'' piece of equipment (*i.e.,* it only needs to be plugged into an electrical outlet and turned on to function properly). For such appliances, EPA intends to treat the date identified on the appliance by the OEM as the date of manufacture.

Under the definition of ''manufactured'' in today's final rule, appliances that are field charged or have the refrigerant circuit completed onsite (for example, residential split systems), regardless of whether additional refrigerant is added on-site or not, would not be ''manufactured'' until installation of all of the components and other parts is completed and the appliance is charged with refrigerant. EPA will not consider such an appliance to be ''manufactured'' unless all four criteria of the definition are met. For such appliances, the date of manufacture may be determined by invoices, contracts, or service records indicating the date that the appliance manufacture was completed.

For pre-charged components of appliances, EPA considers the component to be ''manufactured'' on the date that the OEM has physically completed assembly of the component, the component is charged with refrigerant, and the component is ready for initial distribution or sale. EPA intends to treat the date identified on the pre-charged component by the OEM or provided in documentation by the OEM as the date of component manufacture. While EPA did not propose a definition of ''manufactured'' for appliance components, EPA believes including such a definition in the final rule is appropriate in light of the extensive comments requesting clarification on the date of manufacture of both components and complete appliances. This definition reflects the understanding expressed by commenters as it pertains to when components are manufactured.

Due to the volume of comments received concerning the date of manufacture, including the request that the Agency promulgate a definition of ''manufactured,'' EPA is adding a definition of ''manufactured,'' with respect to appliances and appliance components, at § 82.302. Manufactured, for an appliance, means the date on which the appliance's refrigerant circuit is complete, the appliance can function, the appliance holds a refrigerant charge, and the appliance is ready for use for its intended purposes; for a pre-charged appliance component, ''manufactured'' means the date that the original equipment manufacturer has physically completed assembly of the component, the component is charged with refrigerant, and the component is ready for initial sale or distribution.

E. Ban on Sale or Distribution or Offer for Sale or Distribution in Interstate Commerce

In the NPRM, EPA proposed to ban the sale and distribution, or the offer for sale or distribution in interstate commerce, of any appliance or appliance component that is pre-charged with HCFC–22 or HCFC–142b and is manufactured on or after January 1, 2010. In the NPRM, EPA put forth the Agency's interpretation, consistent with previous actions under CAA § 610, that the term ''interstate commerce'' applies to the product's entire distribution chain up to and including the point of sale to the ultimate consumer (73 FR 78713).

EPA has previously banned the sale or distribution, and offer for sale or distribution in interstate commerce, of certain products containing or manufactured with class II substances, including most pressurized dispensers and plastic foam products (58 FR 69637). EPA has also previously banned the sale or distribution, and offer for sale or distribution in interstate commerce, of air-conditioning and refrigeration appliances containing class I substances (66 FR 57512). EPA's interpretation of interstate commerce for purposes of these bans does not cover the sale, distribution, or offer of sale or distribution of an appliance or an appliance component if the appliance or component is completely manufactured, distributed, and sold without ever crossing State lines. To lie outside the interpretation of interstate commerce, the appliance or component must be manufactured, distributed, and sold exclusively within a particular State, and all of the raw materials, components, equipment, and labor that went into the manufacturing, distributing, selling, or offering for sale or distribution of such a product originated within that State as well.

i. Existing Inventories of Pre-Charged Appliances and Components Manufactured Prior to January 1, 2010

In the NPRM, EPA proposed that effective January 1, 2010, no person may sell or distribute, or offer to sell or distribute, in interstate commerce any pre-charged appliance or appliance component manufactured on or after January 1, 2010 containing HCFC–22, HCFC–142b, or a blend containing one or both of these controlled substances (73 FR 78713). It remains EPA's intent to ban the sale or distribution in interstate commerce of new pre-charged appliances and pre-charged components containing HCFC–22 or HCFC–142b that would be used to configure new appliances in the field, while still allowing the use of inventoried components that were manufactured prior to January 1, 2010 to service appliances that were manufactured prior to January 1, 2010.

EPA received numerous comments in response to the proposal concerning the ''date of manufacture'' of an appliance as it applies to the sale of inventoried pre-charged appliances and components. Overwhelmingly, the commenters focused on the concern of stranding stockpiled inventory that was manufactured prior to January 1, 2010, but not yet sold or distributed. Commenters referenced the need to sell pre-charged appliances and components manufactured prior to January 1, 2010, in order to service existing appliances across multiple refrigeration and air-conditioning sectors, and requested that EPA define a consistent policy for the date of manufacture that would apply to the refrigerant, the components, and the appliances.

Some commenters believed that the proposed ban included existing pre-charged appliances and components that were manufactured prior to but remain in inventory as of January 1, 2010, and thus expressed concern about creating a great deal of stranded inventory, resulting in potentially large economic losses for manufacturers. The commenters requested that the final rule clearly state that industry is permitted to use existing inventories of pre-charged appliance components that were manufactured or imported prior to January 1, 2010 to service existing appliances. Other commenters suggested a sell-through for pre-2010 pre-charged appliances and appliance components during the 2010 calendar year.

EPA also received comment from the Small Business Administration (SBA) requesting that EPA interpret ''manufactured'' as ''the date in which

the appliance is placed in initial inventory, where the original product has completed all of its manufacturing processes and is ready for sale by the manufacturer,'' a definition which the SBA finds consistent with both industry practice and the EPA final rule *Reconsideration of the 610 Nonessential Products Ban* (66 FR 57511; November 15, 2001). In the final rule, EPA permitted the sale and distribution of air-conditioning and refrigeration appliances containing class I controlled substances that were placed into initial inventory by January 14, 2002. SBA stated that the 2001 rule gives an interpretation of initial inventory that is compatible with common industry usage as the date ''that the original product has completed all its processes and is ready for sale by the manufacturer.''

EPA recognizes that air-conditioning and refrigeration appliances containing HCFC–22 or HCFC–142b could be manufactured prior to January 1, 2010, but may not have reached the ultimate consumer by January 1, 2010. EPA contemplated mechanisms for either a ''sell-through'' or a ''grandfathering'' of appliances that were previously manufactured and placed into an initial inventory—similar to the approaches in 40 CFR part 82 subpart C, under the Nonessential Products Ban for class I and class II controlled substances. However, we note that the proposed ban would not have prohibited the sale or distribution of any appliance or appliance component manufactured before January 1, 2010. Thus, in effect, the proposed ban already contained a ''sell-through'' provision.

EPA does not intend to strand stocks of components or make existing appliances obsolete by not allowing them to be serviced with replacement components. EPA noted in the NPRM that it did not intend to regulate the servicing of appliances that were manufactured prior to January 1, 2010 (73 FR 78712). EPA noted that servicing is regulated under other authorities, notably 40 CFR part 82, subpart F. EPA is allowing the continued use of recovered and reclaimed HCFC–22 to service existing equipment, as well as allowing the limited production and import of virgin HCFC–22 and HCFC–142b to service existing appliances, as promulgated in the accompanying final rule titled ''Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export'' (EPA Docket: EPA–HQ–OAR–2008–0496). EPA believes it is necessary to continue to permit the servicing of air-conditioning and refrigeration appliances manufactured prior to January 1, 2010, to ensure a smooth transition to alternatives.

EPA recognizes that existing stockpiles of replacement components could be used to service existing appliances, and that such service would be likely to occur after the January 1, 2010 phaseout date. EPA intends to allow the continued servicing of these appliances in order to allow for a smooth transition away from HCFC–22 and HCFC–142b. This intent is consistent with the companion final rule allocating allowances for the production and consumption of HCFC–22 and HCFC–142b after January 1, 2010, in order to service the existing stock of appliances in residential, commercial, and industrial refrigeration and air-conditioning end-uses. EPA is clarifying that pre-charged appliance *components,* such as condensing units, line sets, evaporators, and compressors that were manufactured before January 1, 2010, may be sold for purposes of servicing appliances manufactured before that date. Manufacturers, distributors, and wholesalers maintaining stockpiles of pre-2010 components that are pre-charged with virgin HCFC–22 or HCFC–142b can continue to sell such components in order to service existing appliances in the year 2010 and beyond.

Consistent with the proposal, this final rule does not apply the prohibition against the sale and distribution in interstate commerce that does not apply to pre-charged components that were manufactured prior to January 1, 2010. The finalized prohibition at § 82.304 reads: ''Effective January 1, 2010, no person may sell or distribute, or offer to sell or distribute, in interstate commerce any product identified in § 82.306.'' This prohibition is limited to products listed in § 82.306, *i.e.,* any air-conditioning or refrigeration pre-charged appliance manufactured on or after January 1, 2010 containing HCFC–22 or HCFC–142b and any pre-charged appliance component for air-conditioning or refrigeration appliances manufactured on or after January 1, 2010 containing HCFC–22 or HCFC–142b. Hence, manufacturers and distributors are allowed to sell or distribute pre-charged HCFC–22 or HCFC–142b appliances and components that are in inventory as of January 1, 2010. There is no time limit for the sale or distribution of such pre-charged appliances or components.

ii. Use of Recovered and Reclaimed HCFC–22 and HCFC–142b

In the NPRM EPA proposed that effective January 1, 2010, no person may sell or distribute, or offer to sell or distribute, in interstate commerce any newly-manufactured pre-charged appliance or appliance component pre-charged with HCFC–22 or HCFC–142, unless the HCFCs were previously reclaimed. EPA defines ''reclaim'' at 40 CFR 82.152 as ''to reprocess refrigerant to all of the specifications in appendix A to 40 CFR part 82, subpart F (based on ARI Standard 700–1995, Specification for Fluorocarbons and Other Refrigerants) that are applicable to that refrigerant and to verify that the refrigerant meets these specifications using the analytical methodology prescribed in section 5 of appendix A of 40 CFR part 82, subpart F.'' EPA limits reclamation to entities that have sought and have received EPA certification as refrigerant reclaimers, and restricts the sale of used refrigerant to a new owner unless it has first been reclaimed by an EPA-certified refrigerant reclaimer.

EPA also proposed to apply the ban on sale and distribution of pre-charged appliances to appliances manufactured after January 1, 2010 that are not pre-charged but are ''suitable only for use'' with newly produced HCFC–22 or HCFC–142b, or blends thereof. When referring to appliances that are suitable for use solely with newly produced HCFC–22 or HCFC–142b, EPA meant appliances that, according to the manufacturer, would not be suitable for use with recycled or reclaimed refrigerants. Such a situation could potentially arise if, for example, manufacturer's directions stated specifically that warranties are void if the appliance is charged with reclaimed refrigerant. As a means of addressing such sales, EPA had proposed a prohibition at § 82.302(b) against the sale and distribution in interstate commerce of any air-conditioning or refrigeration appliance manufactured on or after January 1, 2010, that is suitable only for use with newly produced HCFC–22, HCFC–142b, or a blend containing one or both of these controlled substances. While the proposal addressed suitability as it pertains to pre-charged appliances, EPA intended to include components in the discussion as well.

EPA did not receive comments specifically addressing the proposal to apply the ban on sale and distribution of pre-charged appliances to appliances manufactured after January 1, 2010 that are not pre-charged but are ''suitable only for use'' with newly produced HCFC–22 or HCFC–142b, or blends thereof. However, EPA has reevaluated the concept of ''suitability'' pertaining to the future use of components needed to service existing appliances

manufactured prior to 2010. Appliances and components that were not specified as being suitable for use only with newly produced HCFC–22 or HCFC–142b could still be charged with newly produced substances, even though such use was not promoted by the manufacturer. Thus, the proposed ban on appliances suitable only for use with newly-produced or virgin HCFC–22 or HCFC–142b would not have the effect of ending use of newly-produced or virgin quantities of these HCFCs in new appliances.

As previously stated, EPA does not intend to ban the sale and distribution of components needed to service existing appliances. EPA believes that a ban on pre-charged appliances and components based on statements by the manufacturer that the warranty would apply only if used with newly-produced or virgin HCFCs could be misinterpreted as a ban on use of components needed to service existing appliances. Use of newly-produced HCFCs in existing appliances is not prohibited. In addition, the accompanying HCFC allocation rulemaking ''Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export'' (EPA Docket: EPA–HQ–OAR–2008–0496), specifically prohibits the use of virgin HCFC–22 or HCFC–142b in appliances manufactured on or after January 1, 2010. EPA believes that this prohibition provides adequate coverage against the use of virgin HCFC–22 or HCFC–142b. Therefore, EPA is not finalizing the proposed supplemental ban against sale and distribution of appliances and components that are not pre-charged, but suitable only for use with newly produced or virgin HCFC–22 or HCFC–142b at § 82.302(b).

EPA requested and received several comments concerning the use of reclaimed refrigerant in new pre-charged appliances and pre-charged appliance components. Commenters requested that the Agency explicitly address its intent to allow or disallow the use of recovered and reclaimed HCFC–22 and HCFC–142b in order to meet the future service demand. Numerous commenters specifically requested that the final rule clearly state that un-charged components may continue to be manufactured after January 1, 2010, and field charged with reclaimed refrigerant. One commenter felt that such a regulatory measure would promote and encourage the use of reclaimed refrigerants, especially considering EPA's intent to have reclaimed HCFC–22 reach 20% of the total allocation to fill the shortfall in 2015. In particular, one commenter stated that any ban on reclaimed HCFC–22 use for new or old products would be perceived as a negative message in the marketplace.

EPA also received numerous comments opposing any exemption allowing the use of recovered and reclaimed refrigerant in newly manufactured pre-charged appliances and compliance components. Seven commenters believed that it would be impossible for EPA to enforce such a provision, because it would be unable to determine whether a system is charged with virgin or recovered and reclaimed refrigerant (since both refrigerants meet the same purity standard, ARI 700); therefore, the ban should be extended to newly manufactured equipment using recycled and reclaimed, as well as virgin HCFC–22 or HCFC–142b. Commenters expressed concern that the continued proliferation of new HCFC–22 systems after 2010 that will be allowed to use reclaimed refrigerant would only exacerbate shortages for HCFC–22 service quantities by perpetuating the introduction of new HCFC–22 systems into the marketplace, delaying the U.S. transition to alternatives to ozone-depleting substances.

EPA's intent in proposing to exclude appliances and components charged with reclaimed refrigerant from the prohibition on sale and distribution was to focus the prohibition on the virgin HCFCs whose use in new appliances is banned under section 605(a). The intent of the proposal was to make certain that any virgin HCFC–22 or HCFC–142b contained in pre-charged components is only used in the service of appliances manufactured prior to January 1, 2010. EPA agrees with commenters that noted the difficulty in determining whether refrigerant that is undergoing a production phaseout in the U.S. (*e.g.,* HCFC–22) is virgin refrigerant or is used refrigerant that has been reclaimed. This is especially true for appliances and components that are produced and pre-charged abroad and imported into the United States. It would not be possible for EPA to determine whether such imported pre-charged appliances and components were manufactured with reclaimed refrigerant. Because many countries that export pre-charged appliances and components will not be obligated to freeze HCFC consumption until 2013, consistent with their Montreal Protocol commitments, pre-charged appliances imported from those countries could easily contain virgin HCFCs.

In the accompanying HCFC allocation rulemaking ''Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export'' (EPA Docket: EPA–HQ–OAR–2008–0496), EPA has achieved the 2010 step-down in production and consumption in large part by considering the HCFC servicing demand for 2010–2014. In that related rulemaking, EPA has projected the HCFC appliance servicing demand for 2010–2014 and assumed that the total demand will be met in part through virgin HCFCs and in part through use of reclaimed and recycled HCFCs. As noted in the comments, adding new HCFC appliances to the installed base would cause the servicing demand to grow, potentially resulting in increases in the amounts of HCFC needed to service existing appliances, and likely hinder the growth of alternative refrigerants that do not directly contribute to the depletion of the ozone layer.

EPA supports the use of components to service appliances that were manufactured before January 1, 2010, but we recognize the difficulty in determining whether pre-charged appliances and components, especially those being imported into the United States, have been charged with virgin or reclaimed HCFC–22 or HCFC–142b. EPA is not banning the sale and distribution of un-charged or previously manufactured components needed to service existing appliances manufactured prior to January 1, 2010. However, due to the complexities discussed above, EPA does not believe that components pre-charged with reclaimed refrigerant should be exempted from the prohibition on sale or distribution in interstate commerce of pre-charged appliances and components manufactured in 2010 and beyond. This finding does not prohibit manufacturers from producing replacement components needed to service existing appliances, as long as the components are not pre-charged with HCFC–22or HCFC–142b, regardless if the HCFC is reclaimed or virgin. As noted by commenters representing manufacturers of appliances and components, such components can be sold or distributed in interstate commerce without being pre-charged. Such replacement components can be installed into existing appliances and charged on-site with reclaimed or virgin HCFC–22 or HCFC–142b.

After considering comments and in light of the related rulemaking ''Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export'' (EPA Docket: EPA–HQ–OAR–2008–0496), EPA has decided to extend the January 1, 2010

prohibition to appliances that are pre-charged with reclaimed refrigerant. The final rule thus does not include the proposed text at § 82.306(d), which stated that the prohibition would not apply where the refrigerant was ''used, recovered and reclaimed.'' Therefore, EPA is prohibiting, at § 82.304, the sale or distribution, and the offer for sale or distribution in interstate commerce of all appliances and components that are pre-charged with HCFC–22 or HCFC–142b, regardless of whether the refrigerant is virgin or reclaimed.

iii. Sale and Distribution of Appliances and Components Without Refrigerant

Several comments asked EPA to state explicitly that the prohibition does not extend to appliance components that are needed to service existing appliances and are shipped ''dry'' or with a holding charge of an inert gas. EPA received comments from major U.S. appliance manufacturers stating that there is no technical reason why the types of appliances and components that are currently charged with refrigerant prior to being sold or distributed in interstate commerce could not be shipped ''dry'' or with a holding charge of the inert gas nitrogen. According to comments received by the Agency, the lone exception is that certain TXVs must be shipped with an HCFC in order to meet its intended purpose. Commenters stated that a ban on the manufacture or sale of un-charged components would undermine the intent behind the United States ratifying the Copenhagen Amendment to the Montreal Protocol in 1992. Commenters stated that the sale and distribution of replacement components should be allowed in order to service existing appliances, and asked EPA to clarify whether un-charged components (such as condensing units) can be installed in commercial refrigeration systems and charged with virgin HCFC–22 in the field as a replacement for an existing unit.

Commenters requested an exemption for the manufacture of TXVs containing a ''de minimis'' charge amount of HCFC after January 1, 2010. Allowing an exemption for TXVs would ensure an adequate inventory of component parts to service equipment manufactured prior to January 1, 2010. EPA does not believe that it is necessary to consider establishing a de minimis exemption because there are reasons why TXVs are not subject to the ban. EPA has previously stated that the Agency does not consider TXVs to be pre-charged appliance parts.[4] EPA considers a part to be ''pre-charged'' if it contains a class I or class II substance that will become part of the operating charge of an appliance. Parts that contain CFCs or HCFCs that will not become part of the operating charge, such as TXVs with bulbs containing CFCs or HCFCs, are not considered ''pre-charged'' with refrigerant. In this rule, EPA is finalizing a definition of ''pre-charged appliance component'' that includes the phrase ''charged with refrigerant.'' As defined in section 605(a) and § 82.302, refrigerant means ''any substance consisting in part or whole of a class I or class II ozone-depleting substance that is used for heat transfer purposes and provides a cooling effect.'' This definition is based on the statutory definition in section 605(a). Because the HCFC used in the bulb is not involved in the heat transfer cycle of the appliance, it is not a refrigerant, and thus the TXV is not a pre-charged appliance component. As such, the sale and distribution in interstate commerce of TXVs is not governed by this rulemaking.

However, section 605(a) of the Act explicitly prohibits the introduction into interstate commerce or use of any class II substance unless such substance: (1) Has been used, recovered, and recycled; (2) is used and entirely consumed (except for trace quantities) in the production of other chemicals; or (3) is used as a refrigerant in appliances manufactured prior to January 1, 2020. EPA discusses the applicability of section 605(a) to TXVs in the accompanying HCFC allocation rulemaking ''Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export'' (EPA Docket: EPA–HQ–OAR–2008–0496). EPA does not intend to strand existing appliances that may be in need of replacement components that have historically been shipped pre-charged with refrigerant. EPA has considered the comments sent in response to the NPRM stating that pre-charged components, which do not include TXVs, can be sold with a holding charge of an inert gas and field charged during appliance configuration. Taking all comments under consideration along with the Agency's desire to allow the servicing of existing appliances that have not reached their intended end-of-life, EPA is clarifying that the ban on sale and distribution into interstate commerce of pre-charged components applies only to components that are pre-charged with HCFC–22 or HCFC–142b. The ban applies regardless of whether the HCFCs are virgin or reclaimed. Therefore, component manufacturers, distributors, and sellers are prohibited from selling or distributing components (such as but not limited to condensers and line sets) that were manufactured on or after January 1, 2010 and pre-charged with either virgin or reclaimed HCFC–22 or HCFC–142b.

This prohibition does not apply to appliance components manufactured on or after January 1, 2010 that are sold, distributed, or otherwise introduced into interstate commerce uncharged or with a holding charge of an inert gas, such as nitrogen. Such uncharged components could be used as replacement components for pre-2010 appliances in need of service and charged with either virgin or reclaimed HCFC–22 or HCFC–142b.

iv. Imports and Exports of Pre-Charged Appliances and Components

Commenters stated that the proposal would allow foreign manufacturers to export pre-charged products to the U.S., and that EPA should evenly and fairly impose the prohibition on both domestic and foreign manufacturers. Commenters also stated that allowing the import of pre-charged components could encourage the stockpiling of foreign-made pre-charged components that could be introduced into U.S. interstate commerce well after domestic manufacturers cease their production of these components prior to January 1, 2010.

EPA received numerous comments requesting that it allow the continued export of un-charged and pre-charged HCFC–22 equipment to Article 5 countries[5] after January 1, 2010. Commenters stated that it is unrealistic to assume that [the HCFC–22] market share in Article 5 countries would be replaced by non-HCFC products, and that developing countries' demand for HCFC refrigerant carries with it an implicit recognition of these countries' need for equipment which uses HCFC refrigerants. Further, if these countries need to import HCFCs at least until 2020, then commenters maintain it is reasonable to assume the need for HCFC-using equipment will persist until 2020 as well.

Commenters also stated that they believe that EPA's interpretation of interstate commerce to include exports

[4] EPA has previously stated that TXVs are not considered pre-charged. (*http://www.epa.gov/ozone/title6/608/sales/saleshtml.*)

[5] Article 5 (A5) countries—the Montreal Protocol's identifying term for developing countries, as listed in Annex 4 to Appendix C to 40 CFR 82, subpart A.

will disadvantage U.S. manufacturers that are globally competing against foreign manufacturers selling in Article 5 countries, resulting in possible loss of domestic jobs, the closing of small businesses, and probably the net export status of the industry. Commenters suggested that the final rule provide relief by specifying that the Agency would allow the export of appliances intended for use in A5 countries if such appliances are exported without a refrigerant charge.

EPA is not attempting to regulate foreign commerce through this action. EPA is solely regulating U.S. interstate commerce, which includes both the domestic sale and distribution of any appliance imported into the United States, and the domestic sale or distribution of any appliance intended for ultimate export from the United States. The prohibition on sale and distribution applies to imported products and products destined for export to the same extent that it applies to products manufactured and distributed solely within the United States. EPA previously discussed this interpretation of interstate commerce in the regulations implementing the ban on nonessential products containing or manufactured with a class II substance (58 FR 69638). The sale or distribution, or offer for sale or distribution, of imported products or products destined for export within the scope of this final rule would be subject to the same restrictions as the sale or distribution, or offer of sale or distribution, of products within the scope of that nonessential products ban.

EPA is not restricting the export of appliances that are shipped without refrigerant or with a holding charge of nitrogen. Thus, U.S. manufacturers are not precluded from responding to the demand for HCFC appliances in Article 5 countries. Similarly, this ban does not affect the import of bulk quantities of used HCFC–22 or HCFC–142b under the EPA petitioning process established under 40 CFR 82.24(c). Importers of bulk shipments of used HCFC–22 or HCFC–142b greater than five pounds must still seek and obtain approval from EPA to import on a per-shipment basis.

This rule concerns only the sale or distribution, and offer for sale or distribution, of pre-charged appliances and appliance components manufactured in 2010 and beyond. This action is not intended to govern the sale or distribution, or offer for sale or distribution, of any previously owned or used appliances that were manufactured prior to January 1, 2010.

v. Transhipments of Pre-Charged Appliances and Components

EPA received comments stating that the Agency had not addressed ''transhipments,'' meaning the movement of products through the U.S. on their way to another country. These commenters requested that the final rule clearly state that transhipments of equipment pre-charged with HCFC–22 be allowed on or after January 1, 2010. Transhipments are not destined for use by United States entities, but are held temporarily while awaiting shipment to their ultimate destination. As is done with bulk shipments of controlled class I substances (such as CFC refrigerants), some distributors of pre-charged products will accept transhipments of products that are brought into the United States and temporarily stored in bonded warehouses while they await shipment out of the country.

While this action does apply to imported products, it does not regulate the act of import as such. Sale and distribution in interstate commerce, rather than import or export, are the prohibited acts. In addition, transhipment is a defined term, and EPA is stating the regulatory history of the term for purposes of clarity.

EPA has previously defined ''transhipment'' of controlled substances (at § 82.3) and made the distinction between a transhipment and an import that is subsequently re-exported. The term ''transhipment'' is defined as ''the continuous shipment of a controlled substance, from a foreign State of origin through the United States or its territories, to a second foreign state of final destination, as long as the shipment does not enter into United States jurisdiction. A transhipment, as it moves through the United States or its territories, cannot be re-packaged, sorted or otherwise changed in condition.'' The first discussion of the term ''transhipment'' in the context of the ODS phaseout program appeared in the proposed rulemaking published in the **Federal Register** on March 18, 1993 (58 FR 15014, 15044). The December 10, 1993 final rule defined ''transhipment as the continuous shipment of a controlled substance from a foreign state of origin through the United States or its territories to a second foreign state of final destination.'' (58 FR 65018, 65064). The clarifying phrase ''as long as the shipment does not enter into United States jurisdiction'' was added on May 10, 1995 (60 FR 24970, 24983). EPA promulgated a definition of transhipment that does not permit a shipment to be re-packaged. The current definition distinguishes between a transhipment and a shipment that is imported, re-packaged and then exported, by stating that a transhipment ''cannot be re-packaged, sorted or otherwise changed in condition'' as it moves through the United States or its territories.

The Agency generally exempts transhipments from its ODS regulatory prohibitions at 40 CFR Subpart A. For example, EPA does not apply its ODS import prohibitions to bulk controlled substances, such as CFC–12, that are stored in government bonded warehouses and otherwise meet the definition of a transhipment. For purposes of this final rule, EPA will not consider transhipment of pre-charged appliances or components as sale or distribution in interstate commerce, as defined at § 82.3. However, appliances and components that have not originated from a foreign state but are being stored in the United States for ultimate export are not considered transhipments, and are covered by this rule if sold or distributed in interstate commerce prior to export.

vi. Existing Contracts or Plans for Pre-Charged Appliances and Components

EPA received comment requesting that it provide flexibility for persons who may be unable to comply with the ban for reasons outside of their control. Some commenters interpreted the proposal as banning all sale and distribution of pre-charged appliances and components, even those manufactured prior to January 1, 2010. (As discussed elsewhere in this notice, the proposed and final prohibitions on sale and distribution do not apply to appliances and components manufactured prior to January 1, 2010.) Commenters suggested that in order to minimize the adverse economic effects of the pre-charged ban that EPA make exemptions in cases where binding contracts are in place for the purchase of equipment that was manufactured prior to January 1, 2010, but that cannot be delivered until after January 1, 2010. Commenters also requested that EPA exempt appliances and components intended for construction projects that have received building code approval of plans that include equipment subject to the pre-charged ban, but will not be completed until after January 1, 2010. Commenters requested an expansion of § 82.306(a) exempting new installation projects using HCFC–22 or HCFC–142b appliances that have completed the bidding process or have received building code approval prior to January 1, 2010.

These comments relate primarily to the section 605(a) prohibition on use of

virgin HCFCs in the manufacture of new appliances. In the accompanying final rule titled ''Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export'' (EPA Docket: EPA–HQ–OAR–2008–0496), EPA is granting flexibility in limited instances where construction has begun but for various reasons beyond their control (*e.g.,*, budget shortfalls, weather delays, labor strikes) would not be able to complete projects prior to January 1, 2010.

EPA recognizes that contractual arrangements exist for construction projects that involve air-conditioning systems for which ''manufacture'' (including completion of the refrigerant loop) will not occur until after December 31, 2009. The accompanying allocation rule establishes a grandfathering provision which allows HCFC–22 appliances to be ''manufactured'' onsite during calendar year 2010, if the components are manufactured prior to January 1, 2010, and are specified in a building permit or contract dated before January 1, 2010, for use on a particular project. Given the flexibility offered by the allocation rulemaking, EPA does not find it necessary to adopt a grandfathering provision into § 82.306(a) of this final rule.

F. Costs Analysis and Small Business Economic Impacts

(i) What Are the Impacts on Stratospheric Ozone Avoided Through This Final Action?

The global HCFC phaseout is already underway, and restrictions on production, import, and sale and distribution of specific types of HCFC products are already in place in the United States and in international markets. The United States banned the sale and distribution of aerosols, pressurized dispensers, and foam products containing HCFCs in 1994, and the European Union has banned HCFCs for refrigerant use in new equipment since 2001 (Regulation EC No. 2037/2000 of the European Parliament). Many manufacturers of pre-charged appliances already service the European market and other markets with non-HCFC pre-charged appliances and components. EPA believes this should ease the implementation of a ban on sale and distribution in interstate commerce. Given that retooling and other design changes have either already occurred to meet the European and other markets, or will occur as a result of the global phaseout of HCFCs, EPA believes costs associated directly with this rulemaking are limited. As with any analysis, EPA's relies on a reasonable understanding of current factors affecting costs. Should any of these factors change, costs may change as well. For example, introduction of additional alternatives appears to be accelerating based on new submissions to EPA's Significant New Alternatives Policy (SNAP) program. Availability of additional alternatives in the air-conditioning and refrigeration sectors may reduce costs. Alternatively, new factors that restrict availability of alternatives may raise costs. Based on current conditions, EPA believes that our assessment of costs is reasonable.

EPA estimates that that on average, between 2006 and 2008, approximately 9.5 million pre-charged appliances, including heat pumps, window air conditioners, and dehumidifiers, were imported into the United States and sold throughout the country. This figure includes units pre-charged with refrigerants other than HCFC–22 or HCFC–142b. EPA estimates that 8.4 million pre-charged appliances were pre-charged with HCFC–22. EPA believes this is a mature and stable market and EPA projects that in the absence of a restriction on sale and distribution, as many as 11 million pre-charged HCFC appliances could have been imported and made available for sale or distribution in the U.S., on an annual basis, during 2010–2019 using reasonable assumptions concerning market growth. Separate domestic restrictions on the production and import of HCFC–22 and HCFC–142b would essentially preclude the domestic manufacture and initial charging of these appliances with virgin HCFC–22 or HCFC–142b as of January 1, 2010.

In estimating the environmental impacts associated with continuing to allow the sale and distribution of HCFC–22 and HCFC–142b pre-charged appliances in interstate commerce, EPA considered factors such as the number of different appliances likely to be available, the average charge sizes for the appliances, and the leak rates associated with the appliances that are likely to be serviced during their useful lifetime. The projected additional emission of HCFC–22 between January 1, 2010, and December 31, 2019, in the absence of a ban on pre-charged appliances, based on charge sizes and leak rates is approximately 4,070 ODP-weighted metric tons from these pre-charged appliances. By comparison, in accordance with the Montreal Protocol adjustments from September 2007, in 2010 the cap for consumption for the total basket of HCFCs in the United States will be 3,810 ODP tons annually for the years 2010–2014 and 1,524 ODP tons for the years 2015–2020. This consumption is for the total basket of HCFCs, with HCFC–22 and HCFC–142b restricted to servicing the existing base of air-conditioning and refrigeration appliances—in particular the units that are charged onsite, including but not limited to, chillers and residential unitary units.

The maximum level of consumption of HCFCs will also include use of other HCFCs to service and charge both existing and newly manufactured appliances, and in other applications such as niche solvent or fire suppression uses prior to 2015. EPA received comments on the projected number of pre-charged HCFC appliances that could be available after January 1, 2010, and the associated amount of ODS that would be necessary to both charge and service these appliances during their useful lifetimes. A few commenters stated that EPA had not identified or discussed the impacts of the rule on distributors and contractors, or small businesses and consumers. Additionally, they indicated that EPA failed to analyze consumer behaviors that may be impacted by costs, and also did not conduct a regulatory flexibility analysis. EPA received specific comments from representatives of recreational boat manufacturers stating that the NPRM will have negative financial impacts on thousands of small boat builders, marine product distributors, boat dealers, and repair facilities that may have A/C and refrigeration units in inventory before January 1, 2010.

EPA has addressed the concern of small businesses that stocked (pre-2010) inventory would be stranded under their interpretation of the proposed provisions. EPA is allowing the sale and distribution of pre-charged components (such as condensing units, line sets, evaporator coils, and compressors) and fully-assembled pre-charged appliances (such as freezers and window air conditioners) that are manufactured prior to January 1, 2010 and may be held in inventory as of January 1, 2010. Stockpiled pre-charged appliance component parts, such as condensing units, line sets, evaporator coils, and compressors that are manufactured before January 1, 2010, may be used to service existing appliances. However, due to the use prohibitions in the companion rule, such pre-charged components cannot be configured to ''manufacture'' a new appliance, such as a new residential split system, if the ''manufacture'' involves any use of virgin HCFC–22 or HCFC–142b as a refrigerant. Such use would include the addition of virgin HCFC–22 or HCFC–

142b to complete the initial charge of the appliance and the use of virgin HCFC–22 or HCFC–142b in the components that are being assembled to create the appliance.

EPA believes that distributors of pre-charged appliance components will continue to have access to HCFC–22 and HCFC–142b components that are needed to service appliances that were manufactured prior to January 1, 2010. EPA is allowing the sale of existing inventories of pre-charged components as well as the manufacture or import of replacement components if they are not charged with HCFC–22 or HCFC–142b. In addition, this rulemaking does not impact the manufacture, import, or distribution of appliances or components using SNAP-approved alternative refrigerants, such as R–410A.

EPA has also considered the role that future hydrofluorocarbon (HFC) controls may have on the impacts of today's rulemaking. Depending on how any future HFC controls may affect availability and price of HCFC alternatives, the estimated effects of this rule may be over-stated or under-stated. EPA believes that any future domestic controls on the production and consumption of HFCs, if any, would provide for adequate time for a smooth transition to new alternatives. Therefore, EPA has decided to take action based on current Clean Air Act authority addressing HCFCs.

(ii) What Factors Will Influence the Costs of Pre-Charged Appliances Charged With Substitutes?

Costs to transition to another refrigerant for equipment currently pre-charged with HCFC–22 can be broken down to refrigerant costs and costs associated with manufacturing different equipment components. EPA has considered the transitional costs of moving away from pre-charged HCFC–22 appliances and components.

The primary alternative for pre-charged appliances using HCFC–22 or HCFC–142b is hydrofluorocarbon (HFC) blend R–410A. R–410A air-conditioning systems have been commercially available since 1995. As such, the fixed costs, such as the engineering redesign of certain components of equipment or the costs associated with converting facility manufacturing lines in those countries producing this equipment are not a major consideration. EPA feels that this is a reasonable assumption given that non-ODS alternatives already possess some of the current global and U.S. market share and therefore these costs have already been incurred to some extent; furthermore, facilities abroad (*e.g.,* China, Mexico) are obligated regardless of U.S. regulations to transition their equipment manufacturing facilities to accommodate substitute refrigerants for their own domestic demand. This transition will occur sooner than previously planned given the decision made by the Parties to the Montreal Protocol in September 2007 to adjust the phasedown of HCFC production and import for both Article 2 (developed) and Article 5 (developing) countries.

EPA believes that the price of the refrigerant is a comparatively small fraction of the total price of the air-conditioning and refrigeration appliances affected by this rule, ranging from 1 to 3 percent of total cost. EPA also believes that only a limited number of appliance components will be replaced to accommodate an alternative refrigerant. The decision by the Parties to the Montreal Protocol to adjust the phaseout schedules for HCFCs was based partly on reliable information concerning commercially available substitute refrigerants that has been provided to the Parties by the technical assessment panels the Parties sponsor. For some applications, manufacturers have a suite of non-ODS alternatives from which to choose and can therefore consider a range of price and operational factors.

After U.S. production and import of bulk HCFC–22 for use in new equipment is banned on January 1 2010, the supply of virgin HCFC–22 in the United States will decrease and the demand for reclaimed HCFC–22 and alternatives is expected to increase. Recent industry information indicates these market shifts have been underway for some time, as evident by the introduction of HFC alternatives (*e.g.,* R–410A.), and the recent increases in the amounts of HCFC–22 being reclaimed. The accompanying HCFC allocation rule will also have the effect of restricting the supply of virgin HCFC–22 based on the projected servicing demand in 2010–2014, taking into account the amount of that demand that can be met through recycling and reclamation.

International markets for refrigerants may similarly follow U.S. market trends given the decision made by the Parties to the Montreal Protocol in September 2007 to adjust the phasedown of HCFC production and import for both Article 2 and Article 5 countries. With this change, developing countries (including China, a predominant exporter of HCFC–22 pre-charged appliances to the United States) are now subject to a freeze on HCFC consumption in 2013 based on the average of 2009 and 2010 consumption levels with subsequent step downs in HCFC consumption from 2015 to 2040. As such, it can be reasonably expected that similar shifts in refrigerant pricing and overall transitions are likely to occur in developing countries with an increase in the price of HCFC–22 and a drop in the price of some ODS alternatives. For example, some foreign companies that produce pre-charged HCFC–22 appliances for the U.S. market have further incentives to begin making the long-term capital investments toward the transition to non-ODS alternatives sooner than they would otherwise have done, seeing the advantage of investing in alternatives early. This market strategy would likely have some impact on the economics of refrigerant pricing because the demand created for ODS alternatives by the U.S. market may lead to economies of scale in the countries producing the pre-charged equipment for export to the United States.

(iii) Impacts on the General Public

EPA considered whether the transition to alternative refrigerants in pre-charged appliances would involve differential costs. Considering that these appliances are not retrofitted, this would be an upstream cost occurring at the point of manufacture, not after consumer purchase. EPA's evaluation, included in the docket for this rulemaking, examined potential consumer impacts from differences in refrigerant cost and differences in costs associated with changes to certain appliance components to accommodate an alternative refrigerant. Generally, the R–410A appliances are more energy-efficient than their HCFC–22 counterparts, which would result in reduction of energy usage by consumers and thus would result in a net savings. EPA assessed existing industry data and applied assumptions regarding future manufacturing and marketing trends. Several critical limitations associated with projecting differential refrigerant and component prices preclude the Agency from determining an incremental cost estimate with certainty.

Refrigerant prices vary widely based on factors such as volumes purchased and negotiation of purchasing contracts; further, projecting prices into the future is complicated by variability in individual manufacturers' business decisions regarding when to make the long-term capital investments to alternative refrigerants. The more aggressive phasedown of HCFC–22 production and import resulting from the adjustment decision taken at the 19th Meeting of the Parties is likely to lead to an increase in the price of

HCFC–22 and a drop in the price of R–410A. Prices of HCFC–22 will likely increase as the stepwise reductions in production and consumption continue. As the global phaseout of HCFCs continues, other international markets may become more restrictive, further influencing the global pricing.

Equipment charged with alternative refrigerants such as R–410A requires slightly different components—such as thicker-walled copper tubing—that may cost slightly more than the components used in older HCFC–22 appliances. EPA is not aware of any industry data now available that project the likely future differences in component costs between equipment designed for HCFC–22 and equipment designed for alternatives including R–410A, whether from manufacturers in developed countries or developing countries. EPA estimates that for appliances manufactured in the United States, incremental costs associated with component modifications could range from zero to 10 percent of the cost of the appliances—an estimated per-unit difference of $5 for smaller units and $45 for larger units. The cost differential for manufacturers in developing countries could be less or more, and the degree to which any such differential would be passed along to U.S. consumers is unknown. Given the caveats above, EPA estimates that the price differential could range from $40 to $50 (with a mid-range of $42.50) for each of the larger units (*e.g.,* unitary air conditioners) that would be imported annually during the period 2010–2019, and that the differential for the smaller units (*e.g.,* room air-conditioners) would range from $2 to $5 (with a mid-range of $3.50).

In the updated analysis included in the docket for this rulemaking, EPA states that on average 8.4 million appliances pre-charged with HCFC–22 were imported into the United States annually from 2006 to 2008. Applying assumptions identified in the docket concerning market growth, EPA estimates that the market for imported pre-charged appliances will grow to an annual average rate of 11 million appliances per year during the period 2010–2019. Thus, during the period 2010–2019, EPA projects that an average of 11 million appliances per year would be imported pre-charged with a non-ozone-depleting alternative refrigerant such as R–134a, R–407C, or R–410A. EPA's analysis shows that the engineering modifications to pre-charged components of appliances using R–134a or R–407C are likely to have negligible cost. EPA has, however, calculated the incremental cost associated with the more significant modifications necessary for pre-charged appliances using R–410A. EPA estimates that these appliances will constitute approximately 64 percent of the pre-charged imports during this time, or approximately 7.1 million of the 11 million pre-charged units imported with alternative refrigerants on an annual basis during 2010–2019. The annual aggregate of such impacts would range from $40 to $50 million, with a mid-range estimate of $45 million.

In the NPRM, EPA requested comment regarding the assumptions on market, growth, and factors concerning costs, as cited in a draft memorandum *Costs Associated with Refrigerant Substitution from R–22 to R–410A in Pre-charged Equipment,* prepared by ICF Consulting for EPA. EPA received comments requesting a more detailed assessment of the State and future of the used, recovered, and reclaimed market, and factor those findings and costs into its overall estimates of the impacts of the rule on prices and the industry. EPA notes that assumptions on the future use of HCFCs needed in the service sector are addressed in the accompanying final rule titled ''Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export'' (EPA Docket: EPA–HQ–OAR–2008–0496).

One commenter estimated that the increased cost of this rule related to just imported room air-conditioners, portable air-conditioners, and dehumidifiers is several million dollars per manufacturer, including upfront costs such as redesigning of products and retooling of factories, as well as ongoing costs of higher cost components and refrigerant. The components of an R–410A unit can cost more than an equivalent R–22 unit. One commenter states that EPA should provide a more detailed assessment of availability and costs of alternative refrigerants and factor those findings and costs into its overall estimates on the impacts of the rule.

EPA recognizes that in addition to future changes in refrigerant pricing structures, changes in costs may also result from changes in equipment design. In most cases, appliances charged with common ODS alternatives will require different components than equipment charged with HCFC–22, such as thicker walled copper tubing, newly developed compressors, and other components capable of withstanding high pressures, all of which may cost slightly more than the components used in older HCFC–22. Industry expert opinion suggests that for appliances manufactured in the United States, the added cost to manufacturers that is likely to be reflected in the cost to consumers resulting from the component modifications currently may be anywhere from zero to ten percent of the cost of the appliances, an estimated difference of $2 to $5 for smaller units and $40 to $45 for larger units. EPA also notes that this rule only regulates U.S. interstate commerce and does not consider the costs of retooling foreign manufacturing plants. As previously stated assumptions on the future use of HCFCs needed in the service sector are addressed in the accompanying HCFC allocation final rule. Discussion of the impacts on foreign markets is discussed below.

(iv) Implications for Other Markets

EPA believes that there is an additional impact associated with not banning the sale and distribution in interstate commerce of these appliances as of January 1, 2010. EPA believes that prolonging U.S. demand for imported pre-charged appliances would discourage global efforts to transition to non-ODS technologies in manufactured air-conditioning and refrigeration appliances. Given the commitments of the United States and its trading partners to ultimately phase out HCFCs, investment in alternative refrigerant product lines is occurring and will continue to occur globally. Production capacity requires a long-term capital investment and the choice of refrigerant dictates some of that investment in the form of factory tooling, design, and a network of suppliers for components.

Without the ban contained in this rulemaking, investment decisions influenced by demand could foster continued investment in HCFC-based manufacturing rather than investment in alternatives and would run counter to the United States' domestic approach to promote smooth transitions rather than a rush to transition at the end of the global phaseout. EPA has initiated the phaseout of HCFCs. However, the phaseout regulations do not address the sale and distribution of products that are pre-charged with HCFCs undergoing a phaseout. Without today's final rule, domestic and foreign manufacturers as well as their distributors would face differing requirements. Foreign manufactured pre-charged products and appliances could continue to enter U.S. commerce charged with virgin HCFC–22 and HCFC–142b, thus increasing the service need for HCFC appliances in the United States and potentially resulting in shortages of virgin HCFC–22 and HCFC–142b given the restrictions on production and consumption of these

substances in the United States. EPA believes that this final rule supports the phaseout of HCFC–22 and HCFC–142b by banning all sale and distribution of HCFC–22 and HCFC–142b pre-charged appliances and components.

(v) In the Absence of This Action, Are There Impacts Associated With Unequal Treatment of Stakeholders?

The requirements established at 40 CFR 82.16(c) make it unlawful, effective January 1, 2010, to produce or import HCFC–22 or HCFC–142b for use in refrigeration or air-conditioning appliances manufactured on or after that date. The result of this provision is that, effective January 1, 2010, domestic air-conditioning and refrigeration appliance manufacturers will no longer have newly manufactured or imported HCFC–22 or HCFC–142b available to charge their newly manufactured appliances. EPA believes that this final action provides more equitable treatment of domestically manufactured and imported appliances by holding the equipment to the same requirements for sale and distribution in interstate commerce. EPA also believes that if it had not promulgated this final rule, domestic manufacturers would be faced with differing treatment with regard to sale and distribution in interstate commerce for similar appliances based on the location of the manufacturing facility (*i.e.,* domestic manufacturing facilities as compared to manufacturing facilities located abroad).

III. 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'' because the Office of Management and Budget (OMB) believes that it may raise novel legal or policy issues. Accordingly, EPA submitted this action to 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 any new information collection burden. Rather, this rule bans the sale or distribution of air-conditioning and refrigeration appliances containing HCFC–22 or HCFC–142b containing one or both of these substances, beginning January 1, 2010. However, OMB has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060–0498. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) 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 unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this final rule include contractors and service companies such as plumbing, heating, and air-conditioning contractors; manufacturers of air conditioners and refrigerators, as well as distributors, merchants, and wholesalers of such equipment. This final rule will affect the following categories:

Category	NAICS code	SIC code	Examples of regulated entities
Contractors and Servicing	238220	1711, 7623	Plumbing, Heating, and Air-Conditioning Contractors.
Manufacturers of air conditioners and refrigerators	333415	3585	Air-Conditioning Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.
Air-Conditioning Equipment and Supplies Merchant Wholesalers.	423730	5075	Air-conditioning (condensing unit, compressors) merchant wholesalers.
Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers.	423620	5064	Air-conditioning (room units) merchant wholesalers.
Importers of air conditioners and refrigerators	333415	3585	Air-Conditioning Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. Small entities may continue to sell and distribute pre-charged appliances and appliance components that were manufactured prior to January 1, 2010. Therefore, small entities will not be burdened with the loss of stranded inventories. Such inventories may be sold indefinitely for the service of existing appliances.

New appliances entering the market after January 1, 2010 will rely on alternatives that have been found acceptable under EPA's SNAP Program. Therefore small entities impacted by today's ruling (*e.g.,* service contractors and wholesalers) will continue to have access to and be able to sell and distribute appliances and components that are pre-charged with alternatives to HCFC–22 and HCFC–142b. Similarly, this rulemaking does not ban the manufacture of components that are intended for the service of existing HCFC–22 or HCFC–142b appliances (*i.e.,* appliances manufactured prior to January 1, 2010). Such components can continue to be sold and distributed in interstate commerce as long as they are not pre-charged with HCFC–22 or HCFC–142b.

D. Unfunded Mandates Reform Act

This rule 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. The requirements already established at § 82.16(c) make it unlawful to produce or import HCFC–22 or HCFC–142b on or

after January 1, 2010, for use in refrigeration or air-conditioning appliances manufactured on or after that date. The practical result is that domestic manufacturers of air-conditioning and refrigeration appliances will not be able to charge newly manufactured appliances with virgin or imported HCFC–22 or HCFC–142b, and thus will not be introducing appliances containing these newly produced substances into interstate commerce. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As stated above, this rule affects manufacturers of air-conditioning and refrigeration appliances, not small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, titled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' ''Policies that have Federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This rule 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. Today's rule is expected to primarily affect producers, importers, and exporters of air-conditioning and refrigeration appliances. Thus, the requirements of section 6 of the Executive Order do not apply.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule affects manufacturers of air-conditioning and refrigeration appliances, not tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866. The Agency nonetheless has reason to believe that the environmental health or safety risk addressed by this action may have a disproportionate effect on children. Depletion of stratospheric ozone results in greater transmission of the sun's ultraviolet (UV) radiation to the Earth's surface. The following studies describe the effects on children of excessive exposure to UV radiation: (1) Westerdahl J, Olsson H, Ingvar C. ''At what age do sunburn episodes play a crucial role for the development of malignant melanoma,'' Eur J Cancer 1994: 30A: 1647–54; (2) Elwood JM, Japson J. ''Melanoma and sun exposure: an overview of published studies,'' Int J Cancer 1997; 73:198–203; (3) Armstrong BK, ''Melanoma: childhood or lifelong sun exposure,'' In: Grobb JJ, Stern RS, Mackie RM, Weinstock WA, eds. ''Epidemiology, causes and prevention of skin diseases,'' 1st ed. London, England: Blackwell Science, 1997: 63–6; (4) Whieman D., Green A. ''Melanoma and Sunburn,'' Cancer Causes Control, 1994: 5:564–72; (5) Heenan, PJ. ''Does intermittent sun exposure cause basal cell carcinoma? A case control study in Western Australia,'' Int J Cancer 1995; 60: 489–94; (6) Gallagher, RP, Hill, GB, Bajdik, CD, *et. al.* ''Sunlight exposure, pigmentary factors, and risk of nonmelanocytic skin cancer I, Basal cell carcinoma.'' Arch Dermatol 1995; 131: 157–63; (7) Armstrong, DK. ''How sun exposure causes skin cancer: an epidemiological perspective,'' Prevention of Skin Cancer. 2004. 89–116.

This action supports the Agency's efforts to reduce the potential continued use of class II controlled substances and the emissions of such substances. It supplements the United States' commitment to reduce the total basket of HCFCs produced and imported to a level that is 75 percent below the respective baselines. This rule will reduce the number of appliances charged with HCFC–22 and HCFC–142b that, in the absence of this rulemaking, would continue to be sold and distributed in interstate commerce. Uncontrolled sale and distribution of such appliances and components would increase the service demand for HCFC–22 and HCFC–142b needed for the future service of such appliances. This action is one of the most significant remaining actions that the United States can take to complete the overall phaseout of ODS and further decrease impacts on children's health from stratospheric ozone depletion.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (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. The regulation solely impacts the sale or distribution, or offer for sale or distribution of pre-charged appliances.

I. The 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 action does not involve technical standards. Therefore, EPA did not consider 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 (EO) 12898 (59 FR 7629 (Feb. 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 United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations

without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. By restricting the sale and distribution of appliances charged with HCFC–22 and HCFC–142b, emissions of these ozone-depleting substances will be avoided lessening the adverse human health effects for the entire population.

K. The Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, 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 the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective January 1, 2010.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Reporting and recordkeeping requirements.

Dated: December 7, 2009.

Lisa P. Jackson,

Administrator.

■ 40 CFR part 82 is amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671(q)

■ 2. A new subpart I is added to read as follows:

SUBPART I—BAN ON REFRIGERATION AND AIR-CONDITIONING APPLIANCES CONTAINING HCFCS

Sec.

Subpart I—Ban on Refrigeration and Air-Conditioning Appliances Containing HCFCs

§ 82.300 Purpose.

The purpose of this subpart is to protect stratospheric ozone by restricting the sale and distribution of HCFC containing appliances under authority of section 615 of the Clean Air Act as amended in 1990.

§ 82.302 Definitions.

As used in this subpart, the term:

Appliance means any device which contains and uses a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

Class I substance means any controlled substance designated as class I in 40 CFR part 82, appendix A to subpart A.

Class II substance means any controlled substance designated as class II in 40 CFR part 82, appendix B to subpart A.

Consumer, when used to describe a person taking action with regard to a product, means the ultimate purchaser, recipient or user of a product.

Distributor, when used to describe a person taking action with regard to a product, means:

(1) The seller of a product to a consumer or another distributor; or

(2) A person who sells or distributes that product in interstate commerce, including sale or distribution preceding export from, or following import to, the United States.

Hydrochlorofluorocarbon means any substance listed as class II in 40 CFR part 82, appendix B to subpart A.

Manufactured, for an appliance, means the date on which the appliance's refrigerant circuit is complete, the appliance can function, the appliance holds a refrigerant charge, and the appliance is ready for use for its intended purposes; for a pre-charged appliance component, ''manufactured'' means the date that the original equipment manufacturer has physically completed assembly of the component, the component is charged with refrigerant, and the component is ready for initial sale or distribution.

Person means any individual or legal entity, including an individual, corporation, partnership, association, State, municipality, political subdivision of a State, Indian tribe; any agency, department, or instrumentality of the United States; and any officer, agent, or employee thereof.

Pre-charged appliance means any appliance charged with refrigerant prior to sale or distribution, or offer for sale or distribution in interstate commerce.

Pre-charged appliance component means any portion of an appliance including but not limited to condensers, compressors, line sets, and coils that is charged with refrigerant prior to sale or distribution or offer for sale or distribution in interstate commerce.

Product means an item or category of items manufactured from raw or recycled materials which is used to perform a function or task.

Refrigerant means, for purposes of this subpart, any substance consisting in part or whole of a class I or class II ozone-depleting substance that is used for heat transfer purposes and provides a cooling effect.

§ 82.304 Prohibitions.

Effective January 1, 2010, no person may sell or distribute, or offer to sell or distribute, in interstate commerce any product identified in § 82.306.

§ 82.306 Prohibited products.

Effective January 1, 2010, the following products are subject to the prohibitions specified under § 82.304—

(a) Any pre-charged appliance manufactured on or after January 1, 2010 containing HCFC–22, HCFC–142b or a blend containing one or both of these controlled substances.

(b) Any pre-charged appliance component for air-conditioning or refrigeration appliances manufactured on or after January 1, 2010 containing HCFC–22, HCFC–142b, or a blend containing one or both of these controlled substances.

[FR Doc. E9–29560 Filed 12–14–09; 8:45 am]

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Federal Register

Tuesday,

December 15, 2009

Part IV

Environmental Protection Agency

40 CFR Parts 9 and 63

National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[EPA–HQ–OAR–2006–0406, FRL–9092–1]

RIN 2060–AP16

National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reconsideration.

SUMMARY: EPA received two petitions for reconsideration from trade associations representing their stakeholders regarding the National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities, which EPA promulgated on January 10, 2008, and amended on March 7, 2008. In this action, EPA is proposing amendments and clarifications to certain definitions and applicability provisions of the final rules in response to some of the issues raised in the petitions for reconsideration. In addition, several other compliance-related questions posed by various individual stakeholders and State and local agency representatives are addressed in this proposed action. We are seeking comments only on the proposed amendments presented in this action. We will not respond to any comments addressing other provisions of the final rules or any related rulemakings.

DATES: *Comments.* Written comments must be received on or before February 16, 2010.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by December 28, 2009, a public hearing will be held on December 30, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0406, by one of the following methods:

- *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov*.
- *Fax:* (202) 566–9744.
- *Mail:* Air and Radiation Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* In person or by courier, deliver your comments to: Air and Radiation Docket, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0406. 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: All documents in the docket are listed in the *http://www.regulations.gov* docket 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, 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 is (202) 566–1742.

We request that you also send a separate copy of each comment to the contact persons listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT:

General and Technical Information: Mr. Stephen Shedd, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), U.S. EPA, Research Triangle Park, NC 27711, telephone: (919) 541–5397, facsimile number: (919) 685–3195, e-mail address: *shedd.steve@epa.gov*.

Compliance Information: Ms. Rebecca Kane, Office of Compliance, Air Compliance Branch (2223A), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone: (202) 564–5960, facsimile number: (202) 564–0050, e-mail address: *kane.rebecca@epa.gov*.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAICS *	Examples of regulated entities
Industry	324110 493190 486910 424710 447110 447190	Operations at area sources that transfer and store gasoline, including bulk terminals, bulk plants, pipeline facilities, and gasoline dispensing facilities.
Federal/State/local/tribal governments.		

* North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR part 63, subparts BBBBBB and CCCCCC. If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposal will also be available through the WWW. Following the Administrator's signature, a copy of this action will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg/.* The TTN at EPA's Web site provides information and technology exchange in various areas of air pollution control.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Janet Eck, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), Research Triangle Park, NC 27711; telephone number: (919) 541–7946, e-mail address: *eck.janet@epa.gov*, at least 2 days in advance of the potential date of the public hearing. If a public hearing is held, it will be held at 10 a.m. at EPA's Campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC, or an alternate site nearby. If no one contacts EPA requesting to speak at a public hearing concerning this rule by December 28, 2009 this hearing will be cancelled without further notice.

Outline: The information presented in this preamble is organized as follows:

I. Background

On January 10, 2008 (73 FR 1916) EPA promulgated National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities (40 CFR part 63, subparts BBBBBB and CCCCCC) pursuant to sections 112(c)(3) and 112(d)(5) of the Clean Air Act (CAA). On March 10, 2008, the Administrator received two petitions for reconsideration of the final rules. One petition was filed by the Alliance of Automobile Manufacturers (Alliance) and the other by the American Petroleum Institute (API) (Docket No. EPA–HQ–OAR–2006–0406, items 0174 and 0173). The Alliance also filed a petition for judicial review of the final rules in the U.S. Court of Appeals for the District of Columbia Circuit. In addition, the Alliance, API, and several other stakeholders (affected facilities and State and local government agencies) have contacted EPA with questions or issues related to the implementation of the final rules. We discuss these requests below.

A. Petitions for Reconsideration

1. The Alliance Petition

The Alliance petition identified three issues for reconsideration. The Alliance asserted:

1. The broad definition of ''Bulk Gasoline Plant'' and unclear language in 40 CFR part 63, subpart BBBBBB, section 63.11086, can be read to impose duplicative and redundant requirements on facilities also subject to 40 CFR part 63, subpart CCCCCC.

2. The broad definition of ''Bulk Gasoline Plant'' appears to regulate some specialized engine testing facilities under 40 CFR part 63, subpart BBBBBB when such facilities should be regulated only by 40 CFR part 63, subpart CCCCCC.

3. Emergency generators and fire pump gasoline storage tanks should be exempt from regulation under both 40 CFR part 63, subpart BBBBBB and 40 CFR part 63, subpart CCCCCC.

Today we are granting reconsideration of, and requesting comment on, the first two issues raised in the petition for reconsideration filed by the Alliance. These two issues raise concerns regarding the definition of ''bulk gasoline plant'' and allege that the ambiguous language in the definition may impose duplicative requirements on facilities under both subparts BBBBBB and CCCCCC, or improperly regulate certain facilities under subpart BBBBBB rather than subpart CCCCCC. The Alliance raised similar concerns in their comments submitted on the proposed rule; EPA included its response to those comments in the preamble to the final rule and in the December 19, 2007, Memorandum, ''Summary of Comments and Responses to Public Comments on November 9, 2006 Proposal for Gasoline Distribution Area Sources'' (Docket No. EPA–HQ–OAR–2006–0406, item 0141). Nonetheless, we grant reconsideration on these two issues in the Alliance petition for reconsideration so that we may more fully address these potential ambiguities in the definition and more clearly identify what facilities are ''bulk gasoline plants'' and therefore only subject to subpart BBBBBB. We discuss our proposed changes to this definition and to other applicable regulatory text for addressing these issues in Section III of this preamble.

Moreover, on June 30, 2009 (74 FR 31273) we published a proposed settlement agreement with the Alliance in the **Federal Register** regarding the petition for judicial review filed by the Alliance in the DC Circuit Court of Appeals. After a 30-day public comment period, EPA and the Alliance formally entered into the settlement agreement. Under the terms of the settlement agreement, we are proposing the amendments contained in Attachment A of the agreement. The proposed amendments in Attachment A are those that address the issues for which we grant reconsideration above.

2. The API Petition

The API petition identified four issues for reconsideration. API asserted:

1. The rule should be clarified so that facilities would be allowed 180 days from the compliance date to conduct a performance test and an additional 60 days to submit the Notice of Compliance Status. Additionally, API stated that the requirements under the rule should not be triggered prior to the compliance date regardless of whether or not a Notice of Compliance Status is submitted prior to

the compliance date specified in the rule.

2. The monitoring requirements do not appropriately accommodate daily monitoring and recording requirements for control equipment at facilities that are not manned daily or that have alternative control system configurations.

3. The identification of affected units in 40 CFR part 63, subparts BBBBBB and CCCCCC inadvertently regulate equipment not meant to be part of this rule.

4. EPA has identified startup/shutdown/malfunction (SSM) reporting requirements within the entries of Table 3 of the rule when there is no requirement for an SSM plan for facilities subject to 40 CFR part 63, subpart BBBBBB.

Additionally, on May 8, 2008, API sent a letter to EPA that further clarified the four issues raised in its March 10, 2008 petition. The May 8 letter also introduced seven new issues regarding the final rules. Since these seven issues were not included in the March 10 petition for reconsideration, EPA is not addressing them as part of the petition for reconsideration; instead, EPA is addressing them with the issues raised by other stakeholders (see section I.B. below). In section III. (Rationale for Proposed Amendments) of this preamble, API's issues are identified by the order in which they are listed in the May 8 letter.

Despite having ample time and opportunity to do so, API did not submit comments on any of the issues raised in its petition for reconsideration during the public comment period. The provisions that provoked all of these questions were included in the proposed rules, yet API did not seek to resolve them until after EPA promulgated the final rules. Under CAA section 307(d)(7)(B), EPA is not obligated to reconsider these issues as not being ''properly noticed'' as alleged by API in their petition for reconsideration. Nonetheless, EPA is today granting reconsideration on all four of the issues raised in API's petition for reconsideration. EPA recognizes the value of addressing these questions for the facilities that are attempting to implement the rules; providing clarity on possibly confusing provisions will enhance owner/operator compliance with these rules. Thus, EPA agrees that addressing these issues is appropriate at this time. Section III contains a detailed explanation of the issues as well as EPA's proposed methods for resolving those issues. The package also includes proposed changes to the regulatory text, where appropriate, that address the four issues raised in API's petition for reconsideration.

Our final decision on reconsideration of all the issues for which we are not granting reconsideration today will be issued no later than the date by which we take final action on the issues discussed in today's action.

B. Other Stakeholder Issues

In addition to the petitions for reconsideration discussed above, several other compliance-related questions have been raised by various stakeholders, including the Alliance,[1] API, State and local air pollution control agencies, equipment suppliers, etc. The questions raised by stakeholders include topics such as: Clarification of the applicability of the two subparts to various types of gasoline-handling operations; options for submerged fill pipe lengths; applicability of the subparts to storage tanks that are used infrequently or used only for surge control at pipeline facilities; the definition of monthly throughput and how monthly throughput is to be calculated; the timing of certain recordkeeping activities and submittal of notifications; clarification of the rule text regarding continuous compliance monitoring; clarification of the frequency of required storage tank inspections; and the applicability of several General Provisions subparts. We are addressing these questions in today's action. Section III. of today's notice presents the details on each of the questions that have been raised and on our responses to the questions.

The amendments being proposed today addressing both the petitions for reconsideration and the additional questions from other stakeholders primarily clarify the final rules and do not substantially change the requirements of the final rules. Thus, the estimates of environmental, cost, and information collection impacts are not substantially different than estimated at promulgation of these rules, and no changes have been made to the estimates presented in the final rules.

II. Summary of Proposed Amendments

A. Proposed Amendments Applicable to 40 CFR Part 63, Subpart BBBBBB

As a result of our reconsideration of the issues raised by the petitions filed by the Alliance and API, as well as questions from other stakeholders regarding 40 CFR part 63, subpart BBBBBB, we are proposing to amend certain rule provisions. The rationale for the amendments is fully presented in the next section of this preamble. We are proposing to:

- Add a provision to § 63.11081 clarifying that gasoline storage tanks located at bulk facilities, but used only for dispensing gasoline in a manner consistent with tanks located at a gasoline dispensing facility (GDF) as defined at § 63.11132, are not subject to any of the requirements in 40 CFR part 63, subpart BBBBBB. Instead, these tanks must comply with the applicable requirements of 40 CFR part 63, subpart CCCCCC.
- Add a provision to § 63.11081 stating that if a bulk facility's monthly throughput ever exceeds an applicable throughput threshold in the definition of ''bulk gasoline terminal,'' or in Table 2, item 1 of this subpart, the affected source will remain subject to those requirements even if the affected source's throughput later falls below the applicable throughput threshold.
- Add to § 63.11086 a provision to allow storage tanks to have an additional option for submerged fill pipes that are further from the bottom of the tank than the distances previously specified in § 63.11086 if adequate recordkeeping is performed and records are maintained by the owner or operator to demonstrate that the liquid level in the tank never drops below the highest point in the opening of the fill pipe.
- Amend item 1 in Table 1 to provide different controls than promulgated for two types of tanks, as follows:
  - Add a capacity/throughput threshold below which small, infrequent-use gasoline storage tanks would be required to be equipped with a fixed roof and covers on all openings that are to be maintained in a closed position at all times when not in use.
  - Add a definition for surge control tanks and provisions requiring that they be equipped with pressure/vacuum (PV) vents with a positive cracking pressure of no less than 0.50 inches of water and that all openings are to be maintained in a closed position at all times when not in use.
- Additionally, we are proposing to include the following clarifications:
  - Correct typographical errors;
  - Move the provision that indicates that certain storage tanks that are located at bulk plants are only subject to 40 CFR part 63, subpart CCCCCC from § 63.11086(b)(2) to § 63.111081;
  - Clarify in § 63.11092 the presentation and wording of bulk terminal loading rack testing, monitoring, and recordkeeping provisions;

[1] Letters from the Alliance and API have been added to Docket No. EPA–HQ–OAR–2006–0406 and can be found at items 0175 through 0180.

○ Clarify in a new paragraph (g) in § 63.11081 that the 20,000 gallons per day throughput threshold that distinguishes a bulk gasoline plant from a bulk gasoline terminal is the maximum throughput for any day and not an average;

○ Clarify paragraph (c) in § 63.11083 by removing the word ''average'' in the discussion of monthly throughput;

○ Clarify in a new paragraph in § 63.11095(a)(4) the due dates for Notification of Compliance Status (NOCS) reports for storage tanks on extended compliance dates;

○ Clarify the definition of ''bulk gasoline plant;''

○ Clarify the rule by adding definitions of ''gasoline'' and ''gasoline storage tank'' based on cross-referenced definitions used in other rules;

○ Correct the definition of ''vapor-tight cargo tank;''

○ Clarify in Table 1, item 2(b), that internal floating roof tanks are excluded from the secondary seal requirements in 40 CFR part 63, subpart WW, as we did for 40 CFR part 60, subpart Kb;

○ Clarify, by adding rule text at § 63.11081(d) and (e), that the following activities are not affected source categories under 40 CFR part 63, subpart BBBBBB: the loading of aviation gasoline into storage tanks at airports (including the subsequent transfer of aviation gasoline within the airport), and the loading of gasoline into marine tank vessels at bulk facilities, as discussed at promulgation of this rule;

○ Clarify, by adding rule text at § 63.11081(h), that the loading of gasoline into cargo tanks for on-site redistribution to another storage tank is considered to be a bulk plant operation; and

○ Clarify the applicability of certain General Provisions paragraphs in Table 3.

B. Proposed Amendments Applicable to 40 CFR Part 63, Subpart CCCCCC

As a result of our reconsideration of the issues raised in the petitions filed by the Alliance and API, as well as questions from other stakeholders regarding 40 CFR part 63, subpart CCCCCC, we are proposing to amend certain rule provisions. The rationale for the amendments is fully presented in the next section of this preamble. We are proposing to:

• Clarify in § 63.11111(g) that the loading of aviation gasoline into storage tanks at airports (including the subsequent transfer of aviation gasoline within the airport) is not subject to this subpart.

• Clarify in a new paragraph (h) in § 63.11111 the applicability of 40 CFR part 63, subpart CCCCCC to multiple GDF at different locations within the same area source.

• Add a paragraph (i) to § 63.11111 stating that if a GDF's monthly throughput ever exceeds an applicable monthly throughput threshold, the GDF will remain subject to those requirements even if the GDF's monthly throughput later falls below the applicable monthly throughput threshold.

• Add a paragraph (j) to § 63.11111 stating that the dispensing of gasoline from fixed gasoline storage tanks at a GDF into portable gasoline storage tanks for the on-site delivery and subsequent dispensing of the gasoline into the fuel tank of a motor vehicle or other gasoline-fueled engine or equipment used at the area source is subject to § 63.11116 of this subpart.

• Add a paragraph (e) to § 63.11113 specifying the dates by which the performance tests required under § 63.11120 must be conducted. Section 63.11120(a) is also being revised to add a reference to this new paragraph.

• Add a paragraph (d) to § 63.11116 stating that owners or operators using portable gasoline containers that meet the requirements of 40 CFR part 59, subpart F, (the Mobile Source Air Toxics Rule) will be considered in compliance with paragraph (a)(3) of this section.

• Add to § 63.11117 a provision to allow storage tanks to have an additional option for submerged fill pipes that are further from the bottom of the tank than the distances previously specified in § 63.11117 if adequate recordkeeping is performed and records are maintained by the owner or operator to demonstrate that the liquid level in the tank never drops below the highest point in the opening of the fill pipe.

• Clarify in § 63.11124 the dates by which the NOCS must be submitted.

• Add a new paragraph (c) to § 63.11125 clarifying that cargo tank vapor tightness testing records must be kept for a period of 5 years, but adding that cargo tank owners or operators have the option of keeping only the current year's records with the cargo tank and keeping records for the previous 4 years in the owner's office if the records are instantly available.

• Add a definition of ''vapor-tight cargo tank,'' correct the definition of ''gasoline cargo tank,'' and clarify the location of vapor-tight testing records to clarify compliance for cargo tank owners and operators with item (vi) in Table 2 of 40 CFR part 63, subpart CCCCCC.

• Add definitions for ''gasoline,'' ''motor vehicle,'' ''nonroad engine,'' and ''nonroad vehicle'' to ensure consistency with other rules.

• Amend the current definition of ''gasoline dispensing facility'' in § 63.11132 to clarify our intent to include all public and private stationary facilities that dispense gasoline into the fuel tanks of on- and off-road engines, vehicles, and equipment rather than just those facilities that dispense gasoline into the fuel tanks of motor vehicles.

• Revise the definition of monthly throughput in § 63.11132 to remove the reference to a ''rolling 30-day average'' and to add a clarification on how monthly throughput is calculated. This revision is being proposed to clarify our intent that the monthly throughput is calculated by summing the volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the current day, plus the total volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the previous 364 days, and then dividing that sum by 12.

• Revise § 63.11111(e) and § 63.11113(c) to remove the word ''average.''

• Amend Table 1 by adding a footnote to clarify the applicability of the provisions in the Table.

• Clarify in Table 1, item 2, the construction date after which storage tanks at existing GDF are ''new'' and required to have dual-point vapor balance system.

• Clarify in Table 2, item (vi), that vapor tightness testing documentation must be carried ''with'' the cargo tank, rather than ''on'' the cargo tank.

• Clarify the applicability of certain General Provisions paragraphs in Table 3.

III. Rationale for the Proposed Amendments

A. Applicability

1. Definition of Bulk Gasoline Plant

Alliance, in their petition (issue #1), stated that the broad definition of ''bulk gasoline plant'' in 40 CFR part 63, subpart BBBBBB could be interpreted to impose duplicative and redundant requirements on facilities also subject to 40 CFR part 63, subpart CCCCCC. Alliance stated that, in the preamble to the proposed rule (71 FR 66064, 66066, November 9, 2006), EPA described bulk gasoline plants as ''* * * intermediate storage and distribution facilities that normally receive gasoline from bulk terminals via tank trucks or railcars. Gasoline from bulk plants is subsequently loaded into tank trucks for transport to local dispensing facilities.'' They further stated that the final rule

does not reflect this description and could be interpreted to include any gasoline storage facility that receives less than 20,000 gallons of gasoline per day, including GDF regulated under subpart CCCCCC. Alliance noted that EPA revised the rule between proposal and promulgation, but stated that the revision was not clear and failed to specifically exempt facilities subject to subpart CCCCCC from the requirements of subpart BBBBBB. Alliance requested that such an exemption be clearly stated in subpart CCCCCC.

We agree with the Alliance that the intent of the rule was to separately regulate bulk gasoline plants and GDF. We also agree that, as written, there could be confusion with the definition of ''bulk gasoline plant.'' The definition of ''bulk gasoline plant'' in 40 CFR part 63, subpart BBBBBB includes the phrase ''gasoline storage and distribution facility.'' Our intent was that by including the term ''distribution facility,'' it would be clear that the gasoline stored at these facilities was distributed to smaller dispensing facilities rather than being dispensed into vehicles and other gasoline-fueled equipment. To address the issues raised by the Alliance in their petition, we are proposing to revise the definition of ''bulk gasoline plant'' to include the descriptive language, as used in the preamble, to clarify that gasoline from these facilities is subsequently loaded into gasoline cargo tanks for transport to GDF. The proposed definition is as follows: ''Bulk gasoline plant means any gasoline storage and distribution facility that receives gasoline by pipeline, ship or barge, or cargo tank and subsequently loads the gasoline into gasoline cargo tanks for transport to gasoline dispensing facilities, and has a gasoline throughput of less than 20,000 gallons per day. Gasoline throughput shall be the maximum calculated design throughput as may be limited by compliance with an enforceable condition under Federal, State, or local law and discoverable by the Administrator and any other person.'' This change should adequately address any potential confusion regarding the distinction between bulk plants and GDF; thus, we are not proposing to add an exemption for bulk plants to 40 CFR part 63, subpart CCCCCC.

Alliance also mentioned that some facilities could be subject to overlapping requirements because the final rule failed to clearly exempt facilities that are subject to 40 CFR part 63, subpart CCCCCC from the requirements of 40 CFR part 63, subpart BBBBBB. They requested that such an exemption be added to subpart BBBBBB.

We agree that an operation that dispenses gasoline in a way that meets the definition of ''gasoline dispensing facility'' in 40 CFR part 63, subpart CCCCCC should only be subject to the requirements of subpart CCCCCC regardless of the type of facility (bulk terminal, bulk plant, or pipeline facility) at which it is located. We are proposing to add a paragraph (c) to § 63.11081 to read as follows: ''Gasoline storage tanks that are located at affected sources identified in paragraphs (a)(1) to (a)(4) of this section, and that are used only for dispensing gasoline in a manner consistent with tanks located at a GDF, as defined at § 63.11132, are not subject to any of the requirements in this subpart. These tanks must comply with subpart CCCCCC of this part.''

2. Definition of Gasoline Dispensing Facility (GDF)

Alliance, in their petition (issue #2), expressed concern that, under the current definitions in the rules, some facilities could be considered to be subject to both 40 CFR part 63, subparts BBBBBB and CCCCCC when they should only be subject to subpart CCCCCC. Alliance stated that the overly broad definition of ''bulk gasoline plant'' could subject some specialized test facilities that dispense gasoline into research and development engines, engine dynamometers, engine test stands, and other vehicle testing equipment to regulation under both subpart BBBBBB and CCCCCC because some of these facilities have a single gasoline storage tank that dispenses gasoline into complete motor vehicles as well as the incomplete items described above. Alliance recommended that EPA revise the definition of ''gasoline dispensing facility'' to specifically include facilities that dispense gasoline into motor vehicle engines, whether or not such engine is part of a complete motor vehicle.

Alliance also stated (issue #3) that both subparts could be interpreted to cover storage tanks that fuel emergency generators and fire pumps, but that it is not clear how they apply to this equipment. Alliance added that neither the proposed nor final rules provided any notice that they could potentially apply to the gasoline storage tanks that dispense gasoline into thousands of emergency generators and fire pumps at various types of industrial and other facilities across the nation. Alliance recommended that, because of the small tank size and very low throughput, the storage tanks fueling this type of equipment should not be regulated under either subpart. They suggested that the rules be revised to exclude storage tanks attached to or solely used to fuel emergency generators and fire pumps.

API requested in their May 8, 2008 letter (issue #4) that the definition of ''gasoline dispensing facility'' in 40 CFR part 63, subpart CCCCCC be revised to clarify that the rule does not apply to those facilities that dispense gasoline for use within the facility or by employees of the facility. They stated that these types of GDF do not dispense gasoline for retail sale, and emissions from the gasoline storage tanks are typically addressed by State/local permits or regulations.

Several other stakeholders have questioned whether specific types of operations are considered to be GDF. One stakeholder questioned how a remote facility that has a 5,000-gallon storage tank, receives gasoline once per year, and dispenses about 300 gallons per month for use in stationary and nonroad portable engines is covered by this rule. A few stakeholders asked if the definition should include operations such as marinas that dispense gasoline into boats, storage tanks that are used to dispense gasoline into nonroad vehicles and landscaping or construction equipment, storage tanks that are brought onsite for short term use (such as in construction equipment), and gasoline dispensed for non-retail purposes.

We did not intend to exclude any GDF from this rule and specifically stated in the preamble for the final rule that we intended to cover all public and private GDF (73 FR 1916, 1925). Thus, we are proposing to clarify this in 40 CFR part 63, subpart CCCCCC. This is appropriate because all of these operations are part of the source category that was listed and the facility operations and applicable controls are the same for all types of GDF.

As discussed at promulgation, the CAA requires that EPA set Federal emission standards under CAA section 112(d) for source categories listed under CAA section 112(c)(3). The list of source categories was developed based on an emission inventory. The emission inventory for GDF is based on the total volume of gasoline consumed nationwide (including domestic production plus imports and stock changes from the previous year, minus exports), the emission factor for gasoline loading losses, and the amount of submerged and splash loading and vapor balancing in the industry. Total gasoline consumption is the total used nationwide, so the emission inventory estimated emissions for all end users of gasoline. *See* the August 22, 2008, Memorandum, ''Review of 1990

emissions inventory supporting the listing Gasoline Distribution'' (Docket No. EPA–HQ–OAR–2006–0406, item 0181).

We also believe that the types of storage tanks found at all of these facilities are the same, except that the average or typical size and throughput tend to be smaller than for the more typical GDF that refuel primarily motor vehicles. We considered both the size and throughput of GDF storage tanks in the selection of the control requirements in the current rule, so we believe the types of controls, and the control levels required, are appropriate to all of these facilities.

At proposal and promulgation, we considered all public and private facilities in our calculations and decision-making; thus, tanks at all of these facilities are already covered under the previous estimates. However, in reviewing that data for this proposal, we found that the references that presented the estimated number of private facilities described those facilities as including government agencies, commercial and industrial consumers, school systems, and companies of all sizes, but they did not include farms, nurseries, and landscaping firms. However, it appears that this omission provides little if any impact to our previous estimates since we had considered most private GDF to have monthly throughputs below 10,000 gallons, meaning they would incur no additional control costs. GDF with throughputs of 10,000 gallons per month or less must only perform the good management practices to check for and minimize evaporation of gasoline that are standard industry practices.[2]

We are proposing to amend the current definition of ''gasoline dispensing facility'' to clarify our intent to include all stationary facilities that dispense gasoline into the fuel tanks of all end users of gasoline. The prior definition was: ''Gasoline dispensing facility (GDF) means any stationary facility which dispenses gasoline into the fuel tank of a motor vehicle.'' The new proposed definition is: ''Gasoline dispensing facility (GDF) means any stationary facility which dispenses gasoline into the fuel tank of a motor vehicle, motor vehicle engine, nonroad vehicle, or nonroad engine, including a nonroad vehicle or nonroad engine used solely for competition. These facilities include, but are not limited to, facilities that dispense gasoline into on- and off-road, street, or highway motor vehicles, lawn equipment, boats, test engines, landscaping equipment, generators, pumps, and other gasoline-fueled engines and equipment.'' Thus, we agree with the Alliance that facilities that dispense gasoline into research and development engines, engine dynamometers, engine test stands, and other vehicle testing equipment do not qualify as bulk plants, but instead, qualify as GDF. We also emphasize, contrary to positions asserted by the Alliance, API, and other stakeholders, that all GDFs are covered under subpart CCCCCC, and are proposing amendments to the GDF definition to effectuate that originally expressed intent.

3. Tanks With Infrequent Use

API, in their May 8, 2008 letter (issue #5), stated that the current threshold for installation of floating roofs and seals is based solely on the capacity of the tank. They stated that tanks that are used on a very limited basis do not warrant the significant investment associated with compliance in return for an insignificant reduction in hazardous air pollutant (HAP) emissions. API provided the example of a utility, or maintenance tank that would only hold material for short periods of time while primary tanks are out of service. API requested that additional consideration be given to tanks for which the limited duration of use results in emissions of less than 1 ton per year of volatile organic compounds, but did not provide the basis for using that value.

API subsequently provided additional information in a letter dated August 19, 2008 (Docket No. EPA–HQ–OAR–2006–0406, item 0178), related to their concern about the control of storage tanks that are used infrequently. They stated that the tanks in question were small tanks (generally less than 40,000 gallon capacity, compared to the more typical tanks that have capacities of over 1,000,000 gallons) with few turnovers per year, and that the cost-effectiveness of installing a floating roof in tanks such as these was significantly higher than for the tanks EPA analyzed for the final rule. API provided an example of a 40,000 gallon tank with 5 turnovers per year and a throughput of 175,000 gallons per year (5 turnovers times a 35,000 gallon working capacity). They calculated a HAP cost-effectiveness of about $9,200 per ton for adding a floating roof to such a tank. API recommended that tanks up to 40,000 gallons capacity and with a throughput of less than 175,000 gallons per year only be required to meet the requirements specified in Table 1, item 1 (a fixed roof with all openings closed at all times when not in use).

We analyzed the information provided by API and agree that for infrequent-use and low-throughput tanks, the HAP cost effectiveness of adding a floating roof is expected to be $9,000 per ton or more. We are therefore proposing to establish a separate subcategory for these tanks, based on size and gasoline throughput, with the control requirements in Table 1, item 1. Specifically, we are proposing to amend item 1 of Table 1 of subpart BBBBBB by adding a second subcategory that specifies the control requirements for tanks that have a capacity of less than 151 cubic meters and a throughput of less than 480 gallons per day. We are proposing that these gasoline storage tanks must be equipped with a fixed roof and that covers on all openings be maintained in a closed position at all times when not in use.

4. Surge Control Tanks

API requested (issue #6 in their May 8, 2008 letter, also in their August 19, 2008 letter) that EPA revisit the requirements for surge control tanks. The rule currently would require these tanks to install internal floating roof tanks that would reduce the usable capacity of the tank, which could render the tank no longer adequately capable of providing the required surge relief.

As explained by API, these are tanks used at pipeline facilities to provide a means of ensuring that the pressure in the pipeline does not exceed the level specified by the Department of Transportation (DOT). The surge control tanks are normally kept at very low levels so that gasoline can be pumped into them at any time there is a surge or excess pressure in the pipeline. In follow-up conversations with EPA, API also explained that these tanks are typically fixed roof tanks with capacities ranging from 20,000 to 200,000 gallons; they have PV vents with positive cracking settings of 0.50 inches of water; they are used two or three times per year, on average; the duration of their use is kept as short as possible so that surge capacity will always be available and the pipeline does not have to shutdown. API also explained that the use of floating roof systems in surge control tanks is risky as the loading of gasoline into the tanks is sometimes at such a high rate that the

[2] 40 CFR 63.11116(a). ''You must not allow gasoline to be handled in a manner that would result in vapor releases to the atmosphere for extended periods of time. Measures to be taken include, but are not limited to, the following: (1) Minimize gasoline spills; (2) Clean up spills as expeditiously as practicable; (3) Cover all open gasoline containers and all gasoline storage tank fill-pipes with a gasketed seal when not in use; (4) Minimize gasoline sent to open waste collection systems that collect and transport gasoline to reclamation and recycling devices, such as oil/water separators.''

floating roof can be damaged. API added that the cost-effectiveness would be very poor (nearly $100,000/ton of HAP reduced) to install internal floating roofs because many tanks would have to be replaced with larger tanks, or additional tanks would have to be added, to make up for the loss of capacity from adding the roof.

We reviewed the applicable DOT regulations and agree that pipeline operations are required to maintain the pressure in the pipeline below an established level. It also appears that in the case of a storage tank that is sized just large enough to provide the minimum level of pressure relief, the installation of a floating roof system could reduce the working volume to an unacceptable level. This could necessitate the installation of a larger or an additional tank, resulting in a poor HAP cost-effectiveness as a consequence of complying with the internal floating roof requirement. Also, as pointed out by API, a floating roof system may not be a practical control method for surge control tanks because of the potential for damaging the roof during rapid filling of the tank. We are proposing to add an entry 3 in Table 1 in 40 CFR part 63, subpart BBBBBB, specifying that owners or operators must ''Equip each surge control tank with a fixed roof that is mounted to the tank in a stationary manner and with a PV vent with a positive cracking pressure of no less than 0.50 inches of water. Maintain all openings in a closed position at all times when not in use.''

We are also proposing to add a definition of a surge control tank to implement this new provision. The definition is based on the requirement in DOT regulations (49 CFR 195.406(b)) which states that ''no operator may permit the pressure in a pipeline during surges or other variations from normal operations to exceed 110 percent of the operating pressure limit.'' We are proposing the following definition: ''surge control tank or vessel means, for the purposes of this subpart, those tanks or vessels used only for controlling pressure in a pipeline system during surges or other variations from normal operations.''

5. Definition of Storage Tank

API requested (issue #6 in their May 8, 2008 letter) that the definition in new source performance standard (NSPS) 40 CFR part 60, subpart Kb for ''storage tank'' be included in § 63.11100. They stated that the definition of ''storage tank'' should be included in 40 CFR part 63, subpart BBBBBB rather than relying on the definitions in subpart Kb and 40 CFR part 63, subpart WW, because those definitions are somewhat different. API's view is that the definition of storage tank should exclude ''process tanks'' as is done in the subpart Kb definition of storage tank. API suggested that incorporating the subpart Kb definition would address the concern over the applicability of the rule to surge control tanks at pipeline facilities. As discussed previously, API requested that surge control tanks be excluded from the requirement to have floating roof systems.

Our intent is that compliance with the control requirements of 40 CFR part 60, subpart Kb, and 40 CFR part 63, subpart WW constitutes compliance with the control requirements for bulk facilities under 40 CFR part 63, subpart BBBBBB. As discussed in the proposal (71 FR 66064, 66071, November 9, 2006) and final (73 FR 1916, 1926, January 10, 2008) preambles, we determined that certain seal types are appropriate. We only used the control provisions in subparts Kb and WW to specify the seal types and monitoring of those selected seal types that are referenced in this rule; the applicability requirements in subparts Kb and WW are not applicable for sources subject to subpart BBBBBB.

In reviewing and considering API's suggestions, we agree we should add a definition of gasoline storage tank. However, since gasoline distribution does not include the typical process-type tanks that are described in the 40 CFR part 60, subpart Kb definition, other than the surge control tanks mentioned by API, we do not believe it is necessary to provide an exemption for process tanks in the definition in 40 CFR part 63, subpart BBBBBB, as was done in subpart Kb. We are proposing a definition of gasoline storage tanks as follows: ''Gasoline storage tank or vessel means each tank, vessel, reservoir, or container used for the storage of gasoline, but does not include: (1) Frames, housing, auxiliary supports, or other components that are not directly involved in the containment of gasoline or gasoline vapors; or (2) subsurface caverns or porous rock reservoirs.'' This definition is based on the definition of ''storage vessel'' found in subpart Kb without the exemption for ''process tank.''

We have, however, considered API's stated concern about the possible impacts of requiring control of tanks that are used solely as pipeline ''surge control'' tanks. We have included them in the analysis discussed previously on surge control tanks.

6. Aviation Gasoline at Airports and Marine Tank Vessel Loading at Bulk Facilities

API (issue #3 in their petition and issue #10 in their May 8, 2008 letter) stated that, while the intended exclusion of aviation gasoline at airport facilities is clearly specified in 40 CFR part 63, subpart CCCCCC, there is no mention of this intended exclusion in 40 CFR part 63, subpart BBBBBB. They recommended that the applicability provision of § 63.11081 be revised to specifically list, and exclude from coverage, the storage and loading of aviation gasoline at airports. API also pointed out that the preamble to subpart BBBBBB stated that the loading of gasoline into marine tank vessels is not included in the gasoline distribution source category, and that subpart BBBBBB does not specifically include such an exclusion. API recommended that such an exclusion be added to § 63.11081.

Neither the loading of aviation gasoline at airports nor the loading of gasoline into marine tank vessels at bulk facilities are part of this source category and are not intended to be covered by 40 CFR part 63, subparts BBBBBB or CCCCCC. See the December 19, 2007, Memorandum, ''Summary of Comments and Responses to Public Comments on November 9, 2006 Proposal for Gasoline Distribution Area Sources'' (Docket No. EPA–HQ–OAR–2006–0406, item 0141). We are proposing to revise § 63.11081 to clarify that these activities are not part of the source categories covered by subparts BBBBBB and CCCCCC by adding a paragraph (d), which reads ''The loading of aviation gasoline into storage tanks at airports, and the subsequent transfer of aviation gasoline within the airport, is not subject to this subpart'' and a paragraph (e), which reads: ''The loading of gasoline into marine tank vessels at bulk facilities is not subject to this subpart.''

7. Temporary/Contractor Tanks

One stakeholder stated that 40 CFR part 63, subpart CCCCCC is not clear with regard to whether a facility is required to submit preconstruction, startup, and compliance certifications for temporary tanks, such as those brought onto a site by a contractor or another third party that remain entirely under the control of that party. The stakeholder recommended that EPA clarify how the regulations for GDF would apply to such tanks and which party (the contractor/third party or the owner/operator of the facility) would be responsible for ensuring compliance

and submittal of any applicable notifications.

At this time, we are not proposing any revisions to the rule in response to the issue raised by the stakeholder, but we are requesting comment on the subject discussion below. We believe the issue raised by the stakeholder is not unique to 40 CFR part 63, subpart CCCCCC and could come up at facilities that are subject to a variety of national emission standards for hazardous air pollutants (NESHAP) regulations. Standards, including subpart CCCCCC, apply to the ''owner or operator'' of the affected source, and § 63.2 defines ''owner or operator'' as ''any person who owns, leases, operates, controls, or supervises a stationary source.'' It appears it is the responsibility of the owner or operator of the affected facility to ensure that all emission sources at the facility comply with the requirements of any applicable standards. It seems owners or operators could consider this responsibility when negotiating contracts with third parties and address it in the contracts for the specific work being done. Thus, the requirements in the General Provisions will likely adequately address the stakeholder's concern.

8. Coverage of Tanks Used To Fuel Vehicles and To Fill Cargo Tanks for On-Site Fuel Distribution

One stakeholder requested clarification on how the two subparts would be applied to storage tanks that are used to fuel vehicles but that may also be used to dispense gasoline into portable tanks or cargo tanks. The stakeholder presented four different scenarios as examples of the types of operations in question. Two of the examples involve facilities that dispense gasoline from storage tanks into portable tanks (one a 150-gallon tank and the other a 500-gallon tank) that are then used to fill the fuel tanks of vehicles at test facilities. The other two examples involve operations where gasoline is dispensed from storage tanks into cargo tanks (4,000 to 8,000 gallon capacity) that subsequently off-load the gasoline into another stationary gasoline storage tank located at a separate location. The stakeholder questioned how 40 CFR part 63, subparts BBBBBB and CCCCCC would be applied to these examples and recommended that all of the example operations should be subject only to subpart CCCCCC.

We reviewed the information provided by the stakeholder and agree that additional clarification of the rules is needed. The stakeholder's examples of facilities that dispense gasoline into portable tanks that are then used to fuel vehicles for use within the area source are operations that we consider to be covered by 40 CFR part 63, subpart CCCCCC. Such on-site redistribution of gasoline is not expected to occur at a volume or frequency that would exceed the 10,000 gallons per month threshold; if so, these operations would only be subject to the Management Practices specified in § 63.11116. The other two examples, however, involve the loading of gasoline into a cargo tank and the subsequent unloading of the gasoline back into another storage tank. These operations appear to meet the definition of a bulk plant, so these operations would be subject to § 63.11086. If so, the loading of the cargo tank and the subsequent off-loading from the cargo tank to the storage tanks must be performed using submerged filling. Because submerged filling of storage tanks and cargo tanks is a widely used and cost-effective method of reducing emissions, we expect that most gasoline transfers, such as the examples provided by the stakeholder, already use submerged filling.

To address the questions raised by the stakeholder, we are proposing to add clarifying text to each subpart, as follows:

- Add a paragraph (h) to § 63.11081 of subpart BBBBBB to read as follows: ''Storage tanks that are used to load gasoline into a cargo tank for the on-site redistribution of gasoline to another storage tank are subject to this subpart.''
- Add a paragraph (j) to § 63.11111 of subpart CCCCCC to read as follows: ''The dispensing of gasoline from a fixed gasoline storage tank at a GDF into a portable gasoline tank for the on-site delivery and subsequent dispensing of the gasoline into the fuel tank of a motor vehicle or other gasoline-fueled engine or equipment used within the area source is subject to § 63.11116 of this subpart.''

9. Applicability to Sources That Are Subject to and Complying With 40 CFR Part 63, Subpart VVVVVV

One stakeholder questioned whether a facility that receives and stores gasoline solely for the purpose of denaturing the ethanol that they produce would be subject to 40 CFR part 63, subpart BBBBBB. The facility stores gasoline in a 30,000 gallon storage tank, blends it with the ethanol at a concentration of less than 5-percent gasoline, and then ships the mixture out of the facility.

The National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources (40 CFR part 63, subpart VVVVVV) includes as an affected source the storage and use of gasoline as a feedstock in chemical manufacturing, as described by the stakeholder. The control requirements in subpart VVVVVV for the loading of storage tanks are similar to the requirements found in 40 CFR part 63, subpart BBBBBB. However, because the tank size and throughput thresholds for determining the applicable control level for a given storage tank are not exactly the same in the two standards, a direct comparison of the requirements of the two standards must be on a case-by-case basis. Section 63.11500 of subpart VVVVVV specifies that if part of a facility is subject to both subpart VVVVVV and another Federal rule, the owner or operator may choose to comply only with the more stringent provisions of the two applicable subparts. For example, if the control requirements in the other rule were at least as stringent as those provided in subpart VVVVVV, but the monitoring, recordkeeping, or reporting requirement in the other rule were not as stringent or comprehensive as those in subpart VVVVVV, the source may comply with the control requirements from the other rule, but must comply with the more stringent monitoring, recordkeeping, and reporting requirements in subpart VVVVVV. We are proposing to adopt the same approach in these subparts; therefore, we are proposing to amend subparts BBBBBB and CCCCCC to specify that if an affected source under either of these subparts is also subject to another Federal rule, like subpart VVVVVV, the owner or operator may elect to comply only with the more stringent provisions of the applicable subparts. We are proposing to add a new paragraph (i) to § 63.11081 of subpart BBBBBB and a new paragraph (k) to § 63.11111 of subpart CCCCCC, both of which would read as follows: ''For any affected source subject to the provisions of this subpart and another Federal rule, you may elect to comply only with the more stringent provisions of the applicable subparts. You must consider all provisions of the rules, including monitoring, recordkeeping, and reporting. You must identify the affected source and provisions with which you will comply in your Notification of Compliance Status (NOCS) required under § 63.11093 [or § 63.11124, as applicable]. You also must demonstrate in your NOCS that each provision with which you will comply is at least as stringent as the otherwise applicable requirements in this subpart. You are responsible for making accurate determinations concerning the more stringent provisions; noncompliance with this rule is not excused if it is later determined that your determination was

in error and, as a result, you are violating this subpart. Compliance with this rule is your responsibility and the NOCS does not alter or affect that responsibility.''

B. Throughput Thresholds

1. Once Over a Throughput Threshold

Several stakeholders raised the question of whether a GDF whose gasoline throughput increases from below the 10,000 or 100,000 gallons per month thresholds to above the thresholds, making them subject to the submerged fill or vapor balancing requirements, respectively, in 40 CFR part 63, subpart CCCCCC, would still be subject to those requirements if their throughput subsequently decreases to below the relevant threshold.

Our intent is that once a facility's throughput crosses the threshold for either submerged fill or vapor balancing, the facility must continue to use the controls even if their throughput subsequently decreases to below the applicable threshold. Because neither of these control technologies requires significant ongoing operating costs, the primary control costs that the facility would incur would be for the initial installation. For submerged fill, there are no operating costs and no monitoring, recordkeeping, or reporting costs. In fact, once a facility crosses the 10,000 gallon threshold level and installs submerged fill pipes, there would be an expense involved in converting the tanks back to splash fill (i.e., the cost of removing the submerged fill pipes). Thus, there would be no operational, practical, or economic incentive to discontinue the use of the required control technology.

For vapor balance systems, there are periodic maintenance, testing, and recordkeeping and reporting costs, but these are minor components of the total costs of control. As with submerged fill, it would most likely be more trouble and expense to discontinue the use of the controls and to properly remove the equipment than to continue their use.

Another consideration is the fact that these controls will continue to achieve substantial emissions reductions even if the facility's throughput decreases below the applicable thresholds. In addition, it would be reasonable to assume that if a facility once crossed an applicable throughput threshold, it might do so again at some point in the near future. Thus, in addition to the environmental gain in requiring the continued use of controls, there is a practical economic incentive to maintaining the equipment. We also believe the same holds true for the 20,000 gallons and 250,000 gallons per day throughput thresholds for distinguishing between a bulk terminal and a bulk plant, and requiring submerged fill versus vapor processors on loading racks at bulk terminals under 40 CFR part 63, subpart BBBBBB, respectively.

Thus, we are proposing to clarify both 40 CFR part 63, subparts BBBBBB and CCCCCC to implement this intent. We are proposing to add the following provision to subpart BBBBBB, § 63.11081(f): ''If your affected source's throughput ever exceeds an applicable throughput threshold in the definition of 'bulk gasoline terminal' or in item 1 in Table 2 to this subpart, the affected source will remain subject to the requirements for sources above the threshold even if the affected source throughput later falls below the applicable throughput threshold.'' We are proposing to add the following provision to subpart CCCCCC, § 63.11111(i): ''If your GDF's monthly throughput ever exceeds an applicable monthly throughput threshold in (c) or (d) of this paragraph, the GDF will remain subject to those requirements even if the GDF monthly throughput later falls below the applicable monthly throughput threshold.''

2. Monthly Throughput Definition

Stakeholders requested clarification of the definition of ''monthly throughput'' for GDF and questioned how the throughput value is to be calculated. The stakeholders stated that the inclusion of the phrase ''rolling 30-day average'' is confusing because the calculated value is actually a ''sum'' of the daily throughput over a 30-day period rather than an ''average.'' Stakeholders also questioned whether the use of the word ''average'' in the text of paragraph (e) of § 63.11111(e) for GDF was an oversight or if it is a monthly average based on the last twelve months. Stakeholders have also stated that as an alternative to determining throughput based on the volume of gasoline ''loaded'' into the GDF's storage tanks, the rule should allow for monthly throughput to be based on the volume of gasoline ''dispensed'' by the GDF during a month. These stakeholders explained that some States require throughput to be based on the volume of gasoline dispensed and that keeping two sets of records would be burdensome for GDF in those States.

We agree with the stakeholders that we intended that the monthly throughput would be calculated by taking the total volume of gasoline loaded into all gasoline storage tanks for the last 365 days and dividing by 12 to get the monthly throughput. Not only is this method more simple to implement and understand, this was the method used to analyze the environmental and cost-effectiveness calculations for each threshold. In preparing the rule, we inadvertently used the rule text definition for monthly throughput from State and local rules and did not adjust them for how we evaluated controls and thresholds.

The current definition provides that monthly throughput ''means the total volume of gasoline that is loaded into all gasoline storage tanks during a month, as calculated on a rolling 30-day average.'' We are proposing to revise the definition to remove the phrase ''rolling 30-day average'' in the final rule, as well as to add a clarification on how it is calculated. Also, because we consider the term ''throughput'' to mean literally the volume that goes through the tank, we agree with the stakeholders that it can be measured as either the volume of gasoline going into the tank or the volume of gasoline coming out of the tank. Therefore, we are proposing to add text to allow throughput to be based on the volume of gasoline dispensed by a GDF. We are proposing the definition to read as follows: ''Monthly throughput means the total volume of gasoline that is loaded into, or dispensed from, all gasoline storage tanks at each GDF during a month. Monthly throughput is calculated by summing the volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the current day, plus the total volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the previous 364 days, and then dividing that sum by 12.''

In the final rule, § 63.11111(e) reads as follows: ''An affected source shall, upon request by the Administrator, demonstrate that their average monthly throughput is less than the 10,000-gallon or the 100,000-gallon threshold level, as applicable.'' We agree with the stakeholders that the use of the word ''average'' in the text of the paragraph is confusing. Because we have used an averaging method in the definition of ''monthly throughput,'' the word ''average'' is not needed in this provision; therefore, we propose to amend § 63.11111(e) to delete the word ''average'' from the text. We also found that § 63.11113(c) contained the same incorrect use of the word ''average'' and we are proposing to delete it from that section as well.

While we are taking comment on these changes, we realize that some affected sources may have used either the ''per month'' or ''month average''

method for calculating their gasoline throughput to determine the applicable rule requirements that they subsequently reported in their Initial Notifications. We believe the use of these alternative methods was justified by the language in the final rule. (Additional discussion of the Initial Notifications is presented later in this preamble.) We are proposing that sources use the new method for calculating gasoline throughput prospectively, or in other words, beginning on the date of promulgation of the final rules. Affected sources must be in compliance with the requirements that are found to be applicable, using the final throughput definition, by January 10, 2011. Given that the current method is likely to capture fewer sources over the thresholds, due to seasonal variations, than the 30-day rolling average period, we believe there should be no need to provide more time to comply with the standards. We are therefore not proposing a change to the compliance dates in § 63.11083.

Additionally, Tables 1 and 2 to 40 CFR part 63, subpart BBBBBB contain throughput thresholds for determining applicable bulk terminal loading rack and storage tank emission controls (in gallons per day). Similar to the GDF thresholds discussed above, the bulk terminal thresholds were based on an environmental and cost analysis using total annual throughput for all gasoline loading racks at a bulk terminal divided by 365 days per year. We are proposing to clarify the method of calculation by adding a second sentence in item 1(ii) of Table 1, and in both items 1 and 2 of Table 2, as follows: ''Gallons per day is calculated by summing the current day's throughput, plus the throughput for the previous 364 days, and then dividing that sum by 365.'' We are also proposing to clarify the rule text for both items 1 and 2 of Table 2 that the gasoline throughput is the total for all racks at the bulk gasoline terminal. Section 63.11083(c), which refers to Table 2, incorrectly refers to an ''average'' throughput, and because we are proposing to clarify the method of calculation in the text of Table 2, we are proposing to remove the word ''average'' in this paragraph.

Also note that bulk gasoline terminals and bulk gasoline plants are defined and partly distinguished by throughput (20,000 gallons per day). This 20,000 gallons per day throughput threshold is interpreted as a maximum for any day (no averaging) and is used as such when determining compliance with other rules as well as with this rule. We are proposing to clarify the applicability of the 20,000 gallon per day throughput threshold by adding a paragraph (g) to § 63.11081 specifying that, for the purpose of defining a bulk gasoline plant and a bulk gasoline terminal, the 20,000 gallons per day throughput threshold is the maximum calculated design throughout for any day and is not an average.

3. Start of Throughput Records

Several stakeholders also questioned when facilities must start keeping records of throughput for documenting whether they are operating above or below applicable throughput thresholds in each subpart.

Existing sources that are subject to these subparts were required to submit Initial Notifications by May 9, 2008. EPA assumed that owners and operators would begin keeping throughput records immediately after the promulgation date of January 10, 2008, so that they could indicate exactly which standard was applicable to their facility in the Initial Notification. In addition to the legal requirements to complete the Initial Notification accurately, it is in the best interest of the facility to be aware as early as possible what control requirements must be met. For example, if a GDF's throughput has normally been somewhat below the 100,000 gallon threshold for vapor balancing, but shortly before the January 10, 2011 compliance date, the owner discovers that throughput has surpassed the threshold, installing the required vapor balance system by the compliance date may be difficult or impossible. Thus, EPA expected that owners and operators would begin keeping throughput records as far in advance of the compliance date as possible so that they could be in compliance with applicable controls by the compliance date. However, because the final rules do not specifically state when a facility should start keeping these throughput records, we are proposing to clarify the rules by adding such a requirement. For existing sources, we are proposing that facilities begin keeping records and calculating throughput as of January 10, 2008 (the date of promulgation of the final rules).

For new sources constructed, or for existing sources reconstructed, after November 9, 2006, we are proposing that recordkeeping must begin upon startup of the affected facility. Since the new sources will commence construction after the area source rules are proposed, (*see* CAA section 112(a)(4)), we intended that they comply with all recordkeeping requirements from their startup date based on the amount of throughput expected in their business plan for operating the new source or the capacity of equipment installed.

4. Multiple Tanks at Multiple Locations at Affected Source

Stakeholders, including the Alliance in separate follow-up conversations and correspondence unrelated to their petition for reconsideration, described a situation where a plant site, such as a military base or large private company property, has multiple gasoline storage tanks in multiple locations, and questioned whether it was EPA's intent that the monthly throughput at such a facility would be the ''total volume of gasoline that is loaded into all gasoline storage tanks,'' as specified in the definition of monthly throughput in 40 CFR part 63, subpart CCCCCC. These stakeholders questioned whether subpart CCCCCC applies to each area source individually or to the entire facility collectively. One stakeholder pointed out that the rule text in § 63.11111(a) states ''each GDF that is located at an area source,'' thus inferring that you can have multiple GDF at one location.

We agree with the stakeholders that subpart CCCCCC requires clarification regarding our intent for how the rule should be applied to the situation they describe. As one stakeholder pointed out, § 63.11111(a) states: ''The affected source to which this subpart applies is each GDF that is located at an area source.'' This indicates our understanding that an area source may contain multiple GDF. Additionally, the section titles for the applicable controls based on a GDF's monthly throughput threshold state that these are ''Requirements for facilities with monthly throughput'' meeting or exceeding a certain threshold. We deliberately used the word ''facilities'' in the titles to refer to the individual gasoline dispensing ''facilities'' within the area source, not to an entire area source or plant site. Thus, we intended that the monthly throughput and the corresponding monthly throughput thresholds would be calculated and applied to each individual GDF located at a single location within an area source. Further, the environmental and cost analyses examined the impacts based on groupings of gasoline storage tanks at a single location, not on tanks located far apart. Thus, it is appropriate that a single area source may have multiple GDF located within its exterior boundaries and that each GDF be treated as a separate affected source. To clarify these questions in the rule, we are proposing to add a new paragraph (h) in § 63.11111 as follows: ''(h) Monthly throughput is the total volume of

gasoline loaded into, or dispensed from, all the gasoline storage tanks located at a single affected GDF. If an area source has two or more GDF at separate locations within the area source, each GDF is treated as a separate affected source.''

C. Rule Clarifications

1. Recordkeeping For Continuous Compliance Monitoring

API requested (issue #2 in their petition and issue #3 in the May 8, 2008 letter) that EPA delete a requirement for the automatic recording of shutdown events in the alternative monitoring provisions for control devices used on loading racks that use automated shutdown systems. API explained that automated shutdown systems are frequently relied upon at facilities which have periods during which loading occurs when there are no operating personnel present on site. API also stated that when an automatic shutdown occurs during such unmanned operations, the units are not returned to service until personnel return to the facility to restart the unit. Thus, the automated systems are used to shut down the systems in the event of a malfunction, but are not equipped to provide a ''record'' of the shutdown. API stated that, while it is understandable that the shutdown of the system should be automatic during unmanned activities, no environmental benefit would accrue from requiring recordkeeping to be automated. They further stated that it should be acceptable to allow that a manual record of the shutdown event be entered into the log book when an operator restarts the unit.

The intent of the provision in the rule was to ensure that a record of a shutdown of the system is generated. So long as the loading of cargo tanks at a loading rack cannot be performed while the control device is in a shutdown mode, and a record of the event is generated to document that loading has not occurred, it does not matter whether the record is generated automatically or manually. Thus, we are proposing to revise the verification sentences in § 63.11092(b)(1)(i)(B)(*2*)(*ii*) and (b)(1)(iii)(B)(*2*)(*ii*) to read as follows: ''Verification shall be through visual observation or through an automated alarm or shutdown system that monitors and records system operation. A manual or electronic record of the start and end of a shutdown event may be used.''

API also stated that the requirement in section 63.11092(b)(1)(iii)(B)(*2*)(*ii*) to ''verify, during each day of operation of the loading rack, the proper operation of the assist-air blower, the vapor line valve, and the emergency shutdown system'' should not include the phrase ''and the emergency shutdown system.'' They stated that the emergency shutdown system is a manually operated ''switch'' that is only used to shut down the loading rack and vapor processor in the case of an emergency. API also stated that, in discussions with EPA regarding the monitoring systems in use within the industry, the terms ''emergency shutdown system'' and ''automatic shutdown system'' had been inadvertently used interchangeably by API. API further stated that the automatic shutdown system is ''an electronic system that may be used to monitor the components that are critical to the combustion process (i.e., presence of a pilot flame, vapor line valve, and assist-air blower).'' API then stated that, because neither the emergency shutdown system nor the automatic shutdown system are components that are involved in the combustion efficiency of a thermal oxidizer, neither should be included in the daily check of critical components. API requested that the reference to the emergency shutdown system be removed from the text of the subject paragraph.

Based on discussions with API regarding the function of the emergency shutdown system versus the automatic shutdown system, we agree that the rule text should be amended. However, we believe that it is necessary that the automatic alarm or shutdown system be monitored. As API noted, the use of an automatic alarm or shutdown system is an allowed alternative to the visual monitoring of the critical components of the vapor processor system. We believe that if the automated monitoring system alternative is used, it is important to ensure that if the automatic alarm or shutdown system receives a signal that another component (such as the vapor line valve or the assist-air blower) has malfunctioned, the system will prevent any further loading of gasoline. Thus, we believe that monitoring of the automatic alarm or shutdown system is needed. In follow-up discussions with API, we discussed this need to check the automatic alarm or shutdown systems. Given these are electronic switches and less subject to failure, they would be best checked during the semi-annual preventative maintenance inspection required in the current rule (§ 63.11092(b)(1)(iii)(B)(*2*)(*ii*)). Thus, we are proposing to remove the phrase ''emergency shutdown system'' from the items to be checked daily under § 63.11092(b)(1)(iii)(B)(*2*)(*ii*) and add the phrase ''automated alarm or shutdown system'' as part of the semi-annual inspection required under § 63.11092(b)(1)(iii)(B)(*2*)(*iii*). Also, the alternative monitoring provisions for carbon adsorption systems have similar provisions, so we are proposing a parallel change to add the phrase ''automated alarm or shutdown system'' as part of the semi-annual inspection required under § 63.11092 (b)(1)(i)(B)(*2*)(*iii*).

2. Submerged Fill Drop Tube Measurements and Alternatives

One stakeholder questioned whether the distance from the submerged fill pipe to the bottom of the tank (for determining compliance with the 6 or 12 inch submerged fill requirement) would be measured from the bottom or the top edge of a horizontal fill pipe. The stakeholder also explained that the ends of most vertical submerged fill pipes are cut on a 45-degree angle to properly distribute product; thus, the bottom and top edges of the end of the fill pipe are different distances from the bottom of the tank. Other stakeholders also mentioned that it is industry practice, and some States require, that the measurement be taken at the longest distance.

Another stakeholder asked whether an existing facility whose submerged fill pipe is more than the 12 inch maximum distance from the bottom of the tank could be considered to be in compliance with the rule if they keep records that demonstrate that the level of gasoline in the tank never dropped below the end of the fill pipe.

The primary mechanism by which submerged fill reduces emissions during the filling of a storage tank is the reduction in the formation of airborne droplets of gasoline formed by the ''splashing'' of the gasoline as it is pumped into the tank. As such, the entire opening of the submerged fill pipe should be below the liquid level in the tank as soon as possible when loading occurs. For either vertical or horizontal fill pipes, this would mean that the point in the opening of the pipe that is the greatest distance from the bottom of the tank is the point where the measurement should be made. Many State agency and industry personnel use this approach to measure submerged fill tubes, and we are proposing to add this requirement to § 63.11086(a) and § 63.11117(b).

However, because the goal of submerged filling is simply to reduce splashing, we are proposing to revise the applicable sections of each rule to allow existing storage tanks to have fill pipes that are further from the bottom of the tank if the owner can demonstrate

that at all times the level of the liquid in the tank is above the entire opening of the fill pipe, provided adequate recordkeeping is performed and records are maintained. We are proposing to add a new paragraph (3) to § 63.11086(a) and § 63.11117(b), which reads: ''(3) Submerged fill pipes not meeting the specifications of paragraphs (1) or (2) are allowed if the owner or operator can demonstrate that the liquid level in the tank is always above the entire opening of the fill pipe. Documentation providing such demonstration must be made available for inspection by the Administrator's delegated representative during the course of a site visit.''

3. Continuous Compliance Monitoring of all Vapor Processors

Stakeholders stated that the vapor processor monitoring requirements of § 63.11092(b) were unclear. One stakeholder believes that continuous compliance monitoring is required for all vapor processors; however, the rule text is inconsistent in its presentation of continuous parameter monitoring requirements. The introductory paragraph to the continuous monitoring § 63.11092(b) states that the section is applicable ''For each performance test conducted under paragraph (a)(1) of this section.* * *'' However, within section (b), paragraph (b)(5) specifies requirements for monitoring ''if you have chosen to comply with the performance testing alternatives provided under paragraph (a)(2) or paragraph (a)(3) or this section.* * *'' Paragraph (a)(2) allows sources that are operating in compliance with an enforceable State, local, or tribal rule or permit that requires loading racks to meet an emission limit of 80 milligrams per liter of gasoline loaded to submit a statement by a responsible official of the facility certifying the compliance status of the loading rack in lieu of the test required under paragraph (a)(1). Paragraph (a)(3) allows sources to submit test reports for tests performed within 5 years prior to January 10, 2008, in lieu of performing a new test under paragraph (a)(1). Thus, the stakeholder contends that the rule text, as structured, is unclear on whether the requirements in § 63.11092(b) apply to all vapor processors or only those that must conduct a new performance test under § 63.11092(a)(1).

Another stakeholder pointed out that the rule requires in paragraph (b) that the operator determine a monitored operating parameter value, but that in (b)(1)(iii)(B)(*1*) it allows for monitoring to indicate the presence of a pilot flame. The stakeholder further stated that if they choose to use presence of pilot flame monitoring, they do not have a ''monitored operating parameter,'' as required by § 63.11092(b). The stakeholder then questioned whether EPA's intent was to allow that the presence of a pilot flame be continuously confirmed as an alternative to having to meet the requirement to monitor an operating parameter. Other stakeholders have also questioned how they were to determine an ''operating parameter value'' if they choose to use the option of monitoring for the presence of a pilot flame.

We agree with the stakeholders that the intent was to provide that all vapor processors required in Table 2 item 1(b) for gasoline loading rack(s) at a bulk gasoline terminal with gasoline throughput of 250,000 gallons per day, or greater, must have continuous compliance monitoring under § 63.11092(b). We also agree the rule text in § 63.11092 should be clear and we are proposing clarifications to the rule text by restructuring paragraphs (b) and (b)(1) as explained below.

In the proposed rule text, revised paragraph (b) is the introductory language that requires subject facilities to monitor vapor processors. Revised paragraph (b)(1) lists the specific monitoring requirements for: Carbon adsorption systems (paragraph (b)(1)(i)); condenser systems (paragraph (b)(1)(ii)); thermal oxidation systems (paragraph (b)(1)(iii)); and alternative monitoring or control systems, other than those listed above (paragraph (b)(1)(iv)).

The second stakeholder is correct that paragraph (b)(1)(iii)(B)(*1*) allows monitoring to indicate the presence of a pilot flame in a thermal oxidation system as an alternative to a continuous parameter monitoring system that measures operating temperature. However, the stakeholder's statements imply that he does not consider the presence (or absence) of a pilot flame to be an ''operating parameter'' for a thermal oxidizer. We believe that the presence of a pilot flame is a key operating parameter for a thermal oxidizer and it is our intent that the monitoring for the presence of a pilot flame meets the requirements for monitoring an operating parameter. In addition, it is our intent that when monitoring for the presence of a pilot flame there are two possible parameter ''values'' that could be returned. The first possible outcome of the monitoring is a positive parameter value to indicate that there is a pilot flame. The second possible outcome of the monitoring is a negative parameter value to indicate that there is no pilot flame. We are proposing to clarify our intent regarding the monitoring for the presence of a pilot flame by adding a sentence to paragraph (b)(1)(iii)(B)(*1*) reading as follows: ''The monitor shall show a positive parameter value to indicate that the pilot flame is on or a negative parameter value to indicate that the pilot flame is off.''

4. Secondary Rim Seal Requirements Specified Under 40 CFR Part 63, Subpart WW

API stated (issue #9 in the May 8, 2008 letter) that 40 CFR part 63, subpart BBBBBB did not adequately accomplish EPA's stated goal of requiring that ''internal floating roof tanks have a primary seal but not a secondary seal.'' API pointed out that the final rule excludes the secondary seal requirements found in 40 CFR part 60, subpart Kb when that rule is chosen as the compliance option, but failed to exclude the secondary seal requirements found in 40 CFR part 63, subpart WW when that rule is the compliance option. API further stated that Table 1, item 2(d) should include the phrase ''except for the secondary seal requirements for internal floating roofs under § 63.1063(a)(1)(i)(C) and (D).''

We agree with API that our intent is to exclude the secondary seal requirements found in 40 CFR part 60, subpart Kb and 40 CFR part 63, subpart WW from the requirements of 40 CFR part 63, subpart BBBBBB and that we incorrectly listed only the requirements of subpart Kb as not being required. We are proposing to revise the rule to correct this error by adding the phrase ''except for the secondary seal requirements for internal floating roofs under § 63.1063(a)(1)(i)(C) and (D)'' to the Table 1, item 2(d) entry.

5. Monitoring of Submerged Fill Loading Racks

API requested (issue #11 in the May 8, 2008 letter) that the loading rack portion of 40 CFR part 63, subpart BBBBBB be revised to clarify that the testing and monitoring provisions of § 63.11092 would not apply to facilities with throughputs below the threshold value of 250,000 gallons per day because these facilities are only required to use submerged fill. API pointed out that it is not clearly stated that the testing and monitoring requirements of § 63.11092 apply only to those facilities that are required to control loading rack emissions with a control device.

API is correct that the bulk terminal loading rack testing and monitoring provisions of § 63.11092(a) through (d) apply only to loading racks at facilities with throughputs of 250,000 gallons per day or more that are complying with the 80 milligram per liter emission limit in

item 1(b) of Table 2 to 40 CFR part 63, subpart BBBBBB. We are proposing to revise the introductory text in § 63.11092(a) to read as follows: ''Each owner or operator of a bulk gasoline terminal subject to the emission standard in item 1(b) of Table 2 to this subpart must comply with the requirements in paragraphs (a) through (d) of this section.''

6. Initial Notifications

One stakeholder stated that because EPA is proposing changes to certain definitions and the applicability sections in 40 CFR part 63, subparts BBBBBB and CCCCCC, it is likely that some facilities may now be covered by a different subpart than the subpart for which an Initial Notification was submitted, or may no longer be subject to the revised rules. The stakeholder also stated that many facilities that previously were not subject to either subpart may now be subject to one of the subparts. The stakeholder recommended that EPA clarify how such facilities should proceed with submitting Initial Notifications and whether Initial Notifications for the original rulemaking must be resubmitted.

EPA does not believe that revisions to the Initial Notification requirements are necessary to account for the proposed changes made in this package, but we solicit comment on whether the provisions as written, including those in the General Provisions, are sufficient for accommodating all facilities who find it necessary to submit a revised Notification or a new Notification. While there may be instances where a facility submitted an Initial Notification that is no longer accurate, or did not submit an Initial Notification when one was required because the facility was unsure whether it was subject to either subpart, these facilities may now submit new or revised Notifications. Specifically, § 63.9(b)(2) states that an owner or operator of an affected source ''that has an initial startup before the effective date of a relevant standard'' must submit its Initial Notification ''not later than 120 calendar days after the effective date of the relevant standard (or within 120 calendar days after the source becomes subject to the relevant standard).'' Thus, a facility has 120 days from the effective date of the final amendments to correct a previously submitted Initial Notification or to submit an original Initial Notification. In addition, we expect that many facilities that now realize that they are subject to 40 CFR part 63, subpart CCCCCC as a result of the proposed clarifications of the GDF definition or the calculation of monthly throughput would be GDF that have a monthly throughput of less than 10,000 gallons per month. These facilities would be subject to § 63.11116 and would not be required to submit notifications or reports. For these reasons, we are not proposing revisions to the Initial Notification requirements as they do not seem warranted.

7. Notification of Compliance Status (NOCS)

API (issue #1 in their petition and issue #1 in the May 8, 2008 letter) stated that there is currently ambiguity in 40 CFR part 63, subpart BBBBBB with respect to when an initial NOCS report is due. API stated that § 63.11093(b) invokes § 63.9(h) from the General Provisions which stipulates that it applies ''when an affected source becomes subject to a relevant standard.'' API stated that this suggests that the NOCS report is not applicable until sometime after the compliance date of the rule. Section 63.9(h)(2)(ii), however, requires notifications to be submitted within 60 days after the completion of ''the relevant compliance demonstration activity specified in the relevant standard.'' API stated that every emission point that is subject to the rule has a relevant compliance demonstration activity, and many of the compliance demonstrations will occur prior to the compliance date of the rule. API stated that it would reduce the burden on the affected facilities as well as regulatory agencies if the documentation of these compliance demonstrations could be grouped and submitted in a single initial NOCS report. API also stated that other standards, such as 40 CFR part 63, subpart CC (Refinery MACT), have clarified the NOCS reporting requirements by specifying that an initial NOCS report is due 150 days after the compliance date specified in the rule. API also provided suggested language to be used to revise § 63.11093(b) to accomplish their recommended change.

Contrary to API's assertions, the General Provisions (GP) (40 CFR part 63, subpart A) appear adequate for instructing a facility regarding the schedule of notifications, as presented in § 63.9(h), such that repeating this GP language in subpart BBBBBB, appears unnecessary. However, we do agree with API that the compliance dates for some storage tank controls may be different than for other control equipment compliance dates. The provisions of § 63.11099(a) allow for the delegation of authority to implement and enforce this subpart to state, local, or tribal agencies, with the exception of the items noted in § 63.11099(c). It appears that negotiating an alternative schedule for grouping the submittal of the Notification of Compliance Status with the delegated authority is not prohibited under § 63.11099(c); therefore, we propose that a source could negotiate an alternative schedule under this provision. We solicit comment on this approach.

We agree with API that once the initial NOCS report is required for the facility, and another storage tank comes into compliance due to an extended compliance date past the initial NOCS due date, then they can consolidate the NOCS report with the next semi-annual compliance report under section 63.11095(a). We are proposing to add to § 63.11095(a) as follows: ''(4) For storage vessels complying with § 63.11087(b) after January 10, 2011, the storage vessel's notice of compliance status information can be included in the next semi-annual compliance report in lieu of filing a separate Notification of Compliance Status report under § 63.11093.''

Another stakeholder stated that the schedule for submitting the NOCS report specified in 40 CFR part 63, subpart CCCCCC, § 63.11124(a)(2) and (b)(2), conflicts with the schedule specified in the Table 3 subpart CCCCCC entry for § 63.9(h)(1)–(6). The stakeholder stated that § 63.11124, paragraphs (a)(2) and (b)(2), requires the submittal of the NOCS report ''by the compliance date specified in § 63.11113.'' However, Table 3 indicates that the NOCS should be submitted according to the schedule specified in § 63.9(h)(1)–(6), which states that the NOCS is due ''on the 60th day following the completion of the relevant compliance demonstration activity.'' The stakeholder further stated that the language in § 63.11124 could be interpreted to require submittal of the NOCS on the date of startup for new sources. The stakeholder recommended that § 63.11124 be revised to reference only § 63.9 with regard to when the NOCS is due.

It was not our intent to require submittal of the NOCS on a schedule that deviated from the timeframe specified in section 63.9(h) of the General Provisions. We agree with the stakeholder that there is a contradiction between the requirements of § 63.11124 and the Table 3 reference to § 63.9(h). We are proposing to revise the language in § 63.11124(a)(2) and (b)(2) to be consistent with the 60-day timeframe specified in section 63.9(h). In each paragraph, the revised text would read as follows: ''You must submit a

Notification of Compliance Status to the applicable EPA Regional Office and the delegated State authority, as specified in § 63.13, in accordance with the schedule specified in § 63.9(h).''

8. Storage Tank Inspections

API stated (issue #2 in the May 8, 2008 letter) that the requirements for inspections of storage tanks were not exactly the same for 40 CFR part 60, subpart Kb and 40 CFR part 63, subpart WW, the two alternatives for compliance with 40 CFR part 63, subpart BBBBBB. API explained that both subparts Kb and WW specify up-close inspections of an internal floating roof tank prior to the initial filling of the tank and then each time the tank is emptied and degassed, but at least once every 10 years. The corresponding requirement for an external floating roof tank also specifies an up-close inspection each time the tank is emptied and degassed, but it does not include the requirement for an up-close inspection prior to the initial fill. API also stated that subpart Kb does not apply the 10-year frequency requirement to the up-close inspection of an external floating roof tank. API stated that we should recognize those differences and alert compliance inspectors. API presented three different scenarios for when the first up-close inspection would be required for existing storage tanks. API then requested confirmation that the inspection requirements presented for the three scenarios is correct.

API is correct that inspection of storage tank seals could occur at different times and require different levels of inspection, depending on the standard selected. API is also correct that, because of differences in the compliance status of existing storage tanks, there are different scenarios for when the initial and subsequent inspections must occur. Given all the possible scenarios, API's use of terms not matching rule language, and the complexity of seal types and monitoring, we cannot respond specifically to the three general scenarios presented by API, but we believe the rule text is clear, so we are not proposing changes. In discussions with API, another major concern is the recognition that while some of these inspections may have occurred voluntarily prior to the effective or compliance date of the rule, they may not have proper documentation to adequately determine if the proper inspection was performed, so some tanks may need to be inspected again. We agree that if adequate documentation is not available for those voluntary inspections, then those inspections cannot be used to satisfy the requirements for an initial inspection and to set the date for the next scheduled inspection. In those cases, the initial inspection must be conducted according to the requirements of the standard selected by the owner or operator.

9. General Provisions Applicability

Several stakeholders, including API in their petition (issue #4) and their May 8, 2008 letter (issue #7), stated that the General Provision citations in Table 3 of 40 CFR part 63, subpart BBBBBB were not consistent in whether a SSM plan is required. They pointed out that the SSM requirements in § 63.6(e), (f), and (h) were listed as not applying to subpart BBBBBB while some reporting and recordkeeping associated with SSM plans under § 63.8(c) and § 63.10(b) were listed as applying.

The stakeholders are correct that the rules are inconsistent in the applicability of an SSM plan and the associated recordkeeping and reporting. It was our intent that a SSM plan not be required under these subparts; therefore, SSM-related recordkeeping and reporting were mistakenly required. We are proposing to revise Table 3 to correct this error by changing the entry in the ''Applies to subpart BBBBBB'' column from ''yes'' to ''no'' for the § 63.8(c) and § 63.10(b) rows.

API also stated (issue #8 in the May 8, 2008 letter) that there were corrections needed to two entries in Table 3 to 40 CFR part 63, subpart BBBBBB, Applicability of General Provisions. They stated that the entry for § 63.7(e)(3) is currently listed as a ''yes'' when it should be a ''no.'' API also stated that the entry for § 63.9(h)(1)–(6) should be revised to read as follows: ''Yes, for the initial performance test (if required), however, there are no opacity standards. Notification of Compliance Status reports are otherwise due as specified in § 63.11093(b).''

We evaluated API's requests and have decided to propose the following revisions to Table 3 to 40 CFR part 63, subpart BBBBBB. For entry 63.7(e)(3), we agree with API that the requirement to conduct three 1-hour test runs is not applicable to testing conducted on the control devices specified in § 63.11092(a). We are proposing to revise the entry for § 63.7(e)(3) to read ''yes, except for testing conducted under § 63.11092(a).''

In regard to the timing of the NOCS reports, we are proposing to revise the text of § 63.11095(a)(4) to clarify that once the initial NOCS report is required for a facility, if another storage tank subsequently comes into compliance due to an extended compliance date past the initial NOCS date, then the storage tank's notice of compliance information can be included with the next semi-annual compliance report under § 63.11095(a), in lieu of filing a separate NOCS report. Therefore, we are proposing to revise the Table 3 entry for § 63.9(h)(1)–(6) to read ''yes, except as specified in § 63.11095(a)(4).''

One stakeholder stated that, under § 63.11116(b), owners or operators of GDF with throughput of less than 10,000 gallons per month are not required to submit notifications or reports. The stakeholder then stated that Table 3 indicates that § 63.5 (Preconstruction review and notification requirements) does apply to affected sources. The stakeholder recommended that the Table 3 entry for § 63.5 be revised to state that the requirement to submit preconstruction notifications only applies to affected sources that are subject to § 63.11117.

The stakeholder is correct that the requirements of § 63.5 do not apply to facilities that are only subject to § 63.11116. The only control requirements that these facilities are subject to are the Management Practices specified in § 63.11116; therefore, the submittal of notifications is not necessary. Facilities that are subject to the control requirements of § 63.11117 and § 63.11118, however, are required to submit the applicable notifications. To clarify the notification requirements, we are proposing to amend the Table 3 entry for § 63.5 to state that the requirements only apply to facilities subject to § 63.11117 and § 63.11118.

One stakeholder noted that the Table 3 entries for § 63.10(e)(3)(i)–(iii) and § 63.10(e)(3)(iv)–(v) refer to a § 63.11130(K) that does not exist in the final rule. The stakeholder questioned what EPA's intent was for the applicability of these General Provision sections.

The stakeholder is correct that the Table 3 entries related to excess emissions reports contain an erroneous reference. 40 CFR part 63, subpart CCCCCC does not have any requirement for excess emissions reports, so we are proposing to change the Table 3 (fourth column) entries to ''No.''

Additionally, we are proposing to amend Table 3 in both subparts BBBBBB and CCCCCC and indicate that we are not incorporating § 63.7(e)(1) into the rules by changing the ''Yes'' in both Tables (fourth column) to a ''No.'' Instead, we propose to include the following language regarding conducting performance tests directly

into the subparts as new paragraphs (g) to § 63.11092 of subpart BBBBBB, and (c) to § 63.11120 of subpart CCCCCC: ''Conduct of performance tests. Performance tests conducted for this subpart shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance (i.e., performance based on normal operating conditions) of the affected source. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.''

10. Compliance Testing For GDF

One stakeholder questioned whether Bay Area ST–30, a test method for static pressure testing of a vapor balance system, could be accepted as an alternative to the California Air Resources Board (CARB) 201.3 procedure required by 40 CFR part 63, subpart CCCCCC. The stakeholder explained that Bay Area ST–30 was listed in Stage II vehicle refueling guidance issued by EPA in the early 1990s as a recommended static pressure test method and has been incorporated into several State and local rules requiring Stage II vapor balance systems. The stakeholder pointed out that if Bay Area ST–30 is not an acceptable alternative to CARB 201.3, many facilities would be required to do two different tests to satisfy the State or local and the subpart CCCCCC requirements. The stakeholder also pointed out that Bay Area ST–30 measures the pressure drop from an initial system pressure of 10 inches of water rather than the initial 2 inches of water specified in CARB 201.3.

We have analyzed the requirements of Bay Area ST–30 and found that the original 1983 version of Bay Area ST–30 did not include procedures for testing the integrity of PV valves installed on the storage tanks. Because PV valves are a potential leak source, ST–30 cannot be compared directly to CARB 201.3, which does measure the integrity of PV valve. Therefore, we believe that because the 1983 version of Bay Area ST–30 is not testing all potential storage tank leak sources, it is not an acceptable alternative for the CARB 201.3 testing required by 40 CFR part 63, subpart CCCCCC. We request comment on our analysis.

On December 21, 1994 the Bay Area Air Quality Management District amended ST–30 to include the PV valve and the PV valve connections as components of the system during testing, and CARB subsequently issued a letter of equivalency stating that amended ST–30 was equivalent to CARB 201.3. Therefore, if amended ST–30 is required by regulatory agencies, we are proposing that the testing will be considered to meet the requirements of 40 CFR part 63, subpart CCCCCC. (If facilities have to do separate tests to meet the State and Federal requirements, the ST–30 test should be done first, followed by the CARB 201.3 test. This will ensure that the PV vent and connections will be tested after they are re-installed following the ST–30 test.)

One stakeholder said that 40 CFR part 63, subpart CCCCCC is unclear regarding the performance testing requirements of § 63.11120 (the compliance demonstration for vapor balance systems at GDF with a gasoline throughput of 100,000 gallons or more). The stakeholder questioned whether existing vapor balance systems are required to conduct the specified periodic performance testing and, if so, by what date it must be completed.

Periodic testing is required under § 63.11120(a) as follows: ''Each owner or operator, at the time of installation of a vapor balance system required under § 63.11118(b)(1), and every 3 years thereafter, must comply with the requirements in paragraphs (a)(1) and (2) of this section.'' Paragraphs (a)(1) and (2) specify the test procedures to follow.

The rule text for periodic testing only mentions one of the two management practice options for vapor balance systems. The first and main option is compliance under section 63.11118(b)(1). The vapor balance system must meet the management practices specified in Table 1 to this subpart.[3] As specified in the rule text in § 63.11120(a), owners or operators using this option must demonstrate compliance using the periodic testing procedures specified in § 63.11120(a).

The second option (compliance under § 63.11118(b)(2)) does not require the periodic testing in § 63.11120(a), but periodic testing may be required under State, local, or tribal rule or permits. The second vapor balance compliance option is provided since there are many vapor balance systems that were installed prior to this rule under State, local, or tribal rules or permits. As a way to compare the performance of these systems and ensure continued compliance, these systems must meet certain criteria. This second option is only for vapor balance systems in compliance prior to January 10, 2008. The vapor balance system is considered compliant with 40 CFR part 63, subpart CCCCCC if it is required to comply, and complies, with either a 90-percent reduction in emissions, or uses management practices at least as stringent as those in Table 1 under enforceable State, local, or tribal rule or permit. Owners or operators of vapor balance systems installed prior to January 10, 2008, that choose and comply with the compliance option under § 63.11118(b)(2) are not required by subpart CCCCCC to conduct the testing specified in § 63.11120(a) because § 63.11120(a) states that it is only a requirement for sources complying with § 63.11118(b)(1). However, since they are required to be in compliance with an enforceable State, local, or tribal rule or permit, they may have other or similar periodic testing specified by the State, local, or tribal rule or permit to perform and remain in compliance with both rules.

The dates by which owners or operators of affected GDF must comply with 40 CFR part 63, subpart CCCCCC are specified in § 63.11113. As stated in the General Provisions under § 63.7(a)(2), an affected source must perform tests within 180 days of its compliance date; thus, new sources must test within 180 days after startup and existing sources must conduct all performance tests within 180 days after the compliance date. While the General Provisions are referenced, the rule text in subpart CCCCCC does not provide this text directly. Also, the rule text for § 63.11120(a) specifies that the test must be performed ''at the time of installation.'' Because the installation of a vapor balance system typically involves excavation work, we believe that any new vapor balance system installed to comply with subpart CCCCCC should be tested at the time it is installed rather than after the storage tanks have been recovered and returned to normal service. We agree with the stakeholder that the dates by which the periodic tests required for systems installed for existing installations, as well as new systems for vapor balance systems under § 63.1118(b)(1), are not explicitly stated in the rule. Therefore, we are proposing to add a new paragraph (e) to § 63.11113 to provide the dates discussed above for periodic testing. We are also proposing to add a reference to the dates specified in this new paragraph (e) to the testing and

[3] As an alternative to Table 1 management practices, there is a provision (section 63.11120(b)) that allows use of alternative management practices that are demonstrated to be equivalent to those in Table 1 by testing the vapor balance system to determine if it achieves 95-percent emissions reduction using specific test procedures. This provision also requires using the periodic tests in section 63.11120(b), see section 63.11120(b)(3).

monitoring provisions in § 63.11120, paragraph (a).

Additionally, we are proposing to clarify the requirements for the annual certification testing of cargo tanks by adding a new paragraph (c) to § 63.11120. In the January 10, 2008 final rule, Table 2 item (vi) requires that cargo tanks meet the specifications of EPA Method 27, but does not specifically state what the maximum allowable pressure and vacuum changes are. Proposed paragraph (c) would clarify that the maximum allowable pressure and vacuum change, as measured by EPA Method 27, for all affected gasoline cargo tanks is 3 inches of water, or less, in 5 minutes.

11. Definition of Gasoline

A number of stakeholders have asked what the definition of gasoline is for this rule. Additionally, they have asked if E85, E10, denatured ethanol, and transmix are considered gasoline and how are they handled under this rule.

The definition of gasoline is the same as the definition developed for the NSPS in 40 CFR part 60, subpart XX, Bulk Gasoline Terminals, and used in many State Implementation Plans for Ozone Attainment, as well as 40 CFR part 63, subpart R, the major source NESHAP for gasoline distribution. Gasoline is defined in § 60.501 as follows: ''Gasoline means any petroleum distillate or petroleum distillate/alcohol blend having a Reid vapor pressure of 27.6 kilopascals or greater which is used as a fuel for internal combustion engines.'' Even though the NSPS is cross-referenced in the definitions of 40 CFR part 63, subparts BBBBBB and CCCCCC, for clarity we are proposing to add the definition to these subparts as well.

Both E85 and E10 are petroleum distillate/alcohol blends of 85- or 10-percent ethanol, respectively, with gasoline. Ethanol has a Reid vapor pressure of about 2 pounds per square inch (psi), but when mixed with gasoline at the highest percentage of ethanol (E85), the vapor pressure of the blend is 6 to 12 psi for the different volatility classes of gasoline. Thus, the vapor pressure of E85 and E10 is over the lower limit in the definition of gasoline of 4 psi (27.6 kilopascals is about 4 psi) and considered gasoline under the definition used. Gasoline storage tanks containing E10 and E85 at bulk facilities and GDF would be subject to applicable controls.

The ethanol used in fuel blends is denatured (''poisoned'' to prevent human consumption) at the ethanol plant and can contain up to 5-percent hydrocarbons (gasoline or gasoline-like additives) before blending. As discussed earlier, emissions at ethanol plants are already subject to and controlled under 40 CFR part 63, subpart VVVVVV. Thus, the applicable question becomes how emissions downstream of the ethanol plant are addressed. Based on limited information, denatured ethanol mixed with normal gasoline appears to have a vapor pressure of about 4 psi or less. Thus, it is unclear if the mixture meets our vapor pressure threshold for the various blends and volatility of gasoline. We are requesting information during the comment period as to the vapor pressure of denatured ethanol over the full normal range of amount of ethanol mixed with the range of gasoline volatilities used for denaturing ethanol. Secondly, given that the storage of denatured ethanol to mix with additional gasoline normally occurs at gasoline bulk terminals, we believe these storage emissions should be addressed and controlled whether the liquid meets or does not meet the current definition of gasoline criteria of at or above 4 psi. Thus, we are proposing that any gasoline mixture with alcohol be considered gasoline and be controlled under the current control requirements in subpart BBBBBB and CCCCCC. We are asking for comment on including any mixture, on whether this level of control is appropriate, and if not, we are requesting data on what level of control of those emissions is appropriate.

Another stakeholder asked if transmix (the combined product mix at the interface between different products conveyed in the pipeline) is considered a regulated gasoline under this standard. This issue was discussed in the December 19, 2007, Memorandum, ''Summary of Comments and Responses to Public Comments on November 9, 2006 Proposal for Gasoline Distribution Area Sources'' (Docket No. EPA–HQ–OAR–2006–0406, item 0141) and in the preamble to the final major source NESHAP (59 FR 64303 (December 14, 1994)). We must set standards for all the gasoline operations. The transmix contains various concentrations of gasoline and other products to the degree that it would not be feasible to specify in advance the percentage and concentration of gasoline in the mixture; thus, as discussed in the responses to comment for both standards, it should be stored and considered gasoline for the purposes of these regulations. Additionally, industry has indicated that many of the tanks that store transmix may have low throughputs and that they are often smaller tanks, thereby many are in the lesser control option of installing a fixed roof and maintaining all openings in a closed position at all times when not in use (see item 1 in Table 2 of 40 CFR part 63, subpart BBBBBB).

12. Table 1 Requirements for ''New'' Storage Tanks

Item 2 in Table 1 to 40 CFR part 63, subpart CCCCCC currently specifies that dual-point vapor balance systems be used ''For new or reconstructed GDF, or new storage tank(s) at an existing affected facility subject to § 63.11118.'' As a result of questions regarding the construction date that establishes when a tank is considered new, we are proposing to amend the text of item 2 to read as follows: ''A new or reconstructed GDF, or any storage tank(s) constructed after November 9, 2006, at an existing affected facility subject to § 63.11118.'' Under § 63.11112(b), an affected source constructed after November 9, 2006, is considered to be a new source (a new GDF), and we intended that the same date apply for newly constructed storage tanks at existing facilities. The proposed text would clarify that our intent was for the term ''new storage tank(s)'' to refer to storage tanks constructed after the publication date of the proposed rule.

13. Requirements for Gasoline Containers

One stakeholder stated that some plastic gasoline containers that do not have gaskets may, nevertheless, meet the stringent emission reduction requirements established in the 2007 Mobile Source Air Toxics rulemaking (72 FR 8428) and should be allowed as an acceptable alternative to the requirements of § 63.11116(a)(3), which requires that gasoline containers be covered with a gasketed seal. The stakeholder recommended that EPA allow facilities to comply with § 63.11116(a)(3) by using gasoline containers that meet the evaporative emission standards of 40 CFR part 59, subpart F, sections 59.600–59.699.

We reviewed the requirements of §§ 59.600–59.699 and agree with the stakeholder that the 0.3 grams per gallon per day emission standard found in § 59.611(a) can only be met through the use of tight-fitting closures. We are proposing to add a paragraph (d) to § 63.11116 that reads as follows: ''Portable gasoline containers that meet the requirements of 40 CFR part 59, subpart F, are considered acceptable for compliance with § 63.11116(a)(3).''

14. Cargo Tank Testing and Documentation

Stakeholders have raised several questions regarding the GDF rule requirement that only ''vapor-tight gasoline cargo tanks'' may be used to fill storage tanks at GDF with 100,000 gallons or more per month throughput. The GDF rule provision provides the inspector at vapor balanced GDF an opportunity to check the cargo tank unloading at these facilities to make sure the cargo tank has been tested for vapor tightness. Cargo tank vapor tightness is important to ensure that vapors are properly vapor balanced. Table 2 to 40 CFR part 63, subpart CCCCCC states that if you own or operate a gasoline cargo tank, you must meet the following requirement: ''(vi) The filling of storage tanks at GDF shall be limited to unloading by vapor-tight gasoline cargo tanks. Documentation that the cargo tank has met the specifications of EPA Method 27 shall be carried on the cargo tank.'' In review of the questions raised by the stakeholders, we found that this provision of the rule related to the testing of vapor-tight gasoline cargo tanks needs clarification on several points.

First, 40 CFR part 63, subpart CCCCCC does not include a definition of ''vapor-tight gasoline cargo tank.'' We intended to use the same vapor-tight testing requirements as those in the standards for bulk facilities (40 CFR part 63, subpart BBBBBB) promulgated at the same time as the GDF rule. Subpart BBBBBB contains a definition of ''vapor-tight gasoline cargo tank'' in that subpart. We found, however, that the definition in subpart BBBBBB incorrectly referenced, as part of the definition, the definition of ''vapor-tight gasoline tank truck'' found in 40 CFR 60.501 (the NSPS for Bulk Gasoline Terminals). The subpart BBBBBB definition should have specified the test requirements in § 63.11092(f) of subpart BBBBBB,[4] since it provides the test method and parameters for vapor tight gasoline cargo tanks for subpart BBBBBB, and they are different than those specified in the Bulk Gasoline Terminal NSPS. Therefore, we are proposing to revise the definition of ''vapor-tight gasoline cargo tank'' in subpart BBBBBB to correct the reference to the appropriate vapor tightness test requirements. We are also proposing to include the same definition in 40 CFR part 63, subpart CCCCCC to add clarity. The proposed definition would read as follows: ''vapor-tight gasoline cargo tank means a gasoline cargo tank which has demonstrated within the 12 preceding months that it meets the annual certification test requirements in § 63.11092(f).'' Additionally, it appears that the subpart CCCCCC definition of ''gasoline cargo tank'' requires clarification not only to reference ''loading'' gasoline, but to reference ''unloading'' as well, since the definition also applies to unloading gasoline at GDF. In today's amendments we are proposing a revision of the definition of ''vapor-tight gasoline cargo tank'' in subpart BBBBBB, an insertion of the definition of ''vapor-tight gasoline cargo tank'' into subpart CCCCCC, and a revision of the definition of ''gasoline cargo tank'' in subpart CCCCCC as described above.

The second question that has been raised relates to the statement in Table 2 to 40 CFR part 63, subpart CCCCCC that ''Documentation that the cargo tank has met the specifications of EPA Method 27 shall be carried on the cargo tank.'' Stakeholders have pointed out that it is impractical to require that documentation be ''on'' the cargo tank because most cargo tanks are not equipped for the weatherproof storage of paper documents. It was our intent that the documentation of vapor tightness testing would be carried in the cab of the truck rather than actually ''on the cargo tank.'' In today's amendments, we are proposing to amend the wording of the phrase to state that documentation shall be carried ''with the cargo tank.''

Another question that has been raised relates to the length of time that cargo tank owners or operators must retain testing documentation with the cargo tank. We specified in Table 3 to 40 CFR part 63, subpart CCCCCC that § 63.10(b)(1), the general recordkeeping requirements in the General Provisions, is applicable and requires all records to be readily available and be kept for 5 years. We still believe that 5 years of records is necessary and appropriate. However, we believe, in this case, that records for only the current year need to be available with the cargo tank since the inspector is checking on current compliance. The other 4 years of records can be kept at the cargo tank owner's office as long as the records are readily available. In § 63.11094(c), we specified that records kept at remote locations must be instantly available (e.g., via e-mail or facsimile) for inspection by the Administrator's delegated representative during the course of a site visit or within a mutually agreeable time frame. The record must be an exact duplicate image of the original paper record with certifying signatures. In subpart CCCCCC, we are proposing to clarify the rule text by adding § 63.11125(c), which contains the following requirements: (1) Cargo tank owners or operators must keep documentation of vapor tightness testing for 5 years, but documentation of only the most recent test must be carried with the cargo tank; (2) if the owner or operator of the cargo tank chooses to keep only the current documentation with the cargo tank, documentation for the previous 4 years must be kept at the owner's or operator's office; (3) such office records must be instantly available (e.g., via e-mail or facsimile) to the Administrator's delegated representative during the course of a site visit or within a mutually agreeable time frame; and (4) such records must be an exact duplicate image of the original paper record with certifying signatures.

Also, note that we are working with DOT to resolve questions related to allowing certain new DOT testing requirements[5] as an alternative to vapor-tight testing and documentation in this subpart. Currently we are working with DOT to discuss and resolve questions related to whether the required records of testing have the equivalent content, availability, and retention time requirements. DOT is currently considering revising their standards to make the test documentation equal to this 40 CFR part 63, subpart CCCCCC, and 40 CFR part 63, subparts R and BBBBBB for terminals, and the new source terminal standards under 40 CFR part 60, subpart XX.[6] That effort has not progressed to

[4] 40 CFR 63.11092(f). ''The annual certification test for gasoline cargo tanks shall consist of the test methods specified in paragraphs (f)(1) or (f)(2) of this section. (1) EPA Method 27, Appendix A–8, 40 CFR part 60. Conduct the test using a time period (t) for the pressure and vacuum tests of 5 minutes. The initial pressure (Pi) for the pressure test shall be 460 millimeters (mm) of water (18 inches of water), gauge. The initial vacuum (Vi) for the vacuum test shall be 150 mm of water (6 inches of water), gauge. The maximum allowable pressure and vacuum changes (Δ p, Δ v) for all affected gasoline cargo tanks is 3 inches of water, or less, in 5 minutes. (2) Railcar bubble leak test procedures.* * *''

[5] On April 18, 2003, (68 FR 19258) a final DOT rule (49 CFR 180.407(h)(2) and 180.415(b)(3)(vii)) was issued specifying a new DOT uniform marking for cargo tanks using and passing the Method 27 test. The uniform cargo tank marking is ''K–EPA27'' and includes the date (month and year) that the cargo tank passed the Method 27 test.

[6] The DOT testing limit requirements for a ''K–EPA27'' marking are at least equivalent to Method 27 testing under Reasonably Available Control Technology guidance, NSPS (40 CFR 60, subpart XX) and air toxics rules (40 CFR part 63, subparts R, BBBBBB, and CCCCCC). The DOT rules would be equivalent to contents of the test documentation for all the above subparts if test location and cargo tank owner's address were added to the DOT documentation requirements. The DOT requirements for owner or operator retention of test documentation would be equivalent for the proposed requirements for subpart CCCCCC if test documentation is kept for 1 year with cargo tank and immediately available for 4 previous years at

the degree that we can propose additional changes or alternatives to subpart CCCCCC in today's proposed amendments. Once DOT has finalized the changes to their cargo tank testing standards we will consider those changes and whether any changes are needed in our standards.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is, therefore, not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The proposed amendments clarify, but do not add requirements increasing the collection burden. The information collection requirements contained in the existing regulations at 40 CFR part 63, subparts BBBBBB and CCCCCC were sent to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* OMB approved Information Collection Request (ICR) 2237.02—NESHAP for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities (40 CFR part 63, subparts BBBBBB and CCCCCC) (Final Rule) and assigned OMB control number 2060–0620. This ICR was approved by OMB without change. The OMB control numbers for EPA regulations in 40 CFR are listed in 40 CFR part 9. We are proposing to amend 40 CFR part 9 to add the OMB control number for these rules.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 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 unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed amendments on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of these proposed amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The proposed amendments will not impose any new requirement on small entities that are not currently required by the final rules (i.e., minimizing gasoline spills and evaporation). We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This rule 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. These proposed amendments clarify certain provisions and correct typographical errors in the rule text for a rule EPA previously determined did not include a Federal mandate that may result in an estimated cost of $100 million or more (69 FR 5061, February 3, 2004). Thus, the proposed amendments are not subject to the requirements of sections 202 or 205 of UMRA.

The proposed amendments are also not subject to the requirements of section 203 of UMRA because they contain no regulatory requirements that might significantly or uniquely affect small governments. The proposed amendments clarify certain provisions and correct typographical errors in the rule text; thus, they should not affect small governments.

E. Executive Order 13132: Federalism

These proposed amendments do not have federalism implications. They 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. They provide clarification and correct typographical errors. These changes do not modify existing or create new responsibilities among EPA Regional Offices, States, or local enforcement agencies. Thus, Executive Order 13132 does not apply to these proposed amendments.

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 action from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

These proposed amendments do not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to these proposed amendments.

Nonetheless, 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 Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

These proposed amendments are not subject to Executive Order 13211 (66 FR 18355, May 22, 2001) because they are not a ''significant energy action'' under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or

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the owner or operator's office. Under subparts XX, R, and BBBBBB, the terminal checks the current documentation and keeps the documentation for 5 years. The DOT requirement is currently for 1-year retention at the owner's address. Reasonably Available Control Technology requirements for record retention and location vary by State and local rules and permits.

otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This action does not involve any new technical standards that were not already included in the final rules. Therefore, EPA did not consider the use of any other VCS in these proposed amendments.

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 United States.

EPA has determined that these proposed amendments will not have 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. These proposed amendments do not relax the control measures on sources regulated by the rule and will not cause emissions increases from these sources.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 7, 2009.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, parts 9 and 63 of title 40, chapter I, of the Code of Federal Regulations are proposed to be amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135, *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251, *et seq.,* 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR 1971–1975 Comp., p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857, *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. The table in § 9.1 is amended by adding the following entries in numerical order under the undesignated center heading ''National Emission Standards for Hazardous Air Pollutants for Source Categories'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
National Emission Standards for Hazardous Air Pollutants for Source Categories.[3]	
* * * * *	
63.11080–63.11100	2060–0620
63.11110–63.11132	2060–0620
* * * * *	

[3] The ICRs referenced in this section of the table encompass the applicable general provisions contained in 40 CFR part 63, subpart A, which are not independent information collection requirements.

* * * * *

PART 63—[AMENDED]

3. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart BBBBBB—[Amended]

4. Section 63.11081 is amended by adding paragraphs (c) through (j) to read as follows:

§ 63.11081 Am I subject to the requirements in this subpart?

* * * * *

(c) Gasoline storage tanks that are located at affected sources identified in paragraphs (a)(1) through (a)(4) of this section, and that are used only for dispensing gasoline in a manner consistent with tanks located at a gasoline dispensing facility as defined in § 63.11132, are not subject to any of the requirements in this subpart. These tanks must comply with subpart CCCCCC of this part.

(d) The loading of aviation gasoline into storage tanks at airports, and the subsequent transfer of aviation gasoline within the airport, is not subject to this subpart.

(e) The loading of gasoline into marine tank vessels at bulk facilities is not subject to this subpart.

(f) If your affected source's throughput ever exceeds an applicable throughput threshold in the definition of ''bulk gasoline terminal'' or in item 1 in Table 2 to this subpart, the affected source will remain subject to the requirements for sources above the threshold even if the affected source throughput later falls below the applicable throughput threshold.

(g) For the purpose of determining gasoline throughput, as used in the definition of bulk gasoline plant and bulk gasoline terminal, the 20,000 gallons per day threshold throughput is the maximum calculated design throughout for any day and is not an average.

(h) Storage tanks that are used to load gasoline into a cargo tank for the on-site redistribution of gasoline to another storage tank are subject to this subpart.

(i) For any affected source subject to the provisions of this subpart and another Federal rule, you may elect to comply only with the more stringent provisions of the applicable subparts. You must consider all provisions of the rules, including monitoring, recordkeeping, and reporting. You must identify the affected source and provisions with which you will comply in your Notification of Compliance Status (NOCS) required under § 63.11093. You also must demonstrate in your NOCS that each provision with which you will comply is at least as stringent as the otherwise applicable requirements in this subpart. You are responsible for making accurate determinations concerning the more stringent provisions; noncompliance with this rule is not excused if it is later determined that your determination was in error and, as a result, you are violating this subpart. Compliance with this rule is your responsibility and the NOCS does not alter or affect that responsibility.

(j) For new or reconstructed affected sources, as specified in § 63.11082(b) and (c), recordkeeping to document applicable throughput must begin upon startup of the affected source. For existing sources, as specified in § 63.11082(d), recordkeeping to document applicable throughput must begin on January 10, 2008. Records required under this paragraph shall be kept for a period of 5 years.

5. Section 63.11083 is amended by revising paragraph (c) to read as follows:

§ 63.11083 When do I have to comply with this subpart?

* * * * *

(c) If you have an existing affected source that becomes subject to the control requirements in this subpart because of an increase in the daily throughput, as specified in option 1 of Table 2 to this subpart, you must comply with the standards in this subpart no later than 3 years after the affected source becomes subject to the control requirements in this subpart.

6. Section 63.11086 is amended by revising paragraphs (a) and (b) to read as follows:

§ 63.11086 What requirements must I meet if my facility is a bulk gasoline plant?

* * * * *

(a) Except as specified in paragraph (b) of this section, you must only load gasoline into storage tanks and cargo tanks at your facility by utilizing submerged filling, as defined in § 63.11100, and as specified in paragraphs (a)(1), (a)(2), or (a)(3) of this section. The applicable distances in paragraphs (a)(1) and (2) of this section shall be measured from the point in the opening of the submerged fill pipe that is the greatest distance from the bottom of the storage tank.

(1) Submerged fill pipes installed on or before November 9, 2006, must be no more than 12 inches from the bottom of the tank.

(2) Submerged fill pipes installed after November 9, 2006, must be no more than 6 inches from the bottom of the tank.

(3) Submerged fill pipes not meeting the specifications of paragraphs (a)(1) or (2) of this section are allowed if the owner or operator can demonstrate that the liquid level in the tank is always above the entire opening of the fill pipe. Documentation providing such demonstration must be made available for inspection by the Administrator's delegated representative during the course of a site visit.

(b) Gasoline storage tanks with a capacity of less than 250 gallons are not required to comply with the control requirements in paragraph (a) of this section, but must comply only with the requirements in paragraph (d) of this section.

* * * * *

7. Section 63.11092 is amended as follows:

a. By revising paragraph (a) introductory text;

b. By revising paragraph (b) introductory text;

c. By revising paragraph (b)(1) introductory text;

d. By revising paragraph (b)(1)(i)(B)(*2*)(*ii*);

e. By revising paragraph (b)(1)(i)(B)(*2*)(*iii*);

f. By revising paragraph (b)(1)(iii)(B)(*1*);

g. By revising paragraph (b)(1)(iii)(B)(*2*)(*ii*);

h. By revising paragraph (b)(1)(iii)(B)(*2*)(*iii*); and

i. By adding a new paragraph (g) to read as follows:

§ 63.11092 What testing and monitoring requirements must I meet?

(a) Each owner or operator of a bulk gasoline terminal subject to the emission standard in item 1(b) of Table 2 to this subpart must comply with the requirements in paragraphs (a) through (d) of this section.

* * * * *

(b) Each owner or operator of a bulk gasoline terminal subject to the provisions of this subpart shall install, calibrate, certify, operate, and maintain, according to the manufacturer's specifications, a continuous monitoring system (CMS) while gasoline vapors are displaced to the vapor processor systems, as specified in paragraphs (b)(1) through (5) of this section.

(1) For each performance test conducted under paragraph (a)(1) of this section, the owner or operator shall determine a monitored operating parameter value for the vapor processing system using the procedures specified in paragraphs (b)(1)(i) through (iv) of this section. During the performance test, continuously record the operating parameter as specified under paragraphs (b)(1)(i) through (iv) of this section.

* * * * *

(i) * * *

(B) * * *

(*2*) * * *

(*ii*) The owner or operator shall verify, during each day of operation of the loading rack, the proper valve sequencing, cycle time, gasoline flow, purge air flow, and operating temperatures. Verification shall be through visual observation or through an automated alarm or shutdown system that monitors system operation. A manual or electronic record of the start and end of a shutdown event may be used.

(*iii*) The owner or operator shall perform semi-annual preventive maintenance inspections of the carbon adsorption system, including the automated alarm or shutdown system for those units so equipped, according to the recommendations of the manufacturer of the system.

* * * * *

(iii) * * *

(B) * * *

(*1*) The presence of a thermal oxidation system pilot flame shall be monitored using a heat-sensing device, such as an ultraviolet beam sensor or a thermocouple, installed in proximity of the pilot light to indicate the presence of a flame. The monitor shall show a positive parameter value to indicate that the pilot flame is on, or a negative parameter value to indicate that the pilot flame is off.

* * * * *

(*2*) * * *

(*ii*) The owner or operator shall verify, during each day of operation of the loading rack, the proper operation of the assist-air blower and the vapor line valve. Verification shall be through visual observation or through an automated alarm or shutdown system that monitors system operation. A manual or electronic record of the start and end of a shutdown event may be used.

(*iii*) The owner or operator shall perform semi-annual preventive maintenance inspections of the thermal oxidation system, including the automated alarm or shutdown system for those units so equipped, according to the recommendations of the manufacturer of the system.

* * * * *

(g) *Conduct of performance tests.* Performance tests conducted for this subpart shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance (i.e., performance based on normal operating conditions) of the affected source. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

8. Section 63.11095 is amended by adding a new paragraph (a)(4) to read as follows:

§ 63.11095 What are my reporting requirements?

(a) * * *

(4) For storage vessels complying with § 63.11087(b) after January 10, 2011, the storage vessel's Notice of Compliance Status information can be included in the next semi-annual compliance report in lieu of filing a separate Notification of Compliance Status report under § 63.11093.

* * * * *

9. Section 63.11100 is amended by:

a. Adding, in alphabetical order, new definitions of ''gasoline,'' ''gasoline storage tank or vessel,'' and ''surge control tank or vessel''; and

b. Revising the definitions of ''bulk gasoline plant'' and ''vapor-tight gasoline cargo tank'' to read as follows:

§ 63.11100 What definitions apply to this subpart?

* * * * *

Bulk gasoline plant means any gasoline storage and distribution facility that receives gasoline by pipeline, ship or barge, or cargo tank and subsequently loads the gasoline into gasoline cargo tanks for transport to gasoline dispensing facilities, and has a gasoline throughput of less than 20,000 gallons per day. Gasoline throughput shall be the maximum calculated design throughput as may be limited by compliance with an enforceable condition under Federal, State, or local law and discoverable by the Administrator and any other person.

* * * * *

Gasoline means any petroleum distillate or petroleum distillate/alcohol blend having a Reid vapor pressure of 27.6 kilopascals or greater which is used as a fuel for internal combustion engines.

* * * * *

Gasoline storage tank or vessel means each tank, vessel, reservoir, or container used for the storage of gasoline, but does not include:

(1) Frames, housing, auxiliary supports, or other components that are not directly involved in the containment of gasoline or gasoline vapors; or

(2) Subsurface caverns or porous rock reservoirs.

* * * * *

Surge control tank or vessel means, for the purposes of this subpart, those tanks or vessels used only for controlling pressure in a pipeline system during surges or other variations from normal operations.

* * * * *

Vapor-tight gasoline cargo tank means a gasoline cargo tank which has demonstrated within the 12 preceding months that it meets the annual certification test requirements in § 63.11092(f).

10. Table 1 to Subpart BBBBBB of Part 63 is revised to read as follows:

TABLE 1 TO SUBPART BBBBBB OF PART 63—APPLICABILITY CRITERIA, EMISSION LIMITS, AND MANAGEMENT PRACTICES FOR STORAGE TANKS

If you own or operate . . .	Then you must . . .
1. A gasoline storage tank meeting either of the following conditions: (i) a capacity of less than 75 cubic meters (m^3); or (ii) a capacity of less than 151 m^3 and a gasoline throughput of 480 gallons per day or less. Gallons per day is calculated by summing the current day's throughput, plus the throughput for the previous 364 days, and then dividing that sum by 365.	Equip each gasoline storage tank with a fixed roof that is mounted to the storage tank in a stationary manner, and maintain all openings in a closed position at all times when not in use.
2. A gasoline storage tank with a capacity of greater than or equal to 75 m^3 and not meeting any of the criteria specified in item 1. of this Table.	Do the following: (a) Reduce emissions of total organic HAP or TOC by 95 weight-percent with a closed vent system and control device as specified in § 60.112b(a)(3) of this chapter; or (b) Equip each internal floating roof gasoline storage tank according to the requirements in § 60.112b(a)(1) of this chapter, except for the secondary seal requirements under § 60.112b(a)(1)(ii)(B), § 60.112b(a)(1)(iv) through (ix), and § 63.1063(a)(1)(i)(C) and (D) of this chapter; and (c) Equip each external floating roof gasoline storage tank according to the requirements in § 60.112b(a)(2) of this chapter, except that the requirements of § 60.112b(a)(2)(ii) of this chapter shall only be required if such storage tank does not currently meet the requirements of § 60.112b(a)(2)(i) of this chapter; or (d) Equip and operate each internal and external floating roof gasoline storage tank according to the applicable requirements in § 63.1063(a)(1) and (b), and equip each external floating roof gasoline storage tank according to the requirements of § 63.1063(a)(2) if such storage tank does not currently meet the requirements of § 63.1063(a)(1).
3. A surge control tank	Equip each surge control tank with a fixed roof that is mounted to the tank in a stationary manner and with a pressure/vacuum vent with a positive cracking pressure of no less than 0.50 inches of water. Maintain all openings in a closed position at all times when not in use.

11. Table 2 to Subpart BBBBBB of Part 63 is revised to read as follows:

TABLE 2 TO SUBPART BBBBBB OF PART 63—APPLICABILITY CRITERIA, EMISSION LIMITS, AND MANAGEMENT PRACTICES FOR LOADING RACKS

If you own or operate . . .	Then you must . . .
1. A bulk gasoline terminal loading rack(s) with a gasoline throughput (total of all racks) of 250,000 gallons per day, or greater. Gallons per day is calculated by summing the current day's throughput, plus the throughput for the previous 364 days, and then dividing that sum by 365.	(a) Equip your loading rack(s) with a vapor collection system designed to collect the TOC vapors displaced from cargo tanks during product loading; and (b) Reduce emissions of TOC to less than or equal to 80 mg/l of gasoline loaded into gasoline cargo tanks at the loading rack; and (c) Design and operate the vapor collection system to prevent any TOC vapors collected at one loading rack from passing to another loading rack; and (d) Limit the loading of gasoline into gasoline cargo tanks that are vapor tight using the procedures specified in § 60.502(e) through (j) of this chapter. For the purposes of this section, the term ''tank truck'' as used in § 60.502(e) through (j) of this chapter means ''cargo tank'' as defined in § 63.11100.

TABLE 2 TO SUBPART BBBBBB OF PART 63—APPLICABILITY CRITERIA, EMISSION LIMITS, AND MANAGEMENT PRACTICES FOR LOADING RACKS—Continued

If you own or operate . . .	Then you must . . .
2. A bulk gasoline terminal loading rack(s) with a gasoline throughput (total of all racks) of less than 250,000 gallons per day. Gallons per day is calculated by summing the current day's throughput, plus the throughput for the previous 364 days, and then dividing that sum by 365.	(a) Use submerged filling with a submerged fill pipe that is no more than 6 inches from the bottom of the cargo tank. (b) Make records available within 24 hours of a request by the Administrator to document your gasoline throughput.

12. Table 3 to Subpart BBBBBB of Part 63 is amended by revising the entries for §§ 63.7(e)(1), 63.7(e)(3), 63.8(c)(1), 63.9(h), and 63.10(b)(2) to read as follows:

TABLE 3 TO SUBPART BBBBBB OF PART 63—APPLICABILITY OF GENERAL PROVISIONS

Citation	Subject	Brief description	Applies to subpart BBBBBB
*	*	*	*
63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance test must be conducted under representative conditions.	No, § 63.11092(g) specifies conditions for conducting performance tests.
*	*	*	*
§ 63.7(e)(3)	Test Run Duration	Must have three test runs of at least 1 hour each; compliance is based on arithmetic mean of three runs; conditions when data from an additional test run can be used.	Yes, except for testing conducted under § 63.11092(a).
*	*	*	*
§ 63.8(c)(1)(i)–(iii).	Operation and maintenance of continuous monitoring systems.	Must maintain and operate each CMS as specified in § 63.6(e)(1); must keep parts for routine repairs readily available; must develop a written startup, shutdown, and malfunction plan for CMS as specified in § 63.6(e)(3).	No.
*	*	*	*
§ 63.9(h)(1)–(6)	Notification of Compliance Status.	Contents due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after; when to submit to Federal vs. State authority.	Yes, except as specified in § 63.11095(a)(4); also, there are no opacity standards.
*	*	*	*
§ 63.10(b)(2)(i)–(iv).	Records Related to SSM	Occurrence of each for operations (process equipment); occurrence of each malfunction of air pollution control equipment; maintenance on air pollution control equipment; actions during SSM.	No.
*	*	*	*
§ 63.10(d)(5)	SSM Reports	Contents and submission	No.
*	*	*	*

Subpart CCCCCC—[Amended]

13. Section 63.11111 is amended as follows:

a. By revising paragraph (e);

b. By revising paragraph (g); and

c. By adding new paragraphs (h) through (k) to read as follows:

§ 63.11111 Am I subject to the requirements in this subpart?

* * * * *

(e) An affected source shall, upon request by the Administrator, demonstrate that their monthly throughput is less than the 10,000-gallon or the 100,000-gallon threshold level, as applicable. For new or reconstructed affected sources, as specified in § 63.11112(b) and (c), recordkeeping to document monthly throughput must begin upon startup of the affected source. For existing sources, as specified in § 63.11112(d), recordkeeping to document monthly throughput must begin on January 10, 2008. Records required under this paragraph shall be kept for a period of 5 years.

* * * * *

(g) The loading of aviation gasoline into storage tanks at airports, and the subsequent transfer of aviation gasoline within the airport, is not subject to this subpart.

(h) Monthly throughput is the total volume of gasoline loaded into, or dispensed from, all the gasoline storage tanks located at a single affected GDF. If an area source has two or more GDF at separate locations within the area source, each GDF is treated as a separate affected source.

(i) If your affected source's throughput ever exceeds an applicable throughput threshold, the affected source will remain subject to the requirements for sources above the threshold even if the affected source throughput later falls below the applicable throughput threshold.

(j) The dispensing of gasoline from a fixed gasoline storage tank at a GDF into a portable gasoline tank for the on-site delivery and subsequent dispensing of the gasoline into the fuel tank of a motor vehicle or other gasoline-fueled engine or equipment used at the area source is subject to § 63.11116 of this subpart.

(k) For any affected source subject to the provisions of this subpart and another Federal rule, you may elect to comply only with the more stringent provisions of the applicable subparts. You must consider all provisions of the rules, including monitoring, recordkeeping, and reporting. You must identify the affected source and provisions with which you will comply in your Notification of Compliance Status (NOCS) required under § 63.11124. You also must demonstrate in your NOCS that each provision with which you will comply is at least as stringent as the otherwise applicable requirements in this subpart. You are responsible for making accurate determinations concerning the more stringent provisions, and noncompliance with this rule is not excused if it is later determined that your determination was in error and, as a result, you are violating this subpart. Compliance with this rule is your responsibility and the NOCS does not alter or affect that responsibility.

14. Section 63.11113 is amended by revising paragraph (c) and adding a new paragraph (e) to read as follows:

§ 63.11113 When do I have to comply with this subpart?

* * * * *

(c) If you have an existing affected source that becomes subject to the control requirements in this subpart because of an increase in the monthly throughput, as specified in § 63.11111(c) or (d), you must comply with the standards in this subpart no later than 3 years after the affected source becomes subject to the control requirements in this subpart.

* * * * *

(e) The initial compliance demonstration test required under § 63.11120(a)(1) and (2) must be conducted as specified in paragraphs (e)(1) and (2) of this section.

(1) If you have a new or reconstructed affected source, you must conduct the initial compliance test upon installation of the complete vapor balance system.

(2) If you have an existing affected source, you must conduct the initial compliance test as specified in paragraphs (e)(2)(i) or (e)(2)(ii) of this section.

(i) For vapor balance systems installed on or before December 15, 2009, you must test no later than 180 days after the applicable compliance date specified in paragraphs (b) or (c) of this section.

(ii) For vapor balance systems installed after December 15, 2009, you must test upon installation of the complete vapor balance system.

15. Section 63.11116 is amended by adding a new paragraph (d) to read as follows:

§ 63.11116 Requirements for facilities with monthly throughput of less than 10,000 gallons of gasoline.

* * * * *

(d) Portable gasoline containers that meet the requirements of 40 CFR part 59, subpart F, are considered acceptable for compliance with paragraph (a)(3) of this section.

16. Section 63.11117 is amended by revising paragraph (b) to read as follows:

§ 63.11117 Requirements for facilities with monthly throughput of 10,000 gallons of gasoline or more.

* * * * *

(b) Except as specified in paragraph (c) of this section, you must only load gasoline into storage tanks at your facility by utilizing submerged filling, as defined in § 63.11132, and as specified in paragraphs (b)(1), (b)(2), or (b)(3) of this section. The applicable distances in paragraphs (b)(1) and (2) shall be measured from the point in the opening of the submerged fill pipe that is the greatest distance from the bottom of the storage tank.

(1) Submerged fill pipes installed on or before November 9, 2006, must be no more than 12 inches from the bottom of the tank.

(2) Submerged fill pipes installed after November 9, 2006, must be no more than 6 inches from the bottom of the tank.

(3) Submerged fill pipes not meeting the specifications of paragraphs (b)(1) or (2) of this section are allowed if the owner or operator can demonstrate that the liquid level in the tank is always above the entire opening of the fill pipe. Documentation providing such demonstration must be made available for inspection by the Administrator's delegated representative during the course of a site visit.

* * * * *

17. Section 63.11120 is amended by revising paragraph (a) introductory text and by adding a new paragraph (c) to read as follows:

§ 63.11120 What testing and monitoring requirements must I meet?

(a) Each owner or operator, at the time of installation, as specified in § 63.11113(e), of a vapor balance system required under § 63.11118(b)(1), and every 3 years thereafter, must comply with the requirements in paragraphs (a)(1) and (2) of this section.

* * * * *

(c) Conduct of performance tests. Performance tests conducted for this subpart shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance (i.e., performance based on normal operating conditions) of the affected source. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

18. Section 63.11124 is amended by revising the first sentence in paragraph (a)(2) and the first sentence in (b)(2) to read as follows:

§ 63.11124 What notifications must I submit and when?

(a) * * *

(2) You must submit a Notification of Compliance Status to the applicable EPA Regional Office and the delegated State authority, as specified in § 63.13, in accordance with the schedule specified in § 63.9(h), unless you meet the requirements in paragraph (a)(3) of this section. * * *

* * * * *

(b) * * *

(2) You must submit a Notification of Compliance Status to the applicable EPA Regional Office and the delegated State authority, as specified in § 63.13, in accordance with the schedule specified in § 63.9(h). * * *

* * * * *

19. Section 63.11125 is amended by adding a new paragraph (c) to read as follows:

§ 63.11125 What are my recordkeeping requirements?

* * * * *

(c) Each owner or operator of a gasoline cargo tank subject to the management practices in Table 2 to this subpart must keep records documenting vapor tightness testing for a period of 5 years. Documentation must include each of the items specified in § 63.11094(b)(i) through (viii). Records of vapor tightness testing must be retained as specified in either paragraph (c)(1) or paragraph (c)(2) of this section.

(1) The owner or operator must keep all vapor tightness testing records with the cargo tank.

(2) As an alternative to keeping all records with the cargo tank, the owner or operator may comply with the requirements of paragraphs (c)(2)(i) and (ii) of this section.

(i) The owner or operator may keep records of only the most recent vapor tightness test with the cargo tank and keep records for the previous 4 years at their office or another central location.

(ii) Vapor tightness testing records that are kept at a location other than with the cargo tank must be instantly available (e.g., via e-mail or facsimile) to the Administrator's delegated representative during the course of a site visit or within a mutually agreeable time frame. Such records must be an exact duplicate image of the original paper copy record with certifying signatures.

20. Section 63.11132 is amended as follows:

a. By adding, in alphabetical order, the definitions of ''gasoline,'' ''motor vehicle,'' ''nonroad engine,'' ''nonroad vehicle,'' and ''vapor-tight gasoline cargo tank''; and

b. By revising, in alphabetical order, the definitions of ''gasoline cargo tank,'' ''gasoline dispensing facility,'' and ''monthly throughput'' to read as follows:

§ 63.11132 What definitions apply to this subpart?

* * * * *

Gasoline means any petroleum distillate or petroleum distillate/alcohol blend having a Reid vapor pressure of 27.6 kilopascals or greater which is used as a fuel for internal combustion engines.

Gasoline cargo tank means a delivery tank truck or railcar which is loading or unloading gasoline or which has loaded or unloaded gasoline on the immediately previous load.

Gasoline dispensing facility (GDF) means any stationary facility which dispenses gasoline into the fuel tank of a motor vehicle, motor vehicle engine, nonroad vehicle, or nonroad engine, including a nonroad vehicle or nonroad engine used solely for competition. These facilities include, but are not limited to, facilities that dispense gasoline into on- and off-road, street, or highway motor vehicles, lawn equipment, boats, test engines, landscaping equipment, generators, pumps, and other gasoline-fueled engines and equipment.

Monthly throughput means the total volume of gasoline that is loaded into, or dispensed from, all gasoline storage tanks at each GDF during a month. Monthly throughput is calculated by summing the volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the current day, plus the total volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the previous 364 days, and then dividing that sum by 12.

Motor vehicle means any self-propelled vehicle designed for transporting persons or property on a street or highway.

Nonroad engine means an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 7411 of this title or section 7521 of this title.

Nonroad vehicle means a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.

* * * * *

Vapor-tight gasoline cargo tank means a gasoline cargo tank which has demonstrated within the 12 preceding months that it meets the annual certification test requirements in § 63.11092(f) of this part.

21. Table 1 to Subpart CCCCCC of Part 63 is amended by adding a footnote 1 to the heading, and by revising entry 2. to read as follows:

TABLE 1 TO SUBPART CCCCCC OF PART 63—APPLICABILITY CRITERIA AND MANAGEMENT PRACTICES FOR GASOLINE DISPENSING FACILITIES WITH MONTHLY THROUGHPUT OF 100,000 GALLONS OF GASOLINE OR MORE [1]

If you own or operate . . .	Then you must . . .
* * * * * * *	
2. A new or reconstructed GDF, or any storage tank(s) constructed after November 9, 2006, at an existing affected facility subject to § 63.11118.	Equip your gasoline storage tanks with a dual-point vapor balance system, as defined in § 63.11132, and comply with the requirements of item 1 in this Table.

[1] The management practices specified in this Table are not applicable if you are complying with the requirements in § 63.11118(b)(2), except that if you are complying with the requirements in § 63.11118(b)(2)(i)(B), you must operate using management practices at least as stringent as those listed in this Table.

22. Table 2 to Subpart CCCCCC of Part 63 is amended by revising entry (vi) to read as follows:

TABLE 2 TO SUBPART CCCCCC OF PART 63—APPLICABILITY CRITERIA AND MANAGEMENT PRACTICES FOR GASOLINE CARGO TANKS UNLOADING AT GASOLINE DISPENSING FACILITIES WITH MONTHLY THROUGHPUT OF 100,000 GALLONS OF GASOLINE OR MORE

If you own or operate . . .	Then you must . . .
* * * * * * *	
	(vi) The filling of storage tanks at GDF shall be limited to unloading from vapor-tight gasoline cargo tanks. Documentation that the cargo tank has met the specifications of EPA Method 27 shall be carried with the cargo tank, as specified in § 63.11125(c).

23. Table 3 to Subpart CCCCCC of Part 63 is amended by revising the entries for §§ 63.5, 63.7(e)(1), 63.8(c)(1), 63.10(d)(5), 63.10(e)(3)(i)–(iii), and 63.10(e)(3)(iv)–(v) to read as follows:

TABLE 3 TO SUBPART CCCCCC OF PART 63—APPLICABILITY OF GENERAL PROVISIONS

Citation	Subject	Brief description	Applies to subpart CCCCCC
*	*	*	*
§ 63.5	Construction/Reconstruction	Applicability; applications; approvals	Yes, except that these notifications are not required for facilities subject to § 63.11116.
*	*	*	*
63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance test must be conducted under representative conditions.	No, § 63.11120(c) specifies conditions for conducting performance tests.
*	*	*	*
§ 63.8(c)(1)(i)–(iii)	Operation and maintenance of continuous monitoring systems.	Must maintain and operate each CMS as specified in § 63.6(e)(1); must keep parts for routine repairs readily available; must develop a written startup, shutdown, and malfunction plan for CMS as specified in § 63.6(e)(3).	No.
*	*	*	*
§ 63.10(d)(5)	SSM Reports	Contents and submission	No.
*	*	*	*
§ 63.10(e)(3)(i)–(iii)	Reports	Schedule for reporting excess emissions	No.
§ 63.10(e)(3)(iv)–(v)	Excess Emissions Reports	Requirement to revert to quarterly submission if there is an excess emissions and parameter monitor exceedances (now defined as deviations); provision to request semiannual reporting after compliance for 1 year; submit report by 30th day following end of quarter or calendar half; if there has not been an exceedance or excess emissions (now defined as deviations), report contents in a statement that there have been no deviations; must submit report containing all of the information in §§ 63.8(c)(7)–(8) and 63.10(c)(5)–(13).	No.
*	*	*	*

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December 15, 2009

Part V

Environmental Protection Agency

40 CFR Chapter I

Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[EPA–HQ–OAR–2009–0171; FRL–9091–8]

RIN 2060–ZA14

Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Administrator finds that six greenhouse gases taken in combination endanger both the public health and the public welfare of current and future generations. The Administrator also finds that the combined emissions of these greenhouse gases from new motor vehicles and new motor vehicle engines contribute to the greenhouse gas air pollution that endangers public health and welfare under CAA section 202(a). These Findings are based on careful consideration of the full weight of scientific evidence and a thorough review of numerous public comments received on the Proposed Findings published April 24, 2009.

DATES: These Findings are effective on January 14, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2009–0171. All documents in the docket are listed on the *www.regulations.gov* Web site. 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 either electronically through *www.regulations.gov* or in hard copy at EPA's Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. This Docket Facility 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 Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Jeremy Martinich, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9927; fax number: (202) 343–2202; e-mail address: *ghgendangerment@epa.gov*. For additional information regarding these Findings, please go to the Web site *http://www.epa.gov/climatechange/endangerment.html*.

SUPPLEMENTARY INFORMATION:

Judicial Review

Under CAA section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 16, 2010. Under CAA section 307(d)(7)(B), only an objection to this final action that was raised with reasonable specificity during the period for public comment can be raised during judicial review. This section also provides a mechanism for us to convene a proceeding for reconsideration, '' '[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of this rule.' '' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20004, with a copy to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20004.

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

ACUS Administrative Conference of the United States
ANPR Advance Notice of Proposed Rulemaking
APA Administrative Procedure Act
CAA Clean Air Act
CAFE Corporate Average Fuel Economy
CAIT Climate Analysis Indicators Tool
CASAC Clean Air Scientific Advisory Committee
CBI Confidential Business Information
CCSP Climate Change Science Program
CFCs chlorofluorocarbons
CFR Code of Federal Regulations
CH_4 methane
CO_2 carbon dioxide
CO_2e CO_2-equivalent
CRU Climate Research Unit
DOT U.S. Department of Transportation
EO Executive Order
EPA U.S. Environmental Protection Agency
FR **Federal Register**
GHG greenhouse gas
GWP global warming potential
HadCRUT Hadley Centre/Climate Research Unit (CRU) temperature record
HCFCs hydrochlorofluorocarbons
HFCs hydrofluorocarbons
IA Interim Assessment report
IPCC Intergovernmental Panel on Climate Change
MPG miles per gallon
MWP Medieval Warm Period
N_2O nitrous oxide
NAAQS National Ambient Air Quality Standards
NAICS North American Industry Classification System
NASA National Aeronautics and Space Administration
NF_3 nitrogen trifluoride
NHTSA National Highway Traffic Safety Administration
NOAA National Oceanic and Atmospheric Administration
NOI Notice of Intent
NO_X nitrogen oxides
NRC National Research Council
NSPS new source performance standards
NTTAA National Technology Transfer and Advancement Act of 1995
OMB Office of Management and Budget
PFCs perfluorocarbons
PM particulate matter
PSD Prevention of Significant Deterioration
RFA Regulatory Flexibility Act
SF_6 sulfur hexafluoride
SIP State Implementation Plan
TSD technical support document
U.S. United States
UMRA Unfunded Mandates Reform Act of 1995
UNFCCC United Nations Framework Convention on Climate Change
USGCRP U.S. Global Climate Research Program
VOC volatile organic compound(s)
WCI Western Climate Initiative
WRI World Resources Institute

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I. Introduction

A. Overview

Pursuant to CAA section 202(a), the Administrator finds that greenhouse gases in the atmosphere may reasonably be anticipated both to endanger public health and to endanger public welfare. Specifically, the Administrator is defining the ''air pollution'' referred to in CAA section 202(a) to be the mix of six long-lived and directly-emitted greenhouse gases: carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6). In this document, these six greenhouse gases are referred to as ''well-mixed greenhouse gases'' in this document (with more precise meanings of ''long lived'' and ''well mixed'' provided in Section IV.A).

The Administrator has determined that the body of scientific evidence compellingly supports this finding. The major assessments by the U.S. Global Climate Research Program (USGCRP), the Intergovernmental Panel on Climate Change (IPCC), and the National Research Council (NRC) serve as the primary scientific basis supporting the Administrator's endangerment finding.[1] The Administrator reached her determination by considering both observed and projected effects of greenhouse gases in the atmosphere, their effect on climate, and the public health and welfare risks and impacts associated with such climate change. The Administrator's assessment focused on public health and public welfare impacts within the United States. She also examined the evidence with respect to impacts in other world regions, and she concluded that these impacts strengthen the case for endangerment to public health and welfare because impacts in other world regions can in turn adversely affect the United States.

The Administrator recognizes that human-induced climate change has the potential to be far-reaching and multi-dimensional, and in light of existing knowledge, that not all risks and potential impacts can be quantified or characterized with uniform metrics. There is variety not only in the nature and potential magnitude of risks and impacts, but also in our ability to characterize, quantify and project such impacts into the future. The Administrator is using her judgment, based on existing science, to weigh the threat for each of the identifiable risks, to weigh the potential benefits where relevant, and ultimately to assess whether these risks and effects, when viewed in total, endanger public health or welfare.

The Administrator has considered how elevated concentrations of the well-mixed greenhouse gases and associated climate change affect public health by evaluating the risks associated with changes in air quality, increases in temperatures, changes in extreme weather events, increases in food- and water-borne pathogens, and changes in aeroallergens. The evidence concerning adverse air quality impacts provides strong and clear support for an endangerment finding. Increases in ambient ozone are expected to occur over broad areas of the country, and they are expected to increase serious adverse health effects in large population areas that are and may continue to be in nonattainment. The evaluation of the potential risks associated with increases in ozone in attainment areas also supports such a finding.

The impact on mortality and morbidity associated with increases in average temperatures, which increase the likelihood of heat waves, also provides support for a public health endangerment finding. There are uncertainties over the net health impacts of a temperature increase due to decreases in cold-related mortality, but some recent evidence suggests that the net impact on mortality is more likely to be adverse, in a context where heat is already the leading cause of weather-related deaths in the United States.

The evidence concerning how human-induced climate change may alter extreme weather events also clearly supports a finding of endangerment, given the serious adverse impacts that can result from such events and the increase in risk, even if small, of the occurrence and intensity of events such as hurricanes and floods. Additionally, public health is expected to be

[1] Section III of these Findings discusses the science on which these Findings are based. In addition, the Technical Support Document (TSD) accompanying these Findings summarizes the major assessments from the USGCRP, IPCC, and NRC.

adversely affected by an increase in the severity of coastal storm events due to rising sea levels.

There is some evidence that elevated carbon dioxide concentrations and climate changes can lead to changes in aeroallergens that could increase the potential for allergenic illnesses. The evidence on pathogen borne disease vectors provides directional support for an endangerment finding. The Administrator acknowledges the many uncertainties in these areas. Although these adverse effects provide some support for an endangerment finding, the Administrator is not placing primary weight on these factors.

Finally, the Administrator places weight on the fact that certain groups, including children, the elderly, and the poor, are most vulnerable to these climate-related health effects.

The Administrator has considered how elevated concentrations of the well-mixed greenhouse gases and associated climate change affect public welfare by evaluating numerous and far-ranging risks to food production and agriculture, forestry, water resources, sea level rise and coastal areas, energy, infrastructure, and settlements, and ecosystems and wildlife. For each of these sectors, the evidence provides support for a finding of endangerment to public welfare. The evidence concerning adverse impacts in the areas of water resources and sea level rise and coastal areas provides the clearest and strongest support for an endangerment finding, both for current and future generations. Strong support is also found in the evidence concerning infrastructure and settlements, as well ecosystems and wildlife. Across the sectors, the potential serious adverse impacts of extreme events, such as wildfires, flooding, drought, and extreme weather conditions, provide strong support for such a finding.

Water resources across large areas of the country are at serious risk from climate change, with effects on water supplies, water quality, and adverse effects from extreme events such as floods and droughts. Even areas of the country where an increase in water flow is projected could face water resource problems from the supply and water quality problems associated with temperature increases and precipitation variability, as well as the increased risk of serious adverse effects from extreme events, such as floods and drought. The severity of risks and impacts is likely to increase over time with accumulating greenhouse gas concentrations and associated temperature increases and precipitation changes.

Overall, the evidence on risk of adverse impacts for coastal areas provides clear support for a finding that greenhouse gas air pollution endangers the welfare of current and future generations. The most serious potential adverse effects are the increased risk of storm surge and flooding in coastal areas from sea level rise and more intense storms. Observed sea level rise is already increasing the risk of storm surge and flooding in some coastal areas. The conclusion in the assessment literature that there is the potential for hurricanes to become more intense (and even some evidence that Atlantic hurricanes have already become more intense) reinforces the judgment that coastal communities are now endangered by human-induced climate change, and may face substantially greater risk in the future. Even if there is a low probability of raising the destructive power of hurricanes, this threat is enough to support a finding that coastal communities are endangered by greenhouse gas air pollution. In addition, coastal areas face other adverse impacts from sea level rise such as land loss due to inundation, erosion, wetland submergence, and habitat loss. The increased risk associated with these adverse impacts also endangers public welfare, with an increasing risk of greater adverse impacts in the future.

Strong support for an endangerment finding is also found in the evidence concerning energy, infrastructure, and settlements, as well ecosystems and wildlife. While the impacts on net energy demand may be viewed as generally neutral for purposes of making an endangerment determination, climate change is expected to result in an increase in electricity production, especially supply for peak demand. This may be exacerbated by the potential for adverse impacts from climate change on hydropower resources as well as the potential risk of serious adverse effects on energy infrastructure from extreme events. Changes in extreme weather events threaten energy, transportation, and water resource infrastructure. Vulnerabilities of industry, infrastructure, and settlements to climate change are generally greater in high-risk locations, particularly coastal and riverine areas, and areas whose economies are closely linked with climate-sensitive resources. Climate change will likely interact with and possibly exacerbate ongoing environmental change and environmental pressures in settlements, particularly in Alaska where indigenous communities are facing major environmental and cultural impacts on their historic lifestyles. Over the 21st century, changes in climate will cause some species to shift north and to higher elevations and fundamentally rearrange U.S. ecosystems. Differential capacities for range shifts and constraints from development, habitat fragmentation, invasive species, and broken ecological connections will likely alter ecosystem structure, function, and services, leading to predominantly negative consequences for biodiversity and the provision of ecosystem goods and services.

There is a potential for a net benefit in the near term [2] for certain crops, but there is significant uncertainty about whether this benefit will be achieved given the various potential adverse impacts of climate change on crop yield, such as the increasing risk of extreme weather events. Other aspects of this sector may be adversely affected by climate change, including livestock management and irrigation requirements, and there is a risk of adverse effect on a large segment of the total crop market. For the near term, the concern over the potential for adverse effects in certain parts of the agriculture sector appears generally comparable to the potential for benefits for certain crops. However, The body of evidence points towards increasing risk of net adverse impacts on U.S. food production and agriculture over time, with the potential for significant disruptions and crop failure in the future.

For the near term, the Administrator finds the beneficial impact on forest growth and productivity in certain parts of the country from elevated carbon dioxide concentrations and temperature increases to date is offset by the clear risk from the observed increases in wildfires, combined with risks from the spread of destructive pests and disease. For the longer term, the risk from adverse effects increases over time, such that overall climate change presents serious adverse risks for forest productivity. There is compelling reason to find that the support for a positive endangerment finding increases as one considers expected future conditions where temperatures continue to rise.

Looking across all of the sectors discussed above, the evidence provides compelling support for finding that greenhouse gas air pollution endangers the public welfare of both current and

[2] The temporal scope of impacts is discussed in more detail in Section III.C. The phrase ''near term'' as used in this document generally refers to the current time period from and the next few decades. The phrase ''long term'' generally refers to a time frame extending beyond that to approximately the middle to the end of this century.

future generations. The risk and the severity of adverse impacts on public welfare are expected to increase over time.

The Administrator also finds that emissions of well-mixed greenhouse gases from the transportation sources covered under CAA section 202(a) [3] contribute to the total greenhouse gas air pollution, and thus to the climate change problem, which is reasonably anticipated to endanger public health and welfare. The Administrator is defining the air pollutant that contributes to climate change as the aggregate group of the well-mixed greenhouse gases. The definition of air pollutant used by the Administrator is based on the similar attributes of these substances. These attributes include the fact that they are sufficiently long-lived to be well mixed globally in the atmosphere, that they are directly emitted, and that they exert a climate warming effect by trapping outgoing, infrared heat that would otherwise escape to space, and that they are the focus of climate change science and policy.

In order to determine if emissions of the well-mixed greenhouse gases from CAA section 202(a) source categories contribute to the air pollution that endangers public health and welfare, the Administrator compared the emissions from these CAA section 202(a) source categories to total global and total U.S. greenhouse gas emissions, finding that these source categories are responsible for about 4 percent of total global well-mixed greenhouse gas emissions and just over 23 percent of total U.S. well-mixed greenhouse gas emissions. The Administrator found that these comparisons, independently and together, clearly establish that these emissions contribute to greenhouse gas concentrations. For example, the emissions of well-mixed greenhouse gases from CAA section 202(a) sources are larger in magnitude than the total well-mixed greenhouse gas emissions from every other individual nation with the exception of China, Russia, and India, and are the second largest emitter within the United States behind the electricity generating sector. As the Supreme Court noted, ''[j]udged by any standard, U.S. motor-vehicle emissions make a meaningful contribution to greenhouse gas concentrations and hence, * * * to global warming.'' *Massachusetts* v. *EPA,* 549 U.S. 497, 525 (2007).

[3] Section 202(a) source categories include passenger cars, heavy-, medium and light-duty trucks, motorcycles, and buses.

The Administrator's findings are in response to the Supreme Court's decision in *Massachusetts* v. *EPA*. That case involved a 1999 petition submitted by the International Center for Technology Assessment and 18 other environmental and renewable energy industry organizations requesting that EPA issue standards under CAA section 202(a) for the emissions of carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons from new motor vehicles and engines. The Administrator's findings are in response to this petition and are for purposes of CAA section 202(a).

B. Background Information Helpful To Understand These Findings

This section provides some basic information regarding greenhouse gases and the CAA section 202(a) source categories, as well as the ongoing joint-rulemaking on greenhouse gases by EPA and the Department of Transportation. Additional technical and legal background, including a summary of the Supreme Court's *Massachusetts* v. *EPA* decision, can be found in the Proposed Endangerment and Contribution Findings (74 FR 18886, April 24, 2009).

1. Greenhouse Gases and Transportation Sources Under CAA Section 202(a)

Greenhouse gases are naturally present in the atmosphere and are also emitted by human activities. Greenhouse gases trap the Earth's heat that would otherwise escape from the atmosphere, and thus form the greenhouse effect that helps keep the Earth warm enough for life. Human activities are intensifying the naturally-occurring greenhouse effect by adding greenhouse gases to the atmosphere. The primary greenhouse gases of concern that are directly emitted by human activities include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. Other pollutants (such as aerosols) and other human activities, such as land use changes that alter the reflectivity of the Earth's surface, also cause climatic warming and cooling effects. In these Findings, the term ''climate change'' generally refers to the global warming effect plus other associated changes (*e.g.,* precipitation effects, sea level rise, changes in the frequency and severity of extreme weather events) being induced by human activities, including activities that emit greenhouse gases. Natural causes also, contribute to climate change and climatic changes have occurred throughout the Earth's history. The concern now, however, is that the changes taking place in our atmosphere as a result of the well-documented buildup of greenhouse gases due to human activities are changing the climate at a pace and in a way that threatens human health, society, and the natural environment. Further detail on the state of climate change science can be found in Section III of these Findings as well as the technical support document (TSD) that accompanies this action (*www.epa.gov/climatechange/endangerment.html*).

The transportation sector is a major source of greenhouse gas emissions both in the United States and in the rest of the world. The transportation sources covered under CAA section 202(a)—the section of the CAA under which these Findings occur—include passenger cars, light- and heavy-duty trucks, buses, and motorcycles. These transportation sources emit four key greenhouse gases: carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons. Together, these transportation sources are responsible for 23 percent of total annual U.S. greenhouse gas emissions, making this source the second largest in the United States behind electricity generation.[4]

Further discussion of the emissions data supporting the Administrator's cause or contribute finding can be found in Section V of these Findings, and the detailed greenhouse gas emissions data for section 202(a) source categories can be found in Appendix B of EPA's TSD.

2. Joint EPA and Department of Transportation Proposed Greenhouse Gas Rule

On September 15, 2009, EPA and the Department of Transportation's National Highway Safety Administration (NHTSA) proposed a National Program that would dramatically reduce greenhouse gas emissions and improve fuel economy for new cars and trucks sold in the United States. The combined EPA and NHTSA standards that make up this proposed National Program would apply to passenger cars, light-duty trucks, and medium-duty passenger vehicles, covering model years 2012 through 2016. They proposed to require these vehicles to meet an estimated combined average

[4] The units for greenhouse gas emissions in these findings are provided in carbon dioxide equivalent units, where carbon dioxide is the reference gas and every other greenhouse gas is converted to its carbon dioxide equivalent by using the 100-year global warming potential (as estimated by the Intergovernmental Panel on Climate Change (IPCC). assigned to each gas. The reference gas used is CO_2, and therefore Global Warming Potential (GWP)-weighted emissions are measured in teragrams of CO_2 equivalent (Tg CO_2 eq.). In accordance with UNFCCC reporting procedures, the United States quantifies greenhouse gas emissions using the 100-year time frame values for GWPs established in the IPCC Second Assessment Report.

emissions level of 250 grams of carbon dioxide per mile, equivalent to 35.5 miles per gallon (MPG) if the automobile industry were to meet this carbon dioxide level solely through fuel economy improvements. Together, these proposed standards would cut carbon dioxide emissions by an estimated 950 million metric tons and 1.8 billion barrels of oil over the lifetime of the vehicles sold under the program (model years 2012–2016). The proposed rulemaking can be viewed at (74 FR 49454, September 28, 2009).

C. Public Involvement

In response to the Supreme Court's decision, EPA has been examining the scientific and technical basis for the endangerment and cause or contribute decisions under CAA section 202(a) since 2007. The science informing the decision-making process has grown stronger since our work began. EPA's approach to evaluating the science, including comments submitted during the public comment period, is further discussed in Section III.A of these Findings. Public review and comment has always been a major component of EPA's process.

1. EPA's Initial Work on Endangerment

As part of the *Advance Notice of Proposed Rulemaking: Regulating Greenhouse Gas Emissions under the Clean Air Act* (73 FR 44353) published in July 2008, EPA provided a thorough discussion of the issues and options pertaining to endangerment and cause or contribute findings under the CAA. The Agency also issued a TSD providing an overview of all the major scientific assessments available at the time and emission inventory data relevant to the contribution finding (Docket ID No. EPA–HQ–OAR–2008–0318). The comment period for that *Advance Notice* was 120 days, and it provided an opportunity for EPA to hear from the public with regard to the issues involved in endangerment and cause or contribute findings as well as the supporting science. EPA received, reviewed and considered numerous comments at that time and this public input was reflected in the Findings that the Administrator proposed in April 2009. In addition, many comments were received on the TSD released with the *Advance Notice* and reflected in revisions to the TSD released in April 2009 to accompany the Administrator's proposal. All public comments on the *Advance Notice* are contained in the public docket for this action (Docket ID No. EPA–HQ–OAR–2008–0318) accessible through *www.regulations.gov.*

2. Public Involvement Since the April 2009 Proposed Endangerment Finding

The Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases (Proposed Findings) was published on April 24, 2009 (74 FR 18886). The Administrator's proposal was subject to a 60-day public comment period, which ended June 23, 2009, and also included two public hearings. Over 380,000 public comments were received on the Administrator's proposed endangerment and cause or contribute findings, including comments on the elements of the Administrator's April 2009 proposal, the legal issues pertaining to the Administrator's decisions, and the underlying TSD containing the scientific and technical information.

A majority of the comments (approximately 370,000) were the result of mass mail campaigns, which are defined as groups of comments that are identical or very similar in form and content. Overall, about two-thirds of the mass-mail comments received are supportive of the Findings and generally encouraged the Administrator both to make a positive endangerment determination and implement greenhouse gas emission regulations. Of the mass mail campaigns in disagreement with the Proposed Findings most either oppose the proposal on economic grounds (*e.g.,* due to concern for regulatory measures following an endangerment finding) or take issue with the proposed finding that atmospheric greenhouse gas concentrations endanger public health and welfare. Please note that for mass mailer campaigns, a representative copy of the comment is posted in the public docket for this Action (Docket ID No. EPA–HQ–OAR–2009–0171) at *www.regulations.gov*.

Approximately 11,000 other public comments were received. These comments raised a variety of issues related to the scientific and technical information EPA relied upon in making the Proposed Findings, legal and procedural issues, the content of the Proposed Findings, and the implications of the Proposed Findings.

In light of the very large number of comments received and the significant overlap between many comments, EPA has not responded to each comment individually. Rather, EPA has summarized and provided responses to each significant argument, assertion and question contained within the totality of the comments. EPA's responses to some of the most significant comments are provided in these Findings. Responses to all significant issues raised by the comments are contained in the 11 volumes of the Response to Comments document, organized by subject area (found in docket EPA–HQ–OAR–2009–0171).

3. Issues Raised Regarding the Rulemaking Process

EPA received numerous comments on process-related issues, including comments urging the Administrator to delay issuing the final findings, arguing that it was improper for the Administrator to sever the endangerment and cause or contribute findings from the attendant section 202(a) standards, arguing the final decision was preordained by the President's May vehicle announcement, and questioning the adequacy of the comment period. Summaries of key comments and EPA's responses are discussed in this section. Additional and more detailed responses can be found in the Response to Comments document, Volume 11. As noted in the Response to Comments document, EPA also received comments supporting the overall process.

a. It Is Reasonable for the Administrator To Issue the Endangerment and Cause or Contribute Findings Now

Though the Supreme Court did not establish a specific deadline for EPA to act, more than two and a half years have passed since the remand from the Supreme Court, and it has been 10 years since EPA received the original petition requesting that EPA regulate greenhouse gas emissions from new motor vehicles. EPA has a responsibility to respond to the Supreme Court's decision and to fulfill its obligations under current law, and there is good reason to act now given the urgency of the threat of climate change and the compelling scientific evidence.

Many commenters urge EPA to delay making final findings for a variety of reasons. They note that the Supreme Court did not establish a deadline for EPA to act on remand. Commenters also argue that the Supreme Court's decision does not require that EPA make a final endangerment finding, and thus that EPA has discretionary power and may decline to issue an endangerment finding, not only if the science is too uncertain, but also if EPA can provide ''some reasonable explanation'' for exercising its discretion. These commenters interpret the Supreme Court decision not as rejecting all policy reasons for declining to undertake an endangerment finding, but rather as dismissing solely the policy reasons EPA set forth in 2003. Some commenters cite language in the

Supreme Court decision regarding EPA's discretion regarding ''the manner, timing, content, and coordination of its regulations,'' and the Court's declining to rule on ''whether policy concerns can inform EPA's actions in the event that it makes'' a CAA section 202(a) finding to support their position.

Commenters then suggest a variety of policy reasons that EPA can and should make to support a decision not to undertake a finding of endangerment under CAA section 202(a)(1). For example, they argue that a finding of endangerment would trigger several other regulatory programs—such as the Prevention of Significant Deterioration (PSD) provisions—that would impose an unreasonable burden on the economy and government, without providing a benefit to the environment. Some commenters contend that EPA should defer issuing a final endangerment finding while Congress considers legislation. Many commenters note the ongoing international discussions regarding climate change and state their belief that unilateral EPA action would interfere with those negotiations. Others suggest deferring the EPA portion of the joint U.S. Department of Transportation (DOT)/EPA rulemaking because they argue that the new Corporate Average Fuel Economy (CAFE) standards will effectively result in lower greenhouse gas emissions from new motor vehicles, while avoiding the inevitable problems and concerns of regulating greenhouse gases under the CAA.

Other commenters argue that the endangerment determination has to be made on the basis of scientific considerations only. These commenters state that the Court was clear that ''[t]he statutory question is whether sufficient information exists to make an endangerment finding,'' and thus, only if ''the scientific uncertainty is so profound that it precludes EPA from making a reasoned judgment as to whether greenhouse gases contribute to global warming,'' may EPA avoid making a positive or negative endangerment finding. Many commenters urge EPA to take action quickly. They note that it has been 10 years since the original petition requesting that EPA regulate greenhouse gas emissions from motor vehicles was submitted to EPA. They argue that climate change is a serious problem that requires immediate action.

EPA agrees with the commenters who argue that the Supreme Court decision held that EPA is limited to consideration of science when undertaking an endangerment finding, and that we cannot delay issuing a finding due to policy concerns if the science is sufficiently certain (as it is here). The Supreme Court stated that ''EPA can avoid taking further action only if it determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do'' 549 U.S. at 533. Some commenters point to this last provision, arguing that the policy reasons they provide are a ''reasonable explanation'' for not moving forward at this time. However, this ignores other language in the decision that clearly indicates that the Court interprets the statute to allow for the consideration only of science. For example, in rejecting the policy concerns expressed by EPA in its 2003 denial of the rulemaking petition, the Court noted that ''it is evident [the policy considerations] have nothing to do with whether greenhouse gas emissions contribute to climate change. Still less do they amount to a reasoned justification for declining to form *a scientific judgment'' Id.* at 533–34 (emphasis added).

Moreover, the Court also held that ''[t]he statutory question is whether sufficient information exists to make an endangerment finding'' *Id.* at 534. Taken as a whole, the Supreme Court's decision clearly indicates that policy reasons do not justify the Administrator avoiding taking further action on the question here.

We also note that the language many commenters quoted from the Supreme Court decision about EPA's discretion regarding the manner, timing and content of Agency actions, and the ability to consider policy concerns, relate to the motor vehicle standards required in the event that EPA makes a positive endangerment finding, and not the finding itself. EPA has long taken the position that it does have such discretion in the standard-setting step under CAA section 202(a).

b. The Administrator Reasonably Proceeded With the Endangerment and Cause or Contribute Findings Separate From the CAA Section 202(a) Standard Rulemaking

As discussed in the Proposed Findings, typically endangerment and cause or contribute findings have been proposed concurrently with proposed standards under various sections of the CAA, including CAA section 202(a). EPA received numerous comments on its decision to propose the endangerment and cause or contribute findings separate from any standards under CAA section 202(a).

Commenters argue that EPA has no authority to issue an endangerment determination under CAA section 202(a) separate and apart from the rulemaking to establish emissions standards under CAA section 202(a). According to these commenters, CAA section 202(a) provides only one reason to issue an endangerment determination, and that is as the basis for promulgating emissions standards for new motor vehicles; thus, it does not authorize such a stand-alone endangerment finding, and EPA may not create its own procedural rules completely divorced from the statutory text. They continue by stating that while CAA section 202(a) says EPA may issue emissions standards conditioned on such a finding, it does not say EPA may first issue an endangerment determination and then issue emissions standards. In addition, they contend, the endangerment proposal and the emissions standards proposal need to be issued together so commenters can fully understand the implications of the endangerment determination. Failure to do so, they argue, deprives the commenters of the opportunity to assess the regulations that will presumably follow from an endangerment finding. They also argue that the expected overlap between reductions in emissions of greenhouse gases from CAA section 202(a) standards issued by EPA and CAFE standards issued by DOT calls into question the basis for the CAA section 202(a) standards and the related endangerment finding, and that EPA is improperly motivated by an attempt to trigger a cascade of regulations under the CAA and/or to promote legislation by Congress.

EPA disagrees with the commenters' claims and arguments. The text of CAA section 202(a) is silent on this issue. It does not specify the timing of an endangerment finding, other than to be clear that emissions standards may not be issued unless such a determination has been made. EPA is exercising the procedural discretion that is provided by CAA section 202(a)'s lack of specific direction. The text of CAA section 202(a) envisions two separate actions by the Administrator: (1) A determination on whether emissions from classes or categories of new motor vehicles cause or contribute to air pollution that may reasonably be anticipated to endanger, and (2) a separate decision on issuance of appropriate emissions standards for such classes or categories. The procedure followed in this rulemaking, and the companion rulemaking involving emissions standards for light duty motor vehicles, is consistent with CAA section 202(a). EPA will issue final emissions standards for new motor

vehicles only if affirmative findings are made concerning contribution and endangerment, and such emissions standards will not be finalized prior to making any such determinations. While it would also be consistent with CAA section 202(a) to issue the greenhouse gas endangerment and contribution findings and emissions standards for new light-duty vehicles in the same rulemaking, *e.g.,* a single proposal covering them and a single final rule covering them, nothing in CAA section 202(a) requires such a procedural approach, and nothing in the approach taken in this case violates the text of CAA section 202(a). Since Congress was silent on this issue, and more than one procedural approach may accomplish the requirements of CAA section 202(a), EPA has the discretion to use the approach considered appropriate in this case. Once the final affirmative contribution and endangerment findings are made, EPA has the authority to issue the final emissions standards for new light-duty motor vehicles; however, as the Supreme Court has noted, the agency has 'significant latitude as to the manner, timing, [and] content * * * of its regulations . * * *' *Massachusetts v. EPA,* 549 U.S. at 533. That includes the discretion to issue them in a separate rulemaking.

Commenters' argument would also lead to the conclusion that EPA could not make an endangerment finding for the entire category of new motor vehicles, as it is doing here, unless EPA also conducted a rulemaking that set emissions standards for all the classes and categories of new motor vehicles at the same time. This narrow procedural limitation would improperly remove discretion that CAA section 202(a) provides to EPA.

EPA has the discretion under CAA section 202(a) to consider classes or categories of new motor vehicles separately or together in making a contribution and endangerment determination. This discretion would be removed under commenters' interpretation, by limiting this to only those cases in which EPA was also ready to issue emissions standards for all of the classes or categories covered by the endangerment finding. However, nothing in the text of CAA section 202(a) places such a limit on EPA's discretion in determining how to group classes or categories of new motor vehicles for purposes of the contribution and endangerment findings. This limitation would not be appropriate, because the issues of contribution and endangerment are separate and distinct from the issues of setting emissions standards. EPA, in this case, is fully prepared to go forward with the contribution and endangerment determination, while it is not ready to proceed with rulemaking for each and every category of new motor vehicles in the first rulemaking to set emissions standards. Section 202(a) of the CAA provides EPA discretion with regard to when and how it conducts its rulemakings to make contribution and endangerment findings, and to set emissions standards, and the text of CAA section 202(a) does not support commenters attempt to limit such discretion.

Concerns have been raised that the failure to issue the proposed endangerment finding and the proposed emissions standard together preclude commenters from assessing and considering the implications of the endangerment finding and the regulations that would likely flow from such a finding. However, commenters have failed to explain how this interferes in any way with their ability to comment on the endangerment finding. In fact it does not interfere, because the two proposals address separate and distinct issues. The endangerment finding concerns the contribution of new motor vehicles to air pollution and the effect of that air pollution on public health or welfare. The emissions standards, which have been proposed (74 FR 49454, September 28, 2009), concern the appropriate regulatory emissions standards if affirmative findings are made on contribution and endangerment. These two proposals address different issues. While commenters have the opportunity to comment on the proposed emissions standards in that rulemaking, they have not shown, and cannot show, that they need to have the emissions standards proposal before them in order to provide relevant comments on the proposed contribution or endangerment findings. Further discussion of this issue can be found in Section II of these Findings, and discussion of the timing of this action and its relationship to other CAA provisions and Congressional action can be found in Section III of these Findings and Volume 11 of the Response to Comments document.

c. The Administrator's Final Decision Was Not Preordained by the President's May Vehicle Announcement

EPA received numerous comments arguing that the President's announcement of a new ''National Fuel Efficiency Policy'' on May 19, 2009 seriously undermines EPA's ability to provide objective consideration of and a legally adequate response to comments objecting to the previously proposed endangerment findings.

Commenters' conclusion is based on the view that the President's announced policy requires EPA to promulgate greenhouse gas emissions standards under CAA section 202(a), that the President's and Administrator Jackson's announcement indicated that the endangerment rulemaking was but a formality and that a final endangerment finding was a fait accompli. Commenters argue that this means the result of this rulemaking has been preordained and the merits of the issues have been prejudged.

EPA disagrees. Commenters' arguments wholly exaggerate and mischaracterize the circumstances. In the April 24, 2009 endangerment proposal EPA was clear that the two steps in the endangerment provision have to be satisfied in order for EPA to issue emissions standards for new motor vehicles under CAA section 202(a) (74 FR at 18888, April 24, 2009). This was repeated when EPA issued the Notice of Upcoming Joint Rulemaking to Establish Vehicle GHG Emissions and CAFE Standards (74 FR 24007 May 22, 2009) (Notice of Intent or NOI). This was repeated again when EPA issued proposed greenhouse gas emissions standards for certain new motor vehicles (74 FR 49454, September 28, 2009). EPA has consistently made it clear that issuance of new motor vehicle standards requires and is contingent upon satisfaction of the two-part endangerment test.

On May 19, 2009 EPA issued the joint Notice of Intent, which indicated EPA's intention to propose new motor vehicle standards. All of the major motor vehicle manufacturers, their trade associations, the State of California, and several environmental organizations announced their full support for the upcoming rulemaking. Not surprisingly, on the same day the President also announced his full support for this action. Commenters, however, erroneously equate this Presidential support with a Presidential directive that requires EPA to prejudge and preordain the result of this rulemaking.

The only evidence they point to are simply indications of Presidential support. Commenters point to a press release, which unsurprisingly refers to the Agency's announcement as delivering on the President's commitment to enact more stringent fuel economy standards, by bringing ''all stakeholders to the table and [coming] up with a plan'' for solving a serious problem. The plan that was announced, of course, was a plan to conduct notice and comment

rulemaking. The press release itself states that President Obama ''set in motion a new national policy,'' with the policy ''aimed'' at reducing greenhouse gas emissions for new cars and trucks. What was ''set in motion'' was a notice and comment rulemaking described in the NOI issued by EPA on the same day. Neither the President nor EPA announced a final rule or a final direction that day, but instead did no more than announce a plan to go forward with a notice and comment rulemaking. That is how the plan ''delivers on the President's commitment'' to enact more stringent standards. The announcement was that a notice and comment rulemaking would be initiated with the aim of adopting certain emissions standards.

That is no different from what EPA or any other agency states when it issues a notice of proposed rulemaking. It starts a process that has the aim of issuing final regulations if they are deemed appropriate at the end of the public process. The fact that an Agency proposes a certain result, and expects that a final rule will be the result of setting such a process in motion, is the ordinary course of affairs in notice and comment rulemakings. This does not translate into prejudging the final result or having a preordained result that de facto negates the public comment process. The President's press release of May 19, 2009 was a recognition that this notice and comment rulemaking process would be set in motion, as well as providing his full support for the Agency to go forward in this direction; it was no more than that.

The various stakeholders who announced their support for the plan that had been set in motion all recognized that full notice and comment rulemaking was part of the plan, and they all reserved their rights to participate in such notice and comment rulemaking. For example, see the letter of support from Ford Motor Company, which states that ''Ford fully supports proposal and adoption of such a National Program, which we understand will be subject to full notice-and-comment rulemaking, affording all interested parties including Ford the right to participate fully, comment, and submit information, the results of which are not pre-determined but depend upon processes set by law.''

d. The Notice and Comment Period Was Adequate

Many commenters argue that the 60-day comment period was inadequate. Commenters claim that a 60-day period was insufficient time to fully evaluate the science and other information that informed the Administrator's proposal. Some commenters assert that because the comment period for the Proposed Finding substantially overlapped with the comment period for the Mandatory Greenhouse Gas Reporting Rule, as well as Congress' consideration of climate legislation, their ability to fully participate in the notice and comment period was ''seriously compromised.'' Moreover, they continue, because EPA had not yet proposed CAA section 202(a) standards, there was no valid reason to fail to extend the comment period. Several commenters and other entities had also requested that EPA extend the comment period.

Some commenters assert that the notice provided by this rulemaking was ''defective'' because the **Federal Register** notice announcing the proposal had an error in the e-mail address for the docket. At least one commenter suggests that this error deprives potential commenters of their Due Process under the Fifth Amendment of the Constitution, citing *Armstrong* v. *Manzo,* 380 U.S. 545, 552 (1965), and that failure to ''correct'' the minor typographical error in the e-mail address and extend the comment period would make the rule ''subject to reversal'' in violation of the CAA, Administrative Procedure Act (APA), the Due Process clause of the Constitution, and EO 12866.

Finally, for many of the same reasons that commenters argue a 60-day comment period was inadequate, several commenters request that EPA reopen and/or extend the comment period. One commenter requests that the comment period be reopened because there was new information regarding data used by EPA in the Proposed Findings. In particular, the commenter alleges that it recently became aware that one of the sources of global climate data had destroyed the raw data for its data set of global surface temperatures. The commenter argues that this alleged destruction of raw data violates scientific standards, calls into question EPA's reliance on that data in these Findings, and necessitates a reopening of the proceedings. Other commenters request that the comment period be extended and/or reopened due to the release of a Federal government document on the impact of climate change in the United States near the end of the comment period, as well as the release of an internal EPA staff document discussing the science.

The official public comment period on the proposed rule was adequate. First, a 60-day comment period satisfies the procedural requirements of CAA section 307 of the CAA, which requires a 30-day comment period, and that the docket be kept open to receive rebuttal or supplemental information as follow-up to any hearings for 30 days following the hearings. EPA met those obligations here—the comment period opened on April 24, 2009, the last hearing was on May 21, 2009 and the comment period closed June 23, 2009.

Second, as explained in letters denying requests to extend the comment period, a very large part of the information and analyses for the Proposed Findings had been previously released in July 30, 2008, as part of the *Advance Notice of Proposed Rulemaking: Regulating Greenhouse Gas Emissions under the Clean Air Act (ANPR)* (73 FR 44353). The public comment period for the ANPR is discussed above in Section I.C.1 of these Findings. The Administrator explained that the comment period for that ANPR was 120 days and that the major recent scientific assessments that EPA relied upon in the TSD released with the ANPR had previously each gone through their own public review processes and have been publicly available for some time. In other words, EPA has provided ample time for review, particularly with regard to the technical support for the Findings. See, for example, EPA Letter to Congressman Issa dated June 17, 2009, a copy of which is available at *http://epa.gov/climatechange/endangerment.html*.

Moreover, the comment period was not rendered insufficient merely because other climate-related proceedings were occurring simultaneously.

While one commenter suggests that the convergence of several different climate-related activities has ''seriously compromised'' their ability to participate in the comment process, that commenter was able to submit an 89 page comment on this proposal alone. Moreover, it is hardly rare that more than one rule is out for comment at the same time. As noted above, EPA has received a substantial number of significant comments on the Proposed Findings, and has thoroughly considered and responded to significant comments.

EPA finds no evidence that a typographical error in the docket e-mail address of the **Federal Register** notice announcing the proposal prevented the public from having a meaningful opportunity to comment, and therefore deprived them of due process. Although the minor error—which involved a word processing auto-correction that turned a short dash into a long dash—appeared in the FR version of the Proposed Findings, the e-mail address is correct

in the signature version of the Proposed Findings posted on EPA's Web site until publication in the **Federal Register,** and in the ''Instructions for Submitting Written Comments'' document on the Web site for the rulemaking. EPA has received over 190,000 e-mails to the docket e-mail address to date, so the minor typographical error appearing in only one location has not been an impediment to interested parties' e-mailing comments. Moreover, EPA provided many other avenues for interested parties to submit comments in addition to the docket e-mail address, including via *www.regulations.gov,* mail, and fax; each of these options have been utilized by many commenters. EPA is confident that the minor typographical error did not prevent anyone from submitting written comments, by e-mail or otherwise, and that the public was provided ''meaningful participation in the regulatory process'' as mentioned in EO 12866.

Our response regarding the request to reopen the comment period due to concerns about alleged destruction of raw global surface data is discussed more fully in the Response to Comments document, Volume 11. The commenter did not provide any compelling reason to conclude that the absence of these data would materially affect the trends in the temperature records or conclusions drawn about them in the assessment literature and reflected in the TSD. The Hadley Centre/Climate Research Unit (CRU) temperature record (referred to as HadCRUT) is just one of three global surface temperature records that EPA and the assessment literature refer to and cite. National Oceanic and Atmospheric Administration (NOAA) and National Aeronautics and Space Administration (NASA) also produce temperature records, and all three temperature records have been extensively peer reviewed. Analyses of the three global temperature records produce essentially the same long-term trends as noted in the Climate Change Science Program (CCSP) (2006) report ''Temperature Trends in the Lower Atmosphere,'' IPCC (2007), and NOAA's study [5] ''State of the Climate in 2008''. Furthermore, the commenter did not demonstrate that the allegedly destroyed data would materially alter the HadCRUT record or meaningfully hinder its replication. The raw data, a small part of which has not been public (for reasons described at: *https://www.uea.ac.uk/mac/comm/media/press/2009/nov/CRUupdate*), are available in a quality-controlled (or homogenized, value-added) format and the methodology for developing the quality-controlled data is described in the peer reviewed literature (as documented at *http://www.cru.uea.ac.uk/cru/data/temperature/*).

The release of the U.S. Global Climate Research Program (USGCRP) report on impacts of climate change in the United States in June 2009 also did not necessitate extending the comment period. This report was issued by the USGCRP, formerly the Climate Change Science Program (CCSP), and synthesized information contained in prior CCSP reports and other synthesis reports, many of which had already been published (and were included in the TSD for the Proposed Findings). Further, the USGCRP report itself underwent notice and comment before it was finalized and released.

Regarding the internal EPA staff paper that came to light during the comment period, several commenters submitted a copy of the EPA staff paper with their comments; EPA's response to the issues raised by the staff paper are discussed in the Response to Comments document, Volume 1. The fact that some internal agency deliberations were made public during the comment period does not in and of itself call into question those deliberations. As our responses to comments explain, EPA considered the concerns noted in the staff paper during the proposal stage, as well as when finalizing the Findings. There was nothing about those internal comments that required an extension or reopening of the comment period.

Thus, the opportunity for comment fully satisfies the CAA and Constitutional requirement of Due Process. Cases cited by commenters do not indicate otherwise. The comment period and thorough response to comment documents in the docket indicate that EPA has given people an opportunity to be heard in a ''meaningful time and a meaningful matter.'' *Armstrong* v. *Manzo,* 380 U.S. 545, 552 (1965). Interested parties had full notice of the rulemaking proceedings and a significant opportunity to participate through the comment process and multiple hearings.

For all the above reasons, EPA's denial of the requests for extension or reopening of the comment period was entirely reasonable in light of the extensive opportunity for public comment and heavy amount of public participation during the comment period. EPA has fully complied with all applicable public participation requirements for this rulemaking.

e. These Findings Did Not Necessitate a Formal Rulemaking Under the Administrative Procedure Act

One commenter, with the support of others, requests that EPA undertake a formal rulemaking process for the Findings, on the record, in accordance with the procedures described in sections 556–557 of the Administrative Procedure Act (APA). The commenter requests a multi-step process, involving additional public notice, an on-the-record proceeding (*e.g.,* formal administrative hearing) with the right of appeal, utilization of the Clean Air Scientific Advisory Committee (CASAC) and its advisory proceedings, and designation of representatives from other executive branch agencies to participate in the formal proceeding and any CASAC advisory proceeding.

The commenter asserts that while EPA is not obligated under the CAA to undertake these additional procedures, the Agency nonetheless has the legal authority to engage in such a proceeding. The commenter believes this proceeding would show that EPA is ''truly committed to scientific integrity and transparency.'' The commenter cites several cases to argue that refusal to proceed on the record would be ''arbitrary and capricious'' or would be an ''abuse of discretion.'' The allegation at the core of the commenter's argument is that profound and wide-ranging scientific uncertainties exist in the Proposed Findings and in the impacts on health and welfare discussed in the TSD. To support this argument, the commenter provides lengthy criticisms of the science. The commenter also argues that the regulatory cascade that would be ''unleashed'' by a positive endangerment finding warrants the more formal proceedings.

Finally, the commenter suggests that EPA engage in ''formal rulemaking'' procedures in part due to the Administrative Conference of the United States' (ACUS) recommended factors for engaging in formal rulemaking. The commenter argues that the current action is ''complex,'' ''open-ended,'' and the costs that errors in the action may pose are ''significant.''

EPA is denying the request to undertake an ''on the record'' formal rulemaking. EPA is under no obligation to follow the extraordinarily rarely used formal rulemaking provisions of the APA. First, CAA section 307(d) of the CAA clearly states that the rulemaking provisions of CAA section 307(d), *not* APA sections 553 through 557, apply to certain specified actions, such as this

[5] Peterson, T.C., and M.O. Baringer (Eds.) (2009) State of the Climate in 2008. *Bull. Amer. Meteor. Soc.,* 90, S1–S196.

one. EPA has satisfied all the requirements of CAA section 307(d). Indeed, the commenter itself ''is not asserting that the Clean Air Act expressly requires'' the additional procedures it requests. Moreover, the commenter does not discuss how the suggested formal proceeding would fit into the informal rulemaking requirements of CAA section 307(d) that do apply.

Formal rulemaking is very rarely used by Federal agencies. The formal rulemaking provisions of the APA are only triggered when the statute explicitly calls for proceedings ''on the record after opportunity for an agency hearing.'' *United States* v. *Florida East Coast Ry. Co.,* 410 U.S. 224, 241 (1973). The mere mention of the word ''hearing'' does not trigger the formal rulemaking provisions of the APA. *Id.* The CAA does not include the statutory phrase required to trigger the formal rulemaking provisions of the APA (and as noted above the APA does not apply in the first place). Congress specified that certain rulemakings under the CAA follow the rulemaking procedures outlined in CAA section 307(d) rather than the APA ''formal rulemaking'' commenter suggests.

Despite the inapplicability of the formal rulemaking provisions to this action, commenters suggest that to refuse to voluntarily undertake rulemaking provisions not preferred by Congress would make EPA's rulemaking action an ''abuse of discretion.'' EPA disagrees with this claim, and cases cited by the commenter do not indicate otherwise. To support the idea that an agency decision to engage in informal rulemaking could be an abuse of discretion, commenter cites *Ford Motor Co.* v. *FTC,* 673 F.2d 1008 (9th Cir. 1981). In *Ford Motor Co.,* the court ruled that the FTC's decision regarding an automobile dealership should have been resolved through a rulemaking rather than an individualized adjudication. *Id.* at 1010. In that instance, the court favored ''rulemaking'' over adjudication—not ''formal rulemaking'' over the far more common ''informal rulemaking.'' The case stands only for the non-controversial proposition that sometimes agency use of *adjudications* may rise to an abuse of discretion where a *rulemaking* would be more appropriate—whether formal or informal. The Commenter does not cite a single judicial opinion stating that an agency abused its discretion by following the time-tested and Congressionally-favored informal rulemaking provisions of the CAA or the APA instead of the rarely used formal APA rulemaking provisions.

The commenter also alludes to the possibility that the choice of informal rulemaking may be ''arbitrary and capricious. EPA disagrees that the choice to follow the frequently used, and CAA required, informal rulemaking procedures is arbitrary and capricious. The commenter cites *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519 (1978) for the proposition that ''extremely compelling circumstances'' could lead to a court overturning agency action for declining to follow extraneous procedures. As the commenter notes, in *Vermont Yankee* the Supreme Court overturned a lower court decision for imposing additional requirements not required by applicable statutes. Even if the dicta in *Vermont Yankee* could be applied contrary to the holding of the case in the way the commenter suggests, EPA's decision to follow frequently used informal rulemaking procedures for this action is highly reasonable.

As for the ACUS factors the commenter cites in support of its request, as the commenter notes, the ACUS factors are mere recommendations. While EPA certainly respects the views of ACUS, the recommendations are not binding on the Agency. In addition, EPA has engaged in a thorough, traditional rulemaking process that ensures that any concerns expressed by the commenter have been addressed. EPA has fully satisfied all applicable law in their consideration of this rulemaking.

Finally, as explained in Section III of these Findings and the Response to Comments document, EPA's approach to evaluating the evidence before it was entirely reasonable, and did not require a formal hearing. EPA relied primarily on robust synthesis reports that have undergone peer review and comment. The Agency also carefully considered the comments received on the Proposed Findings and TSD, including review of attached studies and documents. The public has had ample opportunity to provide its views on the science, and the record supporting these final findings indicates that EPA carefully considered and responded to significant public comments. To the extent the commenter's concern is that a formal proceeding will help ensure the *right* action in response to climate change is taken, that is not an issue for these Findings. As discussed in Section III of these Findings, this science-based judgment is not the forum for considering the potential mitigation options or their impact.

II. Legal Framework for This Action

As discussed in the Proposed Findings, two statutory provisions of the CAA govern the Administrator's Findings. Section 202(a) of the CAA sets forth a two-part test for regulatory action under that provision: Endangerment and cause or contribute. Section 302 of the CAA contains definitions of the terms ''air pollutant'' and ''effects on welfare''. Below is a brief discussion of these statutory provisions and how they govern the Administrator's decision, as well as a summary of significant legal comments and EPA's responses to them.

A. Section 202(a) of the CAA—Endangerment and Cause or Contribute

1. The Statutory Framework

Section 202(a)(1) of the CAA states that:

The Administrator shall by regulation prescribe (and from time to time revise) standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in [her] judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.

Based on the text of CAA section 202(a) and its legislative history, the Administrator interprets the two-part test as follows. Further discussion of this two-part test can be found in Section II of the preamble for the Proposed Findings. First, the Administrator is required to protect public health and welfare, but she is not asked to wait until harm has occurred. EPA must be ready to take regulatory action to prevent harm before it occurs. Section 202(a)(1) requires the Administrator to ''anticipate'' ''danger'' to public health or welfare. The Administrator is thus to consider both current and future risks. Second, the Administrator is to exercise judgment by weighing risks, assessing potential harms, and making reasonable projections of future trends and possibilities. It follows that when exercising her judgment the Administrator balances the likelihood and severity of effects. This balance involves a sliding scale; on one end the severity of the effects may be of great concern, but the likelihood low, while on the other end the severity may be less, but the likelihood high. Under either scenario, the Administrator is permitted to find endangerment. If the harm would be catastrophic, the Administrator is permitted to find endangerment even if the likelihood is small.

Because scientific knowledge is constantly evolving, the Administrator may be called upon to make decisions while recognizing the uncertainties and

limitations of the data or information available, as risks to public health or welfare may involve the frontiers of scientific or medical knowledge. At the same time, the Administrator must exercise reasoned decision making, and avoid speculative inquiries. Third, as discussed further below, the Administrator is to consider the cumulative impact of sources of a pollutant in assessing the risks from air pollution, and is not to look only at the risks attributable to a single source or class of sources. Fourth, the Administrator is to consider the risks to all parts of our population, including those who are at greater risk for reasons such as increased susceptibility to adverse health effects. If vulnerable subpopulations are especially at risk, the Administrator is entitled to take that point into account in deciding the question of endangerment. Here too, both likelihood and severity of adverse effects are relevant, including catastrophic scenarios and their probabilities as well as the less severe effects. As explained below, vulnerable subpopulations face serious health risks as a result of climate change.

In addition, by instructing the Administrator to consider whether emissions of an air pollutant cause or contribute to air pollution, the statute is clear that she need not find that emissions from any one sector or group of sources are the sole or even the major part of an air pollution problem. The use of the term ''contribute'' clearly indicates a lower threshold than the sole or major cause. Moreover, the statutory language in CAA section 202(a) does not contain a modifier on its use of the term contribute. Unlike other CAA provisions, it does not require ''significant'' contribution. See, *e.g.,* CAA sections 111(b); 213(a)(2), (4). To be sure, any finding of a ''contribution'' requires some threshold to be met; a truly trivial or de minimis ''contribution'' might not count as such. The Administrator therefore has ample discretion in exercising her reasonable judgment in determining whether, under the circumstances presented, the cause or contribute criterion has been met. Congress made it clear that the Administrator is to exercise her judgment in determining contribution, and authorized regulatory controls to address air pollution even if the air pollution problem results from a wide variety of sources. While the endangerment test looks at the entire air pollution problem and the risks it poses, the cause or contribute test is designed to authorize EPA to identify and then address what may well be many different sectors or groups of sources that are each part of—and thus contributing to—the problem.

This framework recognizes that regulatory agencies such as EPA must be able to deal with the reality that ''[m]an's ability to alter his environment has developed far more rapidly than his ability to foresee with certainty the effects of his alterations.'' See *Ethyl Corp* v. *EPA,* 541 F.2d 1, 6 (DC Cir.), *cert. denied* 426 U.S. 941 (1976). Both ''the Clean Air Act 'and common sense * * * demand regulatory action to prevent harm, even if the regulator is less than certain that harm is otherwise inevitable.' '' See *Massachusetts* v. *EPA,* 549 U.S. at 506, n.7 (citing *Ethyl Corp.*).

The Administrator recognizes that the context for this action is unique. There is a very large and comprehensive base of scientific information that has been developed over many years through a global consensus process involving numerous scientists from many countries and representing many disciplines. She also recognizes that there are varying degrees of uncertainty across many of these scientific issues. It is in this context that she is exercising her judgment and applying the statutory framework. As discussed in the Proposed Findings, this interpretation is based on and supported by the language in CAA section 202(a), its legislative history and case law.

2. Summary of Response to Key Legal Comments on the Interpretation of the CAA Section 202(a) Endangerment and Cause or Contribute Test

EPA received numerous comments regarding the interpretation of CAA section 202(a) set forth in the Proposed Findings. Below is a brief discussion of some of the key adverse legal comments and EPA's responses. Other key legal comments and EPA's responses are provided in later sections discussing the Administrator's findings.

Additional and more detailed summaries and responses can be found in the Response to Comments document. As noted in the Response to Comments document, EPA also received comments supporting its legal interpretations.

a. The Administrator Properly Interpreted the Precautionary and Preventive Nature of the Statutory Language

Various commenters argue either that the endangerment test under CAA section 202(a) is not precautionary and preventive in nature, or that EPA's interpretation and application is so extreme that it is contrary to what Congress intended in 1977, and effectively guarantees an affirmative endangerment finding. Commenters also argue that the endangerment test improperly shifts the burdens to the opponents of an endangerment finding and is tantamount to assuming the air pollution is harmful unless it is shown to be safe.

EPA rejects the argument that the endangerment test in CAA section 202(a) is not precautionary or preventive in nature. As discussed in more detail in the proposal, Congress relied heavily on the en banc decision in Ethyl when it revised section 202(a) and other CAA provisions to adopt the current language on endangerment and contribution. 74 FR 18886, 18891–2. The Ethyl court could not have been clearer on the precautionary nature of a criteria based on endangerment. The court rejected the argument that EPA had to find actual harm was occurring before it could make the required endangerment finding. The court stated that:

> *The Precautionary Nature of ''Will Endanger.''* Simply as a matter of plain meaning, we have difficulty crediting petitioners' reading of the ''will endanger'' standard. The meaning of ''endanger'' is not disputed. Case law and dictionary definition agree that endanger means something less than actual harm. When one is endangered, harm is *threatened;* no actual injury need ever occur. Thus, for example, a town may be ''endangered'' by a threatening plague or hurricane and yet emerge from the danger completely unscathed. A statute allowing for regulation in the face of danger is, necessarily, a precautionary statute. Regulatory action may be taken before the threatened harm occurs; indeed, the very existence of such precautionary legislation would seem to *demand* that regulatory action precede, and, optimally, prevent, the perceived threat. As should be apparent, the ''will endanger'' language of Section 211(c)(1)(A) makes it such a precautionary statute. *Ethyl* at 13 (footnotes omitted).

Similarly, the court stated that ''[i]n sum, based on the plain meaning of the statute, the juxtaposition of CAA section 211 with CAA sections 108 and 202, and the *Reserve Mining* precedent, we conclude that the ''will endanger'' standard is precautionary in nature and does not require proof of actual harm before regulation is appropriate.'' *Ethyl* at 17. It is this authority to act before harm has occurred that makes it a preventive, precautionary provision.

It is important to note that this statement was in the context of rejecting an argument that EPA had to prove actual harm before it could adopt fuel control regulations under then CAA section 211(c)(1). The court likewise rejected the argument that EPA had to show that such harm was ''probable.''

The court made it clear that determining endangerment entails judgments involving both the risk or likelihood of harm and the severity of the harm if it were to occur. Nowhere did the court indicate that the burden was on the opponents of an endangerment finding to show that there was no endangerment. The opinion focuses on describing the burden the statute places on EPA, rejecting *Ethyl's* arguments of a burden to show actual or probable harm.

Congress intentionally adopted a precautionary and preventive approach. It stated that the purpose of the 1977 amendments was to ''emphasize the preventive or precautionary nature of the act, *i.e.,* to assure that regulatory action can effectively prevent harm before it occurs; to emphasize the predominate value of protection to public health.'' [6] Congress also stated that it authorized the Administrator to weigh risks and make projections of future trends, a ''middle road between those who would impose a nearly impossible standard of proof on the Administrator before he may move to protect public health and those who would shift the burden of proof for all pollutants to make the pollutant source prove the safety of its emissions as a condition of operation.'' Leg. His. at 2516.

Thus, EPA rejects commenters' arguments. Congress intended this provision to be preventive and precautionary in nature, however it did not shift the burden of proof to opponents of an endangerment finding to show safety or no endangerment. Moreover, as is demonstrated in the following, EPA has not shifted the burden of proof in the final endangerment finding, but rather is weighing the likelihood and severity of harms to arrive at the final finding. EPA has not applied an exaggerated or dramatically expanded precautionary principle, and instead has exercised judgment by weighing and balancing the factors that are relevant under this provision.

b. The Administrator Does Not Need To Find That the Control Measures Following an Endangerment Finding Would Prevent at Least a Substantial Part of the Danger in Order To Find Endangerment

Several commenters argue that it is unlawful for EPA to make an affirmative endangerment finding unless EPA finds that the regulatory control measures contemplated to follow such a finding would prevent at least a substantial part of the danger from the global climate change at which the regulation is aimed. This hurdle is also described by commenters as the regulation ''achieving the statutory objective of preventing damage'', or ''fruitfully attacking'' the environmental and public health danger at hand by meaningfully and substantially reducing it. Commenters point to *Ethyl Corp.* v. *EPA,* 541 F.2d 1 (DC Cir. 1976) (en banc) as support for this view, as well as portions of the legislative history of this provision.

Commenters contend that EPA has failed to show that this required degree of meaningful reduction of endangerment would be achieved through regulation of new motor vehicles based on an endangerment finding. In making any such showing, commenters argue that EPA would need to account for the following: (1) The fact that any regulation would be limited to *new* motor vehicles, if not the subset of new motor vehicles discussed in the President's May 2009 announcement, (2) any increase in emissions from purchasers delaying purchases of new vehicles subject to any greenhouse gas emissions standards, or increasing the miles traveled of new vehicles with greater fuel economy, (3) the fact that only a limited portion of the new motor vehicle emissions of greenhouse gases would be controlled, (4) the fact that CAFE standards would effectively achieve the same reductions, and (5) the fact that any vehicle standards would not themselves reduce global temperatures. Some commenters refer to EPA's proposal for greenhouse gas emissions standards for new motor vehicles as support for these arguments, claiming the proposed new motor vehicle emission standards are largely duplicative of the standards proposed by the National Highway Traffic Safety Administration (NHTSA), and the estimates of the impacts of the proposed standards confirm that EPA's proposed standards cannot ''fruitfully attack'' global climate change (74 FR 49454, September 28, 2009).

Commenters attempt to read into the statute a requirement that is not there. EPA interprets the endangerment provision of CAA section 202(a) as not requiring any such finding or showing as described by commenters. The text of CAA section 202(a) does not support such an interpretation. The endangerment provision calls for EPA, in its judgment, to determine whether air pollution is reasonably anticipated to endanger public health or welfare, and whether emissions from certain sources cause or contribute to such air pollution. If EPA makes an affirmative finding, then it shall set emissions standards applicable to emissions of such air pollutants from new motor vehicles. There is no reference in the text of the endangerment or cause or contribute provision to anything concerning the degree of reductions that would be achieved by the emissions standards that would follow such a finding. The Administrator's judgment is directed at the issues of endangerment and cause or contribute, not at how effective the resulting emissions control standards will be.

As in the several other similar provisions adopted in the 1977 amendments, in CAA section 202(a) Congress explicitly separated two different decisions to be made, providing different criteria for them. The first decision involves the air pollution and the endangerment criteria, and the contribution to the air pollution by the sources. The second decision involves how to regulate the sources to control the emissions if an affirmative endangerment and contribution finding are made. In all of the various provisions, there is broad similarity in the phrasing of the endangerment and contribution decision. However, for the decision on how to regulate, there are a wide variety of different approaches adopted by Congress. In some case, EPA has discretion whether to issue standards or not, while in other cases, as in CAA section 202(a), EPA is required to issue standards. In some cases, the regulatory criteria are general, as in CAA section 202(a); in others, they provide significantly more direction as to how standards are to be set, as in CAA section 213(a)(4).

As the Supreme Court made clear in *Massachusetts* v. *EPA,* EPA's judgment in making the endangerment and contribution findings is constrained by the statute, and EPA is to decide these issues based solely on the scientific and other evidence relevant to that decision. EPA may not ''rest[] on reasoning divorced from the statutory text,'' and instead EPA's exercise of judgment must relate to whether an air pollutant causes or contributes to air pollution that endangers. *Massachusetts* v. *EPA,* 549 U.S. at 532. As the Supreme Court noted, EPA must ''exercise discretion within defined statutory limits.'' Id. at 533. EPA's belief one way or the other regarding whether regulation of greenhouse gases from new motor vehicles would be ''effective'' is irrelevant in making the endangerment and contribution decisions before EPA. Id. Instead ''[t]he statutory question is

[6] The Supreme Court recognized that the current language in section 202(a), adopted in 1977, is ''more protective'' than the 1970 version that was similar to the section 211 language before the DC Circuit in *Ethyl. Massachusetts* v. *EPA,* 549 U.S. at 506, fn 7.

whether sufficient information exists to make an endangerment finding'' Id. at 534.

The effectiveness of a potential future control strategy is not relevant to deciding whether air pollution levels in the atmosphere endanger. It is also not relevant to deciding whether emissions of greenhouse gases from new motor vehicles contribute to such air pollution. Commenters argue that Congress implicitly imposed a third requirement, that the future control strategy have a certain degree of effectiveness in reducing the endangerment before EPA could make the affirmative findings that would authorize such regulation. There is no statutory text that supports such an interpretation, and the Supreme Court makes it clear that EPA has no discretion to read this kind of additional factor into CAA section 202(a)'s endangerment and contribution criteria. In fact, the Supreme Court rejected similar arguments that EPA had the discretion to consider various other factors besides endangerment and contribution in deciding whether to deny a petition. *Massachusetts* v. *EPA,* 549 U.S. at 532–35.

Commenters point to language from the *Ethyl* case to support their position, noting that the DC Circuit referred to the emissions control regulation adopted by EPA under CAA section 211(c) as one that would ''fruitfully attack'' the environmental and public health danger by meaningfully and substantially reducing the danger. It is important to understand the context for this discussion in *Ethyl.* The petitioner *Ethyl Corp.* argued that EPA had to show that the health threat from the emissions of lead from the fuel additive being regulated had to be considered in isolation, and the threat ''in and of itself'' from the additive had to meet the test of endangerment in CAA section 211(c). EPA had rejected this approach, and had interpreted CAA section 211(c)(1) as calling for EPA to look at the cumulative impact of lead, and to consider the impact of lead from emissions related to use of the fuel additive in the context all other human exposure to lead. The court rejected *Ethyl's* approach and supported EPA's interpretation. The DC Circuit noted that Congress was fully aware that the burden of lead on the body was caused by multiple sources and that it would be of no value to try and determine the effect on human health from the lead automobile emissions by themselves. The court specifically noted that ''the incremental effect of lead emissions on the total body lead burden is of no practical value in determining whether health is endangered,'' but recognized that this incremental effect is of value ''in deciding whether the lead exposure problem can fruitfully be attacked through control of lead additives.'' *Ethyl,* 541 F.2d at 31 fn 62. The court made clear that the factor that was critically important to determining the effectiveness of the resulting control strategy—the incremental effect of automobile lead emissions on total body burden—was irrelevant and of no value in determining whether the endangerment criteria was met. Thus it is clear that the court in *Ethyl* did not interpret then CAA section 211(c)(1)(A) as requiring EPA to make a showing of the effectiveness of the resulting emissions control strategy, and instead found just the opposite, that the factors that would determine effectiveness are irrelevant to determining endangerment.

Commenters also cite to the legislative history, noting that Congress referred to the ''preventive or precautionary nature of the Act, *i.e.,* to assure that regulatory action can effectively prevent harm before it occurs.'' Leg. Hist. at 2516. However, this statement by Congress is presented as an answer to the question on page 2515, ''Should the Administrator act to prevent harm before it occurs or should he be authorized to regulate an air pollutant only if he finds actual harm has already occurred.'' Leg. Hist. at 2515. In this context, the discussion on page 2516 clearly indicates that there is no opportunity for prevention or precaution if the test is one of actual harm already occurring. This discussion does not say or imply that even if the harm has not occurred, you can not act unless you also show that your action will effectively address it. This discussion concerns the endangerment test, not the criteria for standard setting. The criteria for standard setting address how the agency should act to address the harm, and as the *Ethyl* case notes, the factors relevant to how to ''fruitfully attack'' the harm are irrelevant to determining whether the harm is one that endangers the public health or welfare.

As with current CAA section 202(a), there is no basis to conflate these two separate decisions and to read into the endangerment criteria an obligation that EPA show that the resulting emissions control strategy or strategies will have some significant degree of harm reduction or effectiveness in addressing the endangerment. The conflating of the two decisions is not supported in the text of this provision, by the Supreme Court in *Massachusetts* v. *EPA,* by the DC Circuit in *Ethyl,* or by Congress in the legislative history of this provision. It would be an unworkable interpretation, calling for EPA to project out the result of perhaps not one, but even several, future rulemakings stretching over perhaps a decade or decades. Especially in the context of global climate change, the effectiveness of a control strategy for new motor vehicles would have to be viewed in the context of a number of future motor vehicle regulations, as well as in the larger context of the CAA and perhaps even global context. That would be an unworkable and speculative requirement to impose on EPA as a precondition to answering the public health and welfare issues before it, as they are separate and apart from the issues involved with developing, implementing and evaluating the effectiveness of emissions control strategies.

c. The Administrator Does Not Need To Find There Is Significant Risk of Harm

Commenters argue that Congress established a minimum requirement that there be a ''significant risk of harm'' to find endangerment. They contend that this requirement stemmed from the *Ethyl* case, and that Congress adopted this view. According to the commenters, the risk is the function of two variables: the nature of the hazard at issue and the likelihood of its occurrence. Commenters argue that Congress imposed a requirement that this balance demonstrate a ''significant risk of harm'' to strike a balance between the precautionary nature of the CAA and the burdensome economic and societal consequences of regulation.

There are two basic problems with the commenters' arguments. First, commenters equate ''significant risk of harm'' as the overall test for endangerment, however the *Ethyl* case and the legislative history treat the risk of harm as only one of the two components that are to be considered in determining endangerment.—, The two components are the likelihood or risk of a harm occurring, and the severity of harm if it were to occur. Second, commenters equate it to a minimum statutory requirement. However, while the court in the *Ethyl* case made it clear that the facts in that case met the then applicable endangerment criteria, it also clearly said it was not determining what other facts or circumstances might amount to endangerment, including cases where the likelihood of a harm occurring was less than a significant risk of the harm.

In the EPA rulemaking that led to the *Ethyl* case, EPA stated that the requirement to reduce lead in gasoline ''is based on the finding that lead

particle emissions from motor vehicles present a significant risk of harm to the health of urban populations, particularly to the health of city children'' (38 FR 33734, December 6, 1973). The court in *Ethyl* supported EPA's determination, and addressed a variety of issues. First, it determined that the ''will endanger'' criteria of then CAA section 211(c) was intended to be precautionary in nature. It rejected arguments that EPA had to show proof of actual harm, or probable harm. *Ethyl,* 541 F.2d at 13–20. It was in this context, evaluating petitioner's arguments on whether the likelihood of a harm occurring had to rise to the level of actual or probable harm, that the court approved of EPA's view that a significant risk of harm could satisfy the statutory criteria. The precautionary nature of the provision meant that EPA did not need to show that either harm was actually occurring or was probable.

Instead, the court made it clear that the concept of endangerment is ''composed of reciprocal elements of risk and harm,'' *Ethyl* at 18. This means ''the public health may properly be found endangered both by a lesser risk of a greater harm and by a greater risk of lesser harm. Danger depends upon the relation between the risk and harm presented by each case, and cannot legitimately be pegged to 'probable' harm, regardless of whether that harm be great or small.'' The Ethyl court pointed to the decision by the 8th Circuit in *Reserve Mining Co.* v. *EPA,* 514 F.2d 492 (8th Cir, 1975), which interpreted similar language under the Federal Water Pollution Control Act, where the 8th Circuit upheld an endangerment finding in a case involving ''reasonable medical concern,'' or a ''potential'' showing of harm. This was further evidence that a minimum ''probable'' likelihood of harm was not required.

The Ethyl court made it clear that there was no specific magnitude of risk of harm occurring that was required. ''Reserve Mining convincingly demonstrates that the magnitude of risk sufficient to justify regulation is inversely proportional to the harm to be avoided.'' *Ethyl* at 19. This means there is no minimum requirement that the magnitude of risk be ''significant'' or another specific level of likelihood of occurrence. You need to evaluate the risk of harm in the context of the severity of the harm if it were to occur. In the case before it, the Ethyl court noted that ''the harm caused by lead poisoning is severe.'' Even with harm as severe as lead poisoning, EPA did not rely on ''potential'' risk or a ''reasonable medical concern.'' Instead, EPA found that there was a significant risk of this harm to health. This finding of a significant risk was less than the level of ''probable'' harm called for by the petitioner Ethyl Corporation but was ''considerably more certain than the risk that justified regulation in Reserve Mining of a comparably 'fright-laden' harm.'' *Ethyl* at 19–20. The Ethyl court concluded that this combination of risk (likelihood of harm) and severity of harm was sufficient under CAA section 211(c). ''Thus we conclude that however far the parameters of risk and harm inherent in the 'will endanger' standard might reach in an appropriate case, they certainly present a 'danger' that can be regulated when the harm to be avoided is widespread lead poisoning and the risk of that occurrence is 'significant'.'' *Ethyl* at 20.

Thus, the court made it clear that the endangerment criteria was intended to be precautionary in nature, that the risk of harm was one of the elements to consider in determining endangerment, and that the risk of harm needed to be considered in the context of the severity of the potential harm. It also concluded that a significant risk of harm coupled with an appropriate severity of the potential harm would satisfy the statutory criteria, and in the case before it the Administrator was clearly authorized to determine endangerment where there was a significant risk of harm that was coupled with a severe harm such as lead poisoning.

Importantly, the court also made it clear that it was not determining a minimum threshold that always had to be met. Instead, it emphasized that the risk of harm and severity of the potential harm had to be evaluated on a case by case basis. The court specifically said it was not determining ''however far the parameters of risk and harm * * * might reach in an appropriate case.'' *Ethyl* at 20. Also see *Ethyl* fn 17 at 13. The court recognized that this balancing of risk and harm ''must be confined to reasonable limits'' and even absolute certainty of a de minimis harm might not justify government action. However, ''whether a particular combination of slight risk and great harm, or great risk and slight harm constitutes a danger must depend on the facts of each case.'' *Ethyl* at fn 32 at 18.[7]

In some cases, commenters confuse matters by switching the terminology, and instead refer to effects that ''significantly harm'' the public health or welfare. As with the reference to ''significant risk of harm,'' commenters fail to recognize that there are two different aspects that must be considered, risk of harm and severity of harm, and neither of these aspects has a requirement that there be a finding of ''significance.'' The DC Circuit in *Ethyl* makes clear that it is the combination of these two aspects that must be evaluated for purposes of endangerment, and there is no requirement of ''significance'' assigned to either of the two aspects that must instead be evaluated in combination. Congress addressed concerns over burdensome economic and societal consequences in the various statutory provisions that provide the criteria for standard setting or other agency action if there is an affirmative endangerment finding. Those statutory provisions, for example, make standard setting discretionary or specify how cost and other factors are to be taken into consideration in setting standards. However, the issues of risk of harm and severity of harm if it were to occur are separate from the issues of the economic impacts of any resulting regulatory provisions (*see* below).

As is clear in the prior summary of the endangerment findings and the more detailed discussion later, the breadth of the sectors of our society that are affected by climate change and the time frames at issue mean there is a very wide range of risks and harms that need to be considered, from evidence of various harms occurring now to evidence of risks of future harms. The Administrator has determined that the body of scientific evidence compellingly supports her endangerment finding.

B. Air Pollutant, Public Health and Welfare

The CAA defines both ''air pollutant'' and ''effects on welfare.'' We provide both definitions here again for convenience.

Air pollutant is defined as:

[7] Commenters point to *Amer. Farm Bureau Ass'n* v. *EPA,* 559 F.3d 512, 533 (DC Cir. 2009) as supporting their argument. However, in that case the Court made clear that EPA's action was not subject to the endangerment criterion in CAA section 108 but instead was subject to CAA section 109's requirement that the primary NAAQS be requisite to protect the public health with an adequate margin of safety. Under that provision and its case law, the Court upheld EPA's reasoned balancing of the uncertainty regarding the link between non-urban thoracic coarse PM and adverse health effects, the large population groups potentially exposed to these particles, and the nature and degree of the health effects at issue. Citing to EPA's reasoning at 71 FR 61193 in the final PM rule, the court explained that EPA need not wait for conclusive proof of harm before setting a NAAQS under section 109 for this kind of coarse PM. The Court's reference to EPA's belief that there may be a significant risk to public health is not stated as any sort of statutory minimum, but instead refers to the Agency's reasoning at 71 FR 61193, which displays a reasoned balancing of possibility of harm and severity of harm if it were to occur.

''Any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term ''air pollutant'' is used.'' CAA section 302(g). As the Supreme Court held, greenhouse gases fit well within this capacious definition. *See Massachusetts* v. *EPA,* 549 U.S. at 532. They are ''without a doubt'' physical chemical substances emitted into the ambient air. *Id.* at 529.

''Regarding 'effects on welfare', the CAA states that [a]ll language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants.'' CAA section 302(h).

As noted in the Proposed Findings, this definition is quite broad. Importantly, it is not an exclusive list due to the use of the term ''includes, but is not limited to, * * *.'' Effects other than those listed here may also be considered effects on welfare. Moreover, the terms contained within the definition are themselves expansive.

Although the CAA defines ''effects on welfare'' as discussed above, there are no definitions of ''public health'' or ''public welfare'' in the CAA. The Supreme Court has discussed the concept of public health in the context of whether costs of implementation can be considered when setting the health based primary National Ambient Air Quality Standards. *Whitman v. American Trucking Ass'n,* 531 U.S. 457 (2001). In *Whitman,* the Court imbued the term with its most natural meaning: ''the health of the public. *Id.* at 466. In the past, when considering public health, EPA has looked at morbidity, such as impairment of lung function, aggravation of respiratory and cardiovascular disease, and other acute and chronic health effects, as well as mortality. *See, e.g., Final National Ambient Air Quality Standard for Ozone,* (73 FR 16436, 2007).

EPA received numerous comments regarding its proposed interpretations of air pollutant and public health and welfare. Summaries of key comments and EPA's responses are discussed in Sections IV and V of these Findings. Additional and more detailed summaries and responses can be found in the Response to Comments document. As noted in the Response to Comments document, EPA also received comments supporting its legal interpretations.

III. EPA's Approach for Evaluating the Evidence Before It

This section discusses EPA's approach to evaluating the evidence before it, including the approach taken to the scientific evidence, the legal framework for this decision making, and several issues critical to determining the scope of the evaluation performed.

A. The Science on Which the Decisions Are Based

In 2007, EPA initiated its assessment of the science and other technical information to use in addressing the endangerment and cause or contribute issues before it under CAA section 202(a). This scientific and technical information was developed in the form of a TSD in 2007. An earlier draft of this document was released as part of the ANPR published July 30, 2008 (73 FR 44353). That earlier draft of the TSD relied heavily on the IPCC Fourth Assessment Report of 2007, key NRC reports, and a limited number of then-available synthesis and assessment products of the U.S. Climate Change Science Program (CCSP; now encompassed by USGCRP). EPA received a number of comments specifically focused on the TSD during the 120-day public comment period for the ANPR.

EPA revised and updated the TSD in preparing the Proposed Findings on endangerment and cause or contribute. Many of the comments received on the ANPR were reflected in the draft TSD released in April 2009 that served as the underlying scientific and technical basis for the Administrator's Proposed Findings, published April 24, 2009 (74 FR 18886). The draft TSD released in April 2009 also reflected the findings of 11 new synthesis and assessment products under the U.S. CCSP that had been published since July 2008.

The TSD that summarizes scientific findings from the major assessments of the USGCRP, the IPCC, and the NRC accompanies these Findings. The TSD is available at *www.epa.gov/climatechange/endangerment.html* and in the docket for this action. It also includes the most recent comprehensive assessment of the USGCRP, *Global Climate Change Impacts in the United States*,[8] published in June 2009. In addition, the TSD incorporates up-to-date observational data for a number of key climate variables from the NOAA, and the most up-to-date emissions data from EPA's annual *Inventory of U.S. Greenhouse Gas Emissions and Sinks,* published in April, 2009.[9] And finally, as discussed in Section I.B of these Findings, EPA received a large number of public comments on the Administrator's Proposed Findings, many of which addressed science issues either generally or specifically as reflected in the draft TSD released with the April 2009 proposal. A number of edits and updates were made to the draft TSD as a result of these comments.[10]

EPA is giving careful consideration to all of the scientific and technical information in the record, as discussed below. However, the Administrator is relying on the major assessments of the USGCRP, IPCC, and NRC as the primary scientific and technical basis of her endangerment decision for a number of reasons.

First, these assessments address the scientific issues that the Administrator must examine for the endangerment analysis. When viewed in total, these assessments address the issue of greenhouse gas endangerment by providing data and information on: (1) The amount of greenhouse gases being emitted by human activities; (2) how greenhouse gases have been and continue to accumulate in the atmosphere as a result of human activities; (3) changes to the Earth's energy balance as a result of the buildup of atmospheric greenhouse gases; (4) observed temperature and other climatic changes at the global and regional scales; (5) observed changes in other climate-sensitive sectors and systems of the human and natural environment; (6) the extent to which observed climate change and other changes in climate-sensitive systems can be attributed to the human-induced buildup of atmospheric greenhouse gases; (7) future projected climate change under a range of different scenarios of changing greenhouse gas emission rates; and (8) the projected risks and impacts to

[8] Karl, T., J. Melillo, and T. Peterson (Eds.) (2009) Global Climate Change Impacts in the United States. Cambridge University Press, Cambridge, United Kingdom.

[9] U.S. EPA (2009) *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2007.* EPA–430–R–09–004, Washington, DC.

[10] EPA has placed within the docket a separate memo ''Summary of Major Changes to the Technical Support Document'' identifying where within the TSD such changes were made relative to the draft TSD released in April 2009.

human health, society and the environment.

Second, as indicated above, these assessments are recent and represent the current state of knowledge on the key elements for the endangerment analysis. It is worth noting that the June 2009 assessment of the USGCRP incorporates a number of key findings from the 2007 IPCC Fourth Assessment Report; such findings include the attribution of observed climate change to human emissions of greenhouse gases, and the future projected scenarios of climate change for the global and regional scales. This demonstrates that much of the underlying science that EPA has been utilizing since 2007 has not only been in the public domain for some time, but also has remained relevant and robust.

Third, these assessments are comprehensive in their coverage of the greenhouse gas and climate change problem, and address the different stages of the emissions-to-potential-harm chain necessary for the endangerment analysis. In so doing, they evaluate the findings of numerous individual peer-reviewed studies in order to draw more general and overarching conclusions about the state of science. The USGCRP, IPCC, and NRC assessments synthesize literally thousands of individual studies and convey the consensus conclusions on what the body of scientific literature tells us.

Fourth, these assessment reports undergo a rigorous and exacting standard of peer review by the expert community, as well as rigorous levels of U.S. government review and acceptance. Individual studies that appear in scientific journals, even if peer reviewed, do not go through as many review stages, nor are they reviewed and commented on by as many scientists. The review processes of the IPCC, USGCRP, and NRC (explained in fuller detail in the TSD and the Response to Comments document, Volume 1) provide EPA with strong assurance that this material has been well vetted by both the climate change research community and by the U.S. government. These assessments therefore essentially represent the U.S. government's view of the state of knowledge on greenhouse gases and climate change. For example, with regard to government acceptance and approval of IPCC assessment reports, the USGCRP Web site states that: ''When governments accept the IPCC reports and approve their Summary for Policymakers, they acknowledge the legitimacy of their scientific content.'' [11] It is the Administrator's view that such review and acceptance by the U.S. Government lends further support for placing primary weight on these major assessments.

It is EPA's view that the scientific assessments of the IPCC, USGRCP, and the NRC represent the best reference materials for determining the general state of knowledge on the scientific and technical issues before the agency in making an endangerment decision. No other source of information provides such a comprehensive and in-depth analysis across such a large body of scientific studies, adheres to such a high and exacting standard of peer review, and synthesizes the resulting consensus view of a large body of scientific experts across the world. For these reasons, the Administrator is placing primary and significant weight on these assessment reports in making her decision on endangerment.

A number of commenters called upon EPA to perform a new and independent assessment of all of the underlying climate change science, separate and apart from USGCRP, IPCC, and NRC. In effect, commenters suggest that EPA is either required to or should ignore the attributes discussed above concerning these assessment reports, and should instead perform its own assessment of all of the underlying studies and information.

In addition to the significant reasons discussed above for relying on and placing primary weight on these assessment reports, EPA has been a very active part of the U.S. government climate change research enterprise, and has taken an active part in the review, writing, and approval of these assessments. EPA was the lead agency for three significant reports under the USGCRP [12], and recently completed an assessment addressing the climate change impacts on U.S. air quality—a report on which the TSD heavily relies for that particular issue. EPA was also involved in review of the IPCC Fourth Assessment Report, and in particular took part in the approval of the summary for policymakers for the Working Group II Volume, *Impacts, Adaptation and Vulnerability.*[13] The USGCRP, IPCC, and NRC assessments have been reviewed and formally accepted by, commissioned by, or in some cases authored by, U.S. government agencies and individual government scientists. These reports already reflect significant input from EPA's scientists and the scientists of many other government agencies.

EPA has no reason to believe that the assessment reports do not represent the best source material to determine the state of science and the consensus view of the world's scientific experts on the issues central to making an endangerment decision with respect to greenhouse gases. EPA also has no reason to believe that putting this significant body of work aside and attempting to develop a new and separate assessment would provide any better basis for making the endangerment decision, especially because any such new assessment by EPA would still have to give proper weight to these same consensus assessment reports.

In summary, EPA concludes that its reliance on existing and recent synthesis and assessment reports is entirely reasonable and allows EPA to rely on the best available science.[14] EPA also recognizes that scientific research is very active in many areas addressed in the TSD (*e.g.,* aerosol effects on climate, climate feedbacks such as water vapor, and internal and external climate forcing mechanisms), as well as for some emerging issues (*e.g.,* ocean acidification and climate change effects on water quality). EPA recognizes the potential importance of new scientific research, and the value of an ongoing process to take more recent science into account. EPA reviewed new literature in

[11] *http://www.globalchange.gov/publications/reports/ipcc-reports.*

[12] CCSP (2009) *Coastal Sensitivity to Sea-Level Rise: A Focus on the Mid-Atlantic Region.* A Report by the U.S. Climate Change Science Program and the Subcommittee on Global Change Research. [James G. Titus (Coordinating Lead Author), K. Eric Anderson, Donald R. Cahoon, Dean B. Gesch, Stephen K. Gill, Benjamin T. Gutierrez, E. Robert Thieler, and S. Jeffress Williams (Lead Authors)], U.S. Environmental Protection Agency, Washington DC, USA, 320 pp. CCSP (2008) *Preliminary review of adaptation options for climate-sensitive ecosystems and resources.* A Report by the U.S. Climate Change Science Program and the Subcommittee on Global Change Research. [Julius, S.H., J.M. West (eds.), J.S. Baron, B. Griffith, L.A. Joyce, P. Kareiva, B.D. Keller, M.A. Palmer, C.H. Peterson, and J.M. Scott (Authors)]. U.S. Environmental Protection Agency, Washington, DC, USA, 873 pp. CCSP (2008) *Analyses of the effects of global change on human health and welfare and human systems.* A Report by the U.S. Climate Change Science Program and the Subcommittee on Global Change Research. [Gamble, J.L. (ed.), K.L. Ebi, F.G. Sussman, T.J. Wilbanks, (Authors)]. U.S. Environmental Protection Agency, Washington, DC, USA.

[13] IPCC (2007) Climate Change 2007: *Impacts, Adaptation and Vulnerability.* Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, M.L. Parry, O.F. Canziani, J.P. Palutikof, P.J. van der Linden and C.E. Hanson, Eds., Cambridge University Press, Cambridge, UK, 976pp.

[14] It maintains the highest level of adherence to Agency and OMB guidelines for data and scientific integrity and transparency. This is discussed in greater detail in EPA's Response to Comments document.

preparation of this TSD to evaluate its consistency with recent scientific assessments. We also considered public comments received and studies incorporated by reference. In a number of cases, the TSD was updated based on such information to add context for assessment literature findings, which includes supporting information and/or qualifying statements. In other cases, material that was not incorporated into the TSD is discussed within the Response to Comments document.

EPA reviewed these individual studies that were not considered or reflected in these major assessments to evaluate how they inform our understanding of how greenhouse gas emissions affect climate change, and how climate change may affect public health and welfare. Given the very large body of studies reviewed and assessed in developing the assessment reports, and the rigor and breadth of that review and assessment, EPA placed limited weight on the much smaller number of individual studies that were not considered or reflected in the major assessments. EPA reviewed them largely to see if they would lead EPA to change or place less weight on the judgments reflected in the assessment report. While EPA recognizes that some studies are more useful or informative than others, and gave each study it reviewed the weight it was due, the overall conclusion EPA drew from its review of studies submitted by commenters was that the studies did not change the various conclusions or judgments EPA would draw based on the assessment reports.

Many comments focus on the scientific and technical data underlying the Proposed Findings, such as climate change science and greenhouse gas emissions data. These comments cover a range of topics and are summarized and responded to in the Response to Public Comments document. The responses note those cases where a technical or scientific comment resulted in an editorial or substantive change to the TSD. The final TSD reflects all changes made as a result of public comments.

B. The Law on Which the Decisions Are Based

In addition to grounding these determinations on the science, they are also firmly grounded in EPA's legal authority. Section II of these Findings provides an in-depth discussion of the legal framework for the endangerment and cause or contribute decisions under CAA section 202(a), with additional discussion in Section II of the Proposed Finding (74 FR 18886, 18890, April 24, 2009). A variety of important legal issues are also discussed in Sections III, IV, and V of these Findings, as well as in the Response to Comments document, Volume 11. Section IV and V of these Findings explain the Administrator's decisions, and how she exercised her judgment in making the endangerment and contribution determinations, based on the entire scientific record before her and the legal framework structuring her decision making.

C. Adaptation and Mitigation

Following the language of CAA section 202(a), in which the Administrator, in her judgment, must determine if greenhouse gases constitute the air pollution that may be reasonably anticipated to endanger public health or welfare, EPA evaluated, based primarily on the scientific reports discussed above, how greenhouse gases and other climate-relevant substances are affecting the atmosphere and climate, and how these climate changes affect public health and welfare, now and in the future. Consistent with EPA's scientific approach underlying the Administrator's Proposed Findings, EPA did not undertake a separate analysis to evaluate potential societal and policy responses to any threat (*i.e.,* the endangerment) that may exist due to anthropogenic emissions of greenhouse gases. Risk reduction through adaptation and greenhouse gas mitigation measures is of course a strong focal area of scientists and policy makers, including EPA; however, EPA considers adaptation and mitigation to be potential responses to endangerment, and as such has determined that they are outside the scope of the endangerment analysis.

The Administrator's position is not that adaptation will not occur or cannot help protect public health and welfare from certain impacts of climate change, as some commenters intimated. To the contrary, EPA recognizes that some level of autonomous adaptation [15] will occur, and commenters are correct that autonomous adaptation can affect the severity of climate change impacts. Indeed, there are some cases in the TSD in which some degree of adaptation is accounted for; these cases occur where the literature on which the TSD relies already uses assumptions about autonomous adaptation when projecting the future effects of climate change. Such cases are noted in the TSD. We also view planned adaptation as an important near-term risk-minimizing strategy given that some degree of climate change will continue to occur as a result of past and current emissions of greenhouse gases that remain in the atmosphere for decades to centuries.

However, it is the Administrator's position that projections of adaptation and mitigation in response to risks and impacts associated with climate change are not appropriate for EPA to consider in making a decision on whether the air pollution endangers. The issue before EPA involves evaluating the risks to public health and welfare from the air pollution if we do not take action to address it. Adaptation and mitigation address an important but different issue—how much risk will remain assuming some projection of how people and society will respond to the threat.

Several commenters argue that it is arbitrary not to consider adaptation in determining endangerment. They contend that because endangerment is a forward-looking exercise, the fundamental inquiry concerns the type and extent of harm that is believed likely to occur in the future. Just as the Administrator makes projections of potential harms in the future, these commenters contend that the Administrator needs to consider the literature on adaptation that addresses the likelihood and the severity of potential effects. Commenters also note that since adaption is one of the likely impacts of climate change, it is irrational to exclude it from consideration when the goal is to evaluate the risks and harms in the real world in the future, not the risks and harms in the hypothetical scenario that result if you ignore adaptation.

According to commenters, the Administrator must consider both autonomous adaptation and anticipatory adaptation. They contend that literature on adaptation makes it clear there is a significant potential for adaptation, and that it can reduce the likelihood or severity of various effects, including health effects, and could even avert what might otherwise constitute endangerment. Commenters note that EPA considered the adaptation of species in nature, and it is arbitrary to not also consider adaptation by humans. Moreover, they argue that there is great

[15] The IPCC definition of adaptation: ''Adaptation to climate change takes place through adjustments to reduce vulnerability or enhance resilience in response to observed or expected changes in climate and associated extreme weather events. Adaptation occurs in physical, ecological and human systems. It involves changes in social and environmental processes, perceptions of climate risk, practices and functions to reduce potential damages or to realize new opportunities.'' The IPCC defines autonomous adaptation as ''Adaptation that does not constitute a conscious response to climatic stimuli but is triggered by ecological changes in natural systems and by market or welfare changes in human systems.''

certainty that adaptation will occur, and thus EPA is required to address it and make projections. They recommend that EPA look to historic responses to changes in conditions as an analogue in making projections, recognizing that life in the United States is likely to be quite different 50 or 100 years from now, irrespective of climate change.

Commenters argue that adaption needs to be considered because it is central to the statutory requirements governing the endangerment inquiry. EPA is charged to determine the type and extent of harms that are likely to occur, and they argue that this can not rationally be considered without considering adaptation. Since some degree of adaptation is likely to occur, they continue that such a projection of future actual conditions requires consideration of adaption to evaluate whether the future conditions amount to endangerment from the air pollution.

According to commenters, the issue therefore is focused on human and societal adaptation, which can come in a wide variety of forms, ranging from changes in personal behavioral patterns to expenditures of resources to change infrastructure, such as building and maintaining barriers to protect against sea level rise.

With regard to mitigation, commenters argue that EPA should consider mitigation strategies and their potential to alleviate harm from greenhouse gas emissions. They contend that it is unreasonable for EPA to assume that society will not undertake mitigation.

Section 202(a) of the CAA reflects the basic approach of many CAA sections—the threshold inquiry is whether the endangerment and cause or contribute criteria are satisfied, and only if they are met do the criteria for regulatory action go into effect. This reflects the basic separation of two different decisions—is this a health and welfare problem that should be addressed, and if so what are the appropriate mechanisms to address it? There is a division between identifying the health and welfare problem associated with the air pollution, and identifying the mechanisms used to address or solve the problem.

In evaluating endangerment, EPA is determining whether the risks to health and welfare from the air pollution amount to endangerment. As commenters recognize, that calls for evaluating and projecting the nature and types of risks from the air pollution, including the probability or likelihood of the occurrence of an impact and the degree of adversity (or benefit) of such an impact. This issue focuses on how EPA makes such an evaluation in determining endangerment—does EPA look at the risks assuming no planned adaptation and/or mitigation, although EPA projects some degree is likely to occur, or does EPA look at the risks remaining after some projection of adaptation and/or mitigation?

These two approaches reflect different views of the core question EPA is trying to answer. The first approach most clearly focuses on just the air pollution and its impacts, and aims to separate this from the human and societal responses that may or should be taken in response to the risks from the air pollution. By its nature, this separation means this approach may not reflect the actual conditions in the real world in the future, because adaptation and/or mitigation may occur and change the risks. For example, adaptation would not change the atmospheric concentrations, or the likelihood or probability of various impacts occurring (*e.g.*, it would not change the degree of sea level rise), but adaptation has the potential to reduce the adversity of the effects that do occur from these impacts. Mitigation could reduce the atmospheric concentrations that would otherwise occur, having the potential to reduce the likelihood or probability of various impacts occurring. Under this approach, the evaluation of risk is focused on the risk if we do not address the problem. It does not answer the question of how much risk we project will remain after we do address the problem, through either adaptation or mitigation or some combination of the two.

The second approach, suggested by commenters, would call for EPA to project into the future adaptation and/or mitigation, and the effect of these measures in reducing the risks to health or welfare from the air pollution. Commenters argue this will better reflect likely real world conditions, and therefore is needed to allow for an appropriate determination of whether EPA should, at this time, make an affirmative endangerment finding. However, this approach would not separate the air pollution and its impacts from the human and societal responses to the air pollution. It would intentionally and inextricably intertwine them. It would inexorably change the focus from how serious is the air pollution problem we need to address to how good a job are people and society likely to do in addressing or solving the problem. In addition it would dramatically increase the complexity of the issues before EPA.

The context for this endangerment finding is a time span of several decades into the future. It involves a wide variety of differing health and welfare effects, and almost every sector in our society. This somewhat unique context tends to amplify the differences between the two different approaches. It also means that it is hard to cleanly implement either approach. For example, it is hard under the first approach to clearly separate impacts with and without adaption, given the nature of the scientific studies and information before us. Under the second approach it would be extremely hard to make a reasoned projection of human and societal adaptation and mitigation responses, because these are basically not scientific or technical judgments, but are largely political judgments for society or individual personal judgments.

However, the context for this endangerment finding does not change the fact that at their core the two different approaches are aimed at answering different questions. The first approach is focused on answering the question of what are the risks to public health and welfare from the air pollution if we do not take action to address it. The second approach is focused on answering the question of how much risk will remain assuming some projection of how people and society will respond.

EPA believes that it is appropriate and reasonable to interpret CAA section 202(a) as calling for the first approach. The structure of CAA section 202(a) and the various other similar provisions indicate an intention by Congress to separate the question of what is the problem we need to address from the question of what is the appropriate way to address it. The first approach is clearly more consistent with this statutory structure. The amount of reduction in risk that might be achieved through adaptation and/or mitigation is closely related to the way to address a problem, and is not focused on what is the problem that needs to be addressed. It helps gauge the likelihood of success in addressing a problem, and how good a job society may do in reducing risk; it is not at all as useful in determining the severity of the problem that needs to be addressed.

The endangerment issue at its core is a decision on whether there is a risk to health and welfare that needs to be addressed, and the second approach would tend to indicate that the more likely a society is to solve a problem, the less likely there is a problem that needs to be addressed. This would mask the issue and provide a directionally wrong signal. Assume two different situations, both presenting the same serious risks to

public health or welfare without consideration of adaptation or mitigation. The more successful society is projected to be in solving the serious problem in the future would mean the less likely we would be to make an endangerment finding at the inception identifying it as a problem that needs to be addressed. This is much less consistent with the logic embodied in CAA section 202(a), which separates the issue of whether there is a problem from the issue of what can be done to successfully address it.

In addition, the second approach would dramatically increase the complexity of the issues to resolve, and would do this by bringing in issues that are not the subject of the kind of scientific or technical judgments that Congress envisioned for the endangerment test. The legislative history indicates Congress was focused on issues of science and medicine, including issues at the frontiers of these fields. It referred to data, research resources, science and medicine, chemistry, biology, and statistics. There is no indication Congress envisioned exercising judgment on the very different types of issues involved in projecting the political actions likely to be taken by various local, State, and Federal governments, or judgments on the business or other decisions that are likely to be made by companies or other organizations, or the changes in personal behavior that may be occasioned by the adverse impacts of air pollution. The second approach would take EPA far away from the kind of judgments Congress envisioned for the endangerment test.

D. Geographic Scope of Impacts

It is the Administrator's view that the primary focus of the vulnerability, risk, and impact assessment is the United States. As described in Section IV of these Findings, the Administrator gives some consideration to climate change effects in world regions outside of the United States. Given the global nature of climate change, she has also examined potential impacts in other regions of the world. Greenhouse gases, once emitted, become well mixed in the atmosphere, meaning U.S. emissions can affect not only the U.S. population and environment, but other regions of the world as well. Likewise, emissions in other countries can affect the United States. Furthermore, impacts in other regions of the world may have consequences that in turn raise humanitarian, trade, and national security concerns for the United States.

Commenters argue that EPA does not have the authority to consider international effects. They contend that the burden is on EPA is to show endangerment based on impacts in the United States. They note that EPA proposed this approach, which is the only relevant issue for EPA. The purpose of CAA section 202(a), as the stated purpose of the CAA, commenters note, is to protect the quality of the nation's air resources and to protect the health and welfare of the U.S. population. Thus, they continue, international public health and welfare are not listed or stated, and are not encompassed by these provisions. Moreover, they argue that Congress addressed international impacts expressly in two other provisions of the CAA. They note that under CAA section 115, EPA considers emissions of pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare in a foreign country, and that CAA section 179B addresses emissions of air pollutants in foreign countries that interfere with attainment of a National Ambient Air Quality Standards (NAAQS) in the United States. Because Congress intentionally addressed international impacts in those provision, commenters argue that the absence of this direction in CAA section 202(a) means that EPA is not to consider international effects when assessing endangerment under this provision.

Commenters fail to recognize that EPA's consideration of international effects is directed at evaluating their impact on the public health and welfare of the U.S. population. EPA is not considering international effects to determine whether the health and welfare of the public in a foreign country is endangered. Instead, EPA's consideration of international effects for purposes of determining endangerment is limited to how those international effects impact the health and welfare of the U.S. population.

The Administrator looked first at impacts in the United States itself, and determined that these impacts are reasonably anticipated to endanger the public health and the welfare of the U.S. population. That remains the Administrator's position, and by itself supports her determination of endangerment. The Administrator also considered the effects of global climate change outside the borders of the United States and evaluated them to determine whether these international effects impact the U.S. population, and if so whether it impacts the U.S. population in a manner that supports or does not support endangerment to the health and welfare of the U.S. public. She is not evaluating international effects to determine whether populations in a foreign country are endangered. The Administrator is looking at international effects solely for the purpose of evaluating their effects on the U.S. population.

For example, the U.S. population can be impacted by effects in other countries. These international effects can impact U.S. economic, trade, and humanitarian and national security interests. These would be potential effects on the U.S. population, brought about by the effects of climate change occurring outside the United States. It is fully reasonable and rational to expect that events occurring outside our borders can affect the U.S. population.

Thus, commenters misunderstand the role that international effects played in the proposal. The Administrator is not evaluating the impact of international effects on populations outside the United States; she is considering what impact these international effects could have on the U.S. population. That is fully consistent with the CAA's stated purpose of protecting the health and welfare of this nation's population.

E. Temporal Scope of Impacts

An additional parameter of the endangerment analysis is the timeframe. The Administrator's view is that the timeframe over which vulnerabilities, risks, and impacts are considered should be consistent with the timeframe over which greenhouse gases, once emitted, have an effect on climate. Thus the relevant time frame is decades to centuries for the primary greenhouse gases of concern. Therefore, in addition to reviewing recent observations, the underlying science upon which the Administrator is basing her findings generally considers the next several decades—the time period out to around 2100, and for certain impacts, the time period beyond 2100. How the accumulation of atmospheric greenhouse gases and resultant climate change may affect current and future generations is discussed in section IV in these Findings. By current generations we mean a near-term time frame of approximately the next 10 to 20 years; by future generations we mean a longer-term time frame extending beyond that. Some public comments were received that questioned making an endangerment finding based on current conditions, while others questioned EPA's ability to make an endangerment finding based on future projected conditions. Some of these comments are likewise addressed in Section IV in these Findings; and all comments on these temporal issues are addressed in the Response to Comments document.

F. Impacts of Potential Future Regulations and Processes That Generate Greenhouse Gas Emissions

This action is a stand-alone set of findings regarding endangerment and cause or contribute for greenhouse gases under CAA section 202(a), and does not contain any regulatory requirements. Therefore, this action does not attempt to assess the impacts of any future regulation. Although EPA would evaluate any future proposed regulation, many commenters argue that such a regulatory analysis should be part of the endangerment analysis.

Numerous commenters argue that EPA must fully consider the adverse and beneficial impacts of regulation together with the impacts of inaction, and describe this balancing as ''risk-risk analysis,'' ''health-health analysis,'' and most predominantly ''risk tradeoff analysis.'' Commenters argue that EPA's final endangerment finding would be arbitrary unless EPA undertakes this type of risk trade-off analysis.

Commenters specifically argue that EPA must consider the economic impact of regulation, including the Prevention of Significant Deterioration (PSD) permitting program for major stationary sources because it is triggered by a CAA section 202(a) standard, when assessing whether there is endangerment to public welfare. In other words, they argue that the Administrator should determine if finding endangerment and regulating greenhouse gases under the CAA would be worse for public health and welfare than not regulating. Commenters also argue that the reference to ''public'' health or welfare in CAA section 202, as well as the fact that impacts on the economy should be considered impacts to welfare, especially requires EPA to consider the full range of possible impacts of regulation. Commenters provide various predictions regarding how regulating greenhouse gases under the CAA more broadly will impact the public, industry, states the overall economy, and thus, they conclude, public health and welfare. Examples of commenters' predictions include potential adverse impacts on (1) the housing industry and the availability of affordable housing, (2) jobs and income due to industry moving overseas, (3) the agriculture industry and its ability to provide affordable food, and (4) the nation's energy supply. They also cite to the letter from the Office of Management and Budget provided with the ANPR, as well as interagency comments on the draft Proposed Findings, in support of their argument.

At least one commenter argues that EPA fails to discuss the public health or welfare benefits of the processes that *produce* the emissions. The commenter contends that for purposes of CAA section 202(a), this process would be the combustion of gasoline or other transportation fuel in new motor vehicles, and that for purposes of other CAA provisions with similar endangerment finding triggers, the processes would be the combustion of fossil fuel for electric generation and other activities. The commenter continues that EPA's decision to limit its analysis to the perceived detrimental aspects of emissions after they enter the atmosphere—as opposed to the possible positive aspects of emissions because of the processes that create the emissions—is based on EPA's overly narrow interpretation of both the meaning of the term ''emission'' in CAA section 202(a) (and therefore in other endangerment finding provisions) and the intent of these provisions. The commenter states that logically, it makes little sense to limit the definition of the term ''emission'' to only the ''air pollutants'' that are emitted. The commenter concludes that when EPA assesses whether the emission of greenhouse gases endanger public health and welfare, EPA must assess the dangers and benefits on both sides of the point where the emissions occur: in the atmosphere where the emissions lodge and, on the other side of the emitting stack or structure, in the processes that create the emissions. Otherwise, EPA will not be able to accurately assess whether the fact that society emits greenhouse gases is a benefit or a detriment. The commenter states that because greenhouse gas emissions, particularly carbon dioxide emissions, are so closely tied with all facets of modern life, a finding that greenhouse gas emissions endanger public health and welfare is akin to saying that modern life endangers public health or welfare. The commenter states that simply cannot be true because the lack of industrial activity that causes greenhouse gas emissions would pose other, almost certainly more serious health and welfare consequences.

Finally, some commenters argue that the impact of regulating under CAA section 202(a) supports making a final, negative endangerment finding. These commenters contend that the incredible costs associated with using the inflexible regulatory structure of the CAA will harm public health and welfare, and therefore EPA should exercise its discretion and find that greenhouse gases do not endanger public health and welfare because once EPA makes an endangerment finding under CAA section 202(a), it will be forced to regulate greenhouse gases under a number of other sections of the CAA, resulting in regulatory chaos.

At their core, these comments are not about whether commenters believe greenhouse gases may reasonably be anticipated to endanger public health or welfare, but rather about commenters' dissatisfaction with the decisions that Congress made regarding *the response* to any endangerment finding that EPA makes under CAA section 202(a). These comments do not discuss the science of greenhouse gases or climate change, or the impacts of climate change on public health or welfare. Instead they muddle the rather straightforward scientific judgment about whether there may be endangerment by throwing the potential impact of responding to the danger into the initial question. To use an analogy, the question of whether the cure is worse than the illness is different than the question of whether there is an illness in the first place. The question of whether there is endangerment is like the question of whether there is an illness. Once one knows there is an illness, then the next question is what to do, if anything, in response to that illness.

What these comments object to is that Congress has already made some decisions about next steps after a finding of endangerment, and commenters are displeased with the results. But if this is the case, commenters should take up their concerns with Congress, not EPA. EPA's charge is to issue new motor vehicle standards under CAA section 202(a) applicable to emissions of air pollutants that cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. It is not to find that there is no endangerment in order to avoid issuing those standards, and dealing with any additional regulatory impact.

Indeed, commenters' argument would insert policy considerations into the endangerment decision, an approach already rejected by the Supreme Court. First, as discussed in Section I.B of these Findings, in *Massachusetts* v. *EPA*, the court clearly indicated that the Administrator's decision must be a ''scientific judgment.'' 549 U.S. at 534. She must base her decision about endangerment on the science, and not on policy considerations about the repercussions or impact of such a finding.

Second, in considering whether the CAA allowed for economic considerations to play a role in the promulgation of the NAAQS, the

Supreme Court rejected arguments that because many more factors than air pollution might affect public health, EPA should consider compliance costs that produce health losses in setting the NAAQS. *Whitman* v. *ATA*, 531 U.S. at 457, 466 (2001). To be sure, the language in CAA section 109(b) applicable to the setting of a NAAQS is different than that in CAA section 202(a) regarding endangerment. But the concepts are similar—the NAAQS are about setting standards at a level requisite to protect public health (with an adequate margin of safety) and public welfare, and endangerment is about whether the current or projected future levels may reasonably be anticipated to endanger public health or welfare. In other words, both decisions essentially are based on assessing the harm associated with a certain level of air pollution.

Given this similarity in purpose, as well as the Court's instructions in *Massachusetts* v. *EPA* that the Administrator should base her decision on the science, EPA reasonably interprets the statutory endangerment language to be analogous to setting the NAAQS. Therefore, it is reasonable to interpret the endangerment test as not requiring the consideration of the impacts of implementing the statute in the event of an endangerment finding as part of the endangerment finding itself.[16]

Moreover, EPA does not believe that the impact of regulation under the CAA as a whole, let alone that which will result from this particular endangerment finding, will lead to the panoply of adverse consequences that commenters predict. EPA has the ability to fashion a reasonable and common-sense approach to address greenhouse gas emissions and climate change. The Administrator thinks that EPA has and will continue to take a measured approach to address greenhouse gas emissions. For example, the Agency's recent Mandatory Greenhouse Gas Reporting Rule focuses on only the largest sources of greenhouse gases in order to reduce the burden on smaller facilities.[17]

We also note that commenters' approach also is another version of the argument that EPA must consider adaptation and mitigation in the endangerment determination. Just as EPA should consider whether mitigation would *reduce* endangerment, commenters argue we should consider whether mitigation would *increase* endangerment. But as discussed previously, EPA disagrees and believes its approach better achieves the goals of the statute.

Finally, EPA simply disagrees with the commenter who argues that because we are better off now than before the industrial revolution, greenhouse gases cannot be found to endanger public health or welfare. As the DC Circuit noted in the *Ethyl* decision, ''[m]an's ability to alter his environment has developed far more rapidly than his ability to foresee with certainty the effects of his alterations.'' See *Ethyl Corp.,* 541 F.2d at 6. The fact that we as a society are better off now than 100 years ago, and that processes that produce greenhouse gases are a large part of this improvement, does not mean that those processes do not have unintended adverse impacts. It also was entirely reasonable for EPA to look at ''emissions'' as the pollution once it is emitted from the source into the air, and not also as the process that generates the pollution. Indeed, the definition of ''air pollutant'' talks in terms of substances ''emitted into or otherwise enter[ing] the ambient air'' (CAA section 302(g)). It is entirely appropriate for EPA to consider only the substance being emitted as the air pollution or air pollutant.

IV. The Administrator's Finding That Greenhouse Gases Endanger Public Health and Welfare

The Administrator finds that elevated concentrations of greenhouse gases in the atmosphere may reasonably be anticipated to endanger the public health and to endanger the public welfare of current and future generations. The Administrator is making this finding specifically with regard to six key directly-emitted, long-lived and well-mixed greenhouse gases: Carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. The Administrator is making this judgment based on both current observations and projected risks and impacts into the future. Furthermore, the Administrator is basing this finding on impacts of climate change within the United States. However, the Administrator finds that when she considers the impacts on the U.S. population of risks and impacts occurring in other world regions, the case for endangerment to public health and welfare is only strengthened.

A. The Air Pollution Consists of Six Key Greenhouse Gases

The Administrator must define the scope and nature of the relevant air pollution for the endangerment finding under CAA section 202(a). In this final action, the Administrator finds that the air pollution is the combined mix of six key directly-emitted, long-lived and well-mixed greenhouse gases (henceforth ''well-mixed greenhouse gases''), which together, constitute the root cause of human-induced climate change and the resulting impacts on public health and welfare. These six greenhouse gases are carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

EPA received public comments on this definition of air pollution from the Proposed Findings, and summarizes responses to some of those key comments below; fuller responses to public comments can be found in EPA's Response to Comments document, Volume 9. The Administrator acknowledges that other anthropogenic climate forcers also play a role in climate change. Many public comments either supported or opposed inclusion of other substances in addition to the six greenhouse gases for the definition of air pollution. EPA's responses to those comments are also summarized below, and in volume 9 of the Response to Comments document.

The Administrator explained her rationale for defining air pollution under CAA section 202(a) as the combined mix of the six greenhouse gases in the Proposed Findings. After review of the public comments, the Administrator is using the same definition of the air pollution in the

[16] Indeed, some persons may argue that due to the similarities between setting a NAAQS and making an endangerment finding, EPA cannot consider the impacts of implementation of the statute.

[17] Note that it is EPA's current position that these Final Findings do not make well-mixed greenhouse gases ''subject to regulation'' for purposes of the CAA's Prevention of Significant Deterioration (PSD) and title V programs. *See, e.g.*, memorandum entitled ''EPA's Interpretation of Regulations that Determine Pollutants Covered By Federal Prevention of Significant Deterioration (PSD) Permit Program'' (Dec. 18, 2008). While EPA is reconsidering this memorandum and is seeking public comment on the issues raised in it generally, including whether a final endangerment finding should trigger PSD, the effectiveness of the positions provided in the memorandum was not stayed pending that reconsideration. Prevention of Significant Deterioration (PSD): Reconsideration of Interpretation of Regulations That Determine Pollutants Covered by the Federal PSD Permit Program, 74 FR 515135, 51543–44 (Oct. 7, 2009). In addition, EPA has proposed new temporary thresholds for greenhouse gas emissions that define when PSD and title V permits are required for new or existing facilities. Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (74 FR 55292, October 27, 2009). The proposed thresholds would ''tailor'' the permit programs to limit which facilities would be required to obtain PSD and title V permits. As noted in the preamble for the tailoring rule proposal, EPA also intends to evaluate ways to streamline the process for identifying GHG emissions control requirements and issuing permits. See the Response to Comments Document, Volume 11, and the Tailoring Rule, for more information.

final finding, for the following reasons: (1) These six greenhouse gas share common properties regarding their climate effects; (2) these six greenhouse gases have been estimated to be the primary cause of human-induced climate change, are the best understood drivers of climate change, and are expected to remain the key driver of future climate change; (3) these six greenhouse gases are the common focus of climate change science research and policy analyses and discussions; (4) using the combined mix of these gases as the definition (versus an individual gas-by-gas approach) is consistent with the science, because risks and impacts associated with greenhouse gas-induced climate change are not assessed on an individual gas approach; and (5) using the combined mix of these gases is consistent with past EPA practice, where separate substances from different sources, but with common properties, may be treated as a class (*e.g.,* oxides of nitrogen).

1. Common Physical Properties of the Six Greenhouse Gases

The common physical properties relevant to the climate change problem shared by the six greenhouse gases include the fact that they are long-lived in the atmosphere. ''Long-lived'' is used here to mean that the gas has a lifetime in the atmosphere sufficient to become globally well mixed throughout the entire atmosphere, which requires a minimum atmospheric lifetime of about one year.[18] Thus, this definition of air pollution is global in nature because the greenhouse gas emissions emitted from the United States (or from any other region of the world) become globally well mixed, such that it would not be meaningful to define the air pollution as the greenhouse gas concentrations over the United States as somehow being distinct from the greenhouse gas concentrations over other regions of the world.

It is also well established that each of these gases can exert a warming effect on the climate by trapping in heat that would otherwise escape to space. These six gases are directly emitted as greenhouse gases rather than forming as a greenhouse gas in the atmosphere after emission of a pre-cursor gas. Given these properties, the magnitude of the warming effect of each of these gases is generally better understood than other climate forcing agents that do not share these same properties (addressed in more detail below). The ozone-depleting substances that include chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HFCs) also share the same physical attributes discussed here, but for reasons discussed throughout the remainder of this section are not being included in the Administrator's definition of air pollution for this finding.

2. Evidence That the Six Greenhouse Gases Are the Primary Driver of Current and Projected Climate Change

a. Key Observations Driven Primarily by the Six Greenhouse Gases

The latest assessment of the USGCRP, as summarized in EPA's TSD, confirms the evidence presented in the Proposed Findings that current atmospheric greenhouse gas concentrations are now at elevated and essentially unprecedented levels as a result of both historic and current anthropogenic emissions. The global atmospheric carbon dioxide concentration has increased about 38 percent from pre-industrial levels to 2009, and almost all of the increase is due to anthropogenic emissions. The global atmospheric concentration of methane has increased by 149 percent since pre-industrial levels (through 2007); and the nitrous oxide concentration has increased 23 percent (through 2007). The observed concentration increase in these gases can also be attributed primarily to anthropogenic emissions. The industrial fluorinated gases have relatively low concentrations, but these concentrations have also been increasing and are almost entirely anthropogenic in origin.

Historic data show that current atmospheric concentrations of the two most important directly emitted, long-lived greenhouse gases (carbon dioxide and methane) are well above the natural range of atmospheric concentrations compared to at least the last 650,000 years. Atmospheric greenhouse gas concentrations have been increasing because anthropogenic emissions are outpacing the rate at which greenhouse gases are removed from the atmosphere by natural processes over timescales of decades to centuries. It also remains clear that these high atmospheric concentrations of greenhouse gases are the unambiguous result of human activities.

Together the six well-mixed greenhouse gases constitute the largest anthropogenic driver of climate change.[19] Of the total anthropogenic heating effect caused by the accumulation of the six well-mixed greenhouse gases plus other warming agents (that do not meet all of the Administrator's criteria that pertain to the six greenhouse gases) since pre-industrial times, the combined heating effect of the six well-mixed greenhouses is responsible for roughly 75 percent, and it is expected that this share may grow larger over time, as discussed below.

Warming of the climate system is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level. Global mean surface temperatures have risen by 0.74 °C (1.3 °F) (±0.18 °C) over the last 100 years. Eight of the 10 warmest years on record have occurred since 2001. Global mean surface temperature was higher during the last few decades of the 20th century than during any comparable period during the preceding four centuries.

The global surface temperature record relies on three major global temperature datasets, developed by NOAA, NASA, and the United Kingdom's Hadley Center. All three show an unambiguous warming trend over the last 100 years, with the greatest warming occurring over the past 30 years.[20] Furthermore, all three datasets show that eight of the 10 warmest years on record have occurred since 2001; that the 10 warmest years have all occurred in the past 12 years; and that the 20 warmest years have all occurred since 1981. Though most of the warmest years on record have occurred in the last decade in all available datasets, the rate of warming has, for a short time in the

[18] The IPCC also refers to these six GHGs as long-lived. Methane has an atmospheric lifetime of roughly a decade. One of the most commonly used hydrofluorocarbons (HFC–134a) has a lifetime of 14 years. Nitrous oxide has a lifetime of 114 years; sulfur hexafluoride over 3,000 years; and some PFCs up to 10,000 to 50,000 years. Carbon dioxide in the atmosphere is sometimes approximated as having a lifetime of roughly 100 years, but for a given amount of carbon dioxide emitted a better description is that some fraction of the atmospheric increase in concentration is quickly absorbed by the oceans and terrestrial vegetation, some fraction of the atmospheric increase will only slowly decrease over a number of years, and a small portion of the increase will remain for many centuries or more.

[19] As summarized in EPA's TSD, the global average net effect of the increase in atmospheric greenhouse gas concentrations, plus other human activities (*e.g.,* land use change and aerosol emissions), on the global energy balance since 1750 has been one of warming. This total net heating effect, referred to as forcing, is estimated to be +1.6 (+0.6 to +2.4) Watts per square meter (W/m^2), with much of the range surrounding this estimate due to uncertainties about the cooling and warming effects of aerosols. The combined radiative forcing due to the cumulative (*i.e.,* 1750 to 2005) increase in atmospheric concentrations of CO_2, CH_4, and N_2O is estimated to be +2.30 (+2.07 to +2.53) W/m^2. The rate of increase in positive radiative forcing due to these three GHGs during the industrial era is very likely to have been unprecedented in more than 10,000 years.

[20] *See* section 4 of the TSD for more detailed information about the three global temperature datasets.

Hadley Center record, slowed. However, the NOAA and NASA trends do not show the same marked slowdown for the 1999–2008 period. Year-to-year fluctuations in natural weather and climate patterns can produce a period that does not follow the long-term trend. Thus, each year may not necessarily be warmer than every year before it, though the long-term warming trend continues.[21]

The scientific evidence is compelling that elevated concentrations of heat-trapping greenhouse gases are the root cause of recently observed climate change. The IPCC conclusion from 2007 has been re-confirmed by the June 2009 USGCRP assessment that most of the observed increase in global average temperatures since the mid-20th century is very likely [22] due to the observed increase in anthropogenic greenhouse gas concentrations. Climate model simulations suggest natural forcing alone (*e.g.,* changes in solar irradiance) cannot explain the observed warming.

The attribution of observed climate change to anthropogenic activities is based on multiple lines of evidence. The first line of evidence arises from our basic physical understanding of the effects of changing concentrations of greenhouse gases, natural factors, and other human impacts on the climate system. The second line of evidence arises from indirect, historical estimates of past climate changes that suggest that the changes in global surface temperature over the last several decades are unusual.[23] The third line of evidence arises from the use of computer-based climate models to simulate the likely patterns of response of the climate system to different forcing mechanisms (both natural and anthropogenic).

The claim that natural internal variability or known natural external forcings can explain most (more than half) of the observed global warming of the past 50 years is inconsistent with the vast majority of the scientific literature, which has been synthesized in several assessment reports. Based on analyses of widespread temperature increases throughout the climate system and changes in other climate variables, the IPCC has reached the following conclusions about external climate forcing: ''It is extremely unlikely (<5 percent) that the global pattern of warming during the past half century can be explained without external forcing, and very unlikely that it is due to known natural external causes alone'' (Hegerl *et al.,* 2007). With respect to internal variability, the IPCC reports the following: ''The simultaneous increase in energy content of all the major components of the climate system as well as the magnitude and pattern of warming within and across the different components supports the conclusion that the cause of the [20th century] warming is extremely unlikely (<5 percent) to be the result of internal processes'' (Hegerl *et al.,* 2007). As noted in the TSD, the observed warming can only be reproduced with models that contain both natural and anthropogenic forcings, and the warming of the past half century has taken place at a time when known natural forcing factors alone (solar activity and volcanoes) would likely have produced cooling, not warming.

United States temperatures also warmed during the 20th and into the 21st century; temperatures are now approximately 0.7 °C (1.3 °F) warmer than at the start of the 20th century, with an increased rate of warming over the past 30 years. Both the IPCC and CCSP reports attributed recent North American warming to elevated greenhouse gas concentrations. The CCSP (2008g) report finds that for North America, ''more than half of this warming [for the period 1951–2006] is likely the result of human-caused greenhouse gas forcing of climate change.''

Observations show that changes are occurring in the amount, intensity, frequency, and type of precipitation. Over the contiguous United States, total annual precipitation increased by 6.1 percent from 1901–2008. It is likely that there have been increases in the number of heavy precipitation events within many land regions, even in those where there has been a reduction in total precipitation amount, consistent with a warming climate.

There is strong evidence that global sea level gradually rose in the 20th century and is currently rising at an increased rate. It is very likely that the response to anthropogenic forcing contributed to sea level rise during the latter half of the 20th century. It is not clear whether the increasing rate of sea level rise is a reflection of short-term variability or an increase in the longer-term trend. Nearly all of the Atlantic Ocean shows sea level rise during the last 50 years with the rate of rise reaching a maximum (over 2 mm per year) in a band along the U.S. east coast running east-northeast.

Satellite data since 1979 show that annual average Arctic sea ice extent has shrunk by 4.1 percent per decade. The size and speed of recent Arctic summer sea ice loss is highly anomalous relative to the previous few thousands of years.

Widespread changes in extreme temperatures have been observed in the last 50 years across all world regions including the United States. Cold days, cold nights, and frost have become less frequent, while hot days, hot nights, and heat waves have become more frequent.

Observational evidence from all continents and most oceans shows that many natural systems are being affected by regional climate changes, particularly temperature increases. However, directly attributing specific regional changes in climate to emissions of greenhouse gases from human activities is difficult, especially for precipitation.

Ocean carbon dioxide uptake has lowered the average ocean pH (increased the acidity) level by approximately 0.1 since 1750. Consequences for marine ecosystems may include reduced calcification by shell-forming organisms, and in the longer term, the dissolution of carbonate sediments.

Observations show that climate change is currently affecting U.S. physical and biological systems in significant ways. The consistency of these observed changes in physical and biological systems and the observed significant warming likely cannot be explained entirely due to natural variability or other confounding non-climate factors.

b. Key Projections Based Primarily on Future Scenarios of the Six Greenhouse Gases

There continues to be no reason to expect that, without substantial and near-term efforts to significantly reduce emissions, atmospheric levels of greenhouse gases will not continue to climb, and thus lead to ever greater rates of climate change. Given the long atmospheric lifetime of the six greenhouse gases, which range from roughly a decade to centuries, future atmospheric greenhouse gas

[21] Karl T. *et al.,* (2009).

[22] The IPCC Fourth Assessment Report uses specific terminology to convey likelihood and confidence. Likelihood refers to a probability that the statement is correct or that something will occur. ''Virtually certain'' conveys greater than 99 percent probability of occurrence; ''very likely'' 90 to 99 percent; ''likely'' 66 to 90 percent. IPCC assigns confidence levels as to the correctness of a statement. ''Very high confidence'' conveys at least 9 out of 10 chance of being correct; ''high confidence'' about 8 out of 10 chance; ''medium confidence'' about 5 out of 10 chance. The USGCRP uses the same or similar terminology in its reports. See also Box 1.2 of the TSD. Throughout this document, this terminology is used in conjunction with statements from the IPCC and USGCRP reports to convey the same meaning that those reports intended. In instances where a word such as ''likely'' may appear outside the context of a specific IPCC or USGCRP statement, it is not meant to necessarily convey the same quantitative meaning as the IPCC terminology.

[23] Karl T. *et al.* (2009).

concentrations for the remainder of this century and beyond will be influenced not only by future emissions but indeed by present-day and near-term emissions. Consideration of future plausible scenarios, and how our current greenhouse gas emissions essentially commit present and future generations to cope with an altered atmosphere and climate, reinforces the Administrator's judgment that it is appropriate to define the combination of the six key greenhouse gases as the air pollution.

Most future scenarios that assume no explicit greenhouse gas mitigation actions (beyond those already enacted) project increasing global greenhouse gas emissions over the century, which in turn result in climbing greenhouse gas concentrations. Under the range of future emission scenarios evaluated by the assessment literature, carbon dioxide is expected to remain the dominant anthropogenic greenhouse gas, and thus driver of climate change, over the course of the 21st century. In fact, carbon dioxide is projected to be the largest contributor to total radiative forcing in all periods and the radiative forcing associated with carbon dioxide is projected to be the fastest growing. For the year 2030, projections of the six greenhouse gases show an increase of 25 to 90 percent compared with 2000 emissions. Concentrations of carbon dioxide and the other well-mixed gases increase even for those scenarios where annual emissions toward the end of the century are assumed to be lower than current annual emissions. The radiative forcing associated with the non-carbon dioxide well-mixed greenhouse gases is still important and increasing over time. Emissions of the ozone-depleting substances are projected to continue decreasing due to the phase-out schedule under the Montreal Protocol on Substances that Deplete the Ozone Layer. Considerable uncertainties surround the estimates and future projections of anthropogenic aerosols; future atmospheric concentrations of aerosols, and thus their respective heating or cooling effects, will depend much more on assumptions about future emissions because of their short atmospheric lifetimes compared to the six well-mixed greenhouse gases.

Future warming over the course of the 21st century, even under scenarios of low emissions growth, is very likely to be greater than observed warming over the past century. According to climate model simulations summarized by the IPCC, through about 2030, the global warming rate is affected little by the choice of different future emission scenarios. By the end of the century, projected average global warming (compared to average temperature around 1990) varies significantly depending on emissions scenario and climate sensitivity assumptions, ranging from 1.8 to 4.0 °C (3.2 to 7.2 °F), with an uncertainty range of 1.1 to 6.4 °C (2.0 to 11.5 °F).

All of the United States is very likely to warm during this century, and most areas of the United States are expected to warm by more than the global average. The largest warming is projected to occur in winter over northern parts of Alaska. In western, central and eastern regions of North America, the projected warming has less seasonal variation and is not as large, especially near the coast, consistent with less warming over the oceans.

3. The Six Greenhouse Gases Are Currently the Common Focus of the Climate Change Science and Policy Communities

The well-mixed greenhouse gases are currently the common focus of climate science and policy analyses and discussions. For example, the United Nations Framework Convention on Climate Change (UNFCCC), signed and ratified by the United States in 1992, requires its signatories to ''develop, periodically update, publish and make available * * * national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies * * *'' [24] [25] To date, the focus of UNFCCC actions and discussions has been on the six greenhouse gases that are the same focus of these Findings.

Because of these common properties, it has also become common practice to compare these gases on a carbon dioxide equivalent basis, based on each gas's warming effect relative to carbon dioxide (the designated reference gas) over a specified timeframe. For example, both the annual *Inventory of U.S. Greenhouse Gases and Sinks* published by EPA and the recently finalized EPA Mandatory Greenhouse Gas Reporting Rule (74 FR 56260), use the carbon dioxide equivalent metric to sum and compare these gases, and thus accept the common climate-relevant properties of these gases for their treatment as a group. This is also common practice internationally as the UNFCCC reporting guidelines for developed countries, and the Clean Development Mechanism procedures for developing countries both require the use of global warming potentials published by the IPCC to convert the six greenhouse gases into their respective carbon dioxide equivalent units.

4. Defining Air Pollution as the Aggregate Group of Six Greenhouse Gases Is Consistent With Evaluation of Risks and Impacts Due to Human-Induced Climate Change

Because the well-mixed greenhouse gases are collectively the primary driver of current and projected human-induced climate change, all current and future risks due to human-induced climate change—whether these risks are associated with increases in temperature, changes in precipitation, a rise in sea levels, changes in the frequency and intensity of weather events, or more directly with the elevated greenhouse gas concentrations themselves—can be associated with this definition of air pollution.

5. Defining the Air Pollution as the Aggregate Group of Six Greenhouse Gases Is Consistent With Past EPA Practice

Treating the air pollution as the aggregate of the well-mixed greenhouse gases is consistent with other provisions of the CAA and previous EPA practice under the CAA, where separate emissions from different sources but with common properties may be treated as a class (*e.g.,* particulate matter (PM)). This approach addresses the total, cumulative effect that the elevated concentrations of the six well-mixed greenhouse gases have on climate, and thus on different elements of health, society and the environment.[24]

EPA treats, for example, PM as a common class of air pollution; PM is a complex mixture of extremely small particles and liquid droplets. Particle pollution is made up of a number of components, including acids (such as nitrates and sulfates), organic chemicals, metals, and soil or dust particles.

6. Other Climate Forcers Not Being Included in the Definition of Air Pollution for This Finding

Though the well-mixed greenhouse gases that make up the definition of air pollution for purposes of making the endangerment decision under CAA section 202(a) constitute the primary

[24] Due to the cumulative purpose of the statutory language, even if the Administrator were to look at the atmospheric concentration of each greenhouse gas individually, she would still consider the impact of the concentration of a single greenhouse gas in combination with that caused by the other greenhouse gases.

[25] The range of uncertainty in the current magnitude of black carbon's climate forcing effect is evidenced by the ranges presented by the IPCC Fourth Assessment Report (2007) and the more recent study by Ramanathan, V. and Carmichael, G. (2008) Global and regional climate changes due to black carbon. Nature Geoscience, 1(4): 221–227.

driver of human-induced climate change, there are other substances emitted from human activities that contribute to climate change and deserve careful attention, but are not being included in the air pollution definition for this particular action. These substances are discussed immediately below.

a. Black Carbon

Several commenters request that black carbon be included in the definition of air pollution because of its warming effect on the climate. Black carbon is not a greenhouse gas, rather, it is an aerosol particle that results from the incomplete combustion of carbon contained in fossil fuels and biomass, and remains in the atmosphere for only about a week. Unlike any of the greenhouse gases being addressed by this action, black carbon is a component of particulate matter (PM), where PM is a criteria air pollutant under section 108 of the CAA. The extent to which black carbon makes up total PM varies by emission source, where, for example, diesel vehicle PM emissions contain a higher fraction of black carbon compared to most other PM emission sources. Black carbon causes a warming effect primarily by absorbing incoming and reflected sunlight (whereas greenhouse gases cause warming by trapping outgoing, infrared heat), and by darkening bright surfaces such as snow and ice, which reduces reflectivity. This latter effect, in particular, has been raising concerns about the role black carbon may be playing in observed warming and ice melt in the Arctic.

As stated in the April 2009 Proposed Findings, there remain some significant scientific uncertainties about black carbon's total climate effect,[25] as well as concerns about how to treat the short-lived black carbon emissions alongside the long-lived, well-mixed greenhouse gases in a common framework (*e.g.,* what are the appropriate metrics to compare the warming and/or climate effects of the different substances, given that, unlike greenhouse gases, the magnitude of aerosol effects can vary immensely with location and season of emissions). Nevertheless, the Administrator recognizes that black carbon is an important climate forcing agent and takes very seriously the emerging science on black carbon's contribution to global climate change in general and the high rates of observed climate change in the Arctic in particular. As noted in the Proposed Findings, EPA has various pending petitions under the CAA calling on the Agency to make an endangerment finding and regulate black carbon emissions.

b. Other Climate Forcers

There are other climate forcers that play a role in human-induced climate change that were mentioned in the Proposed Findings, and were the subject of some public comments. These include the stratospheric ozone-depleting substances, nitrogen trifluoride (NF_3), water vapor, and tropospheric ozone.

As mentioned above, the ozone-depleting substances (CFCs and HCFCs) do share the same physical, climate-relevant attributes as the six well-mixed greenhouse gases; however, emissions of these substances are playing a diminishing role in human-induced climate change. They are being controlled and phased out under the Montreal Protocol on Substances that Deplete the Ozone Layer. Because of this, the major scientific assessment reports such as those from IPCC focus primarily on the same six well-mixed greenhouse gases included in the definition of air pollution in these Findings. It is also worth noting that the UNFCCC, to which the United States is a signatory, addresses ''all greenhouse gases not controlled by the Montreal Protocol.'' [26] One commenter noted that because the Montreal Protocol controls production and consumption of ozone-depleting substances, but not existing banks of the substances, that CFCs should be included in the definition of air pollution in this finding, which might, in turn, create some future action under the CAA to address the banks of ozone-depleting substances as a climate issue. However, the primary criteria for defining the air pollution in this finding is the focus on the core of the climate change problem, and concerns over future actions to control depletion of stratospheric ozone are separate from and not central to the air pollution causing climate change.

Nitrogen trifluoride also shares the same climate-relevant attributes as the six well-mixed greenhouse gases, and it is also included in EPA's Mandatory Greenhouse Gas Reporting Rule (FR 74 56260). However, the Administrator is maintaining the reasoning laid out in the Proposed Findings to not include NF_3 in the definition of air pollution for this finding because the overall magnitude of its forcing effect on climate is not yet well quantified. EPA will continue to track the science on NF_3.

A number of public comments question the exclusion of water vapor from the definition of air pollution because it is the most important greenhouse gas responsible for the natural, background greenhouse effect. The Administrator's reasoning for excluding water vapor, was described in the Proposed Findings and is summarized here with additional information in Volume 10 of the Response to Comments document. First, climate change is being driven by the buildup in the atmosphere of greenhouse gases. The direct emissions primarily responsible for this are the six well-mixed greenhouse gases. Direct anthropogenic emissions of water vapor, in general, have a negligible effect and are thus not considered a primary driver of human-induced climate change. EPA plans to further evaluate the issues of emissions of water that are implicated in the formation of contrails and also changes in water vapor due to local irrigation. At this time, however, the findings of the IPCC state that the total forcing from these sources is small and that the level of understanding is low.

Water produced as a byproduct of combustion at low altitudes has a negligible contribution to climate change. The residence time of water vapor is very short (days) and the water content of the air in the long term is a function of temperature and partial pressure, with emissions playing no role. Additionally, the radiative forcing of a given mass of water at low altitudes is much less than the same mass of carbon dioxide. Water produced at higher altitudes could potentially have a larger impact. The IPCC estimated the contribution of changes in stratospheric water vapor due to methane and other sources, as well as high altitude contributions from contrails, but concluded that both contributions were small, with a low level of understanding. The report also addressed anthropogenic contributions to water vapor arising from large scale irrigation, but assigned it a very low level of understanding, and suggested that the cooling from evaporation might outweigh the warming from its small radiative contribution.

Increases in tropospheric ozone concentrations have exerted a significant anthropogenic warming effect since pre-industrial times. However, as explained in the Proposed Findings, tropospheric ozone is not a long-lived, well-mixed greenhouse gas, and it is not directly emitted. Rather it forms in the atmosphere from emissions of pre-cursor gases. There is increasing attention in climate change research and the policy community about the extent to which further reductions in tropospheric ozone levels may help

[26] UNFCCC, Art. 4.1(b).

slow down climate change in the near term. The Administrator views this issue seriously but maintains that tropospheric ozone is sufficiently different such that it deserves an evaluation and treatment separate from this finding.

7. Summary of Key Comments on Definition of Air Pollution

a. It Is Reasonable for the Administrator To Define the Air Pollution as Global Concentrations of the Well-Mixed Greenhouse Gases

Many commenters argue that EPA does not have the authority to establish domestic rights and obligations based on environmental conditions that are largely attributed to foreign nations and entities that are outside the jurisdiction of EPA under the CAA. They contend that in this case, the bulk of emissions that would lead to mandatory emissions controls under the CAA would not and could not be regulated under the CAA. They state that CAA requirements cannot be enforced against foreign sources of air pollution, and likewise domestic obligations under the CAA cannot be caused by foreign emissions that are outside the United States. The commenters argue that EPA committed procedural error by not addressing this legal issue of authority in the proposal.

Commenters cite no statutory text or judicial authority for this argument, and instead rely entirely on an analogy to the issues concerning the exercise of extra-territorial jurisdiction. The text of CAA section 202(a), however, does not support this claim. Nothing in CAA section 202(a) limits the term air pollution to those air pollution matters that are caused solely or in large part by domestic emissions. The only issue under CAA section 202(a) is whether the air pollution is reasonably anticipated to endanger, and whether emissions from one domestic source category—new motor vehicles—cause or contribute to this air pollution. Commenters would read into this an additional cause or contribute test—whether foreign sources cause or contribute to the air pollution in such a way that the air pollution is largely attributable to the foreign emissions, or the bulk of emissions causing the air pollution are from foreign sources. There is no such provision in CAA section 202(a). Congress was explicit about the contribution test it imposed, and the only source that is relevant for purposes of contribution is new motor vehicles. Commenters suggest an ill-defined criterion that is not in the statute.

In addition, as discussed in Section II of these Findings, Congress intentionally meant the agency to judge the air pollution endangerment criteria based on the ''cumulative impact of all sources of a pollutant,'' and not an incremental look at just the endangerment from a subset of sources. Commenters' arguments appear to lead to this result. Under the commenters' approach, in those cases where the bulk of emissions which form the air pollution come from foreign sources, EPA apparently would have no authority to make an endangerment finding. Logically, EPA would be left with the option of identifying and evaluating the air pollution attributable to domestic sources alone, and determining whether that narrowly defined form of air pollution endangers public health or welfare. This is the kind of unworkable, incremental approach that was rejected by the court in *Ethyl* and by Congress in the 1977 amendments adopting this provision.

The analogy to extra-territorial jurisdiction is also not appropriate. The endangerment finding itself does not exercise jurisdiction over any source, domestic or foreign. It is a judgment that is a precondition for exercising regulatory authority. Under CAA section 202(a), any exercise of regulatory authority following from this endangerment finding would be for new motor vehicles either manufactured in the United States or imported into the United States. There would be no extra-territorial exercise of jurisdiction. The core issues for endangerment focus on impacts inside the United States, not outside the United States. In addition, the contribution finding is based solely on the contribution from new motor vehicles built in or imported to the United States. The core judgments that need to be made under CAA section 202(a) are all focused on actions and impacts inside the United States. This does not raise any concerns about an extra-territorial exercise of jurisdiction. The basis for the endangerment and contribution findings is fully consistent with the principles underlying the desire to avoid exercises of extra-territorial jurisdiction. Any limitations on the ability to exercise control over foreign sources of emissions does not, however, call into question the authority under CAA section 202 to exercise control over domestic sources of emissions based on their contribution to an air pollution problem that is judged to endanger public health or welfare based on impacts occurring in the United States or otherwise affecting the United States and its citizens.

In essence, commenters are concerned about the effectiveness of the domestic control strategies that can be adopted to address a global air pollution problem that is caused only in part by domestic sources of emissions. While that is a quite valid and important policy concern, it does not translate into a legal limitation on EPA's authority to make an endangerment finding. Neither the text nor the legislative history of CAA section 202(a) support such an interpretation and Congress explicitly separated the decision on endangerment from the decision on what controls are required or appropriate once an affirmative endangerment finding has been made. The effectiveness of the resulting regulatory controls is not a relevant factor to determining endangerment.

EPA also committed no procedural flaw as argued by commenters. The proposal fully explored the interpretation of endangerment and cause or contribution under CAA section 202(a), and was very clear that EPA was considering air pollution to mean the elevated global concentration of greenhouse gases in the atmosphere, recognizing that these atmospheric concentrations were the result of world wide emissions, not just or even largely U.S. emissions. The separation of the effectiveness of the control strategy from the endangerment criteria, and the need to consider the cumulative impact of all sources in evaluating endangerment was clearly discussed. Commenters received fair notice of EPA's proposal and the basis for it.

Similarly, some commenters argue that EPA's proposal defines air pollution as global air pollution, but EPA is limited to evaluating domestic air only; in other words that EPA may only regulate domestic emissions with localized effects. They argue this limitation derives from the purpose of the CAA—to enhance the quality of the Nation's air resources, recognizing that air pollution prevention and control focus on the sources of the emissions, and are the primary responsibility of States and local governments. Therefore, commenters continue, that ''air pollution'' has to be air pollution that originates domestically and is to be addressed only at the domestic source. Sections 115 and 179B of the CAA, as discussed below, reflect this intention as well. The result, they conclude, is that ''air pollution'' as used in CAA section 202(a), includes only pollution that originates domestically, where the effects occur locally. They argue EPA has improperly circumvented this by a ''local-global-local'' analysis that injects

global air pollution into the middle of the endangerment test.

The statutory arguments made by the commenters attempt to read an unrealistic limitation into the general provisions discussed. The issues are similar in nature to those raised by the commenters arguing that EPA has no authority to establish domestic rights and obligations based on environmental conditions that are largely attributable to emissions from foreign nations and entities that are outside the jurisdiction of EPA under the CAA. In both cases, the question is whether EPA has authority to make an endangerment finding when the air pollution of concern is a relatively homogenous atmospheric concentration of greenhouse gases. According to the commenters, although this global pool includes the air over the United States, and leads to impacts in the United States and on the U.S. population, Congress prohibited EPA from addressing this air pollution problem because of its global aspects.

The text of the CAA does not specifically address this, as the term air pollution is not defined. EPA interprets this term as including the air pollution problem involved in this case—elevated atmospheric concentration of greenhouse gases that occur in the air above the United States as well as across the globe, and where this pool of global gases leads to impacts in the United States and on the U.S. population. This is fully consistent with the statutory provisions discussed by commenters. This approach seeks to protect the Nation's air resources, as clearly the Nation's air resources are an integral part of this global pool. The Nation's air resources by definition are not an isolated atmosphere that only contains molecules emitted within the United States, or an atmosphere that bears no relationship to the rest of the globe's atmosphere. There is no such real world body of air. Protecting the Nation's resources of clean air means to protect the air in the real world, not an artificial construct of ''air'' that ignores the many situations where the air over our borders includes compounds and pollutants emitted outside our borders, and in this case to ignore the fact that the air over our borders will by definition have elevated concentrations of greenhouse gases only when the air around the globe also has such concentrations. The suggested narrow view of ''air pollution'' does not further the protection of the Nation's air resources, but instead attempts to limit such protection by defining these resources in a scientifically artificial way that does not comport with how the air in the atmosphere is formed or changes over time, how it relates to and interacts with air around the globe, and how the result of this can affect the U.S. population.

The approach suggested by commenters fails to provide an actual definition for EPA to follow—for example, would U.S. or domestic ''air pollution'' be limited to only those air concentrations composed of molecules that originated in the United States? Is there a degree of external gases or compounds that could be allowed? Would it ignore the interaction and relationship between the air over the U.S. borders and the air around the rest of the globe? The latter approach appears to be the one suggested by commenters. Commenters' approach presumably would call for EPA to only consider the effects that derive solely from the air over our borders, and to ignore any effects that occur within the United States that are caused by air around the globe. However the air over the United States will by definition affect climate change only in circumstances where the air around the world is also doing so. The impacts of the air over the United States cannot be assessed separately from the impacts from the global pool, as they occur together and work together to affect the climate. Ignoring the real world nature of the Nation's air resources, in the manner presumably suggested by the commenters, would involve the kind of unworkable, incremental, and artificially isolating approach that was rejected by the court in *Ethyl* and by Congress in 1977. Congress intended EPA to interpret this provision by looking at air pollutants and air pollution problems in a broad manner, not narrowly, to evaluate problems within their broader context and not to attempt to isolate matters in an artificial way that fails to account for the real world context that lead to health and welfare impacts on the public. Commenters' suggested interpretation fails to implement this intention of Congress.

Commenters in various places refer to the control of the pollution, and the need for it to be aimed at local sources. That is addressed in the standard setting portion of CAA section 202(a), as in other similar provisions. The endangerment provision does not address how the air pollution problem should be addressed—who should be regulated and how they should be regulated. The endangerment provision addresses a different issue—is there an air pollution problem that should be addressed? In that context, EPA rejects the artificially narrow interpretation suggested by the commenters, and believes its broader interpretation in this case is reasonable and consistent with the intention of Congress.

b. Consideration of Greenhouse Gases as Air Pollution Given Their Impact Is Through Climate Rather Than Direct Toxic Effects

A number of commenters argue that carbon dioxide and the other greenhouse gases should not be defined as the air pollution because these gases do not cause direct human health effects, such as through inhalation. Responses to such comments are summarized in Section IV.B.1 of these Findings in the discussion of the public health and welfare nature of the endangerment finding.

c. The Administrator's Reliance on the Global Temperature Data Is a Reasonable Indicator of Human-Induced Climate Change

We received many comments suggesting global temperatures have stopped warming. The commenters base this conclusion on temperature trends over only the last decade. While there have not been strong trends over the last seven to ten years in global surface temperature or lower troposphere temperatures measured by satellites, this pause in warming should not be interpreted as a sign that the Earth is cooling or that the science supporting continued warming is in error. Year-to-year variability in natural weather and climate patterns make it impossible to draw any conclusions about whether the climate system is warming or cooling from such a limited analysis. Historical data indicate short-term trends in long-term time series occasionally run counter to the overall trend. All three major global surface temperature records show a continuation of long-term warming. Over the last century, the global average temperature has warmed at the rate of about 0.13 °F (0.072 °C) per decade in all three records. Over the last 30 years, the global average surface temperature has warmed by about 0.30 °F (0.17 °C) per decade. Eight of the 10 warmest years on record have occurred since 2001 and the 20 warmest years have all occurred since 1981. Satellite measurements of the troposphere also indicate warming over the last 30 years at a rate of 0.20 to 0.27 °F (0.11 °C to 0.15 °C) per decade. Please see the relevant volume of the Response to Comments document for more detailed responses.

Some commenters indicate the global surface temperature records are biased by urbanization, poor siting of instruments, observation methods, and

other factors. Our review of the literature suggests that these biases have in many cases been corrected for, are largely random where they remain, and therefore cancel out over large regions. Furthermore, we note that though the three global surface temperature records use differing techniques to analyze much of the same data, they produce almost the same results, increasing our confidence in their legitimacy. The assessment literature has concluded that warming of the climate system is unequivocal. The warming trend that is evident in all of the temperature records is confirmed by other independent observations, such as the melting of Arctic sea ice, the retreat of mountain glaciers on every continent, reductions in the extent of snow cover, earlier blooming of plants in the spring, and increased melting of the Greenland and Antarctic ice sheets. Please see the relevant volume of the Response to Comments document for more detailed responses.

A number of commenters argue that the warmth of the late 20th century is not unusual relative to the past 1,000 years. They maintain temperatures were comparably warm during the Medieval Warm Period (MWP) centered around 1000 A.D. We agree there was a Medieval Warm Period in many regions but find the evidence is insufficient to assess whether it was globally coherent. Our review of the available evidence suggests that Northern Hemisphere temperatures in the MWP were probably between 0.1 °C and 0.2 °C below the 1961–1990 mean and significantly below the level shown by instrumental data after 1980. However, we note significant uncertainty in the temperature record prior to 1600 A.D. Please see the relevant volume of the Response to Comments document for more detailed responses.

d. Ability To Attribute Observed Climate Change to Anthropogenic, Well-Mixed Greenhouse Gases

Many commenters question the link between observed temperatures and anthropogenic greenhouse gas emissions. They suggest internal variability of the climate system and natural forcings explain observed temperature trends and that anthropogenic greenhouse gases play, at most, a minor role. However, the attribution of most of the recent warming to anthropogenic activities is based on multiple lines of evidence. The first line of evidence arises from our basic physical understanding of the effects of changing concentrations of greenhouse gases, natural factors, and other human impacts on the climate system. Greenhouse gas concentrations have indisputably increased and their radiative properties are well established. The second line of evidence arises from indirect, historical estimates of past climate changes that suggest that the changes in global surface temperature over the last several decades are unusual. The third line of evidence arises from the use of computer-based climate models to simulate the likely patterns of response of the climate system to different forcing mechanisms (both natural and anthropogenic). These models are unable to replicate the observed warming unless anthropogenic emissions of greenhouse gases are included in the simulations. Natural forcing alone cannot explain the observed warming. In fact, the assessment literature [27] indicates the sum of solar and volcanic forcing in the past half century would likely have produced cooling, not warming. Please see the relevant volume of the Response to Comments for more detailed responses.

B. The Air Pollution Is Reasonably Anticipated To Endanger Both Public Health and Welfare

The Administrator finds that the elevated atmospheric concentrations of the well-mixed greenhouse gases may reasonably be anticipated to endanger the public health and welfare of current and future generations. This section describes the major pieces of scientific evidence supporting the Administrator's endangerment finding, discusses both the public health and welfare nature of the endangerment finding, and addresses a number of key issues the Administrator considered when evaluating the state of the science as well as key public comments on the Proposed Findings. Additional detail can be found in the TSD and the Response to Comments document.

As described in Section II of these Findings, the endangerment test under CAA section 202(a) does not require the Administrator to identify a bright line, quantitative threshold above which a positive endangerment finding can be made. The statutory language explicitly calls upon the Administrator to use her judgment. This section describes the general approach used by the Administrator in reaching the judgment that a positive endangerment finding should be made, as well as the specific rationale for finding that the greenhouse gas air pollution may reasonably be anticipated to endanger both public health and welfare.

First, the Administrator finds the scientific evidence linking human emissions and resulting elevated atmospheric concentrations of the six well-mixed greenhouse gases to observed global and regional temperature increases and other climate changes to be sufficiently robust and compelling. This evidence is briefly explained in more detail in Section V of these Findings. The Administrator recognizes that the climate change associated with elevated atmospheric concentrations of carbon dioxide and the other well-mixed greenhouse gases have the potential to affect essentially every aspect of human health, society and the natural environment. The Administrator is therefore not limiting her consideration of potential risks and impacts associated with human emissions of greenhouse gases to any one particular element of human health, sector of the economy, region of the country, or to any one particular aspect of the natural environment. Rather, the Administrator is basing her finding on the total weight of scientific evidence, and what the science has to say regarding the nature and potential magnitude of the risks and impacts across all climate-sensitive elements of public health and welfare, now and projected out into the foreseeable future.

The Administrator has considered the state of the science on how human emissions and the resulting elevated atmospheric concentrations of well-mixed greenhouse gases may affect each of the major risk categories, *i.e.,* those that are described in the TSD, which include human health, air quality, food production and agriculture, forestry, water resources, sea level rise and coastal areas, the energy sector, infrastructure and settlements, and ecosystems and wildlife. The Administrator understands that the nature and potential severity of impacts can vary across these different elements of public health and welfare, and that they can vary by region, as well as over time.

The Administrator is therefore aware that, because human-induced climate change has the potential to be far-reaching and multi-dimensional, not all

[27] Solomon, S., D. Qin, M. Manning, R.B. Alley, T. Berntsen, N.L. Bindoff, Z. Chen, A. Chidthaisong, J.M. Gregory, G.C. Hegerl, M. Heimann, B. Hewitson, B.J. Hoskins, F. Joos, J. Jouzel, V. Kattsov, U. Lohmann, T. Matsuno, M. Molina, N. Nicholls, J. Overpeck, G. Raga, V. Ramaswamy, J. Ren, M. Rusticucci, R. Somerville, T.F. Stocker, P. Whetton, R.A. Wood and D. Wratt (2007) Technical Summary. In: *Climate Change 2007: The Physical Science Basis*. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change [Solomon, S., D. Qin, M. Manning, Z. Chen, M. Marquis, K.B. Averyt, M. Tignor, and H.L. Miller (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA. Karl, T. et al. (2009).

risks and potential impacts can be characterized with a uniform level of quantification or understanding, nor can they be characterized with uniform metrics. Given this variety in not only the nature and potential magnitude of risks and impacts, but also in our ability to characterize, quantify and project into the future such impacts, the Administrator must use her judgment to weigh the threat in each of the risk categories, weigh the potential benefits where relevant, and ultimately judge whether these risks and benefits, when viewed in total, are judged to be endangerment to public health and/or welfare.

This has a number of implications for the Administrator's approach in assessing the nature and magnitude of risk and impacts across each of the risk categories. First, the Administrator has not established a specific threshold metric for each category of risk and impacts. Also, the Administrator is not necessarily placing the greatest weight on those risks and impacts which have been the subject of the most study or quantification.

Part of the variation in risks and impacts is the fact that climbing atmospheric concentrations of greenhouse gases and associated temperature increases can bring about some potential benefits to public health and welfare in addition to adverse risks. The current understanding of any potential benefits associated with human-induced climate change is described in the TSD and is taken into consideration here. The potential for both adverse and beneficial effects are considered, as well as the relative magnitude of such effects, to the extent that the relative magnitudes can be quantified or characterized. Furthermore, given the multiple ways in which the buildup of atmospheric greenhouse gases can cause effects (*e.g.,* via elevated carbon dioxide concentrations, via temperature increases, via precipitation increases, via sea level rise, and via changes in extreme events), these multiple pathways are considered. For example, elevated carbon dioxide concentrations may be beneficial to crop yields, but changes in temperature and precipitation may be adverse and must also be considered. Likewise, modest temperature increases may have some public health benefits as well as harms, and other pathways such as changes in air quality and extreme events must also be considered.

The Administrator has balanced and weighed the varying risks and effects for each sector. She has judged whether there is a pattern across the sector that supports or does not support an endangerment finding, and if so whether the support is of more or less weight. In cases where there is both a potential for benefits and risks of harm, the Administrator has balanced these factors by determining whether there appears to be any directional trend in the overall evidence that would support placing more weight on one than the other, taking into consideration all that is known about the likelihood of the various risks and effects and their seriousness. In all of these cases, the judgment is largely qualitative in nature, and is not reducible to precise metrics or quantification.

Regarding the timeframe for the endangerment test, it is the Administrator's view that both current and future conditions must be considered. The Administrator is thus taking the view that the endangerment period of analysis extend from the current time to the next several decades, and in some cases to the end of this century. This consideration is also consistent with the timeframes used in the underlying scientific assessments. The future timeframe under consideration is consistent with the atmospheric lifetime and climate effects of the six well-mixed greenhouse gases, and also with our ability to make reasonable and plausible projections of future conditions.

The Administrator acknowledges that some aspects of climate change science and the projected impacts are more certain than others. Our state of knowledge is strongest for recently observed, large-scale changes. Uncertainty tends to increase in characterizing changes at smaller (regional) scales relative to large (global) scales. Uncertainty also increases as the temporal scales move away from present, either backward, but more importantly forward in time. Nonetheless, the current state of knowledge of observed and past climate changes and their causes enables projections of plausible future changes under different scenarios of anthropogenic forcing for a range of spatial and temporal scales.

In some cases, where the level of sensitivity to climate of a particular sector has been extensively studied, future impacts can be quantified whereas in other instances only a qualitative description of a directional change, if that, may be possible. The inherent uncertainty in the direction, magnitude, and/or rate of certain future climate change impacts opens up the possibility that some changes could be more or less severe than expected, and the possibility of unanticipated outcomes. In some cases, low probability, high impact outcomes (*i.e.,* known unknowns) are possibilities but cannot be explicitly assessed.

1. The Air Pollution Is Reasonably Anticipated To Endanger Public Health

The Administrator finds that the well-mixed greenhouse gas air pollution is reasonably anticipated to endanger public health, for both current and future generations. The Administrator finds that the public health of current generations is endangered and that the threat to public health for both current and future generations will likely mount over time as greenhouse gases continue to accumulate in the atmosphere and result in ever greater rates of climate change.

After review of public comments, the Administrator continues to believe that climate change can increase the risk of morbidity and mortality and that these public health impacts can and should be considered when determining endangerment to public health under CAA section 202(a). As described in Section IV.B.1 of these Findings, the Administrator is not limited to only considering whether there are any direct health effects such as respiratory or toxic effects associated with exposure to greenhouse gases.

In making this public health finding, the Administrator considered direct temperature effects, air quality effects, the potential for changes in vector-borne diseases, and the potential for changes in the severity and frequency of extreme weather events. In addition, the Administrator considered whether and how susceptible populations may be particularly at risk. The current state of science on these effects from the major assessment reports is described in greater detail in the TSD, and our responses to public comments are provided in the Response to Comments Documents.

a. Direct Temperature Effects

It has been estimated that unusually hot days and heat waves are becoming more frequent, and that unusually cold days are becoming less frequent, as noted above. Heat is already the leading cause of weather-related deaths in the United States. In the future, severe heat waves are projected to intensify in magnitude and duration over the portions of the United States where these events already occur. Heat waves are associated with marked short-term increases in mortality. Hot temperatures have also been associated with increased morbidity. The projected warming is therefore projected to increase heat related mortality and

morbidity, especially among the elderly, young and frail. The populations most sensitive to hot temperatures are older adults, the chronically sick, the very young, city-dwellers, those taking medications that disrupt thermoregulation, the mentally ill, those lacking access to air conditioning, those working or playing outdoors, and socially isolated persons. As warming increases over time, these adverse effects would be expected to increase as the serious heat events become more serious.

Increases in temperature are also expected to lead to some reduction in the risk of death related to extreme cold. Cold waves continue to pose health risks in northern latitudes in temperature regions where very low temperatures can be reached in a few hours and extend over long periods. Globally, the IPCC projects reduced human mortality from cold exposure through 2100. It is not clear whether reduced mortality in the United States from cold would be greater or less than increased heat-related mortality in the United States due to climate change. However, there is a risk that projections of cold-related deaths, and the potential for decreasing their numbers due to warmer winters, can be overestimated unless they take into account the effects of season and influenza, which is not strongly associated with monthly winter temperature. In addition, the latest USGCRP report refers to a study that analyzed daily mortality and weather data in 50 U.S. cities from 1989 to 2000 and found that, on average, cold snaps in the United States increased death rates by 1.6 percent, while heat waves triggered a 5.7 percent increase in death rates. The study concludes that increases in heat-related mortality due to global warming in the United States are unlikely to be compensated for by decreases in cold-related mortality.

b. Air Quality Effects

Increases in regional ozone pollution relative to ozone levels without climate change are expected due to higher temperatures and weaker circulation in the United States relative to air quality levels without climate change. Climate change is expected to increase regional ozone pollution, with associated risks in respiratory illnesses and premature death. In addition to human health effects, tropospheric ozone has significant adverse effects on crop yields, pasture and forest growth, and species composition. The directional effect of climate change on ambient particulate matter levels remains less certain.

Climate change can affect ozone by modifying emissions of precursors, atmospheric chemistry, and transport and removal. There is now consistent evidence from models and observations that 21st century climate change will worsen summertime surface ozone in polluted regions of North America compared to a future with no climate change.

Modeling studies discussed in EPA's Interim Assessment [28] show that simulated climate change causes increases in summertime ozone concentrations over substantial regions of the country, though this was not uniform, and some areas showed little change or decreases, though the decreases tend to be less pronounced than the increases. For those regions that showed climate-induced increases, the increase in maximum daily 8-hour average ozone concentration, a key metric for regulating U.S. air quality, was in the range of 2 to 8 ppb, averaged over the summer season. The increases were substantially greater than this during the peak pollution episodes that tend to occur over a number of days each summer. The overall effect of climate change was projected to increase ozone levels, compared to what would occur without this climate change, over broad areas of the country, especially on the highest ozone days and in the largest metropolitan areas with the worst ozone problems. Ozone decreases are projected to be less pronounced, and generally to be limited to some regions of the country with smaller population.

c. Effects on Extreme Weather Events

In addition to the direct effects of temperature on heat- and cold-related mortality, the Administrator considers the potential for increased deaths, injuries, infectious diseases, and stress-related disorders and other adverse effects associated with social disruption and migration from more frequent extreme weather. The Administrator notes that the vulnerability to weather disasters depends on the attributes of the people at risk (including where they live, age, income, education, and disability) and on broader social and environmental factors (level of disaster preparedness, health sector responses, and environmental degradation). The IPCC finds the following with regard to extreme events and human health:

Increases in the frequency of heavy precipitation events are associated with increased risk of deaths and injuries as well as infectious, respiratory, and skin diseases. Floods are low-probability, high-impact events that can overwhelm physical infrastructure, human resilience, and social organization. Flood health impacts include deaths, injuries, infectious diseases, intoxications, and mental health problems.

Increases in tropical cyclone intensity are linked to increases in the risk of deaths, injuries, waterborne and food borne diseases, as well as post-traumatic stress disorders. Drowning by storm surge, heightened by rising sea levels and more intense storms (as projected by IPCC), is the major killer in coastal storms where there are large numbers of deaths. Flooding can cause health impacts including direct injuries as well as increased incidence of waterborne diseases due to pathogens such as *Cryptosporidium and Giardia.*

d. Effects on Climate-Sensitive Diseases and Aeroallergens

According to the assessment literature, there will likely be an increase in the spread of several food and water-borne pathogens among susceptible populations depending on the pathogens' survival, persistence, habitat range and transmission under changing climate and environmental conditions. Food borne diseases show some relationship with temperature, and the range of some zoonotic disease carriers such as the Lyme disease carrying tick may increase with temperature.

Climate change, including changes in carbon dioxide concentrations, could impact the production, distribution, dispersion and allergenicity of aeroallergens and the growth and distribution of weeds, grasses, and trees that produce them. These changes in aeroallergens and subsequent human exposures could affect the prevalence and severity of allergy symptoms. However, the scientific literature does not provide definitive data or conclusions on how climate change might impact aeroallergens and subsequently the prevalence of allergenic illnesses in the United States.

It has generally been observed that the presence of elevated carbon dioxide concentrations and temperatures stimulate plants to increase photosynthesis, biomass, water use efficiency, and reproductive effort. The IPCC concluded that pollens are likely to increase with elevated temperature and carbon dioxide.

[28] U.S. EPA (2009) *Assessment of the Impacts of Global Change on Regional U.S. Air Quality: A Synthesis of Climate Change Impacts on Ground-Level Ozone.* An Interim Report of the U.S. EPA Global Change Research Program. U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–07/094.

e. Summary of the Administrator's Finding of Endangerment to Public Health

The Administrator has considered how elevated concentrations of the well-mixed greenhouse gases and associated climate change affect public health by evaluating the risks associated with changes in air quality, increases in temperatures, changes in extreme weather events, increases in food and water borne pathogens, and changes in aeroallergens. The evidence concerning adverse air quality impacts provides strong and clear support for an endangerment finding. Increases in ambient ozone are expected to occur over broad areas of the country, and they are expected to increase serious adverse health effects in large population areas that are and may continue to be in nonattainment. The evaluation of the potential risks associated with increases in ozone in attainment areas also supports such a finding.

The impact on mortality and morbidity associated with increases in average temperatures which increase the likelihood of heat waves also provides support for a public health endangerment finding. There are uncertainties over the net health impacts of a temperature increase due to decreases in cold-related mortality, but there is some recent evidence that suggests that the net impact on mortality is more likely to be adverse, in a context where heat is already the leading cause of weather-related deaths in the United States.

The evidence concerning how human-induced climate change may alter extreme weather events also clearly supports a finding of endangerment, given the serious adverse impacts that can result from such events and the increase in risk, even if small, of the occurrence and intensity of events such as hurricanes and floods. Additionally, public health is expected to be adversely affected by an increase in the severity of coastal storm events due to rising sea levels.

There is some evidence that elevated carbon dioxide concentrations and climate changes can lead to changes in aeroallergens that could increase the potential for allergenic illnesses. The evidence on pathogen borne disease vectors provides directional support for an endangerment finding. The Administrator acknowledges the many uncertainties in these areas. Although these adverse effects, provide some support for an endangerment finding, the Administrator is not placing primary weight on these factors.

Finally, the Administrator places weight on the fact that certain groups, including children, the elderly, and the poor, are most vulnerable to these climate-related health effects.

f. Key Comments on the Finding of Endangerment to Public Health

EPA received many comments on public health issues and the proposed finding of endangerment to public health.

i. EPA's Consideration of the Climate Impacts as Public Health Issues Is Reasonable

Several commenters argue that EPA may only consider the health effects from direct exposure to pollutants in determining whether a pollutant endangers public health. The commenters state that EPA's proposal acknowledges that there is no evidence that greenhouse gases directly cause health effects, citing 74 FR 18901. To support their claim that EPA can only consider health effects that result from direct exposure to a pollutant, commenters cite several sources, discussed below.

Clean Air Act and Legislative History. Several commenters argue that the text of the CAA and the legislative history of the 1977 amendments demonstrate that Congress intended public health effects to relate to risks from direct exposure to a pollutant. They also argue that by considering health effects that result from welfare effects, EPA was essentially combining the two categories into one, contrary to the statute and Congressional intent.

Commenters state that the CAA, including CAA section 202(a)(1), requires EPA to consider endangerment of public health separately from endangerment of public welfare. Commenters note that while the CAA does not provide a definition of public health, CAA section 302(h) addresses the meaning of ''welfare,'' which includes weather and climate. Thus, they argue, Congress has instructed that effects on weather and climate are to be considered as potentially endangering welfare—not human health. They continue that Congress surely knew that weather and climatic events such as flooding and heat waves could affect human health, but Congress nonetheless classified air pollutants' effects on weather and climate as effects on welfare.

Commenters also argue that the legislative history confirms that Congress intended for the definition of ''public health'' to only include the consequences of direct human exposure to ambient air pollutants. They note an early version of section 109(b) would have required only a single NAAQS standard to protect ''public health,'' with the protection of ''welfare'' being a co-benefit of the single standard. Commenters note that the proponents of this early bill explained, ''[i]n many cases, a level of protection of health would take care of the welfare situation'' Sen. Hearing, Subcommittee on Air and Water Pollution, Comm. On Public Works (Mar. 17, 1970) (statement of Dr. Middleton, Comm'r, Nat'l Air Pollution Control Admin., HEW), 1970 Leg. Hist. 1194. Commenters state that the Senate bill that ultimately passed rejected this combined standard, requiring separate national ambient air quality standards and national ambient air quality goals. Commenters contend that Congress intended that the national ambient air quality goals be set ''to protect the public health and welfare from any known or anticipated effects associated with'' air pollution, including the list of ''welfare'' effects currently found in CAA section 302(h), such as effects on water, vegetation, animals, wildlife, weather and climate. Commenters note the Senate Committee Report stated that the national ambient air quality *standards* were created to protect public health, while the national ambient air quality *goals* were intended to address broader issues because ''the Committee also recognizes that man's natural and man-made environment must be preserved and protected. Therefore, the bill provides for the setting of national ambient air quality goals at levels necessary to protect public health and welfare from any known or anticipated adverse effects of air pollution—including effects on soils, water, vegetation, man-made materials, animals, wildlife, visibility, climate, and economic values.'' Commenters argue this statement is clearly the source of the current definition of welfare effects in CAA section 302(h), which also includes ''personal comfort and well being.'' They argue the Senate bill contemplated the NAAQS would include only direct health effects, while the *goals* would encompass effects on both the public health and welfare. Commenters continue that considering both public health effects and welfare effects under a combined standard, as the Administrator attempts to do in the proposed endangerment finding, would resurrect the combined approach to NAAQS that the Senate emphatically rejected.

The commenters also cite language from the House Report in support of their view that Congress only intended that EPA consider direct health effects

when assessing endangerment to public health: ''By the words 'cause or contribute to air pollution,' the committee intends to require the Administrator to consider all sources of the contaminant which contributes to air pollution and to consider all sources of exposure to the contaminant—food, water, air, etc.—in determining health risks'' 7 H.R. Rep. No. 95–294, at 49–50 (1977). Commenters also cite language in the Senate Report: ''Knowledge of the relationship between the exposure to many air pollution agents and acute and chronic health effects is sufficient to develop air quality criteria related to such effects'' S. Rep. No. 91–1196, at 7 (1970).

The specific issue here is whether an effect on human health that results from a change in climate should be considered when EPA determines whether the air pollution of well-mixed greenhouse gases is reasonably anticipated to endanger public health. In this case, the air pollution has an effect on climate. For example the air pollution raises surface, air, and water temperatures. Among the many effects that flow from this is the expectation that there will be an increase in the risk of mortality and morbidity associated with increased intensity of heat waves. In addition, there is an expectation that there will be an increase in levels of ambient ozone, leading to increased risk of morbidity and mortality from exposure to ozone. All of these are effects on human health, and all of them are associated with the effect on climate from elevated atmospheric concentrations of greenhouse gases. None of these human health effects are associated with direct exposure to greenhouse gases.

In the past, EPA has not had to resolve the issue presented here, as it has been clear whether the effects relate to public health or relate to public welfare, with no confusion over what category was at issue. In those cases EPA has routinely looked at what effect the air pollution has on people. If the effect on people is to their health, we have considered it an issue of public health. If the effect on people is to their interest in matters other than health, we have considered it public welfare.

For example, there are serious health risks associated with inhalation of ozone, and they have logically been considered as public health issues. Ambient levels of ozone have also raised the question of indirect health benefits through screening of harmful UVB rays. EPA has also considered this indirect health effect of ozone to be a public health issue.[29] Ozone pollution also affects people by impacting their interests in various vegetation through foliar damage to trees, reduced crop yield, adverse impacts on horticultural plants, and the like. EPA has consistently considered these issues when evaluating the public welfare based NAAQS standards under CAA section 109.

In all of these situations the use of the term ''public'' has focused EPA on how people are affected by the air pollution. If the effect on people is to their health then we have considered it a public health issue. If the effect on people is to their interest in matters other than health, then we have treated it as a public welfare issue.

The situation presented here is somewhat unique. The focus again is on the effect the air pollution has on people. Here the effect on people is to their health. However this effect flows from the change in climate and effects on climate are included in the definition of effects on welfare. That raises the issue of how to categorize the health effects—should we consider them when evaluating endangerment to public health? When we evaluate endangerment to public welfare? Or both?

The text of the CAA does not resolve this question. While Congress defined ''effects on welfare,'' it did not define either ''public health'' or ''public welfare''. In addition, the definition of ''effects on welfare'' does not clearly address how to categorize health effects that flow from effects on soils, water, crops, vegetation, weather, climate, or any of the other factors listed in CAA section 302(h). It is clear that effects on climate are an effect on welfare, but the definition does not address whether health impacts that are caused by these changes in climate are also effects on welfare. The health effects at issue are not themselves effects on soils, water, crops, vegetation, weather, or climate. They are instead effects on health. They derive from the effects on climate, but they are not themselves effects on climate or on anything else listed in CAA section 302(h). So the definition of effects on welfare does not address whether an effect on health, which is not itself listed in CAA section 302(h), is also an effect on welfare if it results from an effect on welfare. The text of the CAA also does not address the issue of direct and indirect health effects. Contrary to commenters' assertions, the legislative history does not address or resolve this issue.

In this context, EPA is interpreting the endangerment provision in CAA section 202(a) as meaning that the effects on peoples' health from changes to climate can and should be included in EPA's evaluation of whether the air pollution at issue endangers public health. EPA is not deciding whether these health effects also could or should be considered in evaluating endangerment to public welfare.

The stating of the issue makes the answer seem straightforward. If air pollution causes sickness or death, then these health effects should be considered when evaluating whether the air pollution endangers public health. The term public health is undefined, and by itself this is an eminently reasonable way to interpret it. This focuses on the actual effect on people, as compared to ignoring that and focusing on the pathway from the air pollution to the effect. The question then becomes whether there is a valid basis in the CAA to take the different approach suggested by commenters, an approach contrary to the common sense meaning of public health.

Notably, the term ''public welfare'' is undefined. While it clearly means something other than public health, there is no obvious indication whether Congress intended there to be a clear boundary between the two terms or whether there might be some overlap where some impacts could be considered both a public health and a public welfare impact. Neither the text nor the legislative history resolves this issue. Under either approach, EPA believes the proper interpretation is that these effects on health should be considered when evaluating endangerment to public health.

If we assume Congress intended that effects on public welfare could not include effects on public health and vice versa, then the effects at issue here should most reasonably be considered in the public health category. Indisputably they are health effects, and the plain meaning of the term public health would call for their inclusion in that term. The term public welfare is

[29] As discussed later, in the past EPA took the position that this kind of potential indirect beneficial impact on public health should not be considered when setting the primary health based NAAQS for ozone. This was not based on the view that it was not a potential public health impact, or that it was a public welfare impact instead of a public health impact. Instead EPA was interpreting the NAAQS standard setting provisions of section 109, and argued that they were intended to address only certain public health impacts, those that were adverse, and were not intended to address indirect, beneficial public health impacts. This interpretation of section 109 was rejected in *ATA* v. *EPA*, 175 F.3d 1027 (1999) *reh'g granted in part and denied in part*, 195 F.3d 4 (DC Cir. 1999). The court made it clear that the potential indirect beneficial impact of ambient ozone on public health from screening UVB rays needed to be considered when setting the NAAQS to protect public health.

undefined. If Congress intended that public welfare not include matters included in the public health category, then a reasonable interpretation of this undefined term would include those effects on welfare that impact people in ways other than impacting their health.

The definition of ''effects on welfare'' does not clearly address how to categorize health effects that flow from effects on water, soil, land, climate, or weather. As noted above, the definition does not address whether health impacts that are caused by these changes in climate are also ''effects on welfare.'' Certainly effects on health are not included in the list in CAA section 302(h). The lack of clarity in the definition of effects on welfare, combined with the lack of definition of public welfare, do not warrant interpreting the term public health differently from its straightforward and common sense meaning.

The inclusion of the phrase ''effects on * * * personal comfort and well-being'' as an effect on welfare supports this view. The term would logically mean something other than the different term public health. The term ''well-being'' is not defined, and generally has a broader and different connotation of positive physical, emotional, and mental status. The most straightforward meaning of this term, in a context where Congress used the different term public health in a wide variety of other provisions, would be to include effects on people that do not rise to the level of health effects, but otherwise impact their physical, emotional, and mental status. This gives full meaning to both terms.

The term well-being is a general term, and in isolation arguably could include health effects. However there is no textual basis to say it would include some health effects but not others, as argued by commenters. If sickness impacts your well-being, then it impacts your well-being whether it results directly or indirectly from the pollution in the air. Nothing in CAA section 302(h) limits the term well-being to indirect impacts on people, or to health effects that occur because of other welfare effects, such as climate change. It is listed as its own effect on welfare. Instead of interpreting well-being as including all health effects, or some health effects, the much more logical way to interpret this provision in the context of all of the other provisions of the CAA is to interpret it as meaning effects on people other than health effects.

Thus, if Congress intended to draw a strict line between the two categories of public health and public welfare, for purposes of determining endangerment under CAA section 202(a), then EPA believes that its interpretation is a reasonable and straightforward way to categorize the health effects at issue here. This gives weight to the common sense meaning of the term public health, where the terms public health and public welfare are undefined and the definition of effects on welfare is at best ambiguous on this issue.

In the alternative, if Congress did not intend any such bright line between these two categories and there could be an overlap, then it is also reasonable for EPA to include these health effects in its consideration of whether the air pollution endangers public health. Neither approach condenses or conflates the two different terms. Under either approach EPA's interpretation, as demonstrated in this rulemaking, would still consider numerous and varied effects from climate change as indisputable impacts on public welfare and not impacts on public health. In addition, this interpretation will not change the fact that in almost all cases impacts on public health would not also be considered impacts on public welfare.

Prior EPA actions. Several commenters argue that EPA's decision to include health impacts that occur because of climate change is inconsistent with its past approach, which has been to treat indirect health effects as welfare effects. Commenters contend that in the latest Criteria Document for ozone EPA listed tropospheric ozone's effects on UVB-induced human diseases, as well as its effects on climate change, as welfare effects, even though the agency acknowledged significant health effects such as sunburn and skin cancer. Commenters also argue that EPA listed ''risks to human health'' from toxins released by algal blooms due to excess nitrogen as ''ecological and other welfare effects'' in the recent Criteria Document for oxides of nitrogen and sulfur. Finally, commenters argue that EPA's proposed action was contrary to the Agency decision to list new municipal solid waste landfills as a source category under CAA section 111. Commenters state that EPA listed climate change as a welfare effect in that action, (citing 56 FR 24469).

The Agency's recent approach regarding UVB-induced health effects is consistent with the endangerment findings, and demonstrates that the Agency considers indirect effects on human health as public health issues rather than public welfare issues. While the ozone Criteria Document may have placed the discussion of UV–B related health effects among chapters on welfare effects, in evaluating the evidence presented in the Criteria Document for purposes of preparing the policy assessment document, EPA staff clearly viewed UVB-induced effects as human health effects that were relevant in determining the public health based primary NAAQS for ozone, rather than welfare effects, regardless of which chapter in the Criteria Document described those effects. The evaluation of the UVB-related evidence is discussed with other human health effects evidence. The policy assessment document noted that Chapter 10 of the Criteria Document, ''provides a thorough analysis of the current understanding of the relationship between reducing tropospheric [ozone] concentrations and the potential impact these reductions might have on UV–B surface fluxes and *indirectly contributing to increased UV–B related health effects.'' See*, *Review of the National Ambient Air Quality Standards for Ozone: Policy Assessment of Scientific and Technical Information*, p 3–36 (January 2007) (emphasis added).

EPA repeated this view in the 2007 proposed ozone NAAQS rule. In presenting its evaluation of the human health evidence for purposes of setting the public health based primary NAAQS, EPA stated: ''This section also summarizes the uncertainty about the *potential indirect effects on public health* associated with changes due to increases in UV–B radiation exposure, such as UV–B radiation-related skin cancers, that may be associated with reductions in ambient levels of ground-level [ozone], as discussed in chapter 10 of the Criteria Document and chapter 3 of the Staff Paper.'' 72 FR 37818, 37827. *See* also, 72 FR 37837 (''* * * the Criteria Document also assesses the potential indirect effects related to the presence of [ozone] in the ambient air by considering the role of ground-level [ozone] in mediating human health effects that may be directly attributable to exposure to solar ultraviolet radiation (UV–B).'')

Thus, EPA's approach to UV–B related health effects clearly shows the Agency has treated indirect health effects not as welfare effects, as commenters suggest, but as human health effects that need to be evaluated when setting the public health based primary NAAQS. In this ozone NAAQS rulemaking, EPA did not draw a line between direct and indirect health effects for purposes of evaluating UV–B related health effects and the public health based primary NAAQS.

Similarly, the NO_X/SO_X criteria document does not establish a precedent that indirect human health effects are welfare effects. Toxic algal blooms themselves are a welfare effect, so it is not surprising a discussion of algal blooms appears in sections dealing with welfare effects. The more relevant question is how EPA evaluated information regarding human health risks resulting from algal blooms. In the case of the Criteria Document, the role of nitrogen in causing algal blooms was unclear. As a result, the Agency did not have occasion to evaluate any resulting human health effects and the Criteria Document does not support the view that EPA treats indirect health effects as anything other than a public health issue.

Finally, EPA disagrees that its action here is at odds with the listing of municipal solid waste landfills under CAA section 111. In the landfills New Source Performance Standard (NSPS) EPA did not consider health effects resulting from climate change much less draw any conclusions about health effects from climate change being health or welfare effects. If anything, the landfills NSPS is consistent with EPA's approach. In the proposed rule, EPA stated: ''The EPA has documented many cases of acute injury and death caused by explosions and fires related to municipal landfill gas emissions. In addition to these health effects, the associated property damage is a welfare effect'' (56 FR 24474). EPA considered injury and death from fires resulting from landfill gasses to be health effects. Yet the injury did not result from direct exposure to the pollutant (landfill gas). Instead, the injury resulted from the combustion of the pollutant—the injury is essentially an indirect effect of the pollutant. Yet, as with this action, EPA considered the injury as a human health effect.

Case law. Several commenters argue that EPA's proposed endangerment finding was inconsistent with *NRDC* v. *EPA*, 902 F.2d 962 (DC Cir 1990). Commenters argue that in rejecting the argument that EPA must consider the health effects of increased unemployment that could result from a more stringent primary NAAQS standard, the DC Circuit explained that, ''[i]t is only the health effects relating to pollutants in the air that EPA may consider.'' *Id.* at 973. Several commenters further argue that EPA later relied on that holding to defend its decision to set a primary NAAQS for ozone based solely on direct health effects of ozone. Citing, *EPA Pet'n for Rehearing, Am. Trucking Ass'n* v. *EPA*, No. 97–1440 (DC Cir. June 28, 1999) (''ATA I'') (arguing that the primary NAAQS should be set through consideration of only ''direct adverse effects on public health, and not indirect, allegedly beneficial effects.'')

The *NRDC* case is not contrary to EPA's endangerment finding. In *NRDC*, petitioner American Iron and Steel Institute argued that EPA had to consider the costs of health consequences that might arise from increased unemployment. The court ruled that, ''[c]onsideration of costs associated with alleged health risks from unemployment would be flatly inconsistent with the statute, legislative history and case law on this point.'' 902 F.2d at 973. The cases cited by the court in support of its decision all hold that EPA may not consider economic or technological feasibility in establishing a NAAQS. The *NRDC* decision does not establish a precedent that the CAA prohibits EPA from considering indirect health effects as a public health issue rather than a public welfare issue.

EPA also believes reliance on the Agency's petition for rehearing in noted above is misplaced. In that case, EPA did not argue that indirect beneficial health effects were not public health issues. Instead EPA argued that under the CAA, it did not have to consider such indirect beneficial health effects of an air pollutant when setting the health based primary NAAQS. EPA was interpreting the NAAQS standard setting provisions of CAA section 109, and argued that they were intended to address only certain public health impacts, those that were adverse, and were not intended to address indirect, beneficial public health impacts. The issue in the case was not whether indirect health effects are relevant for purposes of making an endangerment decision concerning public health, but rather whether EPA must consider such beneficial health effects in establishing a primary NAAQS under CAA section 109. EPA's interpretation of CAA section 109 was rejected in *ATA* v. *EPA*, 175 F.3d at 1027 (1999) *reh'g granted in part and denied in part*, 195 F.3d at 4 (DC Cir. 1999). The court made it clear that the potential indirect beneficial impact of ambient ozone on public health from screening UVB rays needed to be considered when setting the NAAQS to protect public health. As discussed above, EPA has done just that as noted above in the UV–B context. Moreover, as discussed in Section II of these Findings, EPA is doing that here as well (*e.g.*, considering any benefits from reduced cold weather related deaths).

ii. EPA's Treatment and Balancing of Heat- vs. Cold-Related Public Health Risks Was Reasonable

A number of public commenters maintain that the risk of heat waves in the future will be modulated by adaptive measures. The Administrator is aware of the potential benefits of adaptation in reducing heat-related morbidity and mortality and recognizes most heat-related deaths are preventable. Nonetheless, the Administrator notes the assessment literature [30] indicates heat is the leading weather-related killer in the United States even though countermeasures have been employed in many vulnerable areas. Given projections for heat waves of greater frequency, magnitude, and duration coupled with a growing population of older adults (among the most vulnerable groups to this hazard), the risk of adverse health outcomes from heat waves is expected to increase. Intervention and response measures could certainly reduce the risk, but as we have noted, the need to adapt supports an increase in risk or endangerment. For a general discussion about EPA's treatment of adaptation see Section III.C of these Findings.

Several commenters also suggest cold-related mortality will decrease more than heat-related mortality will increase, which indicates a net reduction in temperature-related mortality. Some commenters point to research suggesting migration to warmer climates has contributed to the increased longevity of some Americans, implying climate warming will have benefits for health. The Administrator is very clear that the exact balance of how heat- versus cold-related mortality will change in the future is uncertain; however, the assessment literature points to evidence suggesting that the increased risk from heat would exceed the decreased risk from cold in a warming climate. The Administrator does not dispute research indicating the benefits of migration to a warmer climate and nor that average climate warming may indeed provide health benefits in some areas. These points are reflected in the TSD's statement projecting less cold-related health effects. The Administrator considers these potential warming benefits independent of the potential negative effects of extreme heat events which are projected to increase under future climate change scenarios affecting vulnerable groups and communities.

[30] Karl *et al.* (2009).

iii. EPA Was Reasonable To Find That the Air Quality Impacts of Climate Change Contribute to the Endangerment of Public Health

Several commenters suggest that air quality effects of climate change will be addressed through the CAA's NAAQS process, as implemented by the State Implementation Plans (SIP) and national regulatory programs. According to these commenters, these programs will ensure no adverse impact on public health due to climate change. Though climate change may cause certain air pollutant ambient concentrations to increase, States will continue to be compelled to meet the standards. So, while additional measures may be necessary, and result in increased costs, these commenters assert that, ultimately, public health will be protected by the continued existence of the NAAQS and therefore no endangerment with respect to this particular climate change-related impact will occur. One commenter states that EPA inappropriately assigns air quality risk to climate change that will be addressed through other programs. The CAA provides a mechanism to meet the standards and additional control measures consistent with the CAA will be adopted in the future, keeping pollution below unhealthy levels. The commenters state that the fact that NAAQS are in place that require EPA to fulfill its legal obligation to prevent this particular form of endangerment to public health.

EPA does have in place NAAQS for ozone, which are premised on the harmfulness of ozone to public health and welfare. These standards and their accompanying regulatory regime have helped to reduce the dangers from ozone in the United States. However, substantial challenges remain with respect to achieving the air quality protection promised by the NAAQS for ozone. It is the Administrator's view that these challenges will be exacerbated by climate change.

In addition, the control measures to achieve attainment with a NAAQS are a mitigation measure aimed at reducing emissions of ozone precursors. As discussed in Section III.C of these Findings, EPA is not considering the impacts of mitigation with respect to future reductions in emissions of greenhouse gases. For the same reasons, EPA is reasonably not considering mitigation in the form of the control measures that will need to be adopted in the future to reduce emissions of ozone precursors and thereby address the increased ambient ozone levels that can occur because of climate change.

It is important to note that controls to meet the NAAQS are typically put in place only *after* air quality concentrations exceeding the standard are detected. Furthermore, implementation of controls to reduce ambient concentrations of pollutants occurs over an extended time period, ranging from three years to more than twenty years depending on the pollutant and the seriousness of the nonattainment problem. Thus, while the CAA provides mechanisms for addressing adverse health effects and the underlying air quality exacerbation over time, it will not prevent the adverse impacts in the interim. Given the serious nature of the health effects at issue—including respiratory and cardiovascular disease leading to hospital admissions, emergency department visits, and premature mortality—this increase in adverse impacts during the time before additional controls can be implemented is a serious public health concern. Historically, a large segment of the U.S. population has lived in areas exceeding the NAAQS, despite the CAA and its implementation efforts. Half of all Americans, 158 million people, live in counties where air pollution exceeds national health standards.[31] Where attainment of the NAAQS is especially difficult, leading to delays in meeting attainment deadlines, the health effects of increased ozone due to climate change may be substantial.

It is also important to note that it may not be possible for States and Tribes to plan accurately for the impacts of climate change in developing control strategies for nonattainment areas. As noted in the TSD and EPA's 2009 Interim Assessment report (IA), climate change is projected to lead to an increase in the variability of weather, and this may increase peak pollution events including increases in ozone exceedances. While the modeling studies in the IA all show significant future changes in meteorological quantities, there is also significant variability across the simulations in the spatial patterns of these future changes, making it difficult to select a set of future meteorological data for planning purposes. At this time, models used to develop plans to attain the NAAQS do not take potential changes in future meteorology into consideration. Inability to predict the frequency and magnitude of such events could lead to an underestimation of the controls needed to bring areas into attainment, and a prolonged period during which adverse health impacts continue to occur.

Even in areas that meet the NAAQS currently, air quality may deteriorate sufficiently to cause adverse health effects for some individuals. Some at-risk individuals, for example those with preexisting health conditions or other characteristics which increase their risk for adverse effects upon exposure to PM or ozone, may experience health effects at levels below the standard. Current evidence suggests that there is no threshold for PM or ozone concentrations below which no effects can be observed. Therefore, increases in ozone or PM in locations that currently meet the standards would likely result in additional adverse health effects for some individuals, even though the pollution increase might not be sufficient to cause the area to be designated nonattainment. While the NAAQS is set to protect public health with an adequate margin of safety, it is recognized that in attainment areas there may be individuals who remain at greater risk from an increase in ozone levels. The clear risk to the public from ozone increases in nonattainment areas, in combination with the risk to some individuals in attainment areas, supports the finding that overall the public health is endangered by increases in ozone resulting from climate change.

Finally, it is also important to note that not all air pollution events are subject to CAA controls under the NAAQS implementation provisions. ''Exceptional events'' are events for which the normal planning and regulatory process established by the CAA is not appropriate (72 FR 13561). Emissions from some events, including some wildfires, are not reasonably controllable or preventable. Such emissions, however, can adversely impact public health and welfare and are expected to increase due to climate change. As described in the TSD, PM emissions from wildfires can contribute to acute and chronic illnesses of the respiratory system, particularly in children, including pneumonia, upper respiratory diseases, asthma and chronic obstructive pulmonary disease. The IPCC (Field et al., 2007) reported with very high confidence that in North America, disturbances like wildfires are increasing and are likely to intensify in a warmer future with drier soils and longer growing seasons.

2. The Air Pollution Is Reasonably Anticipated to Endanger Public Welfare

The Administrator also finds that the well-mixed greenhouse gas air pollution may reasonably be anticipated to

[31] U.S. EPA (2008) National Air Quality: Status and Trends Through 2007. EPA–454/R–08–006, November 2008.

endanger public welfare, both for current and future generations.

As with public health, the Administrator considered the multiple pathways in which the greenhouse gas air pollution and resultant climate change affect climate-sensitive sectors, and the impact this may have on public welfare. These sectors include food production and agriculture; forestry; water resources; sea level rise and coastal areas; energy, infrastructure, and settlements; and ecosystems and wildlife. The Administrator also considered impacts on the U.S. population from climate change effects occurring outside of the United States, such as national security concerns for the United States that may arise as a result of climate change impacts in other regions of the world. The Administrator examined each climate-sensitive sector individually, informed by the summary of the scientific assessments contained in the TSD, and the full record before EPA, and weighed the extent to which the risks and impacts within each sector support or do not support a positive endangerment finding in her judgment. The Administer then viewed the full weight of evidence looking across all sectors to reach her decision regarding endangerment to public welfare.

a. Food Production and Agriculture

Food production and agriculture within the United States is a sector that will be affected by the combined effects of elevated carbon dioxide concentrations and associated climate change. The Administrator considered how these effects, both adverse and beneficial, are affecting the agricultural sector now and in the future, and over different regions of the United States, taking into account that different regions of the country specialize in different agricultural products with varying degrees of sensitivity and vulnerability to elevated carbon dioxide levels and associated climate change.

Elevated carbon dioxide concentrations can have a stimulatory effect on grain and oilseed crop yield, as may modest temperature increases and a longer growing season that results. A report under the USGCRP concluded that, with increased carbon dioxide and temperature, the life cycle of grain and oilseed crops will likely progress more rapidly. However, such beneficial influences need to be considered in light of various other effects. For example, the literature indicates that elevated carbon dioxide concentrations may also enhance pest and weed growth. Pests and weeds can reduce crop yields, cause economic losses to farmers, and require management control options. How climate change (elevated carbon dioxide, increased temperatures, altered precipitation patterns, and changes in the frequency and intensity of extreme events) may affect the prevalence of pests and weeds is an issue of concern for food production and the agricultural sector. Research on the combined effects of elevated carbon dioxide and climate change on pests, weeds, and disease is still limited. In addition, higher temperature increases, changing precipitation patterns and variability, and any increases in ground-level ozone induced by higher temperatures, can work to counteract any direct stimulatory carbon dioxide effect, as well as lead to their own adverse impacts. There may be large regional variability in the response of food production and agriculture to climate change.

For grain and oilseed crop yields, there is support for the view that in the near term climate change may have a beneficial effect, largely through increased temperature and increased carbon dioxide levels. However there are also factors noted above, some of which are less well studied and understood, which would tend to offset any near term benefit, leaving significant uncertainty about the actual magnitude of any overall benefit. The USGCRP report also concluded that as temperature rises, these crops will increasingly begin to experience failure, especially if climate variability increases and precipitation lessens or becomes more variable.

A key uncertainty is how human-induced climate change may affect the intensity and frequency of extreme weather events such as droughts and heavy storms. These events have the potential to have serious negative impact on U.S. food production and agriculture, but are not always taken into account in studies that examine how average conditions may change as a result of carbon dioxide and temperature increases. Changing precipitation patterns, in addition to increasing temperatures and longer growing seasons, can change the demand for irrigation requirements, potentially increasing irrigation demand.

Another key uncertainty concerns the many horticultural crops (*e.g.,* tomatoes, onions, fruits), which make up roughly 40 percent of total crop value in the United States. There is relatively little information on their response to carbon dioxide, and few crop simulation models, but according to the literature, they are very likely to be more sensitive to the various effects of climate change than grain and oilseed crops.

With respect to livestock, higher temperatures will very likely reduce livestock production during the summer season in some areas, but these losses will very likely be partially offset by warmer temperatures during the winter season. The impact on livestock productivity due to increased variability in weather patterns will likely be far greater than effects associated with the average change in climatic conditions. Cold-water fisheries will likely be negatively affected; warm-water fisheries will generally benefit; and the results for cool-water fisheries will be mixed, with gains in the northern and losses in the southern portions of ranges.

Finally, with respect to irrigation requirements, the adverse impacts of climate change on irrigation water requirements may be significant.

There is support for the view that there may be a benefit in the near term in the crop yield for certain crops. This potential benefit is subject to significant uncertainty, however, given the offsetting impact on the yield of these crops from a variety of other climate change impacts that are less well understood and more variable. Any potential net benefit is expected to change to a disbenefit in the longer term. In addition, there is clear risk that the sensitivity of a major segment of the total crop market, the horticultural sector, may lead to adverse affects from climate change. With respect to livestock production and irrigation requirements, climate change is likely to have adverse effects in both the near and long terms. The impact on fisheries varies, and would appear to be best viewed as neutral overall.

There is a potential for a net benefit in the near term for certain crops, but there is significant uncertainty about whether this benefit will be achieved given the various potential adverse impacts of climate change on crop yield, such as the increasing risk of extreme weather events. Other aspects of this sector are expected to be adversely affected by climate change, including livestock management and irrigation requirements, and there is a risk of adverse effect on a large segment of the total crop market. For the near term, the concern over the potential for adverse effects in certain parts of the agriculture sector appears generally comparable to the potential for benefits for certain crops.

However, considering the trend over near- and long-term future conditions, the Administrator finds that the body of evidence points towards increasing risk

of net adverse impacts on U.S. food production and agriculture, with the potential for significant disruptions and crop failure in the future.

b. Forestry

The factors that the Administrator considered for the U.S. forest sector are similar to those for food production and agriculture. There is the potential for beneficial effects due to elevated concentrations of carbon dioxide and increased temperature, as well as the potential for adverse effects from increasing temperatures, changing precipitation patterns, increased insects and disease, and the potential for more frequent and severe extreme weather events. The potential beneficial effects are better understood and studied, and are limited to certain areas of the country and types of forests. The adverse effects are less certain, more variable, and also include some of the most serious adverse effects such as increased wildfire, drought, and major losses from insects and disease. As with food production and agriculture, the judgment to be made is largely a qualitative one, balancing impacts that vary in certainty and magnitude, with the end result being a judgment as to the overall direction and general level of concern.

According to the underlying science assessment reports, climate change has very likely increased the size and number of wildfires, insect outbreaks, and tree mortality in the Interior West, the Southwest, and Alaska, and will continue to do so. Rising atmospheric carbon dioxide levels will very likely increase photosynthesis for forests, but the increased photosynthesis will likely only increase wood production in young forests on fertile soils. Nitrogen deposition and warmer temperatures have very likely increased forest growth where water is not limiting and will continue to do so in the near future.

An increased frequency of disturbance (such as drought, storms, insect-outbreaks, and wildfire) is at least as important to forest ecosystem function as incremental changes in temperature, precipitation, atmospheric carbon dioxide, nitrogen deposition, and ozone pollution. Disturbances partially or completely change forest ecosystem structure and species composition, cause short-term productivity and carbon storage loss, allow better opportunities for invasive alien species to become established, and command more public and management attention and resources. The combined effects of expected increased temperature, carbon dioxide, nitrogen deposition, ozone, and forest disturbance on soil processes and soil carbon storage remain unclear.

Precipitation and weather extremes are key to many forestry impacts, accounting for part of the regional variability in forest response. If existing trends in precipitation continue, it is expected that forest productivity will likely decrease in the Interior West, the Southwest, eastern portions of the Southeast, and Alaska, and that forest productivity will likely increase in the northeastern United States, the Lake States, and in western portions of the Southeast. An increase in drought events will very likely reduce forest productivity wherever such events occur.

Changes in disturbance patterns are expected to have a substantial impact on overall gains or losses. More prevalent wildfire disturbances have recently been observed in the United States. Wildfires and droughts, among other extreme events (*e.g.,* hurricanes) that can cause forest damage, pose the largest threats over time to forest ecosystems.

For the near term, the Administrator believes the beneficial impact on forest growth and productivity in certain parts of the country from climate change to be more than offset by the clear risk from the more significant and serious adverse effects from the observed increases in wildfires, combined with the adverse impacts on growth and productivity in other areas of the country and the serious risks from the spread of destructive pests and disease. Increased wildfires can also increase particulate matter and thus create public health concerns as well. For the longer term, the Administrator views the risk from adverse effects to increase over time, such that overall climate change presents serious adverse risks for forest productivity. The Administrator therefore finds there is compelling reason to find that the greenhouse gas air pollution endangers U.S. forestry in both the near and long term, with the support for a positive endangerment finding only increasing as one considers expected future conditions in which temperatures continue to rise.

c. Water Resources

The sensitivity of water resources to climate change is very important given the increasing demand for adequate water supplies and services for agricultural, municipal, and energy and industrial uses, and the current strains on this resource in many parts of the country.

According to the assessment literature, climate change has already altered, and will likely continue to alter, the water cycle, affecting where, when, and how much water is available for all uses. With higher temperatures, the water-holding capacity of the atmosphere and evaporation into the atmosphere increase, and this favors increased climate variability, with more intense precipitation and more droughts.

Climate change is causing and will increasingly cause shrinking snowpack induced by increasing temperature. In the western United States, there is already well-documented evidence of shrinking snowpack due to warming. Earlier meltings, with increased runoff in the winter and early spring, increase flood concerns and also result in substantially decreased summer flows. This pattern of reduced snowpack and changes to the flow regime pose very serious risks to major population regions, such as California, that rely on snowmelt-dominated watersheds for their water supply. While increased precipitation is expected to increase water flow levels in some eastern areas, this may be tempered by increased variability in the precipitation and the accompanying increased risk of floods and other concerns such as water pollution.

Warmer temperatures and decreasing precipitation in other parts of the country, such as the Southwest, can sustain and amplify drought impacts. Although drought has been more frequent and intense in the western part of the United States, the East is also vulnerable to droughts and attendant reductions in water supply, changes in water quality and ecosystem function, and challenges in allocation. The stress on water supplies on islands is expected to increase.

The impact of climate change on groundwater as a water supply is regionally variable; efforts to offset declining surface water availability due to increasing precipitation variability may be hampered by the fact that groundwater recharge will decrease considerably in some already water-stressed regions. In coastal areas, the increased salinization from intrusion of salt water is projected to have negative effects on the supply of fresh water.

Climate change is expected to have adverse effects on water quality. The IPCC concluded with high confidence that higher water temperatures, increased precipitation intensity, and longer periods of low flows exacerbate many forms of water pollution and can impact ecosystems, human health, and water system reliability and operating costs. These changes will also exacerbate many forms of water pollution, potentially making attainment of water quality goals more

difficult. Water pollutants of concern that are particularly relevant to climate change effects include sediment, nutrients, organic matter, pathogens, pesticides, salt, and thermal pollution. As waters become warmer, the aquatic life they now support will be replaced by other species better adapted to warmer water. In the long term, warmer water, changing flows, and decreased water quality may result in deterioration of aquatic ecosystems.

Climate change will likely further constrain already over-allocated water resources in some regions of the United States, increasing competition among agricultural, municipal, industrial, and ecological uses. Although water management practices in the United States are generally advanced, particularly in the West, the reliance on past conditions as the basis for current and future planning may no longer be appropriate, as climate change increasingly creates conditions well outside of historical observations. Increased incidence of extreme weather and floods may also overwhelm or damage water treatment and management systems, resulting in water quality impairments. In the Great Lakes and major river systems, lower water levels are likely to exacerbate challenges relating to water quality, navigation, recreation, hydropower generation, water transfers, and bi-national relationships.

The Administrator finds that the total scientific literature provides compelling support for finding that greenhouse gas air pollution endangers the water resources important for public welfare in the United States, both for current and future generations. The adequacy of water supplies across large areas of the country is at serious risk from climate change. Even areas of the country where an increase in water flow is projected could face water resource problems from the variability of the supply and water quality problems associated with precipitation variability, and could face the serious adverse effects from risks from floods and drought. Climate change is expected to adversely affect water quality. There is an increased risk of serious adverse effects from extreme events of flooding and drought. The severity of risks and impacts may only increase over time with accumulating greenhouse gas concentrations and associated temperature increases and precipitation changes.

d. Sea Level Rise and Coastal Areas

A large percentage of the U.S. population lives in coastal areas, which are particularly vulnerable to the risks posed by climate change. The most vulnerable areas are the Atlantic and Gulf Coasts, the Pacific Islands, and parts of Alaska.

According to the assessment literature, sea level is rising along much of the U.S. coast, and the rate of change will very likely increase in the future, exacerbating the impacts of progressive inundation, storm-surge flooding, and shoreline erosion. Cities such as New Orleans, Miami, and New York are particularly at risk, and could have difficulty coping with the sea level rise projected by the end of the century under a higher emissions scenario. Population growth and the rising value of infrastructure increases the vulnerability to climate variability and future climate change in coastal areas. Adverse impacts on islands present concerns for Hawaii and the U.S. territories. Reductions in Arctic sea ice increases extreme coastal erosion in Alaska, due to the increased exposure of the coastline to strong wave action. In the Great Lakes, where sea level rise is not a concern, both extremely high and low water levels resulting from changes to the hydrological cycle have been damaging and disruptive to shoreline communities.

Coastal wetland loss is being observed in the United States where these ecosystems are squeezed between natural and artificial landward boundaries and rising sea levels. Up to 21 percent of the remaining coastal wetlands in the U.S. mid-Atlantic region are potentially at risk of inundation between 2000 and 2100. Coastal habitats will likely be increasingly stressed by climate change impacts interacting with development and pollution.

Although increases in mean sea level over the 21st century and beyond will inundate unprotected, low-lying areas, the most devastating impacts are likely to be associated with storm surge. Superimposed on expected rates of sea level rise, projected storm intensity, wave height, and storm surge suggest more severe coastal flooding and erosion hazards. Higher sea level provides an elevated base for storm surges to build upon and diminishes the rate at which low-lying areas drain, thereby increasing the risk of flooding from rainstorms. In New York City and Long Island, flooding from a combination of sea level rise and storm surge could be several meters deep. Projections suggest that the return period of a 100-year flood event in this area might be reduced to 19–68 years, on average, by the 2050s, and to 4–60 years by the 2080s. Additionally, some major urban centers in the United States, such as areas of New Orleans are situated in low-lying flood plains, presenting increased risk from storm surges.

The Administrator finds that the most serious risk of adverse effects is presented by the increased risk of storm surge and flooding in coastal areas from sea level rise. Current observations of sea level rise are now contributing to increased risk of storm surge and flooding in coastal areas, and there is reason to find that these areas are now endangered by human-induced climate change. The conclusion in the assessment literature that there is the potential for hurricanes to become more intense with increasing temperatures (and even some evidence that Atlantic hurricanes have already become more intense) reinforces the judgment that coastal communities are now endangered by human-induced climate change, and may face substantially greater risk in the future. The Administrator has concluded that even if there is a low probability of raising the destructive power of hurricanes, this threat is enough to support a finding that coastal communities are endangered by greenhouse gas air pollution.

In addition, coastal areas face other adverse impacts from sea level rise such as shoreline retreat, erosion, wetland loss and other effects. The increased risk associated with these adverse impacts also endangers the welfare of current and future generations, with an increasing risk of greater adverse impacts in the future.

Overall, the evidence on risk of adverse impacts for coastal areas from sea level rise provides clear support for finding that greenhouse gas air pollution endangers the welfare of current and future generations.

e. Energy, Infrastructure and Settlements

The Administrator also considered the impacts of climate change on energy consumption and production, and on key climate-sensitive aspects of the nation's infrastructure and settlements.

For the energy sector, the Administrator finds clear evidence that temperature increases will change heating and cooling demand, and to varying degrees across the country; however, under current conditions it is unclear whether or not net demand will increase or decrease. While the impacts on net energy demand may be viewed as generally neutral for purposes of making an endangerment determination, climate change is expected to call for an increase in electricity production, especially supply for peak demand. The U.S. energy sector, which relies heavily on water for cooling capacity and

hydropower, may be adversely impacted by changes to water supply in reservoirs and other water bodies.

With respect to infrastructure, climate change vulnerabilities of industry, settlement and society are mainly related to extreme weather events rather than to gradual climate change. The significance of gradual climate change, *e.g.*, increases in the mean temperature, lies mainly in changes in the intensity and frequency of extreme events. Extreme weather events could threaten U.S. energy infrastructure (transmission and distribution), transportation infrastructure (roads, bridges, airports and seaports), water infrastructure, and other built aspects of human settlements. Moreover, soil subsidence caused by the melting of permafrost in the Arctic region is a risk to gas and oil pipelines, electrical transmission towers, roads, and water systems. Vulnerabilities for industry, infrastructures, settlements, and society to climate change are generally greater in certain high-risk locations, particularly coastal and riverine areas, and areas whose economies are closely linked with climate-sensitive resources. Additionally, infrastructures are often connected, meaning that an impact on one can also affect others.

A significant fraction of U.S. infrastructure is located in coastal areas. In these locations, rising sea levels are likely to lead to direct losses (*e.g.,* equipment damage from flooding) as well as indirect effects such as the costs associated with raising vulnerable assets to higher levels. Water infrastructure, including drinking water and wastewater treatment plants, and sewer and storm water management systems, may be at greater risk of flooding, sea level rise and storm surge, low flows, saltwater intrusion, and other factors that could impair performance and damage costly investments.

Within settlements experiencing climate change stressors, certain parts of the population may be especially vulnerable based on their circumstances. These include the poor, the elderly, the very young, those already in poor health, the disabled, those living alone, and/or indigenous populations dependent on one or a few resources. In Alaska, indigenous communities are likely to experience disruptive impacts, including shifts in the range or abundance of wild species crucial to their livelihoods and well-being.

Overall, the evidence strongly supports the view that climate change presents risks of serious adverse impacts on public welfare from the risk to energy production and distribution as well as risks to infrastructure and settlements.

f. Ecosystems and Wildlife

The Administrator considered the impacts of climate change on ecosystems and wildlife and the services they provide. The Administrator finds clear evidence that climate change is exerting major influences on natural environments and biodiversity, and these influences are generally expected to grow with increased warming. Observed changes in the life cycles of plants and animals include shifts in habitat ranges, timing of migration patterns, and changes in reproductive timing and behavior.

The underlying assessment literature finds with high confidence that substantial changes in the structure and functioning of terrestrial ecosystems are very likely to occur with a global warming greater than 2 to 3 °C above pre-industrial levels, with predominantly negative consequences for biodiversity and the provisioning of ecosystem goods and services. With global average temperature changes above 2 °C, many terrestrial, freshwater, and marine species (particularly endemic species) are at a far greater risk of extinction than in the geological past. Climate change and ocean acidification will likely impair a wide range of planktonic and other marine calcifiers such as corals. Even without ocean acidification effects, increases in sea surface temperature of about 1–3 °C are projected to result in more frequent coral bleaching events and widespread mortality. In the Arctic, wildlife faces great challenges from the effects of climatic warming, as projected reductions in sea ice will drastically shrink marine habitat for polar bears, ice-inhabiting seals, and other animals.

Some common forest types are projected to expand, such as oak-hickory, while others are projected to contract, such as maple-beech-birch. Still others, such as spruce-fir, are likely to disappear from the contiguous United States. Changes in plant species composition in response to climate change can increase ecosystem vulnerability to other disturbances, including wildfires and biological invasion. Disturbances such as wildfires and insect outbreaks are increasing in the United States and are likely to intensify in a warmer future with warmer winters, drier soils and longer growing seasons. The areal extent of drought-limited ecosystems is projected to increase 11 percent per °C warming in the United States. In California, temperature increases greater than 2 °C may lead to conversion of shrubland into desert and grassland ecosystems and evergreen conifer forests into mixed deciduous forests. Greater intensity of extreme events may alter disturbance regimes in coastal ecosystems leading to changes in diversity and ecosystem functioning. Species inhabiting salt marshes, mangroves, and coral reefs are likely to be particularly vulnerable to these effects.

The Administrator finds that the total scientific record provides compelling support for finding that the greenhouse gas air pollution leads to predominantly negative consequences for biodiversity and the provisioning of ecosystem goods and services for ecosystems and wildlife important for public welfare in the U.S., both for current and future generations. The severity of risks and impacts may only increase over time with accumulating greenhouse gas concentrations and associated temperature increases and precipitation changes.

g. Summary of the Administrator's Finding of Endangerment to Public Welfare

The Administrator has considered how elevated concentrations of the well-mixed greenhouse gases and associated climate change affect public welfare by evaluating numerous and far-ranging risks to food production and agriculture, forestry, water resources, sea level rise and coastal areas, energy, infrastructure, and settlements, and ecosystems and wildlife. For each of these sectors, the evidence provides support for a finding of endangerment to public welfare. The evidence concerning adverse impacts in the areas of water resources and sea level rise and coastal areas provide the clearest and strongest support for an endangerment finding, both for current and future generations. Strong support is also found in the evidence concerning infrastructure and settlements, as well ecosystems and wildlife. Across the sectors, the potential serious adverse impacts of extreme events, such as wildfires, flooding, drought, and extreme weather conditions provide strong support for such a finding.

Water resources across large areas of the country are at serious risk from climate change, with effects on water supplies, water quality, and adverse effects from extreme events such as floods and droughts. Even areas of the country where an increase in water flow is projected could face water resource problems from the supply and water quality problems associated with temperature increases and precipitation variability, and could face the increased risk of serious adverse effects from extreme events, such as floods and

drought. The severity of risks and impacts is likely to increase over time with accumulating greenhouse gas concentrations and associated temperature increases and precipitation changes.

Overall, the evidence on risk of adverse impacts for coastal areas provides clear support for a finding that greenhouse gas air pollution endangers the welfare of current and future generations. The most serious potential adverse effects are the increased risk of storm surge and flooding in coastal areas from sea level rise and more intense storms. Observed sea level rise is already increasing the risk of storm surge and flooding in some coastal areas. The conclusion in the assessment literature that there is the potential for hurricanes to become more intense (and even some evidence that Atlantic hurricanes have already become more intense) reinforces the judgment that coastal communities are now endangered by human-induced climate change, and may face substantially greater risk in the future. Even if there is a low probability of increasing the destructive power of hurricanes, this threat is enough to support a finding that coastal communities are endangered by greenhouse gas air pollution. In addition, coastal areas face other adverse impacts from sea level rise such as land loss due to inundation, erosion, wetland submergence, and habitat loss. The increased risk associated with these adverse impacts also endangers public welfare, with an increasing risk of greater adverse impacts in the future.

Strong support for an endangerment finding is also found in the evidence concerning energy, infrastructure, and settlements, as well ecosystems and wildlife. While the impacts on net energy demand may be viewed as generally neutral for purposes of making an endangerment determination, climate change is expected to result in an increase in electricity production, especially to meet peak demand. This increase may be exacerbated by the potential for adverse impacts from climate change on hydropower resources as well as the potential risk of serious adverse effects on energy infrastructure from extreme events. Changes in extreme weather events threaten energy, transportation, and water resource infrastructure. Vulnerabilities of industry, infrastructure, and settlements to climate change are generally greater in high-risk locations, particularly coastal and riverine areas, and areas whose economies are closely linked with climate-sensitive resources. Climate change will likely interact with and possibly exacerbate ongoing environmental change and environmental pressures in settlements, particularly in Alaska where indigenous communities are facing major environmental and cultural impacts on their historic lifestyles. Over the 21st century, changes in climate will cause some species to shift north and to higher elevations and fundamentally rearrange U.S. ecosystems. Differential capacities for range shifts and constraints from development, habitat fragmentation, invasive species, and broken ecological connections will likely alter ecosystem structure, function, and services, leading to predominantly negative consequences for biodiversity and the provision of ecosystem goods and services.

With respect to food production and agriculture, there is a potential for a net benefit in the near term for certain crops, but there is significant uncertainty about whether this benefit will be achieved given the various potential adverse impacts of climate change on crop yield, such as the increasing risk of extreme weather events. Other aspects of this sector may be adversely affected by climate change, including livestock management and irrigation requirements, and there is a risk of adverse effect on a large segment of the total crop market. For the near term, the concern over the potential for adverse effects in certain parts of the agriculture sector appears generally comparable to the potential for benefits for certain crops. However, the body of evidence points towards increasing risk of net adverse impacts on U.S. food production and agriculture over time, with the potential for significant disruptions and crop failure in the future.

For the near term, the Administrator finds the beneficial impact on forest growth and productivity in certain parts of the country from elevated carbon dioxide concentrations and temperature increases to date is offset by the clear risk from the observed increases in wildfires, combined with risks from the spread of destructive pests and disease. For the longer term, the risk from adverse effects increases over time, such that overall climate change presents serious adverse risks for forest productivity. There is compelling reason to find that the support for a positive endangerment finding increases as one considers expected future conditions where temperatures continue to rise.

Looking across all of the sectors discussed above, the evidence provides compelling support for finding that greenhouse gas air pollution endangers the public welfare of both current and future generations. The risk and the severity of adverse impacts on public welfare are expected to increase over time.

h. Impacts in Other World Regions That Can Affect the U.S Population

While the finding of endangerment to public health and welfare discussed above is based on impacts in the United States, the Administrator also considered how human-induced climate change in other regions of the world may in turn affect public welfare in the United States. According to the USGCRP report of June 2009 and other sources, climate change impacts in certain regions of the world may exacerbate problems that raise humanitarian, trade, and national security issues for the United States.[32] The IPCC identifies the most vulnerable world regions as the Arctic, because of the effects of high rates of projected warming on natural systems; Africa, especially the sub-Saharan region, because of current low adaptive capacity as well as climate change; small islands, due to high exposure of population and infrastructure to risk of sea-level rise and increased storm surge; and Asian mega-deltas, such as the Ganges-Brahmaputra and the Zhujiang, due to large populations and high exposure to sea level rise, storm surge, and river flooding. Climate change has been described as a potential threat multiplier with regard to national security issues.

The Administrator acknowledges these kinds of risks do not readily lend themselves to precise analyses or future projections. However, given the unavoidable global nature of the climate change problem, it is appropriate and prudent to consider how impacts in other world regions may present risks to the U.S. population. Because human-induced climate change has the potential to aggravate natural resource, trade, and humanitarian issues in other world regions, which in turn may contribute to the endangerment of public welfare in the United States, this provides additional support for the Administrator's finding that the greenhouse gas air pollution is reasonably anticipated to endanger the public welfare of current and future

[32] ''In an increasingly interdependent world, U.S. vulnerability to climate change is linked to the fates of other nations. For example, conflicts or mass migrations of people resulting from food scarcity and other resource limits, health impacts or environmental stresses in other parts of the world could threaten U.S. national security.'' (Karl *et al.,* 2009).

generations of the United States population.

i. Summary of Key Public Comments on Endangerment to Public Welfare

Several public commenters point out the anticipated benefits that increasing carbon dioxide levels and temperatures will have on agricultural crops. In addition, commenters note how U.S. agricultural productivity, in particular, has been steadily rising over the last 100 years. Responses to major comments are found here and more detailed responses are found in the Response to Comments document.

The Administrator acknowledges that plants including agricultural crops respond to carbon dioxide positively based on numerous well-documented studies. However, previous assessments of food production and agriculture have been modified to highlight increasing vulnerability, stress, and adverse impacts from climate change over time, based on improvements in the understanding of plant physiology, concern over impacts on plant pests and pathogens, and the implications of changes in average temperatures for temperature extremes and for changes in the patterns of precipitation and evaporation. While it is still the case today and for the next few years that climate change benefits agriculture in some places and harms them in others, the Administrator considers that the far larger temperature increases expected over coming decades and beyond on the ''business as usual'' trajectory will put significant stresses on agriculture and land resources in all regions of the United States. The Administrator prudently considers increased climate variability associated with a warming climate, which may overwhelm the positive plant responses from elevated carbon dioxide over time. Further, the effects of climate change on weeds, insect pests, and pathogens are recognized as key factors in determining plant damage in future decades. The Administrator also notes that scientific literature clearly supports the finding that drought frequency and severity are projected to increase in the future over much of the United States, which will likely reduce crop yields because of excesses or deficits of water. Vulnerability to extended drought, according to IPCC, has been documented as already increasing across North America. Further, based on review of the assessment literature, the Administrator considers multiple stresses, such as limited availability of water resources, loss of biodiversity, and air pollution, which are likely to increase sensitivity and reduce resilience in the agricultural sector to climate change over time.

Similar to food production and agriculture, public commenters often noted that forest productivity is projected to increase in the coming years due to the direct stimulatory effect of carbon dioxide on plant growth combined with warmer temperatures and thus extended growing seasons. The Administrator notes this phenomenon has been well documented by numerous studies but recognizes that increased productivity will be associated with significant variation at local and regional scales. The Administrator considers that climate strongly influences forest productivity and composition, and the frequency and magnitude of disturbances that impact forests. Based on the most recent IPCC assessment of the scientific literature, several recent studies confirm previous findings that temperature and precipitation changes in future decades will modify, and often limit, direct carbon dioxide effects on plants. For example, increased temperatures may reduce carbon dioxide effects indirectly, by increasing water demand. The Administrator also considers that new research more firmly establishes the negative impacts of increased climate variability. Projected changes in the frequency and severity of extreme climate events have significant consequences for forestry production and amplify existing stresses to land resources in the future.

Several public commenters maintain that wildfires are primarily the result of natural climatic factors and not climate change and dispute that they are or will increase in the future. The Administrator notes the scientific literature and assessment reports provide several lines of evidence that suggest wildfires will likely increase in frequency over the next several decades because of climate warming. Wildfires and droughts, among other extreme events (*e.g.,* hurricanes) that cause forest damage, pose the largest threats over time to forest ecosystems. The assessment literature suggests that large, stand-replacing wildfires will likely increase in frequency over the next several decades because of climate warming and general climate warming encourages wildfires by extending the summer period that dries fuels, promoting easier ignition and faster spread. Furthermore, current climate modeling studies suggest that increased temperatures and longer growing seasons will elevate wildfire risk in connection with increased aridity.

V. The Administrator's Finding That Emissions of Greenhouse Gases From CAA Section 202(a) Sources Cause or Contribute to the Endangerment of Public Health and Welfare

As discussed in Section IV.A of these Findings, the Administrator is defining the air pollution for purposes of the endangerment finding to be the elevated concentration of well-mixed greenhouse gases in the atmosphere. The second step of the two-part endangerment test is for the Administrator to determine whether the emission of any air pollutant emitted from new motor vehicles cause or contribute to this air pollution. This is referred to as the cause or contribute finding, and is the second finding by the Administrator in this action.

Section V.A of these Findings describes the Administrator's definition and scope of the air pollutant ''well-mixed greenhouse gases.'' Section V.B of these Findings puts forth the Administrator's finding that emissions of well-mixed greenhouse gases from new motor vehicles contribute to the air pollution which is reasonably anticipated to endanger public health and welfare. Section V.C of these Findings provides responses to some of the key comments on these issues. See Response to Comments document Volume 10 for responses to other significant comments on the cause or contribute finding. More detailed emissions data summarized in the discussion below can be found in Appendix B of the TSD.

A. The Administrator's Definition of the ''Air Pollutant''

As discussed in the Proposed Findings, to help appreciate the distinction between air pollution and air pollutant, the *air pollution* can be thought of as the total, cumulative stock in the atmosphere, while the *air pollutant,* can be thought of as the flow that changes the size of the total stock. Given this relationship, it is not surprising that the Administrator is defining the air pollutant similar to the air pollution; while the air pollution is the concentration (*e.g.,* stock) of the well-mixed greenhouse gases in the atmosphere, the air pollutant is the same combined grouping of the well-mixed greenhouse gases, the emissions of which are analyzed for contribution (*e.g.,* the flow into the stock).

Thus, the Administrator is defining the air pollutant as the aggregate group of the same six long-lived and directly-emitted greenhouse gases: Carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons,

and sulfur hexafluoride. As noted above, this definition of a single air pollutant made up of these well-mixed greenhouse gases is similar to definitions of other air pollutants that are comprised of substances that share common attributes with similar effects on public health or welfare (*e.g.,* particulate matter and volatile organic compounds).

The common attributes shared by these six greenhouse gases are discussed in detail in Section IV.A of these Findings, where the Administrator defined the ''air pollution'' for purposes of the endangerment finding. These same common attributes support the Administrator grouping these six greenhouse gases for purposes of defining a single air pollutant as well. These attributes include the fact that they are all greenhouse gases that are directly emitted (*i.e.,* they are not formed through secondary processes in the atmosphere from precursor emissions); they are sufficiently long-lived in the atmosphere such that, once emitted, concentrations of each gas become well mixed throughout the entire global atmosphere; and they exert a climate warming effect by trapping outgoing, infrared heat that would otherwise escape to space. Moreover, the radiative forcing effect of these six greenhouse gases is well understood.

Furthermore, these six greenhouse gases are currently the common focus of climate science and policy. For example, the UNFCCC, signed and ratified by the U.S. in 1992, requires its signatories to ''develop, periodically update, publish and make available * * * national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol [33], using comparable methodologies * * * '' [34] To date, the focus of UNFCCC actions and discussions has been on the six greenhouse gases that are the same focus of these findings. As a Party to the UNFCCC, EPA annually submits the *Inventory of U.S. Greenhouse Gas Emissions and Sinks* to the Convention, which reports on national emissions of anthropogenic emissions of the well-mixed greenhouse gases. International discussions about a post-Kyoto agreement also focus on the well-mixed greenhouse gases.

As noted above, grouping of many substances with common attributes as a single pollutant is common practice under the CAA. Thus, doing so here is not novel. Indeed CAA section 302(g) defines air pollutant as ''any air pollutant agent or *combination of such agents,* * * * '' CAA § 302(g) (emphasis added). Thus, it is clear that the term ''air pollutant'' is not limited to individual chemical compounds. In determining that greenhouse gases are within the scope of this definition, the Supreme Court described section 302(g) as a ''sweeping'' and ''capacious'' definition that unambiguously included greenhouse gases, that are ''unquestionably 'agents' of air pollution.'' *Massachusetts* v. *EPA,* 549 U.S. at 528, 532, 529 n.26. Although the Court did not interpret the term ''combination of'' air pollution agents, there is no reason this phrase would be interpreted any less broadly. Congress used the term ''any'', and did not qualify the kind of combinations that the agency could define as a single air pollutant. Congress provided EPA broad discretion to determine appropriate combinations of compounds that should be treated as a singe air pollutant.[35]

For the same reasons discussed in Section IV.A above, at this time, only carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride share all of these common attributes and thus they are the only substances that the Administrator finds to meet the definition of ''well-mixed greenhouse gas'' at this time.[36] Also as noted above, if in the future other substances are shown to meet the same criteria they may be added to the definition of this single air pollutant.

The Administrator is aware that CAA section 202(a) source categories do not emit all of the substances meeting the definition of well-mixed greenhouse gases. But that does not change the fact that all of these greenhouse gases share the attributes that make grouping them as a single air pollutant reasonable. As discussed further below, the reasonableness of this grouping does not turn on the particular source category being evaluated in a contribution finding.

B. The Administrator's Finding Regarding Whether Emissions of the Air Pollutant From Section 202(a) Source Categories Cause or Contribute to the Air Pollution That May Be Reasonably Anticipated To Endanger Public Health and Welfare

The Administrator finds that emissions of the well-mixed greenhouse gases from new motor vehicles contribute to the air pollution that may reasonably be anticipated to endanger public health and welfare. This contribution finding is for all of the CAA section 202(a) source categories and the Administrator considered emissions from all of these source categories. The relevant mobile sources under CAA section 202 (a)(1) are ''any class or classes of new motor vehicles or new motor vehicle engines, * * *.'' CAA section 202(a)(1) (emphasis added). The new motor vehicles and new motor vehicle engines (hereinafter ''CAA section 202(a) source categories'') addressed are: Passenger cars, light-duty trucks, motorcycles, buses, and medium and heavy-duty trucks. Detailed combined greenhouse gas emissions data for CAA section 202(a) source categories are presented in Appendix B of the TSD.[37]

The Administrator reached her decision after reviewing emissions data on the contribution of CAA section 202(a) source categories relative to both global greenhouse gas emissions and U.S. greenhouse gas emissions. Given that CAA section 202(a) source categories are responsible for about 4 percent of total global greenhouse gas emissions, and for just over 23 percent of total U.S. greenhouse gas emissions, the Administrator finds that both of these comparisons, independently and together, support a finding that CAA section 202(a) source categories contribute to the air pollution that may be reasonably anticipated to endanger public health and welfare. The Administrator is not placing primary weight on either approach; rather she finds that both approaches clearly establish that emissions of the well-mixed greenhouse gases from section 202(a) source categories contribute to air pollution with may reasonably be anticipated to endanger public health and welfare. As the Supreme Court noted, ''[j]udged by any standard, U.S.

[33] The Montreal Protocol covers ozone-depleting substances which may also share physical attributes of the six key greenhouse gases in this action, but they do not share other attributes such as being the focus of climate science and policy. See section * * *.

[34] UNFCCC Art. 4.1(b).

[35] Indeed, the greenhouse gases hydrofluorocarbons and perfluorocarbons each are already a combination of multiple compounds.

[36] The term ''well-mixed greenhouse gases'' is based on one of the shared attributes discussed above—these greenhouse gases are sufficiently long-lived in the atmosphere such that, once emitted, concentrations of each gas become well mixed throughout the entire global atmosphere. Defining the air pollutant to be the combination of these six well-mixed greenhouse gases is based in part on this attribute—after the gases are emitted, they are sufficiently long-lived in the atmosphere to become well mixed as part of the air pollution.

[37] For section 202(a) source categories, only the hydrofluorocarbon emissions related to passenger compartment cooling are included. Emissions from refrigeration units that may be attached to trucks are considered emissions from nonroad engines under CAA section 213.

motor-vehicle emissions make a meaningful contribution to greenhouse gas concentrations and hence, * * * to global warming.'' *Massachusetts v. EPA,* 549 U.S. at 525.[38]

1. Administrator's Approach in Making This Finding

Section 202(a) of the CAA source categories consist of passenger cars, light-duty trucks, motorcycles, buses, and heavy- and medium-duty trucks. As noted in the Proposed Findings, in the past the requisite contribution findings have been proposed concurrently with proposing emission standards for the relevant mobile source category. Thus, prior contribution findings often focused on a subset of the CAA section 202(a) (or other section) source categories. This final cause or contribute finding, however, is for all of the CAA section 202(a) source categories. The Administrator is considering emissions from all of these source categories in the determination.

Section 202(a) source categories emit the following well-mixed greenhouse gases: carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons. As the basis for the Administrator's determination, EPA analyzed historical data of emissions of the well-mixed greenhouse gases for motor vehicles and motor vehicle engines in the United States from 1990 to 2007.

The Proposed Findings discussed a number of possible ways of assessing cause or contribute and the point was made that no single approach is required by the statute or has been used exclusively in previous determinations under the CAA. The Administrator also discussed how, consistent with prior cause or contribute findings and the science, she is using emissions as a proxy for contributions to atmospheric concentrations. This approach is reasonable for the well-mixed greenhouse gases, because cumulative emissions are responsible for the cumulative change in the concentrations in the atmosphere. Similarly, annual emissions are a perfectly reasonable proxy for annual incremental changes in atmospheric concentrations.

In making a judgment about the contribution of emissions from CAA section 202(a) source categories, the Administrator focused on making a reasoned overall comparison of emissions from the CAA section 202(a) source categories to emissions from other sources of greenhouse gases. This allows a determination of how the CAA section 202(a) source categories compare to all of the other sources that together as a group make up the total emissions contributors to the air pollution problem. The relative importance of the CAA section 202(a) source categories is central to making the contribution determination. Both the magnitude of these emissions and the comparison of these emissions to other sources provide the basis to determine whether the CAA section 202(a) source categories may reasonably be judged as contributing to the air pollution problem.

In many cases EPA makes this kind of comparison of source categories by a simple percentage calculation that compares the emissions from the source category at issue to a larger total group of emissions. Depending on the circumstances, a larger percentage often means a greater relative impact from that source category compared to the other sources that make up the total of emissions, and vice versa. However, the actual numerical percentages may have little meaning when viewed in isolation. The context of the comparison is needed to ensure the information is useful in evaluating the relative impact of one source compared to others. For example, the number of sources involved and the distribution of emissions across all of the sources can make a significant difference when evaluating the results of a percentage calculation. In some cases a certain percentage might mean almost all other sources are larger or much larger than the source at issue, while in other circumstances the same percentage could mean that the source at issue is in fact one of the larger contributors to the total.

The Administrator therefore considered the totality of the circumstances in order to best understand the role played by CAA section 202(a) source categories. This is consistent with Congress' intention for EPA to consider the cumulative impact of all sources of pollution. In that context, the global nature of the air pollution problem and the breadth of countries and sources emitting greenhouse gases means that no single country and no single source category dominate or are even close to dominating on a global scale. For example, the United States as a country is the second largest emitter of greenhouse gases, and emits approximately 18 percent of the world's total greenhouse gases. The total emissions of greenhouse gases worldwide are from numerous sources and countries, with each country and each source category contributing a relatively small percentage of the total emissions. That means that the relative ranking of countries or sources is not at all obvious from the magnitude of the percentage by itself. A country or a source may be a large contributor, in comparison to other countries or sources, even though its percentage contribution may appear relatively small.

In this situation, addressing a global air pollution problem may call for many different sources and countries to address emissions even if none by itself dominates or comes close to dominating the global inventory. A somewhat analogous situation can be found in the ozone air pollution problem in the United States. Emissions of NOx and volatile organic compounds (VOCs) often come from numerous small sources, as well as certain large source categories. We have learned that successful ozone control strategies often need to take this into account, and address both the larger sources of NOx and VOCs as well as the many smaller sources, given the breadth of sources that as a group lead to the total inventory of VOCs and NOx.

The global aspects of the greenhouse gas air pollution problem amplify this kind of situation many times over, where no single country or source category dominates or comes close to dominating the global inventory of greenhouse gas emissions. These unique, global aspects of the climate change problem tend to support consideration of contribution at lower percentage levels of emissions than might otherwise be considered appropriate when addressing a more typical local or regional air pollution problem. In this situation it is quite reasonable to consider emissions from source categories that are more important in relation to other sources, even if their absolute contribution initially may appear to be small.

In addition, the Administrator is aware of the fact that the United States is the second largest emitter of well-mixed greenhouse gases in the world. As the United States evaluates how to address climate change, the Administrator will analyze the various sources of emissions and the source's share of U.S. emissions. Thus, when analyzing whether a source category that emits well-mixed greenhouse gases in the United States contributes to the global problem, it is appropriate for the Administrator to consider how that source category fits into the larger picture of U.S. emissions. This ranking process within the United States allows the importance of the source category to

[38] Because the Administrator is defining the air pollutant as the combination of well-mixed greenhouse gases, she is not issuing a final contribution finding based on the alternative definition discussed in the proposed findings (*e.g.,* each greenhouse gas as an individual air pollutant).

be seen compared to other U.S. sources, informing the judgment of the importance of emissions from this source category in any overall national strategy to address greenhouse gas emissions.

It is in this broader context that EPA considered the contribution of CAA section 202(a) sources. This provides useful information in determining the importance that should be attached to the emissions from the CAA section 202(a) sources.

In reaching her determination, the Administrator used two simple and straightforward comparisons to assess cause or contribute for CAA section 202(a) source categories: (1) As a share of total current global aggregate emissions of the well-mixed greenhouse gases; and (2) as a share of total current U.S. aggregate emissions of the well-mixed greenhouse gases.

Total well-mixed greenhouse gas emissions from CAA section 202(a) source categories were compared to total global emissions of the well-mixed greenhouse gases. The total air pollution problem, as already discussed, is the elevated and climbing levels of the six greenhouse gas concentrations in the atmosphere, which are global in nature because these concentrations are globally well mixed (whether they are emitted from CAA section 202(a) source categories or any other source within or outside the United States). In addition, comparisons were also made to U.S. total well-mixed greenhouse gases emissions to appreciate how CAA section 202(a) source categories fit into the larger U.S. contribution to the global problem. It is typical for the Administrator to consider these kinds of comparisons of emissions of a pollutant in evaluating contribution to air pollution, such as the concentrations of that same pollutant in the atmosphere (*e.g.,* the Administrator analyzes $PM_{2.5}$ emissions to determine if a source category contributes to $PM_{2.5}$ air pollution). When viewed in the circumstances discussed above, both of these comparisons provide useful information in determining whether these source categories should be judged as contributing to the total air pollution problem.

a. Section 202(a) of the CAA—Share of Global Aggregate Emissions of the Well-Mixed Greenhouse Gases

Global emissions of well-mixed greenhouse gases have been increasing, and are projected to continue increasing unless the major emitters take action to reduce emissions. Total global emissions of well-mixed greenhouse gases in 2005 (the most recent year for which data for all countries and all greenhouse gases are available) [39] were 38,726 teragrams of CO_2-equivlant ($TgCO_2eq$.) [40] This represents an increase in global greenhouse gas emissions of about 26 percent since 1990 (excluding land use, land use change and forestry). In 2005, total U.S. emissions of well-mixed greenhouse gases were responsible for 18 percent of global emissions, ranking only behind China, which was responsible for 19 percent of global emissions of well-mixed greenhouse gases.

In 2005 emissions of the well-mixed greenhouse gas pollutant from CAA section 202(a) source categories represented 4.3 percent of total global well-mixed greenhouse gas emissions and 28 percent of global transport well-mixed greenhouse gas emissions (Table 1 of these Findings). If CAA section 202(a) source categories' emissions of well-mixed greenhouse gas were ranked against total well-mixed greenhouse gas emissions for entire countries, CAA section 202(a) source category emissions would rank behind only China, the United States as a whole, Russia, and India, and would rank ahead of Japan, Brazil, Germany and every other country in the world. Indeed, countries with lower emissions than the CAA section 202(a) source categories are members of the 17 ''major economies'' ''that meet to advance the exploration of concrete initiatives and joint ventures that increase the supply of clean energy while cutting greenhouse gas emissions.'' *See http://www.state.gov/g/oes/climate/mem/.* It would be anomalous, to say the least, to consider Japan and these other countries as major players in the global climate change community and an integral part of the solution, but not find that CAA section 202(a) source category emissions contribute to the global problem. Thus, the Administrator finds that emission of well-mixed greenhouse gases from CAA section 202(a) source categories contribute to the air pollution of well-mixed greenhouse gases.

TABLE 1—COMPARISON TO GLOBAL GREENHOUSE GAS (GHG) EMISSIONS ($TG\ CO_2E$)

	2005	Sec 202(a) share (percent)
All U.S. GHG emissions	7,109	23.5
Global transport GHG emissions	5,968	28.0
All global GHG emissions	38,726	4.3

b. Section 202(a) of the CAA—Share of U.S. Aggregate Emissions of the Well-Mixed Greenhouse Gases

The Administrator considered compared total emissions of the well-mixed greenhouse gases from CAA section 202(a) source categories to total U.S. emissions of the well-mixed greenhouse gases as an indication of the role these sources play in the total U.S. contribution to the air pollution problem causing climate change.[41]

In 2007, U.S. well-mixed greenhouse gas emissions were 7,150 $TgCO_2eq$. The dominant gas emitted was carbon dioxide, mostly from fossil fuel combustion. Methane was the second largest well-mixed greenhouse gas, followed by N_2O, and the fluorinated gases (HFCs, PFCs, and SF_6). Electricity generation was the largest emitting sector (2,445 $TgCO_2eq$ or 34 percent of

[39] The source of global greenhouse gas emissions data, against which comparisons are made, is the Climate Analysis Indicators Tool of the World Resources Institute (WRI) (2007). Note that for global comparisons, all emissions are from the year 2005, the most recent year for which data for all greenhouse gas emissions and all countries are available. WRI (2007) Climate Analysis Indicators Tool (CAIT). Available at *http://cait.wri.org.* Accessed August 5, 2009.

[40] One teragram (Tg) = 1 million metric tons. 1 metric ton = 1,000 kg = 1.102 short tons = 2,205 lbs. Long-lived greenhouse gases are compared and summed together on a CO_2 equivalent basis by multiplying each gas by its Global Warming Potential (GWPs), as estimated by IPCC. In accordance with UNFCCC reporting procedures, the U.S. quantifies greenhouse gas emissions using the 100-year time frame values for GWPs established in the IPCC Second Assessment Report.

[41] Greenhouse gas emissions data for the United States in this section have been updated since the Proposed Findings to reflect EPA's most up-to-date information, which includes data for the year 2007. The source of the U.S. greenhouse gas emissions data is the *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2007,* published in 2009 (hereinafter ''U.S. Inventory'').

total U.S. greenhouse gas emissions), followed by transportation (1,995 $TgCO_2eq$ or 28 percent) and industry (1,386 $TgCO_2eq$ or 19 percent). Emissions from the CAA section 202(a) source categories constitute the major part of the transportation sector. Land use, land use change, and forestry offset almost 15 percent of total U.S. emissions through net sequestration. Total U.S. well-mixed greenhouse gas emissions have increased by over 17 percent between 1990 and 2007. The electricity generation and transportation sectors have contributed the most to this increase.

In 2007 emissions of well-mixed greenhouse gases from CAA section 202(a) source categories collectively were the second largest emitter of well-mixed greenhouse gases within the United States (behind the electricity generating sector), emitting 1,663 $TgCO_2eq$ and representing 23 percent of total U.S. emissions of well-mixed greenhouse gases (Table 2 of these Findings). The Administrator is keenly aware that the United States is the second largest emitter of well-mixed greenhouse gases. Part of analyzing whether a sector within the United States contributes to the global problem is to see how those emissions fit into the contribution from the United States as a whole. This informs her judgment as to the importance of emissions from this source category in any overall national strategy to address greenhouse gas emissions. Thus, it is relevant that CAA section 202(a) source categories are the second largest emitter of well-mixed greenhouse gases in the country. This is part of the Administrator looking at the totality of the circumstances. Based on this the Administrator finds that emission of well-mixed greenhouse gases from CAA section 202(a) source categories contribute to the air pollution of well-mixed greenhouse gases.

TABLE 2—SECTORAL COMPARISON TO TOTAL U.S. GREENHOUSE GAS (GHG) EMISSIONS ($TG\ CO_2E$)

U.S. emissions	1990	1995	2000	2005	2006	2007
Section 202(a) GHG emissions	1231.9	1364.4	1568.1	1670.5	1665.7	1663.1
Share of U.S. (%)	20.2%	21.1%	22.4%	23.5%	23.6%	23.3%
Electricity Sector emissions	1859.1	1989.0	2329.3	2429.4	2375.5	2445.1
Share of U.S. (%)	30.5%	30.8%	33.2%	34.2%	33.7%	34.2%
Industrial Sector emissions	1496.0	1524.5	1467.5	1364.9	1388.4	1386.3
Share of U.S. (%)	24.5%	23.6%	20.9%	19.2%	19.7%	19.4%
Total U.S. GHG emissions	6098.7	6463.3	7008.2	7108.6	7051.1	7150.1

C. Response to Key Comments on the Administrator's Cause or Contribute Finding

EPA received numerous public comments regarding the Administrator's proposed cause or contribute finding. Below is a brief discussion of some of the key comments. Responses to comments on this issue are also contained in the Response to Comments document, Volume 10.

1. The Administrator Reasonably Defined the ''Air Pollutant'' for the Cause or Contribute Analysis

a. The Supreme Court Held that Greenhouse Gases Fit Within the Definition of ''Air Pollutant'' in the CAA

Several commenters reiterate arguments already rejected by the Supreme Court, arguing that greenhouse gases do not fit into the definition of ''air pollutant'' under the CAA. In particular, at least one commenter contends that EPA must show how greenhouse gases impact or materially change ''ambient air'' when defining air pollutant and making the endangerment finding. This commenter argues that because carbon dioxide is a naturally occurring and necessary element in the atmosphere, it cannot be considered to materially change air.

These and similar arguments were already rejected by the Supreme Court in *Massachusetts* v. *EPA*, 549 U.S. 497 (2007). Briefs before the Supreme Court also argued that carbon dioxide is an essential role for life on earth and therefore cannot be considered an air pollutant, and that the concentrations of greenhouse gases that are a potential problem are not in the ''ambient air'' that people breathe.

The Court rejected all of these and other arguments, noting that the statutory text forecloses these arguments. ''The Clean Air Act's sweeping definition of 'air pollutant' includes '*any* air pollution agent or combination of such agents, including *any* physical, chemical * * * substance or matter which is emitted into or otherwise enters the ambient air . * * *' § 7602(g) (emphasis added). On its face, the definition embraces all airborne compounds of whatever stripe, and underscores that intent through the repeated use of the word 'any.' Carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons are without a doubt 'physical [and] chemical * * * substance[s] which [are] emitted into * * * the ambient air.' The statute is unambiguous.''

547 U.S. at 529–30 (footnotes omitted); see also *id.* at 530, n26 (the distinction regarding ambient air, however, finds no support in the text of the statute, which uses the phrase ''the ambient air'' without distinguishing between atmospheric layer.). Thus, the question of whether greenhouse gases fit within the definition of air pollutant under the CAA has been decided by the Supreme Court and is not being revisited here.

b. The Definition of Air Pollutant May Include Substances Not Emitted by CAA Section 202(a) Sources

Many commenters argue that the definition of ''air pollutant''—here well-mixed greenhouse gases—cannot include PFCs and SF6 because they are not emitted by CAA section 202(a) motor vehicles and hence, cannot be part of any ''air pollutant'' emitted by such sources. They argue that by improperly defining ''air pollutant'' to include substances that are not present in motor vehicle emissions, the Agency has exceeded its statutory authority under CAA section 202(a). Commenters contend that past endangerment findings under CAA section 202(a) demonstrate EPA's consistent approach of defining ''air pollutant(s)'' in accordance with the CAA's clear direction, to include only those pollutants emitted from the relevant source category (citing Notice of Proposed Rulemaking for Heavy-Duty Engine and Vehicle Standards finding that ''emissions of NO_X, VOCs, SO_X, and PM from heavy-duty trucks can reasonably be anticipated to endanger the public health or welfare.'' (65 FR 35436, June 2, 2000). Commenters argue that EPA itself is inconsistent in the Proposed Findings, sometimes referring

to ''air pollutant'' as the group of six greenhouse gases, and other times falling back on the four greenhouse gases emitted by motor vehicles.

EPA acknowledges that the Proposed Findings could have been clearer regarding the proposed definition of air pollutant, and how it was being applied to CAA section 202(a) sources, which emit only four of the six substances that meet the definition of well-mixed greenhouse gases. However, our interpretation does not exceed EPA's authority under CAA section 202(a). It is reasonable to define the air pollutant under CAA section 202(a) to include substances that have similar attributes (as discussed above), even if not all of the substances that meet that definition are emitted by motor vehicles. For example, as commenters note, EPA has heavy duty truck standards applicable to VOCs and PM, but it is highly unlikely that heavy duty trucks emit *every* substance that is included in the group defined as VOC or PM. *See* 40 CFR 51.100(s) (defining volatile organic compound (VOC) as ''any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions'', a list of exemptions are also included in the definition); 40 CFR 51.100(oo) (defining particulate matter (PM) as ''any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers'').

In this circumstance the number of substances included in the definition of well-mixed greenhouse gases is much smaller than other ''group'' air pollutants (*e.g.,* six greenhouse gases versus hundreds of VOCs), and CAA section 202(a) sources emit an easily discernible number of these six substances. However, this does not mean that the definition of the well-mixed greenhouse gases as the air pollutant is unreasonable. By defining well-mixed greenhouse gases as a single air pollutant comprised of six substances with common attributes, the Administrator is giving effect to these shared attributes and how they are relevant to the air pollution to which they contribute. The fact that these six substances share these common, relevant attributes is true regardless of the source category being evaluated for contribution. Grouping these six substances as one air pollutant is reasonable regardless of whether a contribution analysis is undertaken for CAA section 202(a) sources that emit one subset of the six substances (*e.g.*, carbon dioxide, CH_4, N_20 and HFCs, but not PFCs and SF_6), or for another category of sources that may emit another subset. For example, electronics manufacturers that may emit N_2O, PFCs, HFCs, SF_6 and other fluorinated compounds, but not carbon dioxide or CH_4 unless there is on-site fuel combustion. In other words, it is not necessarily the source category being evaluated for contribution that determines the reasonableness of defining a group air pollutant based on the shared attributes of the group.

Even if EPA agreed with commenters, and defined the air pollutant as the group of four compounds emitted by CAA section 202(a) sources, it would not change the result. The Administrator would make the same contribution finding as it would have no material effect on the emissions comparisons discussed above.

c. It Was Reasonable for the Administrator To Define the Single Air Pollutant as the Group of Substances With Common Attributes

Several commenters disagree with EPA's proposed definition of a single air pollutant composed of the six well-mixed greenhouse gases as a class. Commenters argue that the analogy to VOCs is misplaced because VOCs are all part of a defined group of chemicals, for which there are established quantification procedures, and for which there were extensive data showing that the group of compounds had demonstrated and quantifiable effects on ambient air and human health and welfare, and for which verifiable dispersion models existed. They contend this is in stark contrast to the entirely diverse set of organic and inorganic compounds EPA has lumped together for purposes of the Proposed Findings, and for which no model can accurately predict or quantify the actual impact or improvement resulting from controlling the compounds. Moreover, they argue that the gases EPA is proposing to list together as one pollutant are all generated by different processes and, if regulated, would require different types of controls; the four gases emitted by mobile sources can generally be limited only by using controls that are specific to each.

At least one commenter argues that EPA cannot combine greenhouse gases into one pollutant because their common attribute is not a ''physical, chemical, biological or radioactive property'' (quoting from CAA section 302(g)), but rather their effect or impacts on the environment. They say this differs from VOCs, which share the common attribute of volatility, or PM which shares the physical property of being particles.

As discussed above, the well-mixed greenhouse gases share physical attributes, as well as attributes based on sound policy considerations. The definition of ''air pollutant'' in CAA section 302(g) does not limit consideration of common attributes to those that are ''physical, chemical, biological or radioactive property'' as one commenter claims. Rather, the definition's use of the adjectives ''physical, chemical, biological or radioactive'' refer to the different types of substance or matter that is emitted. It is not a limitation on what characteristics the Administrator may consider when deciding how to group similar substances when defining a single air pollutant.

The common attributes that the Administrator considered when defining the well-mixed greenhouse gases are reasonable. While these six substances may originate from different processes, and require different control strategies, that does not detract from the fact that they are all long-lived, well-mixed in the atmosphere, directly emitted, of well-known radiative forcing, and generally grouped and considered together in climate change scientific and policy forums. Indeed, other group pollutants also originate from a variety of processes and a result may require different control technologies. For example, both a power plant and a dirt road can result in PM emissions, and the method to control such emissions at each source would be different. But these differences in origin or control do not undermine the reasonableness of considering PM as a single air pollutant. The fact that there are differences, as well as similarities, among the well-mixed greenhouse gases does not render the decision to group them together as one air pollutant unreasonable.

2. The Administrator's Cause or Contribute Analysis Was Reasonable

a. The Administrator Does Not Need To Find Significant Contribution, or Establish a Bright Line

Many commenters essentially argue that EPA must establish a bright line below which it would never find contribution regardless of the air pollutant, air pollution, and other factors before the Agency. For example, some commenters argue that EPA must provide some basis for determining de minimis amounts that fall below the threshold of ''contributing'' to the endangerment of public health and welfare under CAA section 202(a).

Commenters take issue with EPA's statement that it ''need not determine at this time the circumstances in which emissions would be trivial or de minimis and would not warrant a finding of contribution.'' Commenters argue that EPA cannot act arbitrarily by determining that a constituent contributing a certain percent to endangerment in one instance is de minimis and in another is contributing to endangerment of public health and welfare. They request that EPA revise the preamble language to make clear that the regulated community can rely on its past determinations with respect to ''contribution'' determinations to predict future agency action and argue that EPA should promulgate guidance on how it determines whether a contribution exceeds a de minimis level for purposes of CAA section 202(a) before finalizing the proposal.

The commenters that argue that the air pollution EPA must analyze to determine endangerment is limited to the air pollution resulting from new motor vehicles also argue that as a result, the contribution of emissions from new motor vehicles must be significant. They essentially contend that the endangerment and cause or contribute tests are inter-related and the universe of both tests is the same. In support of their argument, commenters argue that because the clause ''cause, or contribute to, air pollution'' is in plural form, it must be referring back to ''any class or classes of new motor vehicles or new motor vehicle engines,'' demonstrating that EPA must consider only the emissions from new motor vehicles which emit the air pollution which endangers.

Since the Administrator issued the Proposed Findings, the DC Circuit issued another opinion discussing the concept of contribution. See *Catawba County* v. *EPA*, 571 F.3d 20 (DC Cir. 2009). This decision, along with others, supports the Administrator's interpretation that the level of contribution under CAA section 202(a) does not need to be significant. The Administrator is not required to establish a bright line below which she would never find contribution under any circumstances. Finally, it is reasonable for the Administrator to apply a ''totality-of-the-circumstances test to implement a statute that confers broad discretionary authority, even if the test lacks a definite 'threshold' or 'clear line of demarcation to define an open-ended term.'' *Id.* at 39 (citations omitted).

In upholding EPA's $PM_{2.5}$ attainment and nonattainment designation decisions, the DC Circuit analyzed CAA section 107(d), which requires EPA to designate an area as nonattainment if it ''contributes to ambient air quality in a nearby area'' not attaining the national ambient air quality standards. *Id.* at 35. The court noted that it had previously held that the term ''contributes'' is ambiguous in the context of CAA language. *See EDF* v. *EPA*, 82 F.3d 451, 459 (DC Cir. 1996). ''[A]mbiguities in statutes within an agency's jurisdiction to administer are delegations of authority to the agency to fill the statutory gap in reasonable fashion.'' 571 F.3d at 35 (citing *Nat's Cable & Telecomms. Ass'c* v. *Brand X Internet Servs,* 545 U.S. 967, 980 (2005)).

The court then proceeded to consider and reject petitioners' argument that the verb ''contributes'' in CAA section 107(d) necessarily connotes a significant causal relationship. Specifically, the DC Circuit again noted that the term is ambiguous, leaving it to EPA to interpret in a reasonable manner. In the context of this discussion, the court noted that ''a contribution may simply exacerbate a problem rather than cause it * * * '' 571 F.3d at 39. This is consistent with the DC Circuit's decision in *Bluewater Network* v. *EPA,* 370 F.3d 1 (DC Cir. 2004), in which the court noted that the term contribute in CAA section 213(a)(3) ''[s]tanding alone, * * * has no inherent connotation as to the magnitude or importance of the relevant 'share' in the effect; certainly it does not incorporate any 'significance' requirement.'' 370 F.3d at 13. The court found that the bare ''contribute'' language invests the Administrator with discretion to exercise judgment regarding what constitutes a sufficient contribution for the purpose of making an endangerment finding. *Id.* at 14.

Finally, in *Catawba County,* the DC Circuit also rejected ''petitioners' argument that EPA violated the statute by failing to articulate a quantified amount of contribution that would trigger'' the regulatory action. 571 F.3d at 39. Although petitioners preferred that EPA establish a bright-line test, the court recognized that the statute did not require that EPA ''quantify a uniform amount of contribution.'' *Id.*

Given this context, it is entirely reasonable for the Administrator to interpret CAA section 202(a) to require some level of contribution that, while more than de minimis or trivial, does not rise to the level of significance. Moreover, the approach suggested by at least one commenter collapses the two prongs of the test by requiring that contribution must be significant because any climate change impacts upon which an endangerment determination is made result solely from the greenhouse gas emissions of motor vehicles. It essentially eliminates the ''contribute'' part of the ''cause or contribute'' portion of the test. This approach was clearly rejected by the en banc court in *Ethyl.* 541 F.2d at 29 (rejecting the argument that the emissions of the fuel additive to be regulated must ''in and of itself, *i.e.* considered in isolation, endanger[ ] public health.''); see also *Catawba County,* 571 F.3d at 39 (noting that even if the test required significant contribution it would be reasonable for EPA to find a county's addition of $PM_{2.5}$ is significant even though the problem would persist in its absence). It is the commenter, not EPA that is ignoring the statutory language. Whether or not the clause ''cause, or contribute to, air pollution'' refers back to ''any class or classes of new motor vehicles or new motor vehicle engines,'' or to ''emission of any air pollutant,'' the language of CAA section 202(a) clearly contemplates that emission of an air pollutant from any class or classes may merely contribute to, versus cause, the air pollution which endangers.

It is also reasonable for EPA to decline to establish a ''bright-line 'objective' test of contribution.'' 571 F.3d at 39. As noted in the Proposed Findings, when exercising her judgment, the Administrator not only considers the cumulative impact, but also looks at the totality of the circumstances (*e.g.,* the air pollutant, the air pollution, the nature of the endangerment, the type of source category, the number of sources in the source category, and the number and type of other source categories that may emit the air pollutant) when determining whether the emissions justify regulation under the CAA. *Id.* (It is reasonable for an agency to adopt a totality-of-the-circumstances test).

Even if EPA agreed that a level of significance was required to find contribution, for the reasons discussed above, EPA would find that the contribution from CAA section 202(a) source categories is significant. Their emissions are larger than the great majority of emitting countries, larger than several major emitting countries, and they constitute one of the largest parts of the U.S. emissions inventory.

b. The Unique Global Aspects of Climate Change Are an Appropriate Consideration in the Contribution Analysis

Some commenters disagree with statements in the Proposed Findings that the ''unique, global aspects of the climate change problem tend to support a finding that lower levels of emissions should be considered to contribute to the air pollution than might otherwise

be appropriate when considering contribution to a local or regional air pollution problem.'' They argue there is no basis in the CAA or existing EPA policy for this position, and that it reveals an apparent effort to expand EPA's authority to the ''truly trivial or de minimis'' sources that are acknowledged to be outside the scope of regulation, in that it expands EPA's authority to regulate pollutants to address global effects.

Commenters also assert that contrary to EPA's position, lower contribution numbers are appropriate when looking at local pollution, like nonattainment concerns—in other words, in the context of a statutory provision like CAA section 213 specifically aimed at targeting small source categories to help nonattainment areas meet air quality standards. However, they conclude this policy is simply inapplicable in the context of global climate change.

As discussed above, the term ''contribute'' is ambiguous and subject to the Administrator's reasonable interpretation. It is entirely appropriate for the Administrator to look at the totality of the circumstances when making a finding of contribution. In this case, the Administrator believes that the global nature of the problem justifies looking at contribution in a way that takes account of these circumstances. More specifically, because climate change is a global problem that results from global greenhouse gas emissions, there are more sources emitting greenhouse gases (in terms both of absolute numbers of sources and types of sources) than EPA typically encounters when analyzing contribution towards a more localized air pollution problem. From a percentage perspective, there are no dominating sources and fewer sources that would even be considered to be close to dominating. The global problem is much more the result of numerous and varied sources each of which emit what might seem to be smaller percentage amounts when compared to the total. The Administrator's approach recognizes this reality, and focuses on evaluating the relative importance of the CAA section 202(a) source categories compared to other sources when viewed in this context.

This recognition of the unique totality of the circumstances before the Administrator now as compared to previous contribution decisions is entirely appropriate. It is not an attempt by the Administrator to regulate ''truly trivial or de minimis'' sources, or to regulate sources based on their global effects. The Administrator is determining whether greenhouse gas emissions from CAA section 202(a) sources contribute to an air pollution problem is endangering U.S. public health and welfare. As discussed in the Proposed Findings, no single greenhouse gas source category dominates on the global scale, and many (if not all) individual greenhouse gas source categories could appear small in comparison to the total, when, in fact, they could be very important contributors in terms of both absolute emissions or in comparison to other source categories, globally or within the United States. If the United States and the rest of the world are to combat the risks associated with global climate change, contributors must do their part even if their contributions to the global problem, measured in terms of percentage, are smaller than typically encountered when tackling solely regional or local environmental issues. The commenters' approach, if used globally, would effectively lead to a tragedy of the commons, whereby no country or source category would be accountable for contributing to the global problem of climate change, and nobody would take action as the problem persists and worsens. The Administrator's approach, on the contrary, avoids this kind of approach, and is a reasonable exercise of her discretion to determine contribution in the global context in which this issue arises.

Importantly, as discussed above, the contribution from CAA section 202(a) sources is anything but trivial or de minimis under any interpretation of contribution. See, *Massachusetts v. EPA,* 549 U.S. at 1457–58 (''Judged by any standard, U.S. motor-vehicle emissions make a meaningful contribution to greenhouse gas concentrations and hence, * * * to global warming'').

c. The Administrator Reasonably Relied on Comparisons of Emissions From Existing CAA Section 202(a) Source Categories

i. It Was Reasonable To Use Existing Emissions From Existing CAA Section 202(a) Source Categories Instead of Projecting Future Emissions From New CAA Section 202(a) Source Categories

Many commenters argue that EPA improperly evaluated the emissions from the entire motor vehicle fleet, and it is required to limit its calculation to just emissions from new motor vehicles. Thus the emissions that EPA should consider in the cause or contribute determination is far less than the 4.3 percent of U.S. greenhouse gas emissions attributed to motor vehicles in the Proposed Findings, because this number includes both new and existing motor vehicles. One commenter calculated the emissions from new motor vehicles as being 1.8 percent of global emissions, assuming approximately one year of new motor vehicle production in the United States (11 million vehicles) in a total global count currently of approximately 600 million motor vehicles.

In the Proposed Findings, EPA determined the emissions from the entire fleet of motor vehicles in the United States for a certain calendar year. EPA explained that, consistent with its traditional practice, it used the recent motor vehicle emissions inventory for the entire fleet as a surrogate for estimates of emissions for just new motor vehicles and engines. This was appropriate because future projected emissions are uncertain and current emissions data are a reasonable proxy for near-term emissions.

In effect, EPA is using the inventory for the current fleet of motor vehicles as a reasonable surrogate for a projection of the inventory from new motor vehicles over the upcoming years. New motor vehicles are produced year in and year out, and over time the fleet changes over to a fleet composed of such vehicles. This occurs in a relatively short time frame, compared to the time period at issue for endangerment. Because new motor vehicles are produced each year, and continue to emit over their entire life, over a relatively short period of time the emission from the entire fleet is from vehicles produced after a certain date. In addition, the emissions from new motor vehicles are not limited to the emissions that occur only during the one year when they are new, but are emissions over the entire life of the vehicle.

In such cases, EPA has traditionally used the recent emissions from the entire current fleet of motor vehicles as a reasonable surrogate for such a projection instead of trying to project and model those emissions. While this introduces some limited degree of uncertainty, the difference between recent actual emissions from the fleet and projected future emissions from the fleet is not expected to differ in any way that would substantively change the decision made concerning cause or contribution. There is not a specific numerical bright line that must be achieved, and the numerical percentages are not treated and do not need to be treated as precise values. This approach provides a reasonable and clear indication of the relative magnitudes involved, and EPA does not believe that attempting to make future

projections (for both vehicles and the emissions value they are compared to) would provide any greater degree of accuracy or precision in developing such a relative comparison.

ii. The Administrator Did Not Have To Use a Subset or Reduced Emissions Estimate From Existing CAA Section 202(a) Source Categories

Several commenters note that although EPA looks at emissions from all motor vehicles regulated under CAA section 202(a) in its contribution analysis, the Presidential announcement in May 2009 indicated that EPA was planning to regulate only a subset of 202(a) sources. Thus, they question whether the correct contribution analysis should look only at the emissions from that subset and not all CAA section 202(a) sources. Some commenters also argue that because emission standards will not eliminate all greenhouse gas emissions from motor vehicles, the comparison should compare the amount of greenhouse gas emissions ''reduced'' by those standards to the global greenhouse emissions. They also contend that the cost of the new standards will cause individual consumers, businesses, and other vehicle purchasers to hold on to their existing vehicles to a greater extent, thereby decreasing the amount of emissions reductions attributable to the standard and appropriately considered in the contribution analysis. Some commenters go further and contend that EPA also can only include that incremental reduction that the EPA regulations will achieve beyond any reductions resulting from CAFE standards that NHTSA will set.

Although the May announcement and September proposed rule involved only the light duty motor vehicle sector, the Administrator is making this finding for all classes of new motor vehicles under CAA section 202(a). Thus, although the announcement and proposed rule involve light duty vehicles, EPA is working to develop standards for the rest of the classes of new motor vehicles under CAA section 202(a). As the Supreme Court noted, EPA has ''significant latitude as to the manner, timing, content, and coordination of its regulations with those of other agencies. *Massachusetts* v. *EPA,* 549 U.S. at 533.

The argument that the Administrator can only look at that portion of emissions that will be reduced by any CAA section 202(a) standards, and even then only the reduction beyond those attributable to CAFE rules, finds no basis in the statutory language. The language in CAA section 202(a) requires that the Administrator set ''standards applicable to the emission of any air pollutant from [new motor vehicles], which in [her] judgment cause, or contribute to, air pollution which [endangers].'' It does not say set ''standards applicable to the emission of any air pollutant from [new motor vehicles], if in [her] judgment the emissions of that air pollutant as reduced by that standard cause, or contribute to, air pollution which [endangers].'' As discussed above, the decisions on cause or contribute and endangerment are separate and distinct from the decisions on what emissions standards to set under CAA section 202(a). The commenter's approach would improperly integrate these separate decisions. Indeed, because, as discussed above, the Administrator does not have to propose standards concurrent with the endangerment and cause or contribute findings, she would have to be prescient to know at the time of the contribution finding exactly the amount of the reduction that would be achieved by the standards to be set. As discussed above, for purposes of these findings we look at what would be the emissions from new motor vehicles if no action were taken. Current emissions from the existing CAA section 202(a) vehicle fleet are an appropriate estimate.

d. The Administrator Reasonably Compared CAA Section 202(a) Source Emissions to Both Global and Domestic Emissions of Well-Mixed Greenhouse Gases

EPA received many comments on the appropriate comparison(s) for the contribution analysis. Several commenters argue that in order to get around the ''problem'' of basing an endangerment finding upon a source category that contributes only 1.8 percent annually to global greenhouse gas emissions, EPA inappropriately also made comparisons to total U.S. greenhouse gas emissions. These commenters argue that a comparison of CAA section 202(a) source emissions to U.S. greenhouse gas emissions, versus global emissions, is arbitrary for purposes of the cause or contribute analysis, because it conflicts with the Administrator's definition of ''air pollution,'' as well as the nature of global warming. They note that throughout the Proposed Findings, the Administrator focuses on the global nature of greenhouse gas. Thus, they continue, while the percentage share of motor vehicle emissions at the U.S. level may be relevant for some purposes, it is irrelevant to a finding of whether these emissions contribute to the air pollution, which the Administrator has proposed to define on a global rather than a domestic basis. Commenters also accuse EPA of arbitrarily picking and choosing when it takes a global approach (*e.g.,* endangerment finding) and when it does not (*e.g.,* contribution findings).

The language of CAA section 202(a) is silent regarding how the Administrator is to make her contribution analysis. While it requires that the Administrator assess whether emission of an air pollutant contributes to air pollution which endangers, it does not limit *how* she may undertake that assessment. It surely is reasonable that the Administrator look at how CAA section 202(a) source category emissions compare to global emissions on an absolute basis, by themselves. But the United States as a nation is the second largest emitter of greenhouse gases. It is entirely appropriate for the Administrator to decide that part of understanding how a U.S. source category emitting greenhouse gases fits into the bigger picture of global climate change is to appreciate how that source category fits into the contribution from the United States as a whole, where the United States as a country is a major emitter of greenhouse gases. Knowing that CAA section 202(a) source categories are the second largest emitter of well-mixed greenhouse gases in the country is relevant to understanding what role they play in the global problem and hence whether they ''contribute'' to the global problem. Moreover, the Administrator is not ''picking and choosing'' when she applies a global or domestic approach in these Findings. Rather, she is looking at both of these emissions comparisons as appropriate under the applicable science, facts, and law.

e. The Amount of Well-Mixed Greenhouse Gas Emissions From CAA Section 202(a) Sources Reasonably Supports a Finding of Contribution

Many commenters argue that the ''cause or contribute'' prong of the Proposal's endangerment analysis fails to satisfy the applicable legal standard, which requires more than a minimal contribution to the ''air pollution reasonably anticipated to endanger public health or welfare.'' They contend that emissions representing approximately four percent of total global greenhouse gas emissions are a minimal contribution to global greenhouse gas concentrations.

EPA disagrees. As stated above, CAA section 202(a) source category total emissions of well-mixed greenhouse gases are higher than most countries in the world; countries that the U.S. and others believe play a major role in the

global climate change problem. Moreover, the percent of global well-mixed greenhouse gas emissions that CAA section 202(a) source categories represent is higher than percentages that the EPA has found contribute to air pollution problems. *See Bluewater Network,* 370 F.3d at 15 (''For Fairbanks, this contribution was equivalent to 1.2 percent of the total daily CO inventory for 2001.'') As noted above, there is no bright line for assessing contribution, but as discussed in the Proposed Findings and above, when looking at a global problem like climate change, with many sources of emissions and no dominating sources from a global perspective, it is reasonable to consider that lower percentages contribute than one may consider when looking at a local or regional problem involving fewer sources of emissions. The Administrator agrees that ''[j]udged by any standard, U.S. motor-vehicle emissions make a meaningful contribution to greenhouse gas concentrations and hence, * * * to global warming.'' *Massachusetts v. EPA,* 549 U.S. at 525.

VI. 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'' because it raises novel 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 Office of Management and Budget (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.* Burden is defined at 5 CFR 1320.3(b). These Findings do not impose an information collection request on any person.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 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 unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Because these Findings do not impose any requirements, the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities. This action does not impose any requirements on small entities. The endangerment and cause or contribute findings do not in-and-of-themselves impose any new requirements but rather set forth the Administrator's determination on whether greenhouse gases in the atmosphere may reasonably be anticipated to endanger public health or welfare, and whether emissions of greenhouse gases from new motor vehicles and engines contribute to this air pollution. Accordingly, the action affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the Findings.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This finding does not impose any requirements on industry or other entities.

E. Executive Order 13132: Federalism

This action does not have federalism implications. Because this action does not impose requirements on any entities, 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. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, nor does it impose any enforceable duties on any Indian tribes. Thus, Executive Order 13175 does not apply to this action.

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 it does not establish an environmental standard intended to mitigate health or safety risks. Although the Administrator considered health and safety risks as part of these Findings, the Findings themselves do not impose a standard intended to mitigate those risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (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 because it does not impose any requirements.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. at 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 action does not involve technical standards. Therefore, EPA did not consider 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 (EO) 12898 (59 FR 7629, Feb. 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 United States.

EPA has determined that these Findings will not have 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. Although the Administrator considered climate change risks to minority or low-income populations as part of these Findings, this action does not impose a standard intended to mitigate those risks and does not impose requirements on any entities.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, 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. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective January 14, 2010.

Dated: December 7, 2009.

Lisa P. Jackson,

Administrator.

[FR Doc. E9–29537 Filed 12–14–09; 8:45 am]

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Part VI

Department of Housing and Urban Development

24 CFR Parts 30 and 3400

SAFE Mortgage Licensing Act: HUD Responsibilities Under the SAFE Act; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 30 and 3400

[Docket No. FR–5271–P–01]

RIN 2502–A170

SAFE Mortgage Licensing Act: HUD Responsibilities Under the SAFE Act

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: The Secure and Fair Enforcement Mortgage Licensing Act of 2008 (SAFE Act or Act) was enacted into law on July 30, 2008, as part of the Housing and Economic Recovery Act of 2008. This new law directs States to adopt licensing and registration requirements for loan originators that meet the minimum standards specified in the SAFE Act, in lieu of HUD establishing and maintaining a licensing system for loan originators. This new law also encourages the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) to establish a nationwide mortgage licensing system and registry (NMLSR) for the residential mortgage industry for the purpose of providing: uniform State-licensing application and reporting requirements for residential mortgage loan originators, and a comprehensive database to find and track mortgage loan originators licensed by the States and mortgage loan originators that work for federally regulated banks. Loan originators who are employees of federally regulated depository institutions and their subsidiaries are required to register through the NMLSR, but are not subject to State licensing requirements.

If HUD determines that a State's mortgage loan origination licensing standards do not meet the minimum requirements of the statute, HUD is charged with establishing and implementing a system for mortgage loan originators in that State. Additionally, if at any time HUD determines that the NMLSR is failing to meet the SAFE Act's requirements, HUD is charged with establishing and maintaining a licensing and tracking system for mortgage loan originators.

This rule sets forth the minimum standards that the SAFE Act provides States to meet in licensing loan originators. Additionally, consistent with HUD's charge under the SAFE Act, this rule provides the following: the procedure that HUD will use to determine whether a State's licensing and registration system is SAFE Act compliant; the actions that HUD will take if HUD determines that a State has not established a SAFE Act-compliant licensing and registration system or that the NMLSR established by CSBS and AARMR is not SAFE Act compliant; the minimum requirements for the administration of the NMLSR; and HUD's enforcement authority if it operates a State licensing system.

In addition to establishing HUD's responsibilities under the SAFE Act, through this rule, HUD proposes to clarify or interpret certain statutory provisions that pertain to the scope of the SAFE Act licensing requirements, and other requirements that pertain to the implementation, oversight, and enforcement responsibilities of the States. HUD solicits comment on the proposed clarifications and on the regulations proposed to be codified.

DATES: *Comment due date:* February 16, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this rule 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 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 site 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 through TTY by calling the toll-free 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: William W. Matchneer III, Associate Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 9164, Washington DC 20410; telephone number 202–708–6401 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Housing and Economic Recovery Act of 2008 (Pub. L. 110–289, approved July 30, 2008) (HERA) constitutes a major new housing law that is designed to assist with the recovery and the revitalization of America's residential housing market—from modernization of the Federal Housing Administration, to foreclosure prevention, to enhancing consumer protections. The SAFE Act is a key component of HERA designed to improve accountability on the part of loan originators, combat fraud, and enhance consumer protections.

The SAFE Act encourages States to establish minimum standards for the licensing and registration of State-licensed mortgage loan originators and encourages the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) to establish and maintain the NMLSR for the residential mortgage industry for the purpose of achieving the following objectives:

(1) Providing uniform license applications and reporting requirements for State licensed-loan originators;

(2) Providing a comprehensive licensing and supervisory database;

(3) Aggregating and improving the flow of information to and between regulators;

(4) Providing increased accountability and tracking of loan originators;

(5) Streamlining the licensing process and reducing regulatory burden;

(6) Enhancing consumer protections and supporting anti-fraud measures;

(7) Providing consumers with easily accessible information, offered at no charge, utilizing electronic media, including the Internet, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators;

(8) Establishing a means by which residential mortgage loan originators would, to the greatest extent possible, be required to act in the best interests of the consumer;

(9) Facilitating responsible behavior in the mortgage market place and providing comprehensive training and examination requirements related to mortgage lending;

(10) Facilitating the collection and disbursement of consumer complaints on behalf of State mortgage regulators. CSBS and AARMR have established this registry, and it can be found at *http://www.Stateregulatoryregistry.org*.

The SAFE Act also encourages States to participate in the NMLSR and requires participating States to have in place, by law or regulation, a system for licensing and registering loan originators that meets the requirements of sections 1505, 1506, and 1508(d) of the SAFE Act. The SAFE Act requires the States to have the licensing and registration system in place by: (1) July 31, 2009, for States whose legislatures meet annually; and (2) July 31, 2010, for States whose legislatures meet biennially. HUD may grant an extension of not more than 24 months if HUD determines that a State is making a good-faith effort to establish a State licensing law that meets the minimum requirements of the SAFE Act.

HUD is charged by the SAFE Act to establish and maintain a licensing and registration system for a State or territory that does not have in place a system for licensing loan originators that meets the requirements of the SAFE Act, or that fails to participate in the NMLSR. Specifically, section 1508 of the SAFE Act, entitled ''Secretary of Housing and Urban Development Backup Authority to Establish a Loan Originator Licensing System,'' provides that after the time periods for compliance allowed by the statute, if the ''Secretary determines that a State does not have in place by law or regulation a system for licensing and registering loan originators that meets the requirements of sections 1505 and 1506 and subsection (d) of this section [section 1508], or does not participate in the Nationwide Mortgage Licensing System and Registry, the Secretary shall provide for the establishment and maintenance of a system for the licensing and registration by the Secretary of loan originators operating in such State as State-licensed loan originators.''

For any State for which HUD must establish such licensing and registration system, a loan originator in such a State would have to comply with the requirements of HUD's SAFE Act-compliant licensing system for that State, as well as with any applicable State requirements. A HUD license for a State would be valid only for that State, even if HUD must implement licensing systems in multiple States. Additionally, if HUD determines that the NMLSR is failing to meet the requirements and purposes of the SAFE Act, HUD must establish a system that meets the requirements of the SAFE Act.

As noted earlier, the SAFE Act encourages CSBS and AARMR to establish and maintain the NMLSR, and these organizations have development of the NMLSR under way. In addition to developing the NMLSR, CSBS and AARMR developed model legislation to aid and facilitate States' compliance with the requirements of the SAFE Act. Because overall responsibility for interpretation, implementation, and compliance with the SAFE Act rests with HUD, CSBS and AARMR requested that HUD review the model legislation, and advise of its sufficiency in meeting applicable minimum requirements of the SAFE Act. HUD reviewed the model legislation and advised the public that the model legislation offers an approach that meets the minimum requirements of the SAFE Act. States that adopt and implement a State licensing system that follows the provisions of the model legislation, whether by statute or regulation, will be presumed to have met the applicable minimum requirements of the SAFE Act.

In advising the public of its assessment of the model legislation, HUD also presented its views and interpretations of certain statutory provisions that required consideration and analysis in determining that the model legislation meets the minimum requirements of the SAFE Act. These views and interpretations, referred to as HUD's Commentary (or Commentary) can be found at *http://www.hud.gov/offices/hsg/sfh/reguprog.cfm*. (See also HUD's **Federal Register** notice published on January 5, 2009, at 74 FR 312, advising of the availability of the model legislation and HUD's Commentary.) This rule proposes to incorporate the views and interpretations of the SAFE Act that HUD presented in its Commentary.

More recently, HUD posted on its Web site responses to frequently asked questions about the SAFE Act. One of the questions asked concerned the applicability of the definition of loan originator to individuals who modify existing residential mortgage loans. As HUD's response to this question reflects, given the extent to which today's loan modifications can be virtually indistinguishable from refinances, HUD sees the reasonableness of covering these individuals under the definition of loan originator and has advised that it is inclined to require the licensing of individuals who perform loan modifications for servicers. In its response to the question, HUD also highlighted several issues related to loan modifications. Given the continued poor State of the housing situation and the importance of promoting loan modifications as a means of avoiding foreclosure, HUD seeks comment on this issue, as discussed later in this preamble.

Related to HUD's rulemaking is regulatory action recently taken by the Office of the Comptroller of the Currency of the Department of the Treasury, the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision of the Department of the Treasury, the Farm Credit Administration (FCA), and the National Credit Union Administration (collectively, the agencies). The SAFE Act requires these agencies, through the Federal Financial Institutions Examination Council (FFIEC) and the FCA, to develop and maintain a Federal registration system for employees of an institution regulated by one (or more) of the agencies, and to implement this system by July 29, 2009. The SAFE Act specifically prohibits an individual employed by an agency-regulated institution from engaging in the business of residential mortgage loan origination without first obtaining and maintaining annually a registration as a registered mortgage loan originator and obtaining a unique identifier. The agencies published their proposed rule to implement this registration system on June 9, 2009, at 74 FR 27386. The agencies' proposed rule also seeks comment on the issue of coverage of individuals who perform loan

modifications. (See 74 FR at 27391–27392.)

With respect to the agencies' responsibilities under the SAFE Act, and the responsibilities of HUD, it is important to note that HUD's regulations, when promulgated, do not apply to individuals who are employees of agency-regulated institutions and are, accordingly, subject to the regulations to be promulgated by the agencies. Additionally, any action taken by HUD based on a determination that the NMLSR does not meet the requirements of the SAFE Act with respect to individuals subject to the State licensing and registration requirements of the SAFE Act, would not apply to individuals subject to the agencies' SAFE Act regulations.

II. This Proposed Rule

This proposed rule addresses the criteria that HUD will use to determine whether a State has put in place a system for licensing and registering loan originators as required by the SAFE Act. The rule sets forth the statutorily imposed minimum requirements that a State would have to meet to be in compliance with the SAFE Act. Those minimum requirements are found in section 1505 of the SAFE Act, which governs State license and registration application and issuance, section 1506, which governs the standards for State license renewal, and section 1508(d), which governs other standards that a State's law and licensing system must meet. This rule also sets forth clarifications and interpretations of the SAFE Act that HUD previously provided to the public through its Commentary. Among the important clarifications that this rule proposes to make are definitions of what activities are included in ''tak[ing] a residential mortgage loan application'' and ''offer[ing] or negotiate[ing] terms of a residential mortgage loan,'' and what it means to do so ''for compensation or gain.'' The meanings of these terms largely determine whether or not a particular individual is subject to licensing requirements. HUD is aware of the great variety of business models that are utilized in the housing finance industry and proposes to provide definitions based on functions, rather than on job titles or labels, to further clarify whether an individual is subject to licensing requirements. HUD specifically seeks comment on whether the proposed definitions, which are further discussed below, are adequate and appropriate.

This proposed rule would provide that the requirements that HUD would put in place if HUD must establish a licensing and registration system for a State are the same as the minimum requirements that States must implement, in accordance with section 1508 of the SAFE Act. This proposed rule would also provide the criteria that HUD will use to determine, in accordance with section 1509 of the SAFE Act, whether the NMLSR meets the requirements of the SAFE Act.

This rule incorporates the provisions of section 1512 of the SAFE Act, pertaining to confidentiality of information, and of section 1513, pertaining to protection from liability for HUD or the administrator of the NMLSR by reason of good-faith action or omission of any officer or employee of HUD or the administrator while acting within the scope of office or employment, relating to the collection, furnishing or dissemination of information concerning persons who are loan originators or are applying for licensing or registration as loan originators.

This rule also addresses the enforcement authority provided to HUD in section 1514 of the SAFE Act. Section 1514 of the SAFE Act provides HUD with: (1) Summons authority for information on any loan originator operating in any State that is subject to a licensing system established by HUD; (2) the authority to appoint examiners to assist HUD in its responsibilities in a State in which HUD established a licensing system; and (3) the authority to conduct cease-and-desist proceedings with respect to any person who is violating, has violated, or is about to violate any provision of the SAFE Act under a licensing system established by HUD, including the authority to issue temporary orders.

Consistent with HUD's responsibility to oversee implementation and compliance with the SAFE Act, HUD would like to highlight for the public's attention, the following determinations that HUD has made and for which HUD specifically welcomes comment. Several of the determinations were presented in the Commentary which HUD issued in connection with its review of the CSBS/AARMR model legislation and are repeated here. To the extent that this rule would clarify and interpret minimum requirements that are ambiguous or undefined in the SAFE Act, HUD anticipates that States that have already enacted otherwise compliant systems will be able to comply with the clarified requirements through issuance of regulations or otherwise, rather than through legislative amendments.

A. Engaging in the Business of a Loan Originator and State of Licensure

Section 1504(a) of the SAFE Act provides that, upon the establishment of a licensing or registry system, as applicable, in accordance with the SAFE Act, an individual ''may not engage in the business of a loan originator'' without first obtaining a registration or State license. Consistent with this statutory provision, this proposed rule would provide in § 3400.103 that an individual must comply with a State's licensing and registry requirements in order to engage in the business of a loan originator with respect to any residential property in that State. Section 3400.103 of the rule would clarify that the individual must comply with a State's licensing and registry requirements regardless of whether the individual or the prospective borrower is located in the State. This clarification would ensure that each State is able to establish and enforce the provisions of its SAFE Act licensing system and would prevent an individual from circumventing a State's requirements simply by physically locating outside of the State and conducting business in that State by telephone or other means. The same regulatory section clarifies, consistent with section 1503(3)(A)(ii) of the SAFE Act, that a person who performs only ''administrative and clerical tasks'' does not ''engage in the business of a loan originator.''

B. Taking an Application

Section 1503(3)(A)(i) of the SAFE Act defines ''loan originator'' as ''an individual who: (I) takes a residential mortgage loan application; and (II) offers or negotiates terms of a residential mortgage loan for compensation or gain.'' This proposed rule would incorporate in § 3400.23 the interpretation of ''application'' provided in HUD's Commentary. The Commentary Stated that ''application'' includes any request from a borrower, however communicated, for an offer (or in response to a solicitation of an offer) of residential mortgage loan terms, as well as the information from the borrower that is typically required in order to make such an offer.

The Commentary also provided that HUD views the phrase ''tak[ing] an application'' to mean receipt of an application for the purpose of deciding whether or not to extend the requested offer of a loan to the borrower, whether the application is received directly or indirectly from the borrower. Section 3400.103(c)(1) of the proposed rule would incorporate the language of the

Commentary on ''taking an application''. The Commentary also provided that HUD interprets the term ''takes a residential mortgage loan application'' to exclude an individual whose only role with respect to the application is physically handling a completed application form or transmitting a completed form to a lender on behalf of a prospective borrower. This interpretation is consistent with the definition of ''loan originator'' in section 1503(3)(A)(ii) of the SAFE Act.

The Commentary also addressed the meaning of the term ''loan originator.'' The Commentary States that since it generally would not be possible for an individual to offer to or negotiate residential mortgage loan terms with a borrower without first receiving the request from the borrower (including a positive response to a solicitation of an offer), as well as the information typically contained in a borrower's application, HUD considers the definition of loan originator to encompass any individual who, for compensation or gain, offers or negotiates pursuant to a request from and based on the information provided by the borrower. This proposed rule would therefore provide in section 3400.103(c)(1) that such an individual would be included in the definition of loan originator, regardless of whether the individual takes the request from the borrower for an offer (or positive response to an offer) of residential mortgage loan terms directly or indirectly from the borrower.

C. Offering or Negotiating

Similar to HUD's views on ''loan originator'', HUD views the terms ''offers or negotiates'' broadly. HUD views these terms as encompassing interactions between an individual and a borrower where the individual is likely to seek to further his or her own interests or those of a third party. Accordingly, this rule would clarify in § 3400.103(c)(2) that the terms include interactions that are typical between two parties in an arm's length relationship prior to entering into a contract, such as presenting loan terms for acceptance by a prospective borrower and communicating with the borrower for the purpose of reaching an understanding about prospective loan terms.

In addition, this proposed rule proposes to clarify that ''offers or negotiates'' includes actions by an individual that make a prospective borrower more likely to accept a particular set of loan terms or an offer from a particular lender, where the individual may be influenced by a duty to or incentive from any party other than the borrower. Such actions may have the same effect on the borrower's decision as overt negotiations, but without the borrower's knowledge or understanding that other options may be available. Examples include a contingent payment, a contractual duty to recommend one lender or product, or a pattern of steering to a lender that provides grant funding to the steering housing counselor. HUD specifically welcomes comment on the clarification that HUD offers through this rule.

D. For Compensation or Gain

The terms ''for compensation or gain'' are proposed to be broadly defined in § 3400.103(c)(2) and would include any circumstances in which an individual receives or expects to receive anything of value in connection with offering or negotiating terms of a residential mortgage loan. These terms would not be limited to payments that are contingent upon closing of a loan.

E. Independent Contractor Loan Processors or Underwriters

Sections 1503(4) and 1504(b) of the SAFE Act provide that certain individuals who ''engage in residential mortgage loan origination activities as a loan processor or underwriter'' must have a loan originator license, even if their activities do not amount to ''engag[ing] in the business of a loan originator'' under § 1504(a). The SAFE Act defines ''loan processor or underwriter'' as an individual who performs ''clerical or support duties'' at the direction of and subject to the supervision and instruction of a State-licensed loan originator or registered loan originator. ''Clerical or support duties'' are defined to include communicating with a consumer and third parties to collect and analyze information that is necessary to process an application or to underwrite the loan.

Sections 1503(4) and 1504(b) provide that this licensing requirement does not apply to an individual who fully meets the definition of a loan processor or underwriter, in that he or she performs these clerical or support duties at the direction of and subject to the supervision and instruction of a State-licensed loan originator or registered loan originator. Sections 1503(4) and 1504(b) provide that this licensing requirement does apply to individuals who are ''independent contractors'' who perform these clerical or support duties, because, by definition, they do not perform their duties at the direction of and subject to the supervision and instruction of a State licensed loan originator or a registered loan originator. It is the lack of such supervision by individuals already licensed or registered as loan originators that subjects loan processors or underwriters to the SAFE Act licensing and registry requirements.

This proposed rule would clarify in § 3400.23 that an ''independent contractor,'' for purposes of this provision, is an individual who performs these duties other than at the direction of and subject to the supervision of a State licensed loan originator or a registered loan originator. Accordingly, an individual who is an employee of some person or entity (i.e., the individual is not an independent contractor), but who is not subject to the direction, supervision, and instruction of a licensed or registered loan originator, would have to obtain a loan originator license. Such a person or entity could prevent its employees from having to obtain a State loan originator license simply by ensuring that they perform any ''clerical or support duties'' at the direction of and subject to the supervision and instruction of a State-licensed loan originator or registered loan originator.

F. Individuals Not Subject to Licensing Requirements

Notwithstanding the broad definition of ''loan originator'' in the SAFE Act, as noted in HUD's Commentary, there are some limited contexts where offering or negotiating residential mortgage loan terms would not make an individual a loan originator. The provision in the definition that loan originators are individuals who take an ''application'' implies a formality and commercial context that is wholly absent where an individual offers or negotiates terms of a residential mortgage loan with or on behalf of a member of his or her immediate family. Accordingly, this proposed rule would provide in § 3400.103(e)(4) that such individuals are not subject to State licensing requirements.

The commercial context implied by the taking of an ''application'' is also absent where an individual seller provides financing to a buyer pursuant to the sale of the seller's own residence. The frequency with which a particular seller provides financing is so limited that HUD's view is that Congress did not intend to require such sellers to obtain loan originator licenses. Accordingly, this rule would provide in § 3400.103(e)(5) that such individuals are not subject to State licensing requirements.

Additionally, the definition generally would not apply to, for example, a

licensed attorney who negotiates terms of a residential mortgage loan with a prospective lender on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, mortgage broker, or other mortgage loan originator or by an agent of such lender, mortgage broker, or other loan originator. In such cases, the attorney's duties of loyalty to the client require the attorney to seek to further only the client's interests, and the attorney does not negotiate *with* or make offers of loan terms *to* the client. Accordingly, such activities would not fall within the definition of ''offers or negotiates'' as proposed to be defined in § 3400.103(c)(2) and discussed above, and would therefore not be engaging in the business of a loan originator. This rule would provide in § 3400.103(e)(5) that such individuals are not subject to State licensing requirements.

Finally, section 1503(7)(A) of the SAFE Act provides that employees of: (i) A depository institution, (ii) a subsidiary that is owned and controlled by a depository institution and that is regulated by a Federal banking agency, or (iii) an institution regulated by the Farm Credit Administration are not subject to State licensing requirements. The SAFE Act does not define the term ''employee'' and, in consultation with staff of the Federal banking agencies and the Farm Credit Administration, HUD was apprised that there is no general definition of ''employee'' used by these Federal agencies. Accordingly, this proposed rule would clarify in § 3400.23 that HUD interprets ''employee'' to mean only an individual who meets a common law definition of employee and whose income is required to be reported on a W–2 form, unless the Federal banking agencies provide another binding definition. (See Restatement (Third) of Agency § 7.07(3) and comment f.)

G. Minimum Requirements for Licensing

Section 1505 sets forth the minimum licensing requirements. Section 1505(a) requires a background check on the applicant, which includes the submission of fingerprints, personal history and experience, an independent credit report, and information relating to any administrative, civil, or criminal findings by any governmental institution.

Section 1505(b)(2) of the SAFE Act provides that, to be eligible for a license, an individual must not have been convicted of any felony within the preceding 7 years or convicted of certain types of felonies at any time prior to application. Since the provision is triggered by a conviction, rather than by an extant record of a conviction, this proposed rule would clarify in § 3400.105(b)(2) that an individual is ineligible for a loan originator license even if the conviction is later expunged. Pardoned convictions, in contrast, are generally treated as legal nullities for all purposes under State law, and § 3400.105(b)(2) would provide that a pardoned conviction would not render an individual ineligible. Section 3400.105(b)(2) would also clarify that the law under which an individual is convicted, rather than the State where the individual applies for a license, determines whether a particular crime is classified as a felony.

Section 1505(c) establishes pre-licensing education for loan originators. In order to meet the pre-licensing education requirement, the applicant must complete at least 20 hours of approved education, which shall include: (1) At least 3 hours of Federal law and regulation; (2) 3 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and (3) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

Section 1505(d) requires the applicant to meet a written test, developed by the NMLS, and administered by an approved test provider.

Section 1505(e) requires each mortgagee licensee to submit to the NMLS reports of condition (or mortgage call reports). This requirement is further addressed in section I of this preamble and § 3400.111(f) of the proposed regulation.

H. Effective Date of Requirement To Obtain and Maintain a License

Under the SAFE Act, HUD may determine the acceptability of States' licensing and registration systems and of their participation in the NMLS as early as July 31, 2009, or July 31, 2010, as applicable. HUD's position is that Congress did not intend for States to require all mortgage loan originators to meet the educational, testing, and background check requirements and to be licensed immediately upon enactment of the State's legislation or issuance of regulations. In addition, HUD is aware that some States already require licensure of loan originators, and that some individuals in those States will hold licenses that do not expire until as late as December 2010.

Considering the education, testing, and background check standards that license applicants must meet, this proposed rule would provide in § 3400.109(a) that an acceptable delay, with respect to individuals who do not already possess a valid loan originator license, is one which does not extend past July 31, 2010. Section 3400.109(b) would provide that for individuals who possess licenses granted under a system that was enacted prior to the SAFE Act-compliant system, a reasonable delay is one that does not extend past December 31, 2010. This effective date would accommodate individuals with 2-year licenses that were granted or renewed as late as December 2008, and would also synchronize with the NMLSR's uniform annual license expiration date of December 31. Section 3400.109(c) would provide for the possibility of further extensions in the case of unusual hardship faced by loan originators in a State. Finally, § 3400.109(d) would permit States to extend the deadline for individuals who perform or facilitate only modifications or refinancing under the Federal government's Making Home Affordable program. HUD does not believe that SAFE Act licensing requirements should limit borrowers' access to the benefits and protections of the Making Home Affordable program.

I. Other Requirements

Section 1508(d) of the SAFE Act provides additional requirements that a State's loan originator licensing law and system must meet, including the requirement that the State's loan originator supervisory authority be maintained ''to provide effective supervision and enforcement'' of the law. This proposed rule would provide in §§ 3400.111 and 3400.113 a non-exhaustive list of minimum standards that a State supervisory authority must meet in order to provide effective supervision and enforcement, including enforcement authorities that approximate those that HUD would have in a State where it establishes a licensing system, in accordance with section 1514 of the SAFE Act. HUD specifically invites comment on whether its proposed enforcement authorities reflect effective supervision and enforcement of the Safe Act requirements.

Section 3400.111(f) also incorporates the statutorily required submission of reports of condition (or mortgage call reports), and would clarify that it is the responsibility of the loan originator to ensure that all residential mortgage loans that close as a result of the loan originator's activities are included in such reports. This clarification would not prevent such reports from being submitted at an institutional level, but the responsibility for ensuring submission would remain that of the individual loan originator.

This proposed rule would also provide that accreditation under CSBS's Mortgage Accreditation Program provides a supervisory authority a safe harbor, under which HUD will presume that the supervisory authority is providing ''effective supervision and enforcement.''

J. Determinations of Noncompliance by HUD

This proposed rule would specify in § 3400.115 the method HUD will use in making a final determination that a State is not in compliance with the SAFE Act's requirements. Section 3400.115 would provide that a State must provide evidence of its compliance upon request from HUD, and would provide that HUD will provide notice and the opportunity for comment of its initial determination of a State's noncompliance with the SAFE Act, and that HUD's final determination will be published in the **Federal Register.** This regulatory section would also provide that HUD may grant a good-faith extension of up to 24 months from the date of HUD's determination of noncompliance. Finally, § 3400.115 would provide the time frame for when HUD's implementation of a licensing system in a State becomes effective.

K. NMLSR Requirements.

This rule provides in subpart D the requirements that apply to the NMLSR. Section 3400.303 proposes to provide financial reporting requirements that are necessary to determine whether fees charged by the NMLSR are reasonable and not excessive, in accordance with section 1510 of the SAFE Act. This rule would also provide in § 3400.305 requirements that apply to the NMLSR's data security and integrity, which are necessary to achieve the confidentiality required under section 1512 of the SAFE Act and for HUD to determine that NMLSR is meeting the SAFE Act's requirements and purposes. HUD specifically invites comments on whether these provisions are adequate and appropriate.

L. Loan Modifications

As noted earlier in this preamble, HUD continues to seek comment on HUD's inclination to require licensing, as loan originators under the SAFE Act, of individuals who perform loan modifications that involve offering or negotiating of loan terms that are materially different from the original loan. HUD first addressed this issue in a frequently asked questions section on its Web site, concerning the SAFE Act. For the convenience of the reader, and to highlight the questions for which HUD specifically seeks comment, HUD reviews its consideration of this issue as set forth in the frequently asked questions section.

HUD's consideration of this issue is based on HUD's recognition that servicers are increasingly taking applications for and negotiating the terms of loan modifications that materially alter the terms of existing mortgage loans. These types of loan servicing activities are often very different from what industry and the public viewed as typical loan servicing activities only a few years ago. Today's loan modifications may include an increase or decrease in the interest rate, a change to the type of interest rate (*e.g.*, fixed rate versus adjustable rate), an extension of the loan term, an increase or a write-down of the principal, the addition of collateral, changes to provisions for prepayment penalties and balloon payments, and even a change in the parties to the loan through assumption or the addition of a co-signer. The activities of a loan servicer that result in modification of the terms of a residential mortgage loan can be virtually indistinguishable from the performance of a refinancing, which is unambiguously covered by the SAFE Act.

Given the material alteration to the terms of a residential loan that are occurring through today's modifications, HUD is inclined to include in its definition of a loan originator, which is being developed through this rulemaking, an individual who performs a residential mortgage loan modification that involves offering or negotiating of loan terms that are materially different from the original loan. At least in some circumstances, when a borrower seeks modification of an existing loan, he or she is requesting an offer of terms that are different from those of his or her existing loan. The loan servicer responds to this request by requesting from the borrower much of the same, if not exactly the same, information necessary in an application to refinance a mortgage or obtain a new loan, and the loan servicer offers or negotiates the terms of the modification with the borrower.

HUD understands the uncertainty within the residential mortgage industry about whether loan servicers are covered by the SAFE Act. The uncertainty stems from the fact that traditional loan servicer activities (*e.g.*, sending monthly payment statements, collecting monthly payments, maintaining records of payments and balances, collecting and paying taxes and insurance, remitting funds to the note holder, and following up on delinquencies) do not constitute loan origination activities. However, given the housing crisis and as noted earlier, loan servicers today are engaged in modification activities that go beyond those that they traditionally performed and that constitute ''engag[ing] in the business of a loan originator,'' within the meaning of the SAFE Act. Furthermore, when a borrower seeks a loan modification from his or her loan servicer, the borrower may face the same risks that Congress sought to control through loan originator licensing. As a result, borrowers may be well served if individuals who negotiate the terms of loan modifications are required to have the same level of competency, integrity, and accountability that the SAFE Act requires of those originating new loans, including the refinancing of an existing mortgage.

To assist with HUD's consideration and resolution of this issue, HUD specifically invites submission of views on any mandatory licensing provisions, quality controls, and training requirements that are already applicable to servicers, and on whether such measures provide protections for consumers that are equivalent to those under the SAFE Act. HUD also requests views on what, if any, characteristics of a modification should be used to classify the modification as so immaterial that it should not be covered by the SAFE Act. Finally, HUD requests views on whether, if SAFE Act licensing of loan servicers is required at HUD's final rule stage, the rule should provide for an extension of the licensing deadline for individuals performing modifications only under the Federal government's Making Home Affordable program. HUD is interested in whether, by granting an extension of time under this limited set of circumstances, States could be assured that consumers working with unlicensed individuals are still provided strong protections from fraud and abuse. Such an extension would be in addition to the reasonable delays that States may provide to all individuals, in accordance with the guidance provided in HUD's Commentary. The Commentary provided that States could give all individuals until July 31, 2010, to obtain a license, and could give all individuals who already hold licenses issued under a prior licensing system until December 31, 2010, to obtain a license.

HUD understands that a number of States have expressly provided for coverage of individuals performing modifications for servicers through legislation or through administrative means. Several States have opted to

enact legislation defining a loan originator as an individual who takes a residential mortgage loan application *or* offers or negotiates the terms of a residential mortgage loan for compensation or gain. HUD has determined that the model State law developed by CSBS and AARMR, which contains this definition of loan originator, meets the minimum requirements of the SAFE Act. Therefore, since an individual performing a loan modification almost certainly offers or negotiates the terms of a residential mortgage loan, HUD's view is that such State legislation already covers individuals performing such modifications. Although HUD is requesting the submission of views on whether it will require States to cover such individuals, HUD's view is that the decisions of those States to cover such individuals are fully consistent with the SAFE Act and that, in any case, States are free to exceed the standards required by HUD.

M. Third-Party Loan Modification Specialists

HUD has seen a substantial increase in the number of third-party actors (*i.e.,* individuals other than lenders and loan servicers) offering their services as intermediaries to work putatively on behalf of borrowers to negotiate modifications of existing loan terms. In many cases the activities of these third-party actors closely resemble those of mortgage brokers, who act as intermediaries between lenders and borrowers to facilitate the origination of new residential mortgage loans and refinancing of existing mortgages. These third-party actors may advertise their services on television or through telemarketing, targeting homeowners who are having difficulty making their current mortgage payments. In other cases, third parties work with borrowers directly, under programs sponsored by governmental or nonprofit agencies, to advise or assist borrowers in obtaining loan modifications. It is HUD's view that third-party loan modification specialists should be covered by the licensing requirements of the SAFE Act.

HUD specifically requests comment on whether third-party loan modification specialists should be covered by the definition of loan originator and, consequently, be subject to the licensing and registration requirements of the SAFE Act. HUD also requests comments on what specific functions performed by third-party loan modification specialists should be characterized as equivalent to the functions of a loan originator that are covered by the SAFE Act.

N. Grandfathering

One issue that has arisen that HUD did not address in its Commentary on the model State law is that of grandfathering. Specifically, HUD has been asked whether a State may permanently waive certain SAFE Act requirements for individuals who have a certain amount of experience as loan originators. The SAFE Act is clear that to engage in the business of a loan originator, an individual must meet all of the licensing requirements. The SAFE Act makes no provision for waiver of these requirements by States. Accordingly, grandfathering is not authorized under the SAFE Act, and this proposed rule would not provide for grandfathering. However, individuals who were licensed under a previous licensing system may be afforded an extended period of time to comply with requirements, as discussed in part H of this preamble.

III. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled, ''Regulatory Planning and Review''). This rule was determined to be a ''significant regulatory action'' as defined in section 3(f) of the Order, although not an economically significant regulatory action, as provided under section 3(f)(1) of the Order.

HUD's determination that this rule is not an economically significant regulatory action is supported by the fact that the SAFE Act establishes the minimum licensing standards for loan originators, not HUD. While HUD has interpretive, oversight, and enforcement authority under the SAFE Act, HUD is not authorized to make only certain licensing standards applicable to loan originators, and not others. Accordingly, HUD is not able to alter costs that result from compliance with these statutorily imposed requirements either by States or individuals.

This proposed rule is primarily directed to addressing HUD's oversight and enforcement responsibilities. The costs that result from these activities are therefore costs that will be borne by HUD in carrying out its oversight and enforcement responsibilities. While HUD recognizes that there are costs that will be incurred by States and individuals in complying with the SAFE Act requirements, the SAFE Act contemplates that balanced against these costs will be the benefits to which the SAFE Act strives to achieve, which include: uniform license applications and reporting requirements; increased accountability of loan originators; enhanced consumer protections; a streamlined licensing process; and reduced administrative burden through the uniformity provided by the nationwide standards, especially for those that originate loans in more than one State.

The docket file for this rule is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 7th Street, SW., Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Persons with hearing or speech impairments may access the above telephone number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SAFE Act, which establishes minimum licensing requirements for loan originators, is largely directed to individuals who are loan originators as defined by the SAFE Act. The SAFE Act requires each individual to be licensed and registered under the requirements of the SAFE Act. With respect to the SAFE Act licensing standards, HUD is not, through this rule, establishing or implementing these licensing requirements, because the SAFE Act made these requirements self-implementing. Rather, through this rule, HUD proposes to codify, in regulation, the SAFE Act minimum licensing standards, and to codify those clarifications and interpretations that HUD already has issued through Web site postings. HUD is proposing, however, to establish regulations reflecting its oversight responsibilities under the SAFE Act. The codification of the licensing standards, together with HUD's oversight regulations, will provide a convenient location for regulated parties and interested individuals to reference SAFE Act requirements. Because the SAFE Act is not directed to entities, large or small,

but individuals, and because this rule is directed to HUD's oversight responsibilities, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Environmental Impact

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of Section 6 of the Executive Order are met. This rule merely implements the statutory requirements of the SAFE Act and does not have federalism implications beyond those in the Act. This rule does not itself impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose any Federal mandate on any State, local, or tribal government or the private sector within the meaning of UMRA.

List of Subjects

24 CFR Part 30

Administrative practice and procedure, Grant programs-housing and community development, Loan programs-housing and community development, Mortgages, and Penalties.

24 CFR Part 3400

Licensing, Mortgages, Registration, Reporting and recordkeeping requirements.

For the reasons Stated in the preamble, HUD proposes to amend 24 CFR part 30 and add a new 24 CFR part 3400, as follows:

PART 30—CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT

1. The authority citation for part 30 continues to read as follows:

Authority: 12 U.S.C. 1701q–1, 1703, 1723i, 1735f–14, and 1735f–15; 15 U.S.C. 1717a; 28 U.S.C. 2461 note; 42 U.S.C. 1437z–1 and 3535(d).

2. Add § 30.69 to subpart B to read as follows:

§ 30.69 SAFE Mortgage Licensing violations.

(a) *General.* HUD may impose a civil penalty on a loan originator operating in any State which is subject to a licensing system established by HUD under 12 U.S.C. 5107 and in accordance with subpart C of 24 CFR part 3400, if HUD finds that such loan originator has violated or failed to comply with any requirement of the SAFE Act, the provisions of 24 CFR part 3400, or a provision of State law enacted or promulgated under the SAFE Act to which the person is subject and with respect to a State that is subject to a licensing system established by HUD under section 12 U.S.C. 5107 and in accordance with subpart C of 24 CFR part 3400.

(b) *Maximum amount of penalty.* The maximum amount of penalty for each act or omission described in paragraph (a) of this section shall be $25,000.

3. Add part 3400, to read as follows:

PART 3400—SAFE MORTGAGE LICENSING ACT

Sec.

Authority: 12 U.S.C. 5101–5113; 42 U.S.C. 3535(d).

§ 3400.1 Purpose.

(a) This part implements HUD's responsibilities under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) (12 U.S.C. 5101–5113). The SAFE Act strives to enhance consumer protection and reduce fraud by directing States to adopt minimum uniform standards for the licensing and registration of residential mortgage loan originators and to participate in a nationwide mortgage licensing system and registry database of residential mortgage loan originators. Under the SAFE Act, if HUD determines that a State's loan origination licensing system does not meet the minimum requirements of the SAFE Act, HUD is charged with establishing and implementing a system for all loan originators in that State. Additionally, if at any time HUD determines that the nationwide mortgage licensing system and registry is failing to meet the SAFE Act's requirements, HUD is charged with establishing and maintaining a licensing and registry database for loan originators.

(b) Subpart A establishes the definitions applicable to this part. Subpart B provides the minimum standards that a State must meet in licensing loan originators, including standards for whom a State must require to be licensed, and sets forth HUD's procedure for determining a State's

compliance with the minimum standards. Subpart C provides the requirements that HUD will apply in any State that HUD determines has not established a licensing and registration system in compliance with the minimum standards of the SAFE Act. Subpart D provides minimum requirements for the administration of the Nationwide Mortgage Licensing System and Registry. Subpart E clarifies HUD's enforcement authority in States in which it operates a State licensing system.

§ 3400.3 Confidentiality of information.

(a) Except as otherwise provided in this part, any requirement under Federal or State law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry or a system established by the Secretary under this part, and any privilege arising under Federal or State law (including the rules of any Federal or State court) with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the system. Such information and material may be shared with all State and Federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by Federal and State laws.

(b) Information or material that is subject to a privilege or confidentiality under paragraph (a) of this section shall not be subject to:

(1) Disclosure under any Federal or State law governing the disclosure to the public of information held by an officer or an agency of the Federal Government or the respective State; or

(2) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry or by the Secretary with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.

(c) Any State law, including any State open record law, relating to the disclosure of confidential supervisory information or any information or material described in paragraph (a) of this section that is inconsistent with paragraph (a), shall be superseded by the requirements of such provision to the extent that State law provides less confidentiality or a weaker privilege.

(d) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

Subpart A—General

§ 3400.20 Scope of this subpart.

This subpart provides the definitions applicable to this part, and other general requirements applicable to this part.

§ 3400.23 Definitions.

Terms that are defined in the SAFE Act and used in this part have the same meaning as in the SAFE Act, unless otherwise provided in this section.

Administrative or clerical tasks means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

American Association of Residential Mortgage Regulators is the national association of executives and employees of the various States who are charged with the responsibility for administration and regulation of residential mortgage lending, servicing and brokering, and dedicated to the goals described at *http://www.aarmr.org*.

Application means a request, in any form, for an offer (or a response to a solicitation of an offer) of residential mortgage loan terms and the information about the borrower or prospective borrower that is customary or necessary in a decision on whether to make such an offer.

Clerical or support duties:

(1) Include:

(i) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(ii) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms; and

(2) Does not include:

(i) Taking a residential mortgage loan application; or

(ii) Offering or negotiating terms of a residential mortgage loan.

Conference of State Bank Supervisors (CSBS) is the national organization composed of State bank supervisors dedicated to maintaining the State banking system and State regulation of financial services in accordance with the CSBS statement of principles described at *http://www.csbs.org*.

Employee:

(1) Subject to paragraph (2) of this definition, means:

(i) An individual:

(A) Whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person, and

(B) Whose compensation for Federal income tax purposes is reported, or required to be reported, on a W–2 form.

(2) Has such binding definition as may be issued by the Federal banking agencies in connection with their implementation of their responsibilities under the SAFE Act.

Farm Credit Administration means the independent Federal agency, authorized by the Farm Credit Act of 1971, to examine and regulate the Farm Credit System.

Federal banking agencies means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

Independent contractor means an individual who performs his or her duties other than at the direction of and subject to the supervision and instruction of an individual who is licensed and registered in accordance with § 3400.103(a), or is exempt under § 3400.103(e)(7).

Loan originator. See § 3400.103.

Loan processor or underwriter, for purposes of this part, means an individual who, with respect to the origination of a residential mortgage loan, performs clerical or support duties at the direction of and subject to the supervision and instruction of:

(1) A State-licensed loan originator, or

(2) A registered loan originator.

Nationwide Mortgage Licensing System and Registry or NMLSR means the mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for licensing and registration of loan originators and the registration of registered loan originators or any system established by the Secretary of HUD, as provided in subpart D of this part.

Nontraditional mortgage product means any mortgage product other than a 30-year fixed-rate mortgage.

Real estate brokerage activities mean any activity that involves offering or

providing real estate brokerage services to the public including—

(1) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(2) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(3) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);

(4) Engaging in any activity for which a person engaged in the activity is required to be registered as a real estate agent or real estate broker under any applicable law; and

(5) Offering to engage in any activity, or act in any capacity, described in paragraphs (1), (2), (3), or (4) of this definition.

Residential mortgage loan means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

Secretary means the Secretary of Housing and Urban Development.

State means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

Unique identifier means a number or other identifier that:

(1) Permanently identifies a loan originator;

(2) Is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the Federal banking agencies to facilitate electronic tracking of loan originators and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators; and

(3) Shall not be used for purposes other than those set forth under the SAFE Act.

Subpart B—Determination of State Compliance With the SAFE Act

§ 3400.101 Scope of this subpart.

This subpart describes the minimum standards of the SAFE Act that apply to a State's licensing and registering of loan originators. This subpart also provides the procedures that HUD follows to determine that a State does not have in place a system for licensing and registering mortgage loan originators that complies with the minimum standards. Upon making such a determination, HUD will impose the requirements and exercise the enforcement authorities described in subparts C and E of this part.

§ 3400.103 Individuals required to be licensed by States.

(a) Except as provided in paragraph (e) of this section, in order to operate a SAFE-compliant program, a State must prohibit an individual from engaging in the business of a loan originator with respect to any dwelling or residential real estate in the State, unless the individual first:

(1) Registers as a loan originator through and obtains a unique identifier from the NMLSR, and

(2) Obtains and maintains a valid loan originator license from the State.

(b)(1) An individual engages in the business of a loan originator if the individual:

(i)(A) Takes a residential mortgage loan application; and

(B) Offers or negotiates terms of a residential mortgage loan for compensation or gain; or

(ii) Represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationary, brochures, signs, rate lists, or other promotional items), that such individual can or will provide any of the services or perform any of the activities described in paragraph (b)(1)(i) of this section.

(2) An individual does not engage in the business of a loan originator merely by performing administrative or clerical tasks.

(c)(1) An individual ''takes a residential mortgage loan application'' if the individual receives a residential mortgage loan application for the purpose of deciding (or influencing or soliciting the decision of another) whether to extend an offer of residential mortgage loan terms to a borrower or prospective borrower (or to accept the terms offered by a borrower or prospective borrower in response to a solicitation), whether the application is received directly or indirectly from the borrower or prospective borrower.

(2) An individual ''offers or negotiates terms of a residential mortgage loan for compensation or gain'' if the individual:

(i)(A) Presents for acceptance by a borrower or prospective borrower residential mortgage loan terms;

(B) Communicates directly or indirectly with a borrower or prospective borrower for the purpose of reaching an understanding about prospective residential mortgage loan terms; or

(C) Recommends, refers, or steers a borrower or prospective borrower to a particular lender or set of residential mortgage loan terms, in accordance with a duty to or incentive from any person other than the borrower or prospective borrower; and

(ii) Receives or expects to receive payment of money or anything of value in connection with the activities described in paragraph (c)(2)(i) of this section or as a result of any residential mortgage loan terms entered into as a result of such activities.

(d)(1) Except as provided in paragraph (e) of this section, a State must prohibit an individual who is an independent contractor from engaging in residential mortgage loan origination activities as a loan processor or underwriter with respect to any dwelling or residential real estate in the State, unless the individual first:

(i) Registers as a loan originator through and obtains a unique identifier from the NMLSR, and

(ii) Obtains and maintains a valid loan originator license from the State.

(2) An individual engages in residential mortgage loan origination activities as a loan processor or underwriter if, with respect to a residential mortgage loan application, the individual performs clerical or support duties.

(e) A State is not required to impose the prohibitions required under paragraphs (a) and (d) of this section on the following individuals:

(1) An individual who performs only real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless the individual is compensated directly or indirectly by a lender, mortgage broker, or other loan originator or by an agent of such lender, mortgage broker, or other loan originator;

(2) An individual who is involved only in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. 101(53D);

(3) A loan processor or underwriter who performs only clerical or support duties and does so at the direction of and subject to the supervision and instruction of an individual who is licensed and registered in accordance with paragraph (a) of this section or who is exempt under paragraph (e)(7) of this section;

(4) An individual who only offers or negotiates terms of a residential mortgage loan with or on behalf of an

immediate family member of the individual;

(5) Any individual who only offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.

(6) A licensed attorney who only negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; or

(7) An individual who is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry, and who is an employee of—

(i) A depository institution;

(ii) A subsidiary that is:

(A) Owned and controlled by a depository institution; and

(B) Regulated by a Federal banking agency; or

(iii) An institution regulated by the Farm Credit Administration.

(f) A State must require an individual licensed in accordance with paragraphs (a) or (d) of this section to renew the loan originator license no less often than annually.

§ 3400.105 Minimum loan originator license requirements.

For an individual to be eligible for a loan originator license required under § 3400.103(a) and (d), a State must require and find, at a minimum, that an individual:

(a) Has never had a loan originator license revoked in any governmental jurisdiction, except that a formally vacated revocation shall not be deemed a revocation;

(b)(1) Has never been convicted of, or pled guilty or *nolo contendere* to, a felony in a domestic, foreign, or military court:

(i) During the 7-year period preceding the date of the application for licensing; or

(ii) At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering.

(2) For purposes of this paragraph (b):

(i) Expungement of a conviction described in paragraph (b)(1) of this section does not affect the ineligibility of the convicted individual;

(ii) Pardoned convictions do not render an individual ineligible; and

(iii) Whether a particular crime is classified as a felony is determined by the law of the State in which an individual is convicted.

(c) Has demonstrated financial responsibility, character, and general fitness, such as to command the confidence of the community and to warrant a determination that the loan originator will operate honestly, fairly, and efficiently, under reasonable standards established by the individual State.

(d) Completed at least 20 hours of pre-licensing education that has been reviewed and approved by the Nationwide Licensing System and Registry. The pre-licensing education completed by the individual must include at least:

(1) 3 hours of Federal law and regulations;

(2) 3 hours of ethics, which must include instruction on fraud, consumer protection, and fair lending issues; and

(3) 2 hours of training on lending standards for nontraditional mortgage product marketplace.

(e)(1) Achieved a test score of not less than 75 percent correct answers on a written test developed by the NMLSR in accordance with 12 U.S.C. 5105(d).

(2) To satisfy the requirement under paragraph (a)(5)(i) of this section, an individual may take a test three consecutive times, with each retest occurring at least 30 days after the preceding test. If an individual fails three consecutive tests, the individual must wait at least 6 months before taking the test again.

(3) If a State licensed loan originator fails to maintain a valid license for 5 years or longer, the individual must retake the test and achieve a test score of not less than 75 percent correct answers.

(f) Be covered by either a net worth or surety bond requirement, or pays into a State fund, as required by the State loan originator supervisory authority.

(g) Has submitted to the NMLSR fingerprints for submission to the Federal Bureau of Investigation and to any government agency for a State and national criminal history background check; and

(h) Has submitted to the NMLSR personal history and experience, which must include:

(1) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction; and

(2) An independent credit report.

§ 3400.107 Minimum annual license renewal requirements.

For an individual to be eligible to renew a loan originator license as required under § 3400.105(f), a State must require the individual:

(a) To continue to meet the minimum standards for license issuance provided in § 3400.105; and

(2) To satisfy annual continuing education requirements, which must include at least 8 hours of education approved by the NMLSR. The 8 hours of annual continuing education must include at least:

(i) 3 hours of Federal law and regulations;

(ii) 2 hours of ethics (including instruction on fraud, consumer protection, and fair lending issues); and

(iii) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) A State must provide that credit for a continuing education course is valid only for the year in which the course is taken and that an individual may not meet the annual requirements for continuing education by taking an approved course more than one time in the same year or in successive years.

(c) An individual who is an instructor of an approved continuing education course may receive credit for the individual's own annual continuing education requirement at the rate of 2 hours credit for every one hour taught.

§ 3400.109 Effective date of State requirements imposed on individuals.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, a State must provide that the effective date for requirements it imposes in accordance with §§ 3400.103, 3400.105, and 3400.107 is no later than July 31, 2010.

(b) For an individual who was permitted to perform residential mortgage loan originations under State legislation or regulations enacted or promulgated prior to the State's enactment or promulgation of a licensing system that complies with this subpart, a State may delay the effective date for requirements it imposes in accordance with §§ 3400.103, 3400.105, and 3400.107 to no later than December 31, 2010. For purposes of this paragraph (b), an individual was permitted to perform residential mortgage loan originations only if prior State law required the individual to be licensed, authorized, registered, or otherwise granted a form of affirmative and revocable government permission for individuals as a condition of performing residential mortgage loan originations.

(c) HUD may approve a later effective date only upon a State's demonstration that substantial numbers of loan originators (or of a class of loan originators) who require a State license face unusual hardship, through no fault of their own or of the State government, in complying with the standards

required by the SAFE Act to be in the State legislation and in obtaining State licenses within one year.

(d) For an individual who engages in the business of a loan originator solely by providing or facilitating residential mortgage loan modifications and refinancing under the Department of the Treasury's Making Home Affordable program, a State may delay the effective date for requirements it imposes in accordance with §§ 3400.103, 3400.105, and 3400.107 until the date such program is terminated.

§ 3400.111 Other minimum requirements for State licensing systems.

(a) *General.* A State must maintain a loan originator licensing, supervisory, and oversight authority (supervisory authority) that provides effective supervision and enforcement, in accordance with the minimum standards provided in this section and in § 3400.113.

(b) *Authorities.* A supervisory authority must have the legal authority and mechanisms:

(1) To examine any books, papers, records, or other data of any loan originator operating in the State;

(2) To summon any loan originator operating in the State, or any person having possession, custody, or care of the reports and records relating to such a loan originator, to appear before the supervisory authority at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation of such loan originator for compliance with the requirements of the SAFE Act;

(3) To administer oaths and affirmations and examine and take and preserve testimony under oath as to any matter in respect to the affairs of any such loan originator;

(4) To enter an order requiring any individual or person that is, was, or would be a cause of a violation of the SAFE Act as implemented by the State, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same requirement;

(5) To suspend, terminate, and refuse renewal of a loan originator license for violation of State or Federal law; and

(6) To impose civil money penalties for individuals acting as loan originators, or representing themselves to the public as loan originators, in the State without a valid license or registration.

(c) A supervisory authority must have established processes in place to verify that individuals subject to the requirement described in § 3400.103(a)(1) and (d)(1) are registered with the NMLSR.

(d) The supervisory authority must be required under State law to regularly report violations of such law, as well as enforcement actions and other relevant information, to the NMLSR.

(e) The supervisory authority must have a process in place for challenging information contained in the NMLSR.

(f) The supervisory authority must require a loan originator to ensure that all residential mortgage loans that close as a result of the loan originator engaging in activities described in § 3400.103(b)(1) are included in reports of condition submitted to the NMLSR. Such reports of condition shall be in such form, shall contain such information, and shall be submitted with such frequency and by such dates as the NMLSR may reasonably require.

§ 3400.113 Performance standards.

(a) For HUD to determine that a State is providing effective supervision and enforcement, a supervisory authority must meet the following performance standards:

(1) The supervisory authority must participate in the NMLSR;

(2) The supervisory authority must approve or deny loan originator license applications and must renew or refuse to renew existing loan originator licenses for violations of State or Federal law;

(3) The supervisory authority must discipline loan originator licensees with appropriate enforcement actions, such as license suspensions or revocations, cease-and-desist orders, civil money penalties, and consumer refunds for violations of State or Federal law;

(4) The supervisory authority must examine or investigate loan originator licensees in a systematic manner based on identified risk factors or on a periodic schedule.

(b) A supervisory authority that is accredited under the Conference of State Bank Supervisors Mortgage Accreditation Program will be presumed by HUD to be compliant with the requirements of this section.

§ 3400.115 Determination of noncompliance.

(a) *Evidence of compliance.* Any time a State enacts legislation that affects its compliance with the SAFE Act, it must notify HUD. Upon request from HUD, a State must provide evidence that it is in compliance with the requirements of the SAFE Act and this part, including citations to applicable State law, and regulations, descriptions of processes followed by the State's supervisory authority, and data concerning examination, investigation, and enforcement actions.

(b) *Initial determination of noncompliance.* If HUD makes an initial determination that a State is not in compliance with the SAFE Act, HUD will notify the State and also publish, in the **Federal Register**, HUD's initial finding and presenting the opportunity for public comment for a period of no less than 30 days. This public comment period will allow the residents of the State and other interested members of the public to comment on HUD's initial determination.

(c) *Final determination of noncompliance.* In making a final determination of noncompliance, HUD will review additional information that may be offered by a State and the comments submitted during the public comment period described in paragraph (b) of this section. If HUD makes a final determination that a State does not have in place by law or regulation a system that complies with the minimum requirements of the SAFE Act, as described in this part, HUD will publish that final determination in the **Federal Register**.

(d) *Good-faith effort to meet compliance.* If HUD makes the final determination described in paragraph (c) of this section, but HUD finds that the State is making a good-faith effort to meet the requirements of 12 U.S.C. 5104, 5105, 5107(d), and this subpart, HUD may grant the State a period of not more than 24 months to comply with these requirements.

(e) *Effective date of subparts C and E.* The provisions of subparts C and E of this part will become effective with respect to a State upon the latter of:

(1) The effective date of HUD's final determination with respect to the State, pursuant to paragraph (c) of this section; or

(2)(i) The expiration of the period of time granted pursuant to paragraph (c) of this section, and

(ii) The effective date of HUD's subsequent final determination that the State does not have in place by law or regulation a system that complies with 12 U.S.C. 5104, 5105, 5107(d), and this part.

Subpart C—HUD's Loan Originator Licensing System and Nationwide Mortgage Licensing and Registry System

§ 3400.201 Scope of this subpart.

The SAFE Act provides HUD with ''backup authority'' to establish a loan originator licensing system for any State that is determined by HUD not to be in compliance with the minimum standards of the SAFE Act. The SAFE Act also authorizes HUD to establish and maintain a nationwide mortgage licensing system and registry if HUD determines that the NMLSR is failing to meet the purposes and requirements of the SAFE Act for a comprehensive licensing, supervisory, and tracking system for loan originators. The provisions of this subpart become applicable to individuals in a State as provided in § 3400.115(e).

§ 3400.203 HUD's establishment of loan originator licensing system.

If HUD determines, in accordance with § 3400.115(e), that a State has not established a licensing and registration system in compliance with the minimum standards of the SAFE Act, HUD shall apply to individuals in that State the minimum standards of the SAFE Act, as specified in subpart B, which provides the minimum requirements that a State must meet to be in compliance with the SAFE Act, and as may be further specified in this part.

§ 3400.205 HUD's establishment of nationwide mortgage licensing system and registry.

If HUD determines that the NMLSR established by CSBS and AARMR does not meet the minimum requirements of subpart D of this part, HUD will establish and maintain a nationwide mortgage licensing system and registry.

Subpart D—Minimum Requirements for Administration of the NMLSR

§ 3400.301 Scope of this subpart.

This subpart establishes minimum requirements that apply to administration of the NMLSR by the Conference of State Bank Supervisors or by HUD. The NMLSR must accomplish the following objectives:

(a) Provides uniform license applications and reporting requirements for State-licensed loan originators.

(b) Provides a comprehensive licensing and supervisory database.

(c) Aggregates and improves the flow of information to and between regulators.

(d) Provides increased accountability and tracking of loan originators.

(e) Streamlines the licensing process and reduces the regulatory burden.

(f) Enhances consumer protections and supports anti-fraud measures.

(g) Provides consumers with easily accessible information, offered at no charge, utilizing electronic media, including the Internet, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators.

(h) Establishes a means by which residential mortgage loan originators would, to the greatest extent possible, be required to act in the best interests of the consumer.

(i) Facilitates responsible behavior in the mortgage marketplace and provides comprehensive training and examination requirements related to mortgage lending.

(j) Facilitates the collection and disbursement of consumer complaints on behalf of State and Federal mortgage regulators.

§ 3400.303 Financial reporting.

To the extent that CSBS maintains the NMLSR, CSBS must annually provide to HUD, and HUD will annually collect and make available to the public, NMLSR financial statements, audited in accordance with Generally Accepted Accounting Principles (GAAP) promulgated by the Federal Accounting Standards Advisory Board, and other data. These financial statements and other data shall include, but not be limited to, the level and categories of funds received in relation to the NMLSR and how such funds are spent, including the aggregate total of funds paid for system development and improvements, the aggregate total of salaries and bonuses paid, the aggregate total of other administrative costs, and detail on other money spent, including money and interest paid to reimburse system investors or lenders, and a report of each State's activity with respect to the NMLSR, including the number of licensees, the State's financial commitment to the system, and the fees collected by the State through the NMLSR.

§ 3400.305 Data security.

(a) To the extent that CSBS maintains the NMLSR, CSBS must complete a background check on its employees, contractors, or other persons who have access to loan originators' Social Security numbers, fingerprints, or any credit reports collected by the system.

(b) To the extent that CSBS maintains the NMLSR, CSBS must keep and adhere to an appropriate information security and privacy policy. If the NMLSR forms a reasonable belief that a security breach has occurred, it shall notify affected parties in a reasonable amount of time, including any loan originators or registrants whose data may have been compromised, and the employer of the loan originator or registrant, if such employer is also licensed through the system.

§ 3400.307 Fees.

CSBS or HUD, as applicable, may charge reasonable fees to cover the costs of maintaining and providing access to information from the Nationwide Mortgage Licensing System and Registry. Fees shall not be charged to consumers for access to such system and registry. If HUD determines to charge fees, the fees to be charged shall be issued by notice with the opportunity for comment prior to any fees being charged.

§ 3400.309 Absence of liability for good-faith administration.

HUD or any organization serving as the administrator of the Nationwide Mortgage Licensing System and Registry or a system established by HUD under 12 U.S.C. 5108 and in accordance with subpart C, or any officer or employee of HUD or HUD's designee, shall not be subject to any civil action or proceeding for monetary damages by reason of the good faith action or omission of any officer or employee of any such entity, while acting within the scope of office or employment, relating to the collection, furnishing, or dissemination of information concerning persons who are loan originators or are applying for licensing or registration as loan originators.

Subpart E—Enforcement of HUD Licensing System.

§ 3400.401 HUD's authority to examine loan originator records.

(a) *Summons authority.* HUD may:

(1) Examine any books, papers, records, or other data of any loan originator operating in any State which is subject to a licensing system established by HUD under subpart C of this part; and

(2) Summon any loan originator referred to in paragraph (a)(1) of this section or any person having possession, custody, or care of the reports and records relating to such loan originator, to appear before a HUD representative at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation of such loan originator for

compliance with the requirements of the SAFE Act.

(b) *Examination authority.* (1) *In general.* If HUD establishes a licensing system under 12 U.S.C. 5107 and in accordance with subpart C of this part for any State, HUD shall appoint examiners for the purposes of ensuring the appropriate administration of the HUD licensing system.

(2) *Power to examine.* Any examiner appointed under paragraph (b)(1) of this section shall have power, on behalf of HUD, to make any examination of any loan originator operating in any State which is subject to a licensing system established by HUD under 12 U.S.C. 5107 and in accordance with subpart C of this part, whenever HUD determines that an examination of any loan originator is necessary to determine the compliance by the originator with minimum requirements of the SAFE Act.

(3) *Report of examination.* Each HUD examiner appointed under paragraph (b)(1) of this section shall make a full and detailed report to HUD of examination of any loan originator examined under this section.

(4) *Administration of oaths and affirmations; evidence.* In connection with examinations of loan originators operating in any State which is subject to a licensing system established by HUD under 12 U.S.C. 5107, and in accordance with subpart C of this part, or with other types of investigations to determine compliance with applicable law and regulations, HUD and the examiners appointed by HUD may administer oaths and affirmations and examine and take and preserve testimony under oath as to any matter in respect to the affairs of any such loan originator.

(5) *Assessments.* The cost of conducting any examination of any loan originator operating in any State which is subject to a licensing system established by HUD under 12 U.S.C. 5107 and in accordance with subpart C of this part shall be assessed by HUD against the loan originator to meet the Secretary's expenses in carrying out such examination.

§ 3400.403 Enforcement proceedings.

(a) *Cease and desist proceeding.* (1) If HUD finds, after notice and opportunity for hearing in accordance with subpart A of part 26, that any person is violating, has violated, or is about to violate any provision of the SAFE Act, the provisions of this part, or a provision of State law enacted or promulgated under the SAFE Act, to which the person is subject and with respect to a State that is subject to a licensing system established by HUD under 12 U.S.C. 5107 and in accordance with subpart C of this part, HUD may publish such findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation.

(2) The order authorized by paragraph (a)(1) of this section may, in addition to requiring a person to cease and desist from committing or causing a violation, require such person to comply, or to take steps to effect compliance, with such provision or regulation, upon such terms and conditions and within such time as HUD may specify in such order.

(3) Any order issued under paragraph (a)(1) of this section may, as HUD determines appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as HUD may specify, with such provision or regulation with respect to any loan originator.

(b) *Hearing.* The notice instituting proceedings in accordance with paragraph (a) of this section shall establish a hearing date not earlier than 30 days nor later than 60 days after the date of service of the notice unless an earlier or a later date is set by HUD with the consent of any respondent so served.

(c) *Temporary order.* (1) *Issuance of a temporary order.* Whenever HUD determines that the alleged violation or threatened violation specified in the notice instituting proceedings in accordance with paragraph (a) of this section, or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to consumers, or substantial harm to the public interest prior to the completion of the proceedings, HUD may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened violation and to prevent dissipation or conversion of assets, significant harm to consumers, or substantial harm to the public interest as HUD determines appropriate pending completion of such proceedings.

(i) The order authorized by paragraph (c)(1) of this section shall be entered only after notice and opportunity for a hearing, unless HUD determines that notice and hearing prior to entry would be impracticable or contrary to the public interest.

(ii) The temporary order authorized by paragraph (c)(1) of this section shall become effective upon the date of service upon the respondent and, unless set aside, limited, or suspended by HUD or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

(2) *Review of temporary orders.* (i) *Review by HUD.* At any time after the respondent has been served with a temporary cease-and-desist order pursuant to paragraph (c)(1) of this section, the respondent may apply to HUD to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease-and-desist order entered without a prior hearing before HUD, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application, and HUD shall hold a hearing and render a decision on such application at the earliest possible time.

(ii) *Judicial review.* (A) Within 10 days after the date the respondent was served with a temporary cease-and-desist order entered with a prior hearing before HUD or within 10 days after HUD renders a decision on an application and hearing under paragraph (b) of this section, with respect to any temporary cease-and-desist order entered without a prior hearing before HUD, the respondent may apply to the United States district court for the district in which the respondent resides or has its principal place of business, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order.

(B) A respondent served with a temporary cease-and-desist order entered without a prior hearing before the Secretary may not apply to the court, except after a hearing and decision by HUD on the respondent's application under paragraph (c)(2)(i) of this section.

(C) The commencement of proceedings under paragraph (b) of this section shall not, unless specifically ordered by the court, operate as a stay of HUD's order.

(d) *Authority of the secretary to prohibit persons from serving as loan originators.* In any cease-and-desist proceeding under this section, HUD may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as HUD shall determine, any person who has violated this title or regulations thereunder, from acting as a loan originator if the conduct of that person

demonstrates unfitness to serve as a loan originator.

§ 3400.405 Civil money penalties.

HUD may impose civil money penalties on a loan originator operating in any State which is subject to a licensing system established by HUD under 12 U.S.C. 5107 and in accordance with subpart C of this part, as provided in 24 CFR 30.69.

Dated: November 11, 2009.

David H. Stevens,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. E9–29708 Filed 12–14–09; 8:45 am]

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LIST OF PUBLIC LAWS

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H.R. 955/P.L. 111–99

To designate the facility of the United States Postal Service located at 10355 Northeast Valley Road in Rollingbay, Washington, as the ''John 'Bud' Hawk Post Office''. (Nov. 30, 2009; 123 Stat. 3011)

H.R. 1516/P.L. 111–100

To designate the facility of the United States Postal Service located at 37926 Church Street in Dade City, Florida, as the ''Sergeant Marcus Mathes Post Office''. (Nov. 30, 2009; 123 Stat. 3012)

H.R. 1713/P.L. 111–101

To name the South Central Agricultural Research Laboratory of the Department of Agriculture in Lane, Oklahoma, and the facility of the United States Postal Service located at 310 North Perry Street in Bennington, Oklahoma, in honor of former Congressman Wesley ''Wes'' Watkins. (Nov. 30, 2009; 123 Stat. 3013)

H.R. 2004/P.L. 111–102

To designate the facility of the United States Postal Service located at 4282 Beach Street in Akron, Michigan, as the ''Akron Veterans Memorial Post Office''. (Nov. 30, 2009; 123 Stat. 3014)

H.R. 2215/P.L. 111–103

To designate the facility of the United States Postal Service located at 140 Merriman Road in Garden City, Michigan, as the ''John J. Shivnen Post Office Building''. (Nov. 30, 2009; 123 Stat. 3015)

H.R. 2760/P.L. 111–104

To designate the facility of the United States Postal Service located at 1615 North Wilcox Avenue in Los Angeles, California, as the ''Johnny Grant Hollywood Post Office Building''. (Nov. 30, 2009; 123 Stat. 3016)

H.R. 2972/P.L. 111–105

To designate the facility of the United States Postal Service located at 115 West Edward Street in Erath, Louisiana, as the ''Conrad DeRouen, Jr. Post Office''. (Nov. 30, 2009; 123 Stat. 3017)

H.R. 3119/P.L. 111–106

To designate the facility of the United States Postal Service located at 867 Stockton Street in San Francisco, California, as the ''Lim Poon Lee Post Office''. (Nov. 30, 2009; 123 Stat. 3018)

H.R. 3386/P.L. 111–107

To designate the facility of the United States Postal Service located at 1165 2nd Avenue in Des Moines, Iowa, as the ''Iraq and Afghanistan Veterans Memorial Post Office''. (Nov. 30, 2009; 123 Stat. 3019)

H.R. 3547/P.L. 111–108

To designate the facility of the United States Postal Service located at 936 South 250 East in Provo, Utah, as the ''Rex E. Lee Post Office Building''. (Nov. 30, 2009; 123 Stat. 3020)

S. 748/P.L. 111–109

To redesignate the facility of the United States Postal Service located at 2777 Logan Avenue in San Diego, California, as the ''Cesar E. Chavez Post Office''. (Nov. 30, 2009; 123 Stat. 3021)

S. 1211/P.L. 111–110

To designate the facility of the United States Postal Service located at 60 School Street, Orchard Park, New York, as the ''Jack F. Kemp Post Office Building''. (Nov. 30, 2009; 123 Stat. 3022)

S. 1314/P.L. 111–111

To designate the facility of the United States Postal Service located at 630 Northeast Killingsworth Avenue in Portland, Oregon, as the ''Dr. Martin Luther King, Jr. Post Office''. (Nov. 30, 2009; 123 Stat. 3023)

S. 1825/P.L. 111–112

To extend the authority for relocation expenses test programs for Federal employees, and for other purposes. (Nov. 30, 2009; 123 Stat. 3024)

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